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**Review of Franchising Regulation in
New Zealand**

Discussion Paper

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Review of Franchising Regulation in New Zealand

Introduction

1. I have had a long-standing interest in the law surrounding franchising, which is an area that I specialise in at the University of Auckland.
2. I fully support the Ministry of Economic Development's Review of Franchising and also the public statements made by the outgoing Minister of Commerce on the need to provide protection to franchisees and to ensure greater confidence in the sector following recently publicised shortcomings. I believe regulation in this area should not be ideologically driven but should aim to promote greater legal certainty and to promote entrepreneurship and the growth of small business, which is essential to New Zealand's economic development.
3. I believe there should be franchise-specific legislation encompassing not only mandatory information disclosure and mediation but also specific rules aimed at addressing well-known tensions within franchise relationships. These rules should be aimed at ensuring the fairness of process rather than prescriptive norms and such an approach would, in my view, obviate the need for a general duty of good faith, although this could still be included as an over-arching principle.

My Interest in Franchising

4. I have for several years been active in researching and teaching the law surrounding franchising at the University of Auckland. I have recently secured a Faculty Research Grant to conduct an empirical study of all litigation between franchisors and franchisees in Australia and New Zealand. I teach a post-graduate subject on franchising law at the Law School which is the only specialist course on the subject in New Zealand. Franchising is also covered in the context of several undergraduate subjects I teach at the Business School.
5. In the course of my research, spanning over a decade, I have made a comparative study of the regulation of franchising in overseas jurisdictions, including Australia and the United States. From this research I have been able to discern patterns or trends in regulation as well as the known deficiencies they are designed to address. I have commented in the legal literature on many of these and on particular cases involving franchising, such as the *Dymocks* litigation.
6. I have also been active in arguing the case for law reform to protect franchisees specifically and to strengthen the reputation of franchise networks generally. Several of my contributions to the debate on

franchise law reform have been published in legal periodicals and professional journals.¹

Business Format Franchising

7. Definitions of franchising are inherently problematic. That said, business format franchising or entire business method franchising has been a global success story. This is partly because it has enabled well-known brands to combine with entrepreneurship at the local level and is generally seen as a win-win scenario whereby expansion at the retail level is largely funded by franchisees. Accordingly this type of franchising now accounts for around half of all retail business in the United States, a significant proportion of its GDP and in Australia around a third of all retail business. Few reliable statistics exist in New Zealand in order to make comparisons, but this is an area where more work is needed.
8. However, this success has come at a cost. The nature of the contractual paradigm between franchisors and franchisees is such that it contains the seeds for potential instability and exploitation to occur. This is because it attempts to combine two contradictory types of contract: standard form or non-negotiated contracts and long-term relational or incomplete ones. This gives rise to a power imbalance between the franchisor and the franchisee. A related issue is the inevitable informational imbalance between the parties.
9. These tensions have resulted in many advanced economies enacting some form of franchise-specific regulation to address either the power imbalance or the information imbalance or both.² Generally, the regulatory approach has followed a common trend, beginning with information disclosure and tending towards addressing the relationship between the parties. Some jurisdictions, notably in the United States, go even further by requiring franchises to be registered and documentation to be vetted beforehand.³

¹ See GUNASEKARA, G.N. 'Standard Form Commercial Contracts, Unilateral Variation and the Legal Response: the Case of Franchising' (2007) *New Zealand Business Law Quarterly Volume 13* 263-271; GUNASEKARA, G.N. & SIMS, A.J. 'Franchising: A case for regulation' (2007) *University of Auckland Business Review Volume 9* 48-55; GUNASEKARA, G.N. & WATSON, S. 'Regulating Business Format Franchising: Familiar Solutions for Novel Problems' (2006) *New Zealand Business Law Quarterly Volume 12* 174-197; GUNASEKARA, G.N. 'Strengthening Franchising Through Regulation' *Franchise New Zealand Volume 16, Issue 04, Summer 2007/2008* 103-107; GUNASEKARA, G.N. 'Protection for small business: the case of franchisees' *New Zealand Law Journal* [2005] 457-460; GUNASEKARA, G.N. 'Good Faith, Repudiation and Franchise Agreements' *New Zealand Law Journal* [2002] 453-455.

² For example, two of our major trading partners, Australia and the United States, have extensive regulation containing both disclosure requirements as well as aspects of the franchise relationship (dealt with at the state level in the USA).

³ See for example the California Franchise Investment Act (CAL. CORP. CODE Section 31000 to 31516): 23 states in the USA, including California and Iowa, go even further by requiring that franchises not be terminated without prior notification and an opportunity to remedy defects: See California's Franchise Relations Act (CAL. BUS. & PROF. CODE Section 2000).

10. Any move to regulate franchising in New Zealand therefore has a rich diversity of models to draw upon. In my view any regulation should only be aimed at business format franchising with the definition sufficiently wide to encompass all such businesses whilst excluding other forms such as product franchises, licensing and so forth. Existing definitions that may be of use include s. 9 of the Corporations Act (Cth) 2001 in Australia. Also useful is the definition adopted by the New Zealand Franchise Association Incorporated in its Rules. Clause 3.1.7 states that a franchise means:

The method of conducting business under which the right to engage in the offering, selling or distributing of goods or services within New Zealand includes or is subject to at least the following features:

- The grant by a Franchisor to a Franchisee of the right to the use of a Mark, in such a manner that the business carried on by the Franchisee is or is capable of being identified by the public as being substantially associated with a Mark identifying, commonly connected with or controlled by the Franchisor; and
 - The requirement that the Franchisee conducts the business, or that part of the business subject to the Franchise Agreement, in accordance with the marketing, business or technical plan or system specified by the Franchisor; and
 - The provision by the Franchisor of ongoing marketing, business or technical assistance during the term of the Franchise Agreement...
11. It will be seen that this definition incorporates the aspects of public association, control by franchisors and dependency of franchisees that are the central features of business format franchising.

The Inadequacy of Existing Law: The Information Deficit

12. Current laws such as the Fair Trading Act 1996 (FTA) and the Contractual Remedies Act 1979 (CRA) are only partially effective in dealing with the types of disclosure of information needed in the franchising context. In the first place, there is the obvious difficulty that these laws operate as an ambulance at the bottom of the cliff: by the time legal action is initiated, the damage has already occurred and in my experience many franchisees do not have the legal resources to pursue remedies against a usually much better funded franchisor.
13. My research, together with that of colleagues, has indicated that there is a wide disparity in awards of damages by courts against franchisors and little certainty as to the basis for them: awards over the last twenty years against franchisors have ranged from \$55,000 to \$817,187 and against franchisees from \$2,766 to \$122,000.⁴ Franchisors have been

⁴ G. Gunasekara and N. Dabee 'Franchising and Misleading and Deceptive Conduct: An Analysis of Disputes' (forthcoming article).

found liable even where earnings estimates could be said to have been validly based, that is based on sales by other franchisors in different locations and taking into account such factors as trading conditions and the size of the local population.⁵ It could even be said that the lack of a mandatory disclosure regime in New Zealand has resulted in judges placing the onus on franchisors to give all relevant information to franchisees or take the risk that the disclosure will be found to be misleading. This has arguably resulted in less certainty for franchisors than would be the case were there to be a standard template for disclosure as exists in Australia.

14. Current franchise research that I am conducting (pursuant to a recently obtained research grant) has highlighted a large number of successful claims by franchisees against franchisors in the period between 1987 and 2007. Although the research is still incomplete at this point, tentative figures suggest that claims for misleading and deceptive conduct in relation to the sale of franchises account for a disproportionately large proportion of all misleading and deceptive conduct claims in relation to the sale of businesses in this period.⁶ If confirmed, this strengthens the argument for mandatory information disclosure. The research has also suggested that successful counter-claims brought by franchisors against franchisees are considerably less successful.⁷ Therefore, it is reasonable to conclude that the information deficit has been a prime source of disputes in franchising.
15. Legal technicalities can, however, result in existing laws such as the FTA and the CRA denying a remedy to a disappointed franchisee. For example in *Des Forges v Wright*⁸ the plaintiff took an assignment of a franchise from the defendant franchisee but shortly thereafter the franchisor closed down its principal factory and sold the trade name. The effect of this was to deprive the new franchisee of up to half its business (which had consisted of the branded products). It was held that there was nothing unlawful about the silence by the assignor (innocent or not) as to the continuity of supply of the products. On the other hand the franchisor had made misleading statements by intimating to the assignee that things would remain much the same after the assignment (at the time the statements were made the franchisor was already attempting to sell its interests). Unfortunately for the plaintiff, however, a claim for damages under the FTA could not succeed as the statement by the defendant had not caused its loss: since the assurances had been given after the assignment had been agreed to, the defendant's conduct did not cause the plaintiff's loss.

⁵ See for example the substantial damages award in *Valda Video Ltd v United Video Franchising Ltd* (Unreported, High Court of Auckland, 21 August 2001, Randerson J, CP123/00)

⁶ Around 33%. See G. Gunasekara and N. Dabee 'Franchising and Misleading and Deceptive Conduct: An Analysis of Disputes' (forthcoming article).

⁷ Over the past twenty years the average paid out by franchisors was \$298,045, whereas that paid out by franchisees was \$37,105 G. Gunasekara and N. Dabee 'Franchising and Misleading and Deceptive Conduct: An Analysis of Disputes' (forthcoming article).

⁸ *Des Forges v Wright* [1996] 2 NZLR 758.

Had there been, in New Zealand, a mandatory disclosure requirement such as that contained in the Australian legislation⁹ this outcome would have been averted.

The Inadequacy of Existing Law: The Relationship

16. Commentators on franchising have also pointed to a power imbalance between the franchisor and the franchisee. This is because most franchise agreements are of a standard form nature with little or no opportunity for negotiation of terms by the franchisee – the franchisor essentially presents a “take it or leave it” package. On the other hand, it is impossible for such an agreement to cover all future contingencies. To resolve this, the agreement is essentially incomplete, leaving many details to be added in future. However, these additions are inevitably under the control of the franchisor with franchisees rarely given contractual rights to object or even to be consulted. From the economic standpoint, these “vertical” controls are justifiable as they allow franchisors to be more efficient by imposing homogenous standards and discipline on all franchisees.
17. Nevertheless, this ability to re-draw the contract can lead to perverse results and can, in some circumstances, be used by franchisors opportunistically to transfer risk on an ongoing basis to franchisees. Regrettably, despite the assertion that this unilateral right to vary the operating manual must be consistent with the agreement;¹⁰ in reality this provides little safe-guard to franchisees and, as will be seen, there is no implied term that changes to the operating manual will not be made where this results in significant hardship to the franchisees or substantially diminishes the benefits to them of the agreement.
18. One of the risks to which a franchisee is exposed is the fact that the operating manual is usually part and parcel of the franchise agreement and franchisees are duty bound to follow it. On the other hand altering and updating the Manual is the responsibility of the franchisor. This allows franchisors to vary the contract at will and to shift risks onto franchisees at their convenience. Such a development in fact occurred in the recent case of *Maranatha Ltd v Tourism Transport Ltd*¹¹ (the “Super Shuttle” case). The franchisor decided that the cost of the Auckland Airport licence fee (which the franchisor had previously carried) should in future be passed on to franchisees and ultimately to customers through a “user pays” surcharge. The franchise operating manual was altered, in addition to requiring that the franchisees display and use the franchisor’s current maximum fare schedule, to also require them to pay a surcharge at a level decided by the franchisor. The Court refused the request by some franchisees for an interim

⁹ S. 51 AC (3) (i) & (4) (i) of the Trade Practices Act 1972 (Cth) requires the disclosure of information as to any contingencies or risks of which the franchisor is aware or ought to be aware.

¹⁰ See ‘System compliance’ in Table One of the Review of Franchising in New Zealand, Discussion Document, August 2008 at p.10.

¹¹ (Unreported) High Court Auckland, Rodney Hansen J, 3 April 2007, CIV 6006-404-6431.

injunction to prevent introduction of the surcharge because damages would be an adequate remedy and the franchisees had also delayed bringing proceedings.¹²

19. Although the outcome in this case was arguably justified, there are statements by the judge that, in principle, unilateral changes may be made by franchisors without consultation. This highlights the vulnerability of franchisees under such incomplete or relational contractual arrangements and illustrates the fact that existing New Zealand law is inadequate in protecting franchisees. In my experience, such arrangements (including operating manuals) apply to the **entire** franchising sector (business format franchising) and are **not** specific to particular types of franchising or to particular industries only.
20. Another aspect where the existing law in New Zealand is deficient is the ability of franchisees to form their own associations, in particular the lack of a prohibition on franchisors inducing franchisees not to form such an association or not to associate with other franchisees for lawful purposes. In my view the existence of franchisees' consultative bodies will, in most cases, serve to reduce the dangers of unilateral franchisor actions. Alternatively, any future franchise regulation might consider including a requirement that franchisees be consulted, individually or collectively, prior to revisions in the operating manual that substantially reduce the benefits to them of the franchise agreement.
21. Known tensions exist in franchise relationships. These include disagreements over territory (encroachment), rights of renewal and the right of franchisees to assign or sell their interests during the franchise term. With regard to the latter, for example the law in New Zealand is uncertain to say the least.
22. It is usually possible for the franchisee to assign the franchise to a new franchisee with the approval of the franchisor. Where an assignment is allowed, it is not clear if the franchisor's consent to this can still be unreasonably withheld for any reason, for instance to exert pressure in order to recover a debt.¹³ In one New Zealand High Court decision, it was found that consent could not be unreasonably withheld.¹⁴ In another, more recent, case it was held that such a term could only be implied for business efficacy reasons if it satisfied all the stringent criteria in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings*.¹⁵ The

¹² They had not complained when the surcharge was introduced but only later when it was increased by 150%; other plaintiffs had become franchisees after the surcharge was introduced and so could be said to have agreed to it; see G Gunasekara 'Standard Form Commercial Contracts, Unilateral Variation and the Legal Response: the Case of Franchising' (2007) 13 *New Zealand Business Law Quarterly* 263.

¹³ *Old v Snack Systems N.Z. Ltd* (Unreported, High Court Auckland 19 August 1994 Master Towle CP 266/94); compare *Rappongi Excursions Ltd v Denny's Inc* (Unreported, High Court Nelson 24 April 2002, CP 20/01, Master Venning).

¹⁴ *Old v Snack Systems N.Z. Ltd* (Unreported, High Court Auckland 19 August 1994 Master Towle CP 266/94)

¹⁵ (1977) 180 CLR 266; *Rappongi Excursions Ltd v Denny's Inc* (Unreported, High Court Nelson 24 April 2002, CP 20/01, Master Venning).

High Court also regarded itself as bound by the views expressed by the Court of Appeal in *Bilgola Enterprises Ltd v Dymocks Franchise Systems (NSW) Pty Ltd*.¹⁶ In the absence of a definitive ruling by the Supreme Court, uncertainty therefore exists for both franchisees and franchisors as to the grounds on which franchisors may refuse to sanction an assignment. A Code of Conduct, such as exists in Australia, would reduce this uncertainty.¹⁷

23. In my opinion, serious consideration should be given to introducing an obligation of good faith into all franchise agreements, although, as I have written in the past, this should not be seen as a panacea.¹⁸ A duty to act fairly and in good faith is a requirement in many overseas jurisdictions, either in the context of all contracts or specifically in relation to certain types of agreements including relational ones such as franchise contracts. In my view, good faith does not exist in a vacuum. It should only be invoked in relation to the exercise of powers conferred in the contract or the performance of duties under the contract. It should not, however, be inconsistent with the express provisions of the contract.
24. An over-arching duty to act in good faith has proved capable of addressing residual issues in the franchise relationship and especially in addressing the power imbalance between the parties. Some examples include *Burger King Corp v Hungry Jack's Pty Ltd*¹⁹ and the American *Baskin-Robbins* decision.²⁰ In *Baskin-Robbins*, the franchisor had failed to properly consider a site relocation request by the franchisee and conveyed inaccurate information regarding the provisions of the existing lease. While *Baskin-Robbins* might well be caught by our fair trading laws, there is nothing to prevent the former type of conduct unless through implication of a contractual term, which we have seen is difficult.
25. In *Burger King*, a franchisor attempted to use the powers conferred on it in a long-term agreement for ulterior motives as it wished to terminate its dealings with an Australian master franchisee. It therefore failed to properly use the discretions given to it (for example in approving the franchisee's business plans for expansion) in order to justify terminating the franchise for non-performance by the franchisee. The NSW Court of Appeal found the franchisor in breach of an implied duty of good faith.

¹⁶ [2000] 3 NZLR 169.

¹⁷ See Trade Practices (Industry Codes – Franchising) Regulations 1998 (the 'Franchising Code of Conduct') clause 20.

¹⁸ G. Gunasekara and S. Watson 'Regulating Business Format Franchising: Familiar Solutions for Novel Problems' (2006) *New Zealand Business Law Quarterly Volume 12* 174-197 at p.190; and see R. Ahdar, 'Do You Want Fries With That? The Franchise as a Cultural and Legal Phenomenon' in M Freeman (ed), *Law and Popular Culture*, Oxford: Oxford University Press, 2005 p. 574.

¹⁹ [2001] 1 NSWCA 187

²⁰ *Dunfee v Baskin-Robbins Inc* (1986) 720 P2d 1148

My Recommendations for Reform

26. Maintaining the status quo is **not** an option as evidenced by some of the cases and examples given above. I am broadly supportive of options 2 and 3 as stated in the Discussion Document. I do not favour a co-regulatory regime, although I believe it is vital to maintain the input and ongoing participation of the Franchise Association, for any future regulatory measures. Ultimately the measures I outline below (with the exception of mandatory dispute resolution) will need to be subject to a public enforcement regime. However the costs to Government associated with this will be minimised as, in most cases, enforcement will be through private litigation between the affected parties. Although agencies such as the Commerce Commission will need to be involved (especially in policing disclosure) the principles outlined below are intended to deal in the main with helping to minimise conflicts in the franchise relationship. Self-policing mechanisms ought also to be considered, such as stipulating that agreements are un-enforceable where there has been substantial failure to comply with the disclosure requirements. There will also be little if any conflict with existing law, although it may be advisable, should a disclosure document be made mandatory, to clarify the relationship of franchise offerings to other investment schemes such as those under the Securities Act 1978 – for example the Australian regulatory package adopted in 1998 exempted franchising from the requirements of the Corporations Act by removing franchising from the definition of “managed investment scheme”.²¹
27. As mentioned in the Discussion Document education initiatives are an essential ingredient in any reform and mechanisms should be found to institutionalise these within the sector. For example the Discussion document states that “Pre-contractual disclosure would make a franchisee aware of the terms of termination and renewal and if they were unhappy with these terms, they could reject the contract.”²² However awareness of the franchisor’s right to terminate or non-renew is meaningless if the franchisee is ignorant as to the circumstances in which such rights may be exercised: for instance to apply pressure on franchisees or to extract gains from them (for example a successful franchisee might be made to pay a significantly higher fee for the right to renew). In this context the education of franchisees as to risks can bear fruit in terms of legal consequences: in the example given a franchisee might seek assurances or clarification as to the franchisor’s future intentions which can result in legal remedies to franchisees.²³
28. Next, mandatory information disclosure should be a starting point. The disclosure regime should aim to address the information deficit referred to earlier. In particular, it should be designed to make franchisees

²¹ Corporations Act 2001, s 9.

²² See paragraph 103, Review of Franchising in New Zealand, Discussion Document, August 2008 at p.25.

²³ Such as under the doctrine of promissory estoppel or for misleading and deceptive conduct under the Fair Trading Act 1986.

aware of actual and prospective risks in the relationship, in particular by making franchisors disclose, on an ongoing basis, those risks of which they are aware. Another governing principle should be transparency so that franchisors should disclose any relationships where they have a conflict, or potential conflict, with franchisees (such as interests in authorised suppliers to franchisees or rebates received from them).

29. The disclosure document should also require that the parties' rights and duties in areas where tensions are known to occur (such as rights to renewal, rights to assign and territory) are clearly stated in the franchise agreement. The Australian approach in clearly delineating the criteria for withholding assent to assignment should be adopted. I would go further in requiring that fair process be followed when rights of renewal are exercised – this would avoid the difficulties evidenced in the Australian case *Far Horizons Pty Ltd v McDonald's Australia Ltd*²⁴ where a franchisee felt victimised as he felt the standards he had to meet to obtain the renewal were arbitrarily varied by the franchisor.
30. In addition, a requirement to give adequate notice of termination for cause and an opportunity to remedy defects should be adopted here as in Australia. However, just as in Australia, a franchisor should be permitted to terminate without notice when there has been certain serious conduct by the franchisee, such as abandonment or intentional wrong-doing. Any regulation should also expressly preserve the right of franchisors to obtain injunctive remedies against franchisees whose conduct imperils the reputation of the franchise as a whole or the goodwill associated with it.²⁵
31. A further issue that often arises in franchising is where a new franchise is sold in the same territory as an existing franchisee, or where the franchisor itself decides to operate within an existing territory. Some franchise agreements deal with this by giving franchisees a right of first refusal when a new franchise is to be offered either within or in proximity to the existing territory. However, even a right of first refusal may not protect franchisees from adverse behaviour on the part of franchisors. For example, in *Auckland Express Service Centre Ltd v AA AutoService Ltd*²⁶ the franchisee was unable to exercise a right of renewal because the franchisor had already secured the only available rental premises for another party, to which it wanted to sell the territory.
32. As a minimum requirement the franchise regulation should contain the following:
 - Mandatory information disclosure
 - A requirement that potential franchisees receive professional advice

²⁴ [2000] VSR 310

²⁵ See for instance *The Body Shop International plc v Rawle* (1994) 27 IPR 255.

²⁶ Unreported, 2002, High Court Auckland, CP. 664-SW01.

- A cooling-off period
 - Mandatory dispute resolution
 - Notification of termination and a right to remedy defects
 - An obligation of good faith
33. While many of these are seen as a given in the context of franchise regulation, it is important to realise that often the devil is in the detail. There is a danger that form will be mistaken for substance. For example, a cooling-off period is of little use if franchisees have also incurred other obligations such as leasing arrangements which will be difficult for them to extricate themselves from, should they change their minds. It is more useful for franchisees to be given all relevant information (confidentiality clauses can easily be used to protect franchisors' interests) well beforehand, rather than relying on a cooling-off right. Indeed, recent alterations to the Franchise Code of Conduct in Australia have adopted this approach.
34. Similarly, it is of little use stipulating that potential franchisees receive professional advice unless there are consequences for failure to comply or significant incentives to do so. It is suggested that one such mechanism may be to allow the courts discretion to invalidate, wholly or partly, any contract with a franchisee who did not receive such advice, or to re-draw its terms. Such an approach is not altogether unknown in New Zealand law.²⁷
35. In relation to the power imbalance and relationship conflicts greater caution is needed when devising appropriate responses. Certainly, an over-arching requirement to act in good faith would tackle many of the difficulties experienced by franchisees. A particular concern has been the absence of a valuation mechanism in those instances where a franchisor buys back the franchise from the franchisee. For example in *Video Ezy International (NZ) Ltd v John Jackson & Co Ltd*²⁸ the franchisor was able to re-purchase a business for \$1 excluding stock and fixtures. This nominal price did not, however, include the franchisee's liabilities. The concept of "fair value" exists in other areas of commercial law, notably company law, and it would not be impossible to adopt it in this context. Providing an independent arbitrator to assess fair value could be part of any mandatory dispute resolution procedure, thus minimising the costs associated with it.
36. Other options include empowering the courts to disallow or re-draw contractual provisions that have been unilaterally altered by the franchisor through instruments such as the operating manual. Alternatively, franchisees ought to be given the right to cancel the contract and apply for relief to the court. In this regard, the principles contained in the CRA should be given full effect: a remedy should be available where a party to the contract is substantially denied the

²⁷ See Contractual Remedies Act 1979 s.4 (1) (c).

²⁸ Unreported, Christchurch HC, 15 April 2005, John Hansen J, CIV2005-409-000499.

benefit of the contract or their burdens have substantially increased under it, or the benefit or burden of the contract is substantially different from that which they contracted for.

37. Finally, an option worth exploring is, instead of a prescriptive list of information that must be disclosed, to stipulate that franchisees must be given a disclosure document that complies with certain principles, leaving the detail to individual franchises. As indicated above, these principles could include **risk-awareness, transparency, and clarity**. One criticism of adopting this approach would be that it again lends itself to uncertainty: there would need to be a vetting mechanism to assess the degree to which the disclosure document complies with the principles. On the other hand, such an approach has proven workable in other fields, notably with regard to accounting standards. Relevant principles that may be workable as far as the relationship is concerned are **fair process, good faith and fair value**.

Conclusion

38. In summary my research has highlighted numerous areas where existing law in New Zealand does not adequately cater for (or only partially caters for) the demands thrown up by the innovative form of business that constitutes business format franchising. A compelling case can be made that properly thought out regulation will **increase**, rather than decrease, **certainty** for all parties involved in franchising and that the transaction costs associated with disputes can be substantially reduced as a consequence (even more so with the introduction of mandatory dispute resolution). Lastly, small business is an engine for growth in the New Zealand economy and as the Discussion Document states franchising now accounts for a significant portion of this. However since franchisees provide much of the capital in this sector enhancing their confidence to invest will generate benefits to the economy that ultimately outweigh the costs.