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Published

2012

Journal Title

Macquarie Journal of Business Law

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**LEGAL ISSUES IN FRANCHISING IN AUSTRALIA: IS THE CURRENT  
REGULATORY ENVIRONMENT FOR THE FRANCHISE SECTOR ADEQUATE?**

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*Franchising is one of the fastest-growing business sectors in Australia, contributing about 12 percent to the country's economy.<sup>2</sup> Australia is a heavily franchised nation, with nearly three times as many franchise systems per head of population as the United States.<sup>3</sup> The franchising relationship is commonly referred to as a 'commercial marriage', in which the parties depend on each other for their continued well being, the relationship is intended to continue for a lengthy period of time and is intended to be satisfactory to both parties.<sup>4</sup> Nevertheless, this 'marriage' between franchisor and franchisee is inherently fragile and has recently become more complicated. There has been a great deal of discussion about the nature of the franchise relationship and how it should be regarded in law,<sup>5</sup> given that the area of franchising governed by contracts has always been problematic. In Australia's complex economy, the legal system faces the challenging task of developing and enforcing the legal rules of franchising to the benefit of both parties. This article examines the effectiveness of the regulatory changes made to the Franchising Code of Conduct (FCC) on 1 July 2010 and the likely impact of these changes on both franchisors and franchisees.*

**I INTRODUCTION**

‘Never be a pioneer; it doesn't pay. Let the other man do the pioneering; and then after he has shown what can be done, do it bigger and more quickly. But let the other man take the time and risk to show you how to do it.’ *Leo Baekeland, inventor of Bakelite.*

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<sup>2</sup> Featherstone, T., ‘Sharp slowdown threatens franchising growth’ (2010) *Brisbane Times*.

<sup>3</sup> Franchise Council of Australia at <[http://www.worldfranchisecouncil.org/control/product?product\\_id=FC\\_AU](http://www.worldfranchisecouncil.org/control/product?product_id=FC_AU)> last accessed on 2 November 2011.

<sup>4</sup> Weinberg, L., “Chapter 2: The Franchise Relationship” *Franchising 101* (Toronto: Ontario Bar Association, 2001) at 1, quoted in Library and Archives Canada Cataloguing in Publication.

<sup>5</sup> Spencer, E.C., ‘Balance of Power, Certainty and Discretion in the Franchise Relationship: An Analysis of Contractual Terms’ *Law Papers* (2008).

Franchising is basically a commercial relationship whereby a business proprietor, the 'franchisor', distributes or markets their products, services, or methods through affiliated dealers, the 'franchisees', under a licensing arrangement.<sup>6</sup> Business-format franchises are the most common type of franchising arrangements, and are where the franchisor provides their established business system and identity to the franchisee in exchange for an initial fee and ongoing payments.<sup>7</sup> Well known international franchises include fast food giants McDonald's, Pizza Hut, Domino's Pizza and KFC, as well as a myriad of other businesses like Century 21 real estate, 7 Eleven convenience stores, H & R Block tax services, Hertz rental cars, and Subway sandwiches. The modern commercial form of franchising that is well known today owes its origins to the promulgation of fast food restaurant chains in the United States of America in the mid-20<sup>th</sup> century.<sup>8</sup> However, it should be noted that these fast food franchises did not become fully established in Australia until the 1970s, at which point in time franchising became very popular due to an intensification of competition in the marketplace and the perception that embracing the recognised business system and name of a franchise was a less risky option than operating independently.<sup>9</sup> For the past four decades, franchising has been one of the fastest-growing sectors of the Australian economy.<sup>10</sup>

Although the concept of franchising appears to be a modern phenomenon, forms of franchising have actually been in use since the Middle Ages with one of the earliest examples being the issuing of tax collection franchises in the 12<sup>th</sup> century by the clergy to selected persons with the collectors being entitled to a percentage of the revenue collected.<sup>11</sup> European sovereigns also drew upon the early franchising concept by granting licences to individuals or groups of persons to allow them to build a road or bridge, or to run a market or fair.<sup>12</sup> A franchise in this sense was a 'privilege' or a 'right' as

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<sup>6</sup> Hillstrom, L. & Hillstrom, K. (eds), *Encyclopedia of Small Business*, (2<sup>nd</sup> ed, 2002), Gale, p 529. Contrast this simple definition of franchising with the legalistic definition of 'franchise agreement' in Clause 4 of the *Franchising Code of Conduct*, as prescribed by the *Trade Practices (Industry Codes - Franchising) Regulations (1998)*.

<sup>7</sup> Hillstrom, L. & Hillstrom, K. (eds), *Encyclopedia of Small Business*, (2<sup>nd</sup> ed, 2002), Gale, p 529.

<sup>8</sup> Andrew Terry, 'Franchise Sector Regulation: The Australian Experience' (2003/2004), *Law Asia Journal*, pp. 57 – 77 at pp. 57 – 58; and Business Victoria, 'A brief history of franchising' at <[http://www.business.vic.gov.au/BUSVIC/STANDARD/PC\\_50190.html](http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_50190.html)> last accessed on 27 January 2012.

<sup>9</sup> Wright, O., & McAuley, A., 'Australian franchising research: Review, synthesis and future research direction', *Australasian Marketing Journal* (2011), doi:10.1016/j.ausmj.2011.10.002 (Article in Press).

<sup>10</sup> See Franchising Council of Australia.

<sup>11</sup> Enterprise 21, 'History of Franchising' at <<http://www.enterprise21.com.au/historyfran.php>> last accessed on 27 January 2012.

<sup>12</sup> Business Victoria, 'A brief history of franchising' at <[http://www.business.vic.gov.au/BUSVIC/STANDARD/PC\\_50190.html](http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_50190.html)>

derived from an old French term ‘francis’.<sup>13</sup> The earliest example of franchising in the Australian context can be traced back to the origins of colonisation when Governor Macquarie extended to licences to prisoners to distil rum.<sup>14</sup> Even though forms of franchising can be traced back to the 12<sup>th</sup> century, it was not until the late 19<sup>th</sup> century in the United States of America that a more modern form emerged through the Singer Sewing Machine Company selling their sewing machines under a distribution arrangement whereby independent salespersons acquired exclusive territorial rights to sell the sewing machines in exchange for the payment of fees.<sup>15</sup> This commercial form of franchising was then embraced by the American sports industry in the 1920s, and later the emerging fast food industry in the 1950s.<sup>16</sup>

It is estimated that there are 63,500 business-format franchised units operating in Australia, together with 7900 company-owned units, producing a total of 71,400 units in business-format franchise systems.<sup>17</sup> IBISWorld expects the number of franchisors to grow by about 3.9 percent a year until 2014/15.<sup>18</sup> Franchising is a significant part of the Australian economy, given that it employs between 500,000 and 700,000 people<sup>19</sup> and its turnover contributes an estimated \$128 billion each year.<sup>20</sup> Clearly, franchising is an important and growing part of the Australian economy.

The increase in and the role played by franchising in Australia’s economy has emphasised the importance of building a successful, healthy relationship between franchisor and franchisee. However, legal conflicts between franchisors and franchisees have been increasingly common in recent

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last accessed on 27 January 2012, and Enterprise 21, ‘History of Franchising’ at <<http://www.enterprise21.com.au/historyfran.php>> last accessed on 27 January 2012.

<sup>13</sup> Business Victoria, ‘A brief history of franchising’ at <[http://www.business.vic.gov.au/BUSVIC/STANDARD/PC\\_50190.html](http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_50190.html)> last accessed on 27 January 2012.

<sup>14</sup> Enterprise 21, ‘History of Franchising’ at <<http://www.enterprise21.com.au/historyfran.php>> last accessed on 27 January 2012.

<sup>15</sup> Business Victoria, ‘A brief history of franchising’ at <[http://www.business.vic.gov.au/BUSVIC/STANDARD/PC\\_50190.html](http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_50190.html)> last accessed on 27 January 2012.

<sup>16</sup> Enterprise 21, ‘History of Franchising’ at <<http://www.enterprise21.com.au/historyfran.php>> last accessed on 27 January 2012.

<sup>17</sup> Business in Australia at <<http://justvisas.combidesign.com.au/Business-in-Australia/Franchise>> last accessed on 2 December 2011.

<sup>18</sup> In 2006/2007 the industry experienced a 14.6 per cent recorded growth and a sales turnover of approximately \$130 billion, and six separate franchise systems made the BRW Fast 100 list.<sup>18</sup>

<sup>19</sup> Franchising Australia 2010 Report, see <<http://www.franchise.edu.au/franchise-research--franchising-australia.html>> last accessed on 12 May 2011.

<sup>20</sup> *Ibid.*

years,<sup>21</sup> often resulting in expensive litigation. Research conducted by 10 Thousand Feet reveals that 58 percent of franchisors reported a formal dispute with a franchisee in the preceding three years, with 34 percent going to mediation and 17 percent ending up in court.<sup>22</sup> Keith Kanouse argued that franchising agreements have started to take judicial notice of the fact that the typical franchise agreement is a ‘contract of adhesion’ and contains many unconscionable terms.<sup>23</sup> Kanouse further points out that:

Parties having disproportionate bargaining power enter into the franchise agreement and its provisions are not subject to arm’s-length negotiation between parties of comparable bargaining power, notwithstanding the party line of the franchisor community that the typical franchise agreement is negotiated by a knowledgeable franchisor and a knowledgeable franchisee. Franchises are offered by a franchisor on a non-negotiable ‘take it or leave it’ basis. Franchisees sign the franchise agreement that contains provisions which are patently ‘commercially unreasonable’. The courts have begun to recognize that the most egregious terms, in which franchisees relinquish valuable rights without getting anything in return, may not be enforceable.<sup>24</sup>

Franchisees lack the power of knowledge in the franchise relationship, largely because the franchisors often only offer certain information, as they are in the business of selling franchises.<sup>25</sup> In fact, ‘most franchise agreements are drafted by a franchisor’s lawyers to benefit the franchisor in every possible way and are usually presented to franchisees on a take-it-or-leave-it basis.’<sup>26</sup> In addition, the franchisor’s power of unilateral variation under the *Franchising Code of Conduct* allows franchisors to retain the ability to change terms for their own benefit. It is clear that there is a ‘power imbalance’ in the relationship between franchisors and franchisees in the Australian context.<sup>27</sup>

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<sup>21</sup> Moskin, M., *Commercial Contracts: Strategies for Drafting and Negotiating* (2008, Aspen Publishers) at 21-61.

<sup>22</sup> Hammond, M., ‘Becoming a Franchisee: More than half of Australian franchises face disputes’ at <<http://www.startupsmart.com.au/franchising/2010-11-11/more-than-half-of-australian-franchises-face-disputes.html>> last accessed on 21 September 2011.

<sup>23</sup> Kanouse, K., ‘Collective Negotiation of Franchise Agreements: A Non-Legislative/Non-Litigious Solution to Many of Problems’ at <<http://www.evancarmichael.com/Legal/5711/COLLECTIVE-NEGOTIATION-OF-FRANCHISE-AGREEMENTS--A-NonLegislativeNonLitigious-Solution-to-Many-of-Problems.html>> last accessed on 21 September 2011.

<sup>24</sup> *Ibid.*

<sup>25</sup> Elizabeth Spencer, ‘Reconceiving the Regulation of the Franchise Sector’ *Macquarie Law Journal* (2008), Vol. 8, pp. 103 – 123 at p. 111.

<sup>26</sup> Peter C Lagarias & Robert S Boulter, ‘The Modern Reality of the Controlling Franchisor: The Case for More, Not Less, Franchisee Protection’ (2010) 29 (3) *Franchise Law Journal*.

<sup>27</sup> Elizabeth Spencer, ‘Balance of Power, Certainty and Discretion in the Franchise Relationship: An Analysis of Contractual Terms’ (2008) Paper presented at the 22nd annual International Society of Franchising conference (ISoF 2008), Saint-Malo, Brittany, France.

Therefore, the precise legal construction in franchising is crucial for the proper and sustained growth of a franchise business, as well as to foster good business conduct in franchising in Australia. Simultaneously, there is regular debate about whether strict regulation on franchising may adversely affect or lead to uncertainty in the industry.<sup>28</sup> The key concern is how these two competing interests can be balanced. This article examines the 2010 reforms to the *Franchising Code of Conduct* and how they have affected both franchisors and franchisees.

## II FRANCHISING REFORM 2010: ITS EFFECTIVENESS AND BENEFITS

In order to address the high number of disputes in the franchising sector, the *Franchising Code of Conduct* was substantially amended in early 2010; these amendments applied to any franchise agreement entered into, renewed, transferred or extended on or after 1 July 2010. The ACCC promotes compliance with the Code and with the *Australian Competition and Consumer Act 2010 (CCA)* (previously the *Trade Practices Act 1974 [Cth]*) by informing both franchisors and franchisees of their rights and obligations under the Code and by enforcing it where required.<sup>29</sup> The reforms were instituted Australia-wide, so there is now a single national regime for franchises in Australia. This benefits franchisors, especially those with nation-wide franchises, as it means that they only have one set of rules to follow. A Franchise Council of Australia survey revealed that 95 percent of franchisors wanted one national set of rules for the sector.<sup>30</sup> This section examines the impact that the 2010 amendments to the *Franchising Code of Conduct* have had on both franchisors and franchisees, and the impact they might have on the franchising section in general.

One of the main changes brought about by the 2010 amendments to the Code was a significant disclosure requirement, which provoked some of the most extensive criticisms of the reform.<sup>31</sup> The requirement demands that a plain-English disclosure document explaining a franchisor's rights and responsibilities be provided to potential franchisees prior to the signing of a franchise agreement. The disclosure obligations must include:

- (a) the division of legal and dispute resolution costs
- (b) the circumstances under which a franchisor can make a unilateral variation to the agreement
- (c) any confidentiality obligations
- (d) details of arrangements that will apply at the end of the franchise agreement

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<sup>28</sup> See Andrew Terry, 'Franchise Sector Regulation: The Australian Experience', *LawAsia Journal*, [2003/2004], pp. 57 – 77 at p. 59.

<sup>29</sup> Australian Competition and Consumer Commission, *Small Business Guide, Franchising Code of Conduct amendments*.

<sup>30</sup> Frank Zumbo, 'Openness the key to franchise relationships in downturn', 29 January 2009.

<sup>31</sup> Elizabeth Spencer, 'Reconceiving the Regulation of the Franchise Sector' *Macquarie Law Journal* (2008), Vol. 8, pp. 103 – 123 at p. 119.

(e) whether the franchisor can transfer or novate the franchise.<sup>32</sup>

Further, franchisors must also disclose whether they will require their franchisees to undertake unforeseen capital expenditures (UCEs) that were not disclosed by the franchisor before the franchise agreement was entered into, regardless of whether the franchise agreement contains such requirements.<sup>33</sup> This enables franchisees to foresee the possibility of significant capital expenditure that may occur over the course of the franchise, before entering into a franchise agreement. From a franchisee's point of view, the mandatory rules for clear disclosure of unforeseen significant up-front capital expenditure can certainly help create a transparent process; in practice, however, a concern that remains is how far ahead the franchisor can predict expenditures. A number of capital expenditures are incurred during the course of the franchising terms that were not foreseeable at the commencement of the franchising agreement. For example, in today's complex economic environment, 'franchisors are continually searching for new methods and strategies to increase their market share and ensure the long-term viability of their company'.<sup>34</sup> This could result in adding physical design changes to the stores, as well as the purchase and installation of new technology or equipment to improve the competitive position of the business.<sup>35</sup> Therefore, forecasting franchisors' capital demand and supply could be difficult and unpredictable, and planning several years ahead may create an extra burden for franchisors. This suggests that franchisees previously bore the cost of any unforeseen capital expenditure and it was up to the franchisee's accountant or business adviser to predict and make plans to counter UCEs. Now, however, the onus is back on the franchisors.

In addition, the new disclosure requirements,<sup>36</sup> require franchisors to give franchisees six months' notice of their decision to either renew or not renew the franchise agreement.<sup>37</sup> Where a franchise agreement is for less than six months, a franchisor is required to inform its franchisees at least one month prior to the end of the franchise agreement of its decision to renew or not to renew a franchise agreement.<sup>38</sup> This would be to the distinct advantage of franchisees because franchisees would be receiving sufficient advance notice of the franchisor's intentions towards them at the end of their current term, with plenty of time to consider options, move onto another business or try to re-negotiate renewal, termination or new agreement terms. Craig Emerson once said that this change makes it clear to franchisees that their agreements are not necessarily ongoing and provides 'more information that franchisees

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<sup>32</sup> Australian Competition and Consumer Commission, Small Business Guide, Franchising Code of Conduct amendments.

<sup>33</sup> See Clause 13A Franchising Code of Conduct amendments; See also Australian Competition and Consumer Commission, 'Franchising Code of Conduct Compliance Manual for Franchisors and Mater Franchisees (2011).

<sup>34</sup> Anonymous, 'Chapter one' at <<http://scholar.lib.vt.edu/theses/available/etd-324311849741271/unrestricted/!thesisd.pdf> at 10>.

<sup>35</sup> *Ibid.*

<sup>36</sup> Cl 6B.

<sup>37</sup> See Clause 20A the Franchising Code of Conduct amendments.

<sup>38</sup> See Franchising Code of Conduct amendments.

need to make decisions about their businesses'.<sup>39</sup> However, it is necessary to give proper grounds for non-renewal and to ensure that termination or non-renewal occurs in good faith. Franchisors can retain the discretion to decide not to renew or extend the agreement, in order to ensure that franchisees work efficiently and productively; again, however, non-renewal must be shown to be based on proper grounds and good faith. What amounts to 'good faith' is subjective and there is no definition in the reform to underline what constitutes 'good faith' in franchising contracts. One of the loopholes of the reform is that the amendments have not created or defined the right of 'good faith'. The most significant consequence is that the amendments do not exactly re-open the argument about whether franchisors have a fiduciary duty to franchisees in the franchise relationship because of good faith requirements, but instead they put it in the spotlight.

Clause 6B of the amendments now requires a franchisor to give the franchisee a disclosure document if the franchisee wants to renew, extend the term or extend the scope of the franchise business. This suggests that, prior to this change, only the franchisor had the power to raise issues of renewal, term extension or extending the scope of the business with the franchisee. The amendment probably disadvantages franchisors because the franchisor will first have to produce a new disclosure document tailored to the franchisee's proposal (under Clause 6 (2) (b) as additional information). This will also require a franchisor to expend extra man-hours in response to each request from a franchisee to renew or extend the term or scope of the franchise and supply the disclosure document and renewal or extension agreement (franchise agreement) to a franchisee 14 days before a franchisee enters into them.<sup>40</sup> This amendment probably gives an advantage to franchisees because every time a franchisee now requests a disclosure document for a renewal, extension or change to the scope of the franchise business, they can receive up-to-date information about the state of the franchisor's business, which they will clearly use in their decision to renew, extend, etc.

In addition, the new disclosure requirements have made it necessary to include in the disclosure document that the franchise could fail during the franchise term.<sup>41</sup> On the positive side, this will certainly allow the intended franchisee to make careful decision and to understand that profits cannot be guaranteed, as in any other business. On the negative side, it may be difficult for the franchisors from the outset of the franchising agreement to disclose in detail about all the potential 'liabilities and consequences' of the franchisor's failure.<sup>42</sup> It has further been argued that 'some of the potential "liabilities and consequences" may arise not from the franchise agreement itself but from common law (such as a duty of care to a customer of the franchisee) or from

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<sup>39</sup> James Thomson, 'Franchising Code changes lead to increase in disclosure, but critic slams "window dressing"', 7 June 2010.

<sup>40</sup> CI 10(e).

<sup>41</sup> See The Australian Competition and Consumer Commission, Franchising Code of Conduct amendments 2010.

<sup>42</sup> See CPA Australia at <<http://www.cpaaustralia.com.au/cps/rde/xbcr/cpa-site/industry-consultation-franchising-reforms-submission.pdf>> last accessed on 26 September 2011.



separate agreements (such as supply agreements) that the franchisor and franchisee may enter subsequent to the commencement of the franchise agreement'.<sup>43</sup> While it is essential to protect franchisees' rights, contractual flexibility is also necessary within certain contexts in franchising agreements.

Under Clause 13(2), whilst there is a seven-day cooling-off period upon entering into a franchise agreement (in favour of a franchisee who wishes to pull out within seven days of entering), the cooling-off period does not apply to franchisees when a franchise is renewed, extended, transferred or if the scope is extended. This issue of extending the scope of a franchise comes through again in these amendments. It may be assumed that since the franchisee has already been through the term of one franchise, they should be familiar enough with it to decide whether they want to renew, extend, transfer or extend the scope, either at their request or at the franchisor's, and should be sophisticated enough to get their own legal, accounting and business advice on a renewal, extension, transfer or extension of scope, without making this another prerequisite for the franchisor's entry into the agreement. This is to the franchisor's advantage because the franchisee's time-frame for obtaining such advice seems to be much longer, and the longer it takes, the greater the risk of the franchisee pulling out or not completing the agreement (the 'sale').

It seems that prior to the amendments, franchisors were exempt from complying with the disclosure and franchise agreement obligations of the FCC regarding extensions to the franchisees term or changes to the nature of the franchise business itself. Certain clauses (Clauses 4.2, 6A, 8(b), 10(e) and 11(a)(b)) have been amended to include extensions of the terms of current franchise agreements (such as increasing the term of a current franchise agreement from five years to seven years) and the 'scope' of a franchise agreement ('scope' is a broad term that could refer to extending the scope of a McDonald's franchise from supplying burgers, or a company supplying a café) as being 'franchise agreements' to comply with the FCC. This amendment probably gives an advantage to franchisees, given that any proposal to increase a current franchisee's term or to change the type of franchise business carried on by current franchisees will require the franchisor to comply with the same disclosure requirements under the FCC and to make sure that any 'extension agreement' also complies with the FCC requirements for franchise agreements under the FCC. The amendment probably disadvantages franchisors because, strictly read, it requires the franchisor to spend more time conforming with FCC requirements and disclosures every time the franchisor wants to either add a new good or service to the franchise or increase a franchisee's term. Prior to the amendments, a franchisor could argue that unless a renewal of a franchise was on exactly the same terms as given under a previous franchise (a 'renewal'), it was not covered by the FCC and did not require FCC compliance.

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<sup>43</sup> The Australian Competition and Consumer Commission, Franchising Code of Conduct amendments 2010.

Amendments regarding good faith and dispute resolution have also received close attention in the reform. The Code was amended to state that ‘nothing in the Code limits any obligation imposed by the common law applicable in a State or Territory, on the parties to a franchise agreement to act in good faith’. As discussed above, however, the reform does not either define the term ‘good faith’ or indicate what constitutes good faith; this could have an impact on what the franchisor is permitted to do during the relationship. In particular, an undefined good faith requirement offers no more protection than that which already existed under the initial franchising Code of 1998. It is likely that this provision of the Code will receive consideration in the near future, as franchisors and franchisees struggle to define their relationships in the wake of the other changes **introduced** by the Act.

The Code and the amendments to the Australian Consumer Law provide comprehensive legal protection against all forms of false or misleading representations incurred during the course of the franchising agreement. The ACCC will also take action where misrepresentation has been alleged. Penalties of up to \$1.1 million for corporations and \$220,000 for individuals apply to anyone engaging in such unconscionable conduct or making false or misleading representations. These amendments provide franchisees with better protection against unscrupulous franchisors. The new amendments also give the ACCC a range of new enforcement powers, including the ability to conduct random audits to ensure compliance with the Code and to issue public warnings about rogue or unscrupulous franchisors.<sup>44</sup>

Franchisees now have access to clear, upfront information on a range of important issues, including the circumstances under which a contract can be unilaterally varied by the franchisor, the details of the process for determining arrangements at the end of the franchise agreement, and whether the franchisor will amend the franchise agreement on or before transfer of the franchise.<sup>45</sup> As Bruce McFarlane of the Hall Wilcox law firm points out, prior to the 2010 reforms franchisors were only required to disclose payments to, or collected by, the franchisor or an associate.<sup>46</sup> Under the enhanced disclosure regime, franchisors must disclose all payments that a franchisee may be required to make to third parties, if the expenditure is within the knowledge or control of, or is reasonably foreseeable by, the franchisor.<sup>47</sup>

In general, the 2010 amendments to the Code justly provide small businesses with greater protection from unfair business conducted by more powerful businesses. According to DIISR, ‘the Government has indicated that the recent reforms are aimed at putting franchisees in a better position to understand the risks of going into franchising by giving them clearer

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<sup>44</sup> Commonwealth Government Response to the report of the Parliamentary Joint Committee on Corporations and Financial Services – Opportunity not opportunism: improving conduct in Australian franchising.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

information up front about the terms and conditions on offer'.<sup>48</sup> The most important positive outcome of the 2010 reforms is increased knowledge and certainty for franchisees, who now have a better understanding of their rights, obligations, potential costs and dispute resolution options.<sup>49</sup>

### III CONCLUSION

The new reform has certainly improved the balance of power between franchisees and franchisors. The laws have improved legal protection for franchisees, while they also impose greater obligations on franchisors in terms of the disclosures and renewing franchisees agreements. It could be argued that the new regulatory framework in Australia is extremely comprehensive and exhaustive, which helps maintain a healthy balance between the interests of franchisors and franchisees.

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<sup>48</sup> Top 9 compliance questions about the new Code at <[http://www.franchiseadvice.com.au/index.php?option=com\\_content&task=view&id=194&Itemid](http://www.franchiseadvice.com.au/index.php?option=com_content&task=view&id=194&Itemid)>.

<sup>49</sup> James Thomson, 'Franchising Code changes lead to increase in disclosure, but critic slams "window dressing"', 7 June 2010.