

Attachment to media release - Government appoints expert panel on franchising and unconscionable conduct

**MINISTER FOR COMPETITION POLICY AND CONSUMER AFFAIRS' EXPERT
PANEL TO ADVISE ON STRENGTHENING THE FRANCHISING CODE OF
CONDUCT AND THE UNCONSCIONABLE CONDUCT PROVISIONS OF THE
TRADE PRACTICES ACT 1974**

Terms of reference

In responding to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into Franchising and the Senate Standing Committee on Economics Unconscionable Conduct Inquiry, the Government asks the Panel to consider the matters raised in Recommendation 2 of the Unconscionable Conduct Inquiry, and Recommendation 8 of the Franchising Inquiry, in accordance with the terms of reference below.

The Panel will:

- inquire into and report to the Minister for Competition Policy and Consumer Affairs on the need to introduce a list of examples that constitute 'unconscionable conduct', or a statement of principles, into the TPA;
- consider the efficacy of a statutory list of examples or statement of principles concerning unconscionable conduct, and their legal effect;
- provide advice on whether the measures suggested by Recommendation 2 of the Unconscionable Conduct Inquiry would serve to: improve the clarity of Part IVA of the TPA; increase the effectiveness of those provisions; and improve community confidence in the effectiveness of those provisions; and
- if the Panel is satisfied that a list of examples or a statement of principles would improve the effectiveness of Part IVA, compile a list of examples that are generally accepted to constitute 'unconscionable conduct', or a statement of principles, having regard to the matters set out in these terms of reference.

The Panel will also:

- inquire into and report on the need to introduce into the Franchising Code of Conduct a list of examples of specific behaviours that are inappropriate in a franchising arrangement, with particular reference to:
 - unforeseen capital expenditure;
 - unilateral contract variation;
 - attribution of legal costs;
 - confidentiality agreements; and

- franchisor-initiated changes to franchise agreements when a franchisee is trying to sell the business; and
- consider the potential impact any proposed measures could have on the franchising sector.

As part of this process, take account of the views of the ACCC, the retail tenancy and franchising industries, small business organisations, and such other parties as the panel considers would have an interest in the outcome of this process.