

Franchising Alert

2013 Review of Franchising Code

January 2013

The Minister for Small Business, the Honourable Brendan O'Connor, announced on 4 January 2013 that the Federal Government has commenced a review of the Franchising Code of Conduct (**Code**). Mr O'Connor stated in his initial press release that the primary purpose of this review is to *"verify, after a reasonable implementation period, that the amendments to the Franchising Code of Conduct made in 2008 and 2010 are working as intended"*.

The Government has elected to commence the Code review process by appointing Mr Alan Wein to conduct the review. Mr Wein has a long standing involvement in the franchise sector. He is the co-founder and former owner of the HOUSE homeware franchise chain. He also has recent experience in the franchise industry through his role as an accredited mediator in Victoria.

Terms of reference of the Review

The Government has directed Mr Wein to inquire into the efficiency of the amendments made to the Code in 2008 and 2010. In addition, the Government has requested Mr Wein specifically inquire into:

- good faith in franchising;
- the rights of franchisees at the end of the term of their franchise agreements, including recognition for any contribution they have made to the building of the franchise;
- the operation of the provisions of the *Competition and Consumer Act 2010* (formerly known as the *Trade Practices Act*) as they relate to enforcement of the Code.

Mr Wein is required to prepare a report for public release on or before 3 April 2013.

In gathering evidence and preparing for the final report, the Government has requested that Mr Wein undertake appropriate consultation with industry and interested State and Territory stakeholders. Interested stakeholders have been invited to provide feedback and submissions to Mr Wein based on the Government's terms of reference.

Making and lodging submissions

- To assist stakeholders in preparing submissions, a detailed discussion paper has been prepared by the Government which examines in detail each of the terms of reference and proposes a number of questions for comment. To view the discussion paper [click here](#).
- The Government has indicated that it prefers to receive all submissions in electronic format (word or RTF format). Submissions need to be sent to franchisingcodereview@innovation.gov.au and must be received on or before Friday 15 February 2013.
- It is important to remember that all submissions will be made available to the public. However, there is a procedure in place to allow some submissions to be confidential should that be necessary. For a more comprehensive summary of how to lodge submissions please [click here](#).

Initial Comment

The 2013 review of the Code could potentially be a watershed moment for the franchising sector if significant changes are recommended. Whilst no one will disagree that the Code can be improved there is significant risk to the sector if changes are made without a balanced consultation by all interested stakeholders. Issues such as

good faith, end of term arrangements and penalties for breaching the Code are legally and commercially complex, and if not understood properly, could impose significant restraints on the franchise sector. We encourage all franchisors to take the time to carefully review the terms of reference and supporting discussion paper and consider whether they should make a formal submission to the Government. As with past Government inquiries we are happy to discuss and assist with the preparation of submissions.

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For further information, please [click here](#) to contact our national Franchising team

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