

 **FRANCHISOR NEWS****GOOD FAITH**

The issue of good faith in franchising is based on concerns of opportunistic conduct by some Franchisors, who take advantage of imbalances of bargaining power between themselves and Franchisees.

On 4 January 2013 the Australian Government announced a review of the Franchising Code of Conduct. The review report was provided to the Government on 30 April 2013.

One of the recommendations in the report related to the concept of “good faith”. In particular, the report recommended:

1. The Code be amended to include an express obligation to act in good faith. Such an obligation should:
  - (a) extend to the negotiation of a franchise agreement, the performance of a franchise agreement, the performance of obligations under the Code, and the resolution of any disputes between the parties whether or not there is a valid franchise agreement at the time of the dispute;
  - (b) apply to both the franchisor and the franchisee (or prospective franchisee);
  - (c) not be able to be limited or excluded by any provision of the contract between the parties (such provisions should be declared void);
  - (d) be clearly stated as not preventing a party from acting in its legitimate commercial interests; and
  - (e) expressly exclude an argument that a franchisor has not acted in good faith because there is no term in a franchise agreement specifying a right of renewal.

The Government accepted, or accepted in principle most of the recommendations in the report, including as to good faith.

As at December 2013 we await legislation being passed to enact the statutory good faith provision. Once the Code is amended, Franchisors (and Franchisees) will each have a statutory obligation to act in good faith towards one another.

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