

A Good Faith Solution to Franchise Relationship Issues Down Under: the French Lesson

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Abstract

Recent Australian inquiries into franchising have recommended the introduction of an obligation of good faith in the *Franchising Code of Conduct*, Australia's mandatory regulatory instrument. The most recent report – *Review of the Franchising Code of Conduct 2013* (the Wein Report) – concluded that despite there being ‘many compelling arguments both in favour of, and against, the introduction of an explicit obligation [of good faith] the weight of opinion supports the inclusion of such an obligation in the Franchising Code of Conduct’. Because of a change of government, this initiative was not consummated and the new government's attitude is not yet clear. Good faith is nevertheless back on centre stage in the Australian franchising milieu and, if not legislated at this stage, will inevitably be a prominent issue in future inquiries.

This paper reviews recent developments in relation to good faith as a convenient device to restrain opportunistic conduct by franchisors and franchisees. Given the civil law heritage of the concept of good faith, this paper also considers the influence of the underlying obligation of good faith under Article 1134 of the French *Civil Code* on the franchisor-franchisee relationship and any possible lessons therefrom for the Australian franchise sector.

Keywords

Franchise regulation, good faith, relational contracts, civil law, common law