



MEDIA RELEASE

DR CRAIG EMERSON

Minister for Small Business, Independent Contractors and the Service Economy
Minister for Competition Policy and Consumer Affairs
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Better protection for franchisees

Small Business Minister Craig Emerson today announced the most sweeping reform of the Franchising Code of Conduct since its inception 12 years ago.

“In making these reforms the Government is not throwing the baby out with the bathwater,” Dr Emerson said.

“The reforms will put franchisees in a better position to understand the risks of going into franchising by giving them clearer information up front about the terms and conditions on offer”.

Dr Emerson said the reforms will also better protect franchisees from unconscionable conduct and false and misleading representations from unscrupulous franchisors while retaining for good, honest franchisors the flexibility they need to make franchising a commercial success for themselves and their franchisees.

Franchisors will be asked to provide prospective franchisees with a short, simple plain English document which sets out their rights and responsibilities, he said.

Dr Emerson, releasing the report of an expert panel set up to look at specific areas of concern in the franchising community, said it was vital that people considering buying a franchise had a complete understanding of the contract.

He said the Rudd Government had agreed with the expert panel’s view that franchisors be asked to provide plain English guides, as well as its other recommendations in relation to unconscionable conduct, unilateral contract variations, unforeseen capital expenditure, attribution of legal costs, confidentiality agreements and the sale of the business.

Dr Emerson said the plain English guide would be additional to the current disclosure requirements under the Franchising Code and would emphasise the key costs, benefits and risks of the franchise system.

“The Government is seeking the support of the franchising community in voluntarily producing a short simple document,” Dr Emerson said.

“However, the panel has suggested the Government should consider mandating a short document of this kind if evidence emerges to indicate that franchisees remain unaware of the nature of the franchise relationship and the potential key costs, benefits, and risks of the franchise business model in general.”

Dr Emerson said the unconscionable conduct provisions of the Trade Practices Act would be made clearer to help courts with interpretation, to help regulators with enforcement, and to help people understand what was and what was not acceptable.

And franchisors would have to make it clear to prospective franchisees that there may be unilateral contract variations, unforeseen capital expenditure, requirements to meet legal costs, and confidentiality restrictions. Furthermore, the franchisor would have to clearly spell out – at the time of entering the contract – the process for the sale of the business.

Dr Emerson said the Rudd Government was determined to protect franchisees and had already moved to give the Australian Competition and Consumer Commission (ACCC) the power to conduct random audits of franchisors.

Dr Emerson, speaking at a BRW conference in Sydney, said buying a franchise was an increasingly popular way of getting into business with 71,000 franchise agreements in place across the nation.

“Australian franchises employ more than 400,000 people and turn over around \$130 billion a year – that’s a lot of jobs and a lot of money,” Dr Emerson said.

“When a franchising agreement works well, it can be a great way for people to break into business.

“Their hard work and enthusiasm, operating under the protective umbrella of a large, well-established business name, can be a winning combination.

“But it is important that franchisees go into business armed with all the facts so they can make an informed decision about whether a franchise is right for them.”

Dr Emerson said he agreed with the panel’s suggestion that the changes be allowed to operate for three to five years to provide sufficient time to evaluate their effectiveness.

“In other words, we should let the reforms settle in and not keep changing the Franchising Code – let’s give it a breather for a few years.

“I also encourage the ACCC and other regulators to take a robust attitude to enforcing the law, both to provide a deterrent for inappropriate business conduct, and to build the body of case law to inform our common understanding of the law,” he said.

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