FRANCHISING UPDATE | PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES: MAIN CHANGES FROM THE AUSTRALIAN FEDERAL GOVERNMENT RESPONSE

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FRANCHISING CODE

On Thursday 20 August 2020, the Australian Federal Government released a report which sets out intended changes to the Franchising Code (the Code).

In addition, the Government has indicated there will be some further consultation to finalise a number of matters. A steep increase to penalties for non-compliance (which will double) will likely push compliance up the list of priorities for franchisor's and, combined with the other anticipated changes, increase the disclosure of information to franchisees. Details regarding these changes, such as the potential registration process and new 'short-form' Key Disclosure Information Fact Sheet that will need to be provided to franchisees are not yet known.

SUMMARY OF KEY CHANGES

The main changes are:

- Penalties to double
- Increased disclosure (particularly around supply rebates and leasing arrangements) - a new 'short-form' Key Disclosure Information Fact Sheet to be required
- Increased dispute resolution options (voluntary binding arbitration and conciliation)
- Franchisees will be able to group together in disputes (if the person conducting the dispute resolution determines a multi-party dispute is appropriate)
- Franchisors will need to give seven days' notice to terminate in the 'special circumstances' prescribed by the Code (they can currently terminate immediately on written notice).

There are other changes regarding:

- Tightening of provisions and increased disclosures around significant capital expenditure
- Clarification of 'cooling off' rights and the 'disclosure period'

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- Franchisors can no longer charge franchisees for their legal costs (but can include this fee in their franchise fees)
- Disclosure documents must be provided in electronic and hard copy format.

The Australian Federal Government has flagged that there will be further consultation with the franchising sector or further consideration regarding the following issues:

- A public register of franchisors
- Facilitating a negotiated early termination from a franchise by parties (including early exits by franchisees to reasonably constrain financial loss)
- Unilateral variations of franchise agreement and subsidiary documents in the context of unfair contract terms legislation.

The table, attached here, sets out the main points (in some cases extracted directly) from the paper circulated by the Australian Federal Government on Thursday 20 August, 2020. The expected changes to the Franchising Code are highlighted in green the issues being further considered or not changed are highlighted in blue.

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