March 2024

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This publication does not constitute legal advice and should not be relied upon as such. It is intended only to provide a summary and general overview on matters of interest to clients in the Consumer Good sector, and it is not intended to be comprehensive. Careful consideration should be given to specific factual circumstances and the resulting legal implications. You should seek legal or other professional advice before acting or relying on any of the content.

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Welcome to the ninth edition of FMCG *Express*

With the increased cost of living affecting discretionary spending, and the expansion of Government regulation into more areas, our clients in the consumer sector are under immense pressure. We have prepared this edition to help your organisations navigate these ongoing disruptions. One way to pivot and adapt is to adopt technological advancements. While the potential for AI to assist is both exciting and enticing, the regulatory landscape needs to be appropriate. Antoine Pace and Eve Lillas consider that exact point, particularly as it affects the consumer sector.

I have noticed the proliferation of online reviews in the e-commerce space, which usually enhance my digital experience. But what happens when your business is the recipient of a review you consider unfair or untrue? Our newest partner Marina Olsen and associate Jeren Gul share their expertise on how and when an online review may be defamatory. The article considers both the legal landscape and relevant, practical considerations.

Our employment team have provided us with a concise summary of recent changes to the Fair Work Act including a helpful timeline. Many of our FMCG *Express* readers, particularly those in the retail and hospitality sectors, rely on a casual workforce, and there are some key changes as to how such workers can be engaged. We are all looking for the government to expertly balance the protection of employees with the ability for business to expand and fuel our economic growth. Susan Goodman and Louise Rumble consider specifics around ESG reporting obligations.

Finally, we have a number of industry specific articles. Kelly Griffiths and Clare Smith provide an interesting summary of changes to the laws regarding medical devices, and Adam Walker, Andrew Barr and Maggie Laing consider the independent review of the Franchising Code of Conduct and what this could mean for those who operate in this space.

I hope you enjoy this edition of FMCG *Express* and stay tuned for our bumper tenth edition later this year.

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We used AI to generate this Title. Can you tell?

By Antoine Pace, Partner and Eve Lillas, Senior Associate

Given that AI is already deeply embedded in our everyday lives and work, the critical question now turns from 'Should we use AI?' to 'How should we use AI?'.

AI technology is rapidly advancing. Just as recently as 13 February 2024, OpenAI announced that it had begun trialling persistent memory in ChatGPT. This new feature allows ChatGPT to remember previous discussions to make future outputs more helpful.

Despite the proliferation of AI, which is already being used in a broad range of everyday technologies, a recent study by KPMG and The University of Queensland suggests there is a lack of awareness globally regarding whether individuals were using AI. The survey also suggests that most people are wary of trusting AI, and are supportive of setting guardrails for and regulation of AI.[1]

So how is AI being regulated?

Globally, governments have not necessarily taken a uniform approach regarding regulation of AI.

In November 2023, Australia and 27 other countries signed the Bletchley Declaration, under which it committed to international collaboration to ensure AI safety and transparency.[2]

As has been the case with privacy (think: GDPR[3]) the European Union has been a leader in regulation of AI. In December 2023, the European Union Parliament passed the EU AI Act[4] . This establishes a risk-based regulatory model which categorises four levels of risk: 1. unacceptable; 2. high; 3. limited; and 4. minimal or no risk.

In comparison, the UK has taken a more flexible and 'pro-innovation' approach – with a focus on prioritising its goal of being a science and technology 'superpower' by 2030.[5] The UK has introduced a framework with five key 'general principles' to be applied by regulators in conjunction with existing laws.

In contrast, the Australian Government has taken an interim response to the safe and responsible use of AI. Currently, Australia has voluntary ethical frameworks for using AI, including the *Australian Artificial Intelligence Ethic's Framework* (2019).[6] In June 2023, the Australian Government issued a discussion paper titled *Safe and Responsible AI in Australia* (**Discussion Paper**).[7] The Discussion Paper invited submissions on mitigating the risks of AI, and regulation and governance in Australia. The Discussion Paper also invited feedback on 'a possible risk management approach', similar to the EU AI Act, with consultation closing on 4 August 2023.

On 17 January 2024, the government published its Interim Response to the Discussion Paper.[8] The Interim Response referred to a number of Australian laws and regulations that are currently under review (e.g. the *Privacy Act 1988* (Cth) (**Privacy Act**)). As mentioned in the Interim Response, there is a clear tension between the estimated projections of AI and automation contributing an additional $170 billion to $600 billion a year to Australia's GDP by 2030 on the one hand, and on the other, a low degree of public trust that AI is being used safely and responsibly.

As of February 2024, an AI Expert Group is being established to advise the Australian Government, which suggests that Australia may be taking a similar 'pro innovation' approach to the UK.

Businesses will need to monitor this moving landscape to keep up to date on how the government intends to roll out relevant regulations, safeguards and guidelines to support and manage AI technologies in Australia.

Critical use of AI and considerations for businesses in the FMCG sector

AI is being used in the FMCG space for a range of purposes to improve efficiencies, leverage data and streamline processes.

Some of the key areas relating to use of AI in the FMCG sector and relevant considerations for businesses are set out below:

1. Privacy considerations

AI systems and tools leverage large data sets, which in some cases could include personal information (such as employee or customer information). As a result, the Privacy Act could impinge upon the implementation and use of AI by some businesses.

It is critical that businesses are aware of what information is being collected and used by the AI systems they are using, and what information is being disclosed to any third party AI systems providers if applicable. The use of AI could impact on a business' compliance obligations under the Privacy Act, including requirements regarding obtaining individuals' consent, use of information for the purpose for which it was collected, possible notification requirements, and obligations regarding security of personal information.

Businesses should take a 'privacy by design' approach and consider whether any personal information is being shared with an AI tool, and if so, undertake due diligence on the privacy practices of the third party AI tools and providers, and consider whether a privacy impact assessment is required prior to deploying AI systems or tools. With the government's review of the Privacy Act underway, we can expect to see further guidance and accountability for entities handling personal information within AI systems.

2. Targeted advertising

The advertising industry has embraced the use of AI technologies, particularly in relation to targeted advertising. Targeted advertising can take many forms, including online (e.g. banner advertisements), targeted emails and online marketing campaigns, and even dynamic out of home displays that react either using beacon technologies or biometrics. AI can be used to segment audiences and build profiles by analysing user data, browsing history and data points, social listening and predictive analytics to produce or serve personalised ads and website content. While these tools may be valuable for businesses, there are a number of key critical legal issues that will require consideration.

Can you tell this image is AI generated?

Direct marketing and targeting and trading of personal information were highlighted as areas for potential reform in the recent the Privacy Act Review Report. The government's Response to the Privacy Act Review Report highlighted concerns from Australians that they considered online tracking, profiling and targeting to be unreasonable in certain circumstances. To address concerns regarding harmful targeting, the government has announced its intention to amend the Privacy Act to provide further guidance regarding requirements for targeting individuals, on the principle that it should be 'fair and reasonable in the circumstances'. It has gone on to say that the amendments will prohibit targeting individuals based on sensitive information (except for socially beneficial content). The government also announced its intention to impose certain requirements regarding information to be provided to users regarding targeting systems, including the use of algorithms and profiling to target content to individuals, and the need to obtain individual consent prior to trading personal information.

Businesses should also ensure they have conducted due diligence regarding any marketing software and tools that they use, to understand how data is collected and used to target individuals, and should be cautious of using sensitive personal information to target individuals, or of targeting vulnerable individuals. We can also expect to see further regulation regarding children's privacy and relevant direct marketing activities in the coming round of amendments.

3. Consider your contracts!

With AI now being used for a range of services, it is important for business to take a step back and consider their contractual commitments to customers and third parties, which may restrict the ability to engage with third parties that are using AI systems or providing AI systems and tools.

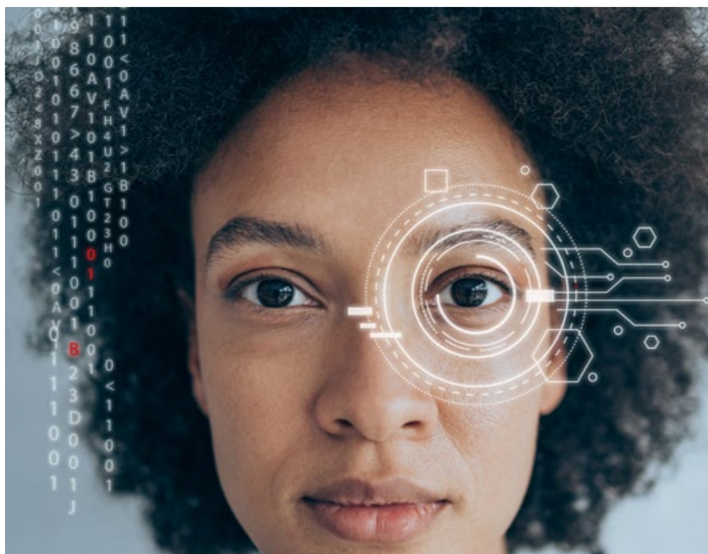
Consider:

- Do my contracts with third parties allow me to use information or data within AI systems (including relevant third party tools)?
- Has my business put contractual parameters in place regarding the use of AI in respect of their information and information that they hold, and which may be provided or accessed by third parties (noting that this might include personal information or commercially sensitive information)?
- Is there sufficient protection in our contracts with AI system providers if the technology fails?

4. Security and supervision

FMCG businesses globally have looked towards AI tools and systems to assist with things like monitoring employees, and surveilling or managing warehouses, which may include facial recognition.

Businesses will need to be conscious of risks regarding employee awareness and notification, and laws relating to the use of surveillance devices and data and personal information. This includes the Privacy Act, and state / territory laws regarding the use of monitoring devices and systems such as CCTV, and workplace surveillance laws. Such monitoring, and particularly the use of sensitive personal information (such as biometric information) has been under considerable scrutiny[9] and has been the topic of employee concern. The government's planned amendments to the employee records exemption under the Privacy Act coupled with further regulation in relation to AI, is likely to give rise to stringent guardrails in relation to the use of AI in this context.



What does this mean for your business?

To position your business to adapt and leverage AI, while being conscious of the shifting regulatory landscape regarding AI, we suggest that businesses:

1. monitor the regulatory landscape, and understand your obligations;
2. critically assess and test new AI tools prior to using these technologies, including security measures and what information will be collected, used and disclosed through the AI system;
3. ensure your staff are adequately trained on the use of any AI systems, including security and safety requirements and checks and balances for accuracy;
4. consider creating a company policy requiring human review or the application of other appropriate risk controls;
5. consider your contracts with customers/third parties or AI service providers, including how they address issues relating to AI; and
6. consider whether you need to notify your customers and obtain their consent, in relation to your use of AI, or the disclosure of their information to AI service providers (and update your terms and conditions, privacy collection notices and privacy policy accordingly).

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1. Trust in Artificial Intelligence: A global study (kpmg.com)
2. Australia signs the Bletchley Declaration at AI Safety Summit | Ministers for the Department of Industry, Science and Resources
3. See What is GDPR, the EU's new data protection law? - GDPR.eu
4. AI Act | Shaping Europe's digital future (europa.eu)
5. https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper
6. https://www.industry.gov.au/publications/australias-artificial-intelligence-ethics-framework
7. https://storage.googleapis.com/converlens-au-industry/industry/p/prj2452c8e24d7a400c72429/public_assets/Safe-and-responsible-AI-in-Australia-discussion-paper.pdf
8. The Australian Government's interim response to safe and responsible AI consultation | Department of Industry Science and Resources
9. The decision is clear – the AAT confirms that the Privacy Act applies to Clearview AI's conduct | Gadens

Sticks and stones may break your bones, but words can harm your business

When can an online business review be defamatory?

By Marina Olsen, Partner and Jeren Gul, Associate

The number of platforms and technologies enabling customers to review goods and services online has exploded in the last few years, and negative reviews have the potential to significantly impact on sales and business reputation. From general platforms like Google Business, Amazon and Facebook, to specialised portals such as Tripadvisor (accommodation, restaurants and experiences), Glassdoor (employment) and OpenTable (restaurants), having your business the subject of an online review can feel unfair and upsetting. This article considers the circumstances in which an online review might be defamatory in Australia, and potential avenues for recourse.

In short, an online business review will be defamatory and actionable under Australian law if it meets four elements: a person or entity is responsible for 'publishing' the review; 'identification' of a person or entity able to sue; the review carries a meaning that is 'defamatory'; and (except in Western Australia or the Northern Territory) the review has caused or is likely to cause 'serious harm' to the plaintiff's reputation. If all elements are made out, a number of defences are available to the publisher of the defamatory review.

Commencing and pursuing defamation litigation is a major undertaking for a business the subject of a negative online review. In some cases, there may be alternative avenues available, including takedown procedures offered by the relevant review platforms.

Who is the publisher?

In the online environment, publication 'is a process which includes making matter available for comprehension by a third party (relevantly by including the matter on a webpage) and which is completed upon the third party having that matter available for comprehension (relevantly by viewing the webpage and reading the matter)'.[1]

There can be (and often are) multiple parties responsible for publishing defamatory matter, as every voluntary and active participant in the process of making the content available is considered a publisher for the purposes of defamation law.[2] So, for example, if a person uses an online platform to post a negative review, both the poster and the platform may be considered publishers. There might also be further intermediaries liable for publication – for example, in the widely publicised case of Voller handed down in 2021, the High Court confirmed that operators of Facebook pages are also responsible as publishers for comments by third parties on posts appearing on their accounts. A matter can include not just words but also gestures[3] - for example, a person who 'likes' another user's defamatory review might be a publisher for defamation purposes.[4]

While many of the online platforms have their operations based outside Australia, in the case of online reviews, publication occurs at the point of download, where the material has been read and comprehended. The location of both the poster and the platform is irrelevant, at least on the question of publication.

Identifying the plaintiff (and the defendant)

An essential part of a defamation claim is that the plaintiff has been 'identified' by the defamatory matter: that is, it must be shown that the publication is 'of and concerning' an identified or identifiable person. Significantly in the context of business reviews, a corporation cannot sue for defamation unless it is a not-for-profit entity or has fewer than 10 employees (including related entities).[7]

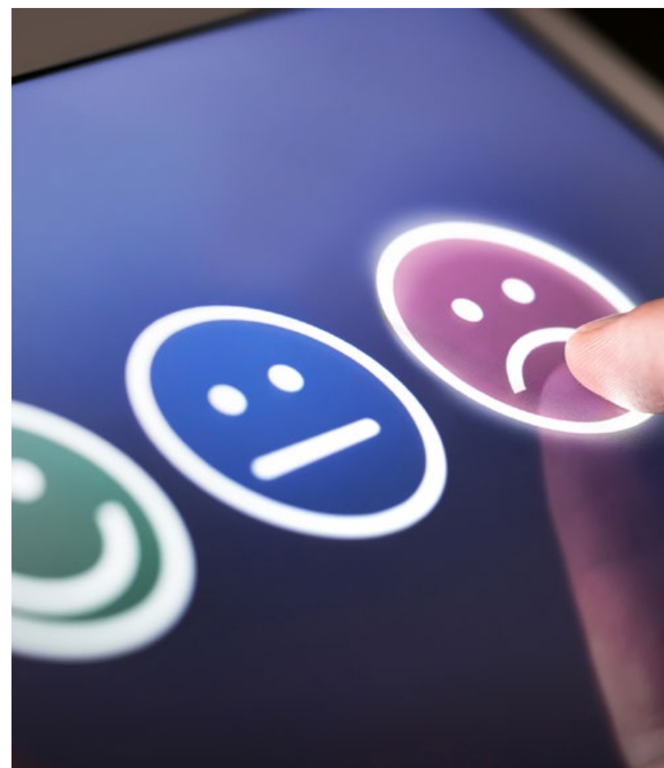
Even if defamation is not an available remedy, a corporate plaintiff might be able to bring an injurious falsehood claim, although success can be difficult as the action requires proof of malicious intent and proof of damage. Alternatively, a company might be able to pursue an online reviewer for contravention of the Australian Consumer Law if the review constitutes misleading or deceptive conduct (section 18) or makes false or misleading representations (section 29).

In some cases, a review of a business may give rise to concerns that the criticisms are really being made about the managers of the business, its owners or members of its board. To be identified, an individual does not need to be specifically named in the review: in some circumstances, a statement made by reference to a business, company or corporate group might 'identify' an individual by implication. The Federal Court was required to consider this question in a case commenced by Harry Triguboff against The Australian Financial Review. In that case, Mr Triguboff had argued that he had been defamed by an article criticising Meriton, the building company of which he is founder and managing director, despite not being named. Mr Triguboff argued that the article was "of and concerning" him because he is so well-known as the figurehead of the company that he was necessarily identified. The Court disagreed, and the proceedings were dismissed.[8] Generally, something more than a reference to a business or company with which a person is associated is required: a photo, a reference to their role or a description of the plaintiff might be sufficient.

Conversely, many online review platforms allow users to post content anonymously or under a pseudonym (or the use of fake names by posters), mounting a potential barrier to pursuing defamation proceedings against the poster. Without details of their identity, it will be impossible to commence Court proceedings against them.

Where a person's identity is unable to be traced through technological means, preliminary discovery applications can be utilised to unveil the identity of a potential defendant via the Courts.

So, for example, in *Lin v Google LLC* [9], the manager and ex-owner of a panel beater in Sydney successfully obtained an order from the Federal Court requiring Google to disclose details of the author of a negative review who had posted under the name 'Lucas'. Similarly, in 2022, Twitter was ordered to hand over details relating to the person posting under the widely followed Twitter handle 'PRGuy17' after an application by far right figure Avi Yemini.[10]

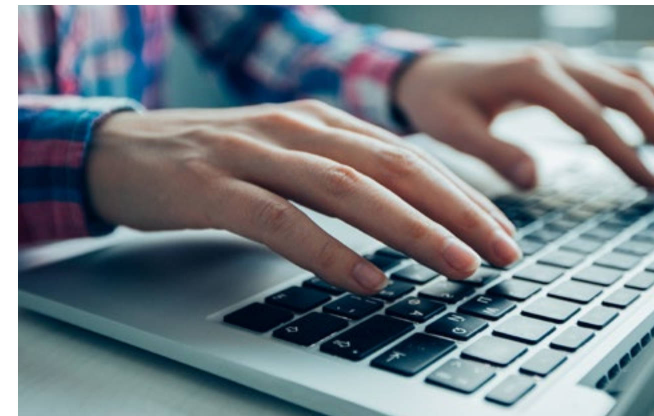


Defamatory imputations

To be defamatory, a review must convey defamatory meanings (or 'imputations') about the identified plaintiff.[11] A review will be defamatory if those imputations are likely to lead an ordinary reasonable person to think less of the plaintiff,[12] to shun or avoid them[13] or to expose them to hatred, ridicule, or contempt.[14] An assessment of whether the meaning is defamatory extends to injury to a person's professional and business reputation, and is not limited to their personal or private life.[15] For example, in *John Fairfax Publications Pty Ltd v Gacic,* a restaurant critic and newspaper publisher were successfully sued over a review of a restaurant, where the defamatory imputations found to have been conveyed included that the plaintiffs sell unpalatable food and provide bad service.[16]

It is important to note, particularly in the online environment where anonymity and physical distance seemingly encourage strong words, that language that is properly characterised as 'mere vulgar abuse' (for example, describing a business owner as a 'moron') is not generally considered to be defamatory. Similarly, a one-star review on its own is unlikely to be defamatory because it does not convey a particular meaning.

The context in which a publication is made is likely to influence the meanings that are conveyed. The way the ordinary reasonable reader would comprehend a short online business review is likely to differ to the ordinary reasonable reader's comprehension of a lengthy research report.[17] Social media users have been dubbed a 'new class of reader' by the UK Supreme Court.[18] These users 'know that Google reviews must be read with a degree of caution...They would know that these reviews are largely expressions of personal opinion. They would also expect a range of views and be unsurprised if there was an unflattering review, as unflattering reviews appear on many if not most business websites'.[19] On forums such as Google, Tripadvisor, Facebook, Yelp and Foursquare, the ordinary reasonable reader can be expected to scroll through content fairly quickly, gaining an impression of reviews rather than pausing and undertaking an analytical approach of what each one means[20]



Serious harm

In 2021 a new element was introduced through reforms to the uniform defamation laws in Australia, requiring a plaintiff to prove that the publication has caused or is likely to cause serious harm to their reputation (rather than, for example, hurt to their feelings).[21] Those reforms have been enacted by all states and territories except Western Australia and the Northern Territory - in these jurisdictions, a plaintiff need not meet this element. The introduction of the serious harm element has noticeably reduced the number that actually proceed to trial.

Factors that will be considered in determining whether serious harm is likely in the case of an online review include:

a. the seriousness of the imputations conveyed;

b. the extent of publication – the number of users that visit a platform may be relevant, as might the number of likes and comments that a post receives;

c. the context in which the review has been published – how do other reviews in the vicinity of the review in question impact on the likelihood of serious harm;

d. the length of time for which a review remains online – while Internet publications can remain online in perpetuity, it may be relevant if a post has been removed swiftly; and

e. any grapevine effect that flows from publication – the Court factors in the likelihood that defamatory imputations might be spread by way of republication.

There is a real question whether one bad review is capable of causing serious harm to a plaintiff, particularly when it is surrounded by positive reviews. Likewise, if there are numerous bad reviews about a business, there must be evidence of causation between the particular review complained of and serious harm to reputation.[22]

Scott v Bodley[23] is a case that highlights the risks of suing over an online review without strong proof of serious harm. In that case, the plaintiff owned a painting business and sued over one Google review and one comment on the Facebook page of his business. The reviews remained online for about 14 days. The imputations related to the plaintiff being incompetent and dishonest, behaving unprofessionally and verbally abusing the defendant. The plaintiff failed to prove serious harm. The judge pointed to a number of factors that indicated against serious harm: the evidence showed the business' financial position improved; the imputations were not particularly serious; the posts remained online for only a short period; the plaintiff could not identify a single person who had read the posts; and there was no evidence of any engagement with the posts.

In *High Quality Jewellers Pty Ltd v Ramaihi*[24], the judge also held that the plaintiffs had failed to establish the serious harm element. There, the defendant posted a review of a family-owned jewellery business on Google suggesting its staff were rude and unhelpful towards customers and were unscrupulous. Although it was clear that the review was not made by a legitimate customer, the plaintiffs had not shown extensive publication or financial loss. The judge did state (at [113]):

> ***I accept the proposition that a single review could cause serious harm. This may be especially so where the business involves the sale of high value goods and where customers are especially concerned with pricing. I accept that, when comparing two businesses, a business with a negative review might be passed over for a business without such a review.***

Defences available to publishers

If all elements of the action are made out, there are defences available to publishers of defamatory matter, both at common law and under the Act. Of most relevance to business reviews are the defences of justification and honest opinion (or fair comment at common law).[25]

The defence of justification requires a publisher to prove that the imputations conveyed are substantially true.[26] While the defence is fairly straightforward from a legal perspective, success will depend on whether the publisher has credible evidence to support their claim. In some cases, this evidence might be documentary or a matter of expert opinion, but in others it may be one word against another. For example, if a reviewer complains that a staff member spoke to them rudely or was inappropriate, whether they can make out a truth defence will depend on whether the Court prefers their evidence.

The defence of honest opinion is more legally complex. The review must be properly characterised as an expression of an opinion or comment (rather than an assertion of fact), relate to a matter of public interest and be based on proper material.[27] Whilst customer reviews are generally in the nature of opinion, there can be assertions of fact embedded within them, making it difficult for a publisher to rely upon this defence. The proper material requirement means that the review must set out the material on which the opinion is based, and that material must generally be substantially true; this can be a difficult element to satisfy in the context of short reviews.

Final thoughts

Online reviews can be damaging and hurtful. However, it should be apparent from the above that many hurdles stand in the way of successfully bringing a defamation claim to address that damage. Almost all of the mainstream online review forums provide mechanisms for dealing with complaints and considering the takedown of defamatory material or material breaching internal policies and community guidelines (which is often a lower threshold to satisfy than defamation). The limitation with this avenue is that some of those platforms effectively require a judgment pronouncing that a defamation has occurred before they will take any steps. Many platforms have suggestions for dealing with online reviews in a practical manner, including contacting the poster directly and seeking to engage with them with a view to having the review amended or taken down, or asking other customers to provide positive reviews so that the negative review sinks further down in prominence.

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1. *Google LLC v Defteros* [2022] HCA 27 at 58.
2. *Fairfax Media Publications Pty Ltd v Voller* (2021) 273 CLR 346.
3. Section 4 of the *Defamation Act 2005* (Cth) (**Act**).
4. *Bolton v Stoltenberg* [2018] NSWSC 1518 at [174] and [175], although no case has yet made a specific finding about 'likes'.
5. *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 at 600.
6. *Palace Films Pty Ltd v Fairfax Media Publications Pty Ltd* [2012] NSWSC 1136 at [10].
7. Section 9 of the Act (noting that the entity must also not be a public body).
8. *Triguboff v Fairfax Media Publications Pty Ltd* [2018] FCA 845.
9. [2021] FCA 1113. *See also Kabbabe v Google LLC* [2020] FCA 126; *Allison v Google LLC* [2021] FCA 186; *Colagrande v Telstra Corporation Ltd* [2020] FCA 1595.
10. *Yemini v Twitter International Company* [2022] FCA 318.
11. *Jones v Skeleton* [1964] NSWR 485 at 491.
12. *Mirror Newspapers Ltd v World Hosts Pty Ltd* (1979) 141 CLR 632 at 638-649.
13. *Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 TLR 581.
14. *Boyd v Mirror Newspapers Ltd* [1980] 2 NSWLR 449.
15. *Tournier v National Provincial & Union Bank of England Ltd* [1924] 1 KB 461 at 477, 486-7.
16. (2007) 230 CLR 291.
17. *Lewis v Daily Telegraph Ltd* [1964] AC 235 at 277.
18. *Stocker v Stocker* [2019] UKSC 17, cited with approval in *Scott v Bodley (No 2)* [2022] NSWDC 651 (**Scott v Bodley**) and *High Quality Jewellers Pty Ltd v Ramaihi (Ruling)* [2022] VCC 2240 (**High Quality Jewellers**).
19. Scott v Bodley at [42]; High Quality Jewellers at [114].
20. *Bazzi v Dutton* [2021] FCA 1474 at [29]; *Bazzi v Dutton* [2022] FCAFC 84 at [62].
21. Section 10A of the Act.
22. High Quality Jewellers at [10].
23. Scott v Bodley.
24. High Quality Jewellers.
25. There is also a defence of innocent dissemination (under s 32 of the Act) for intermediaries who satisfy the definition of a 'subordinate distributor' and also the potential application to of section 235 of the *Online Safety Act 2021* (Cth) in respect of liability.
26. Section 25 of the Act.
27. Section 31 of the Act.

Closing Loopholes – What you need to know about changes to the *Fair Work Act 2009* (Cth)

By Amanda Junkeer, Partner, Diana Diaz, Special Counsel and Olivia Torchia, Lawyer

Workplace laws are changing following the passage of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (Closing Loopholes No.1) and the *Fair Work Legislation Amendment (Closing Loopholes No.2) Act 2024* (Cth) (Closing Loopholes No.2) in the past few months. Many of the changes will impact a range of employers and at different times. Some changes have commenced already while others will come into effect at different points between now and 2025. In this update, we provide an overview of the key features of the reforms likely to impact the FMCG sector.

Same job, same pay

Casual employment

In a shift away from recent case law, the definition of casual employment will revert to a 'multi factor' test as had been the test previously.

The new definition focuses on the totality of the employment relationship. Relevant factors will include whether there is an absence of a firm advance commitment to continuing and indefinite work and whether the employee is entitled to a casual loading or specific rate of pay. The factors will replace the primacy previously placed on the contract terms (that is, the written contract).

Employers will need to provide casual employees with a new 'Casual Employment Information Statement' (**CEIS**) before or soon after starting casual employment, at the six-month mark and at the 12 month mark. There are some exceptions to the timeframes for small business employers and rules about the ongoing provision of the CEIS during employment.

Casual conversion will now be an employee right where an employee can request conversion to permanent employment after six months (longer for a small business) by notifying their employers.

Right to disconnect

A new workplace right will allow employees to: refuse to monitor, read or respond to contact, or attempted contact from their employer (or third party) where the contact or attempted contact is outside of the employee's 'working hours'; but not if the refusal is unreasonable.

What is 'unreasonable' will depend on a range of factors including the reason for the contact, how the contact is made, and the extent to which the employee is compensated for working additional hours.

As this will be a workplace right, an employer will be prohibited under existing general protections provisions in the *Fair Work Act 2009* (Cth) (**FW Act**) from taking adverse action against an employee for reasons that include the new right.

Where disputes arise and they are not resolved at the workplace level, either party will be able to apply to the Fair Work Commission (**FWC**) to deal with the dispute and/or to make a 'stop order'.

Many awards and enterprise agreements deal with how additional hours of work are treated and paid. The right to disconnect may overlap with those existing frameworks and is also likely to impact those employees to whom an award and enterprise agreement does not apply.

Employers can prepare for the new right by reviewing their contracts and policies to deal with out-of-hours contact, set expectations, and appropriately deal with workplace flexibility arrangements in place that allow employees to work in a way that suits them and the business.

New definitions of 'employee' and 'employer'

A new definition of 'employee' and 'employer' will require a multiple factor assessment to determine if a person is an independent contractor or employee, as was the case a few years ago. The focus is now on the totality of the relationship by assessing the 'real substance, practical reality and true nature of the relationship between the individual and the person.'

In addition, a new 'opt-out' mechanism will be available to permit an independent contractor earning over the 'contractor high income threshold' (which has not been set yet) to remain as a contractor rather than converting to an employment relationship. Opt-out notices can be revoked at any time by the individual.

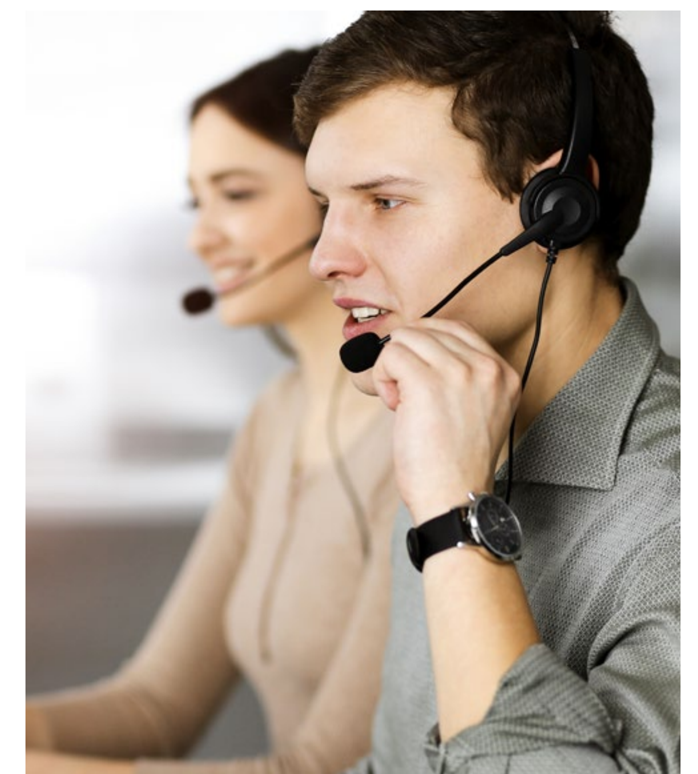
Employee-like worker

Gig workers are set to get more protections. The changes will apply to those such as ride share and meal delivery workers (e.g. Uber, Menulog, etc.) where they perform 'employee like' work. Regulated workers (which will include employee-like workers and certain road transport contractors) may benefit from Minimum Standards Orders which can be made by the FWC to provide for basic entitlements. Additional rights to challenge an unfair 'deactivation' of their engagement are also part of the changes.

Wage theft

A new federal criminal offence will be introduced in the FW Act to address intentional wage theft. These provisions do not intend to capture underpayments that are accidental, inadvertent or a genuine mistake, but rather intentional conduct. Employers who intentionally commit an offence will now face a maximum civil penalty of up to three times the amount of the underpayment or $7.8 million, and individuals may risk up to 10 years' imprisonment or a fine. While intentional conduct will be caught by the criminal offence, employers are on notice about systematic underpayments and their obligations to take proactive steps to remediate and prevent underpayments or risk falling foul of the law.

Wage compliance is not new, and employers have been on notice for some years about the serious consequences, both financial and reputational, that can follow where systematic underpayments are uncovered. The criminalisation of the offence escalates the need for employers to be vigilant and take proactive steps to ensure they are compliant. With a short lead time in 2024 before the changes become law, employers are encouraged to start planning now.



Snapshot of other changes:

Intractable bargaining

Intractable bargaining provisions allow the FWC to intervene with arbitration if parties cannot reach an enterprise agreement. To assist a resolution, the FWC may issue intractable bargaining declarations and intractable bargaining workplace determinations. The FWC's power will extend to ensuring the workplace determinations provide for no less than an existing enterprise agreement benefit.

Union delegates rights

The change will see the FW Act introduce new workplace rights and protections for workplace delegates (i.e. union delegates), including in awards and enterprise agreements. New rights include the right to reasonable communication with other employees (union members or employees eligible to be members) about union matters and the right to paid time to attend union training. The new protections will also extend to regulated workers (employee-like workers and regulated road transport contractors) who are workplace delegates.

Gadens' Workplace Advisory and Disputes team can assist with guidance and practical help to implement the changes.

Timeline of key changes

Key change	Date
Same job, same pay	15 December 2023 but note that orders cannot be made until November 2024
Casual employee definition change	26 August 2024
Right to disconnect (except small employers)	26 August 2024
Definition of employee	26 August 2024 or earlier by proclamation
Employee-like worker	26 August 2024 or earlier by proclamation
Wage theft	1 January 2025 or when declared by the Minister
Right to disconnect for small business employers	26 August 2025

Ahead of the curve: Preparing for mandatory ESG reporting

By Louise Rumble, Partner, Susan Goodman, Partner and Vishmitha De Alwis, Lawyer

Environmental, social and governance (ESG) reporting has recently emerged as a critical tool for companies to communicate their sustainability efforts and impact on various stakeholders.

On 12 January 2024, following two rounds of consultation, the Federal Government released the exposure draft of the Treasury Laws Amendment Bill 2024: Climate-related financial disclosure (Draft Legislation). The Draft Legislation outlines a proposal for the implementation of a mandatory climate-related financial disclosure regime. It is based on existing international frameworks and standards, with the aim of creating a global baseline for investor-focused sustainability. It addresses reporting entities, assurance requirements, reporting framework, liability enforcement and transition and review provisions.

Coverage and Threshold Criteria

If enacted, the Draft Legislation will cover entities to which **both** of the following threshold criteria apply:

a. the entity is required to lodge financial reports under Chapter 2M of the *Corporations Act 2001* (Cth) (**Act**); and

b. the entity meets the prescribed size thresholds.

In addition, all entities that are required to report under Chapter 2M of the Act that are registered as a 'Controlling Corporation' reporting under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER reporting entities**) would be covered, even if they do not meet the threshold criteria. Asset owners with assets of $5 billion or more (including the entities they control) will also be covered.

Chapter 2M of the *Corporations Act 2001* (Cth)

The reporting requirements under Chapter 2M of the Act apply to all large proprietary companies, all public companies, all disclosing entities and all registered schemes. The Act provides that some small proprietary companies will be required to prepare a report under certain circumstances.

Section 45A(3) of the Act defines a large proprietary company as a proprietary company that meets **at least two** of the following thresholds in a given financial year:

a. the consolidated revenue for the financial year of the entity and the entities it controls (if any) is $25 million, or any other amount prescribed by the regulations;

b. the value of the consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any) is $12.5 million, or any other amount prescribed by the regulations; and

c. the entity and the entities it controls (if any) have 50 or more employees, or any other number prescribed by the regulations.

Prescribed size thresholds

The draft legislation proposes that entities lodging financial reports under Chapter 2M of the Act that meet two of the following three criteria, will be covered by the proposed regime:

a. the consolidated revenue for the financial year of the entity and any entities it controls is $50 million or more;

b. the value of the consolidated gross assets at the end of the financial year of the entity and any entities it controls is $25 million or more; and

c. tthe entity and any entities it controls (if any) has 100 or more employees at the end of the financial year.

The draft legislation proposes to adopt existing concepts and definitions under the Act, particularly regarding 'small' and 'large proprietary' entities in determining whether an entity meets the prescribed size threshold outlined above.

Therefore, for the purposes of calculating whether the entity has 100 or more employees at the end of the financial year, the employees of the entity and the employees of all entities the entity controls will be included in the head count.

The draft legislation clarifies that the question of whether an entity 'controls' another entity is to be determined in accordance with accounting standards in force at the time. Additionally, when counting employees, part-time employees are counted as an appropriate fraction of a full-time employee.

Small and medium-sized businesses, below the relevant thresholds and which are not NGER reporting entities, will not be subject to the proposed regime. However, the draft legislation provides the Minister with the broad discretionary power to determine lower thresholds (i.e. the threshold number of employees), which could be used to bring new entities that do not meet the existing thresholds into the ambit of the proposed regime.

Phased Implementation

The draft legislation proposes a three-phased approach to the mandatory reporting over a four year period based on revenue, assets, number of employees and whether the entity has reporting obligations under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**).

The sustainability reporting thresholds for each group or phase are set out below:

Phase	First reporting period	Eligible entities
Group 1	Financial year commencing between 1 July 2024 and 30 June 2026	A company, disclosing entity, registered scheme or registrable superannuation entity that meets one of the following thresholds: 1. The entity satisfies at least two of the following three criteria: a. the entity and any entities it controls have 500 or more employees at the end of the financial year; b. consolidated gross assets at the end of the financial year of the entity and any entities it controls is valued at $1 billion or more; c. consolidated revenue for the financial year of the entity and any entities it controls is $500 million or more; or 2. The entity is a registered corporation and meets the reporting thresholds for a financial year under the NGER Act.
Group 2	Financial year commencing between 1 July 2026 and 30 June 2027	A company, disclosing entity, registered scheme or registrable superannuation entity that meets one of the following thresholds: 1. The entity satisfies at least two of the following three criteria: a. the entity and any entities it controls have 250 or more employees at the end of the financial year; b. consolidated gross assets at the end of the financial year of the entity and any entities it controls is valued at $500 million or more; c. consolidated revenue for the financial year of the entity and any entities it controls is $200 million or more; or 2. The entity is a registered corporation (or is required to make an application to be registered) under the NGER Act; or 3. The entity controls assets at the end of the financial year of the entity and the entities of $5 billion or more.
Group 3	Financial year commencing on or after 1 July 2027	A company, disclosing entity, registered scheme or registrable superannuation entity that meets one of the following thresholds: 1. The entity satisfies at least two of the following three criteria: a. the entity and any entities it controls have 100 or more employees at the end of the financial year; b. consolidated gross assets at the end of the financial year of the entity and any entities it controls is valued at $25 million or more; c. consolidated revenue for the financial year of the entity and any entities it controls is $50 million or more; or 2. The entity is a registered corporation (or is required to make an application to be registered) under the NGER Act.

Contents of the ESG Report

The ESG report will require the following:

a. a climate statement;

b. notes to the climate statement;

c. any statements prescribed by regulation; and

d. directors' declaration.

Climate statement

The climate statement will comprise climate-related financial disclosures that are proposed to be based on the Australian Accounting Standards Board's (AASB) SR1 Australian Sustainability Reporting Standards - Disclosure of Climate-related Financial Information (ASRS) accounting standard.

Whilst the ASRS is yet to be finalised, these are expected to include, for example:

- material climate-related financial risks and opportunities faced by the entity (if any); and
- information relating to climate-related governance, strategy and risk management and metrics, including scope 1, 2 and 3 emissions of greenhouse gases.

Prescribed statements, including non-climate sustainability disclosures

The draft legislation provides that the reporting entities must report in accordance with the 'sustainability standards' to be developed by the AASB.

The draft legislation also provides the Minister with the power to expand the sustainability report to include statements relating to other undefined 'environmental sustainability' matters beyond the standards.

Directors' declaration

Directors must make a declaration that (among other things), any statements in the sustainability report complies with the requirements of the Act (which includes with the sustainability standards" developed by the AASB).

Liability and enforcement

The draft legislation provides that the existing liability framework in relation to directors' duties, misleading and deceptive conduct and general disclosure obligations in the Act and the Australian Securities and Investment Commission Act 2001 (Cth) will apply to climate disclosures. However, liability for misleading and deceptive conduct in relation to the most uncertain parts of a climate statement will be temporally suspended to allow entities time to develop the capability to report to the required standards. That is, limited immunity will apply to statements in sustainability reports prepared for financial years commencing between 1 July 2024 and 30 June 2027. In this time period, only ASIC will be able to commence action for breaches of the relevant provisions made in disclosures of Scope 3 greenhouse gas emissions and climate-related forward-looking statements. After this period, existing liability provisions will apply.

Assurance requirements

Assurance of climate-related disclosures will be required, commencing with limited assurance of Scope 1 and Scope 2 greenhouse gas emissions for reports prepared from 1 July 2024. By 1 July 2030, reasonable assurance for all climate disclosure will be required. What is required for assurance for Group 1, 2 and 3 entities is to be clarified by the AASB.

Where to from here?

Whether or not the draft legislation is implemented in a form that is conceptually the same as what is currently proposed, a mandatory climate-related financial disclosure regime appears to have relatively broad support across industry and is likely to become a legal obligation.

Therefore, it will be important for businesses to establish whether they would be required to comply with the new reporting regime and start implementing the systems and capabilities to prepare for the phased implementation of the new legislation.

Please reach out to our team if you have any questions about how this proposed legislation may impact your business or if you would like to have a conversation about preparing for the mandatory climate-related disclosures.

Personalised Medical Devices and the ARTG – Should your products be registered?

By Kelly Griffiths, Partner, Clare Smith, Associate and Jenna Blatch-Williams, Paralegal

Personalised medical devices (**PMD**) are devices that are specifically designed, manufactured or adapted to suit an individual's needs. It is no longer the case that PMD are exempt from the requirement to be approved by the Therapeutic Goods Administration (**TGA)** and registered on the Australian Register of Therapeutic Goods (**ARTG**). Given the rapid advancement of technology and increasing personalisation of medical devices in higher risk categories, the TGA has undertaken a concerted effort to educate stakeholders on the new regulatory framework that applies in this important area of technology.

Prior to 25 February 2021, most PMD met the definition of a 'custom-made' medical device and were exempt from the requirement to be registered on the ARTG. However, since early 2021, PMD are classified more broadly as follows:

1. **Patient-matched medical device** – a medical device that is personalised prior to manufacture using a specified design template, and repeatable process that can be validated or verified;
2. **Adaptable medical device** – a mass-produced medical devices that is adapted or modified for an individual's specific needs after the device is supplied; and
3. **Custom-made medical device** – a medical device that is personalised prior to manufacture at the written request of a health professional because no existing medical device on the ARTG can meet an individual's specific needs.

It is critical that medical device sponsors are aware of these classifications and understand the regulatory requirements for any medical devices that they distribute within the Australian market. Those requirements include that:

- patient-matched medical devices must be registered on the ARTG before more than five are supplied per financial year;
- adaptable medical devices must be registered on the ARTG; and
- custom-made medical devices are exempt from the requirement to be registered on the ARTG.

Key differences between personal medical device classifications

Adaptable medical devices are easily distinguished from the other two classes, as they are adapted or modified after manufacture. Some examples of adaptable medical devices include a limb prosthesis and a mass-produced surgical implant for cranial reconstruction. Adaptable medical devices must be registered on the ARTG.

Patient-matched and custom-made medical devices, on the other hand, are both designed and produced for a particular individual.

Patient-matched medical devices are manufactured by the manufacturer in accordance with a 'specified design envelope'. The specified design envelope is the range between minimum and maximum dimensions, performance limits or other relevant factors that:

a. characterise a medical device for production purposes; and

b. may be based on a standard device template.

The manufacturer designs the device (sometimes in consultation with a healthcare professional) within the envelope to match the anatomical and/or physiological features, or a pathological condition, of an individual. The manufacturing process of such devices is capable of validation and reproduction.

Patient-matched medical devices must be approved by the TGA and included in the ARTG before more than five are supplied per financial year. Some examples of patient-matched medical devices include dental aligners (as they are designed in a software suite to suit a specific person before they are manufactured), and therapeutic insoles for a variety of foot pathologies and most foot sizes.

A custom-made medical device is so unique that there would be no way a manufacturer could validate the device design or verify the production process at the time it is requested. Custom-made medical devices are intended by a manufacturer for a particular patient for the sole use of a certain healthcare professional in the course of their practice.

A custom-made medical device is designed by a healthcare professional in circumstances when no kind of medical device on the ARTG exists to address an individual's unique needs. The manufacture of such a device is at the written request of a healthcare professional, in accordance with the design characteristics specified by that professional, to address anatomical and physiological characteristics, or pathological condition, of the particular individual.

Custom-made medical devices are not required to be registered on the ARTG. An example of a custom-made medical device is an individually made radius bone replacement for the sole use of a specific patient, where there is no device (i.e. orthopaedic implant) included on the ARTG that could reconstruct that bone.

We note that patient-matched medical devices may also be manufactured following the request of a healthcare professional. Requesting such medical devices in writing does not exempt them from the registration requirement.

Criminal offences and civil penalties may apply to a person that supplies, imports or exports a medical device that should be – but is not – registered on the ARTG. The maximum criminal offence applicable to the supply, import or export of an unregistered devices is imprisonment for five years or 4,000 penalty units, or both.[1] And the maximum civil penalty for the supply, import or export of an unregistered medical device is 5,000 penalty units for an individual and 50,000 penalty units for a body corporate.[2]

Executive officers of a body corporate that commits and offence under or contravenes the *Therapeutic Goods Act 1989* (Cth) (**Act**) may be personally liable if they knew the contravention or offence would be committed, had sufficient influence over the body corporate in relation to the contravention or offence, and failed to take reasonable steps to prevent it.[3] The officer may also face criminal and civil penalties under the Act. Given the personal liability that may apply to officers and that the current value of a penalty unit is $313 per unit, it is clearly important to ensure a medical device is registered if required.

For advice on whether your personalised medical device should be registered on the ARTG and, if so, how to register it, contact us here.

1. *Therapeutic Goods Act 1989* (Cth) s 41MI.
2. Ibid, s 41MIB.
3. Ibid, s 54B.
4. *Crimes Act 1914* (Cth) s 4AA.

Review finds Franchising Code of Conduct fit for purpose but recommends some changes

By Adam Walker, Partner, Andrew Barr, Associate and Maggie Laing, Lawyer

An independent review of the Franchising Code of Conduct (Code),[1] undertaken by Dr Michael Schaper was released on 8 February 2024 by the Minister for Small Business, the Hon Julie Collins MP. Aside from reviewing provisions in the Code related to the automotive sector and the Franchise Disclosure Register (FDR), which review was required by the Code, the review also considered a range of issues in the current regulatory framework, such as the scope and structure of the Code, the disclosure and transparency of information, the rights and obligations of the parties, the dispute resolution mechanisms, the enforcement and compliance measures, and the education and awareness initiatives, and examined the impact of emerging trends and challenges on the franchising sector, such as digital disruption, changing consumer preferences, and environmental sustainability.

In submitting the report of the Independent Review of the Franchising Code of Conduct (Report),[2] Dr Schaper commented that "the Code, like other frameworks which support competitive and fair market conduct, should not be overly prescriptive or attempt to guide all actions by sector participants". Dr Schaper found that there is 'merit in the continued operation of the Code in some form' and recommended that the Code should be remade (and not be allowed to sunset in April 2025).

The report made 23 formal recommendations and 34 implementation suggestions for the government to consider, aiming to improve the balance, clarity, and effectiveness of the Code and to enhance the confidence and trust in the franchising sector. This article sets out some of the key recommendations of the Report.

Scope and structure of the Code

The Report recommended that the Code should be remade, largely in its current format, and suggested that certain technical and drafting issues should be considered to reduce unnecessary complexity or to eliminate current unclear expression.

It also recommended that a clear statement of purpose should be inserted into the Code, such that the Code is intended to 'improve standards of conduct and ensure access to information and dispute resolution', rather than 'eliminate all misconduct or risk'.

Entering into a franchise agreement

The Report observed that pre-contractual disclosure can sometimes be burdensome for both parties and that mandating greater disclosure would be counterproductive. It recommended that pre-entry information given to prospective franchisees should be simplified and consolidated. One obvious example is to retire the key facts sheet.

In addition, the Report also recommended that all franchise agreements, not just new vehicle dealership agreements, should provide a reasonable opportunity to make a return on investment, and should include provisions for compensation for franchisees in the event of early termination.

Ending a franchise relationship

The Report found that changes made in 2021 relating to notice periods for termination made it difficult for franchisors to act decisively in the context of serious breaches and recommended that provisions relating to termination for serious breaches should be simplified.

In relation to franchisee-initiated exits, the Report recommended that best practice guidance should be provided to clarify the process and circumstances in which a franchisee can negotiate an early exit from a franchise agreement.

One of the findings of the Report was that some restraints of trade unduly limit franchisee opportunities at the end of a franchise agreement, dissuading competition in the sector. Accordingly, the Report recommended that further work should be done to limit the use of unreasonable restraints of trade.

Regulatory oversight and dispute resolution

Due to the lack of a comprehensive source of information for participants in the sector, the Report recommended that a comprehensive online government resource, in the nature of ASIC's MoneySmart website, should be created. The Report also recommended that best practice guidance and education should be developed to improve standards of conduct in franchising.

Notably for franchisors, the Report recommended that the Australian Small Business and Family Enterprise Ombudsman should be given powers to name franchisors who have not participated meaningfully in alternative dispute resolution. In addition, to deter non-compliance with the Code, the Report recommended that all substantive obligations in the Code have a penalty provision and that infringement notice penalties be increased.

Support for a licensing regime

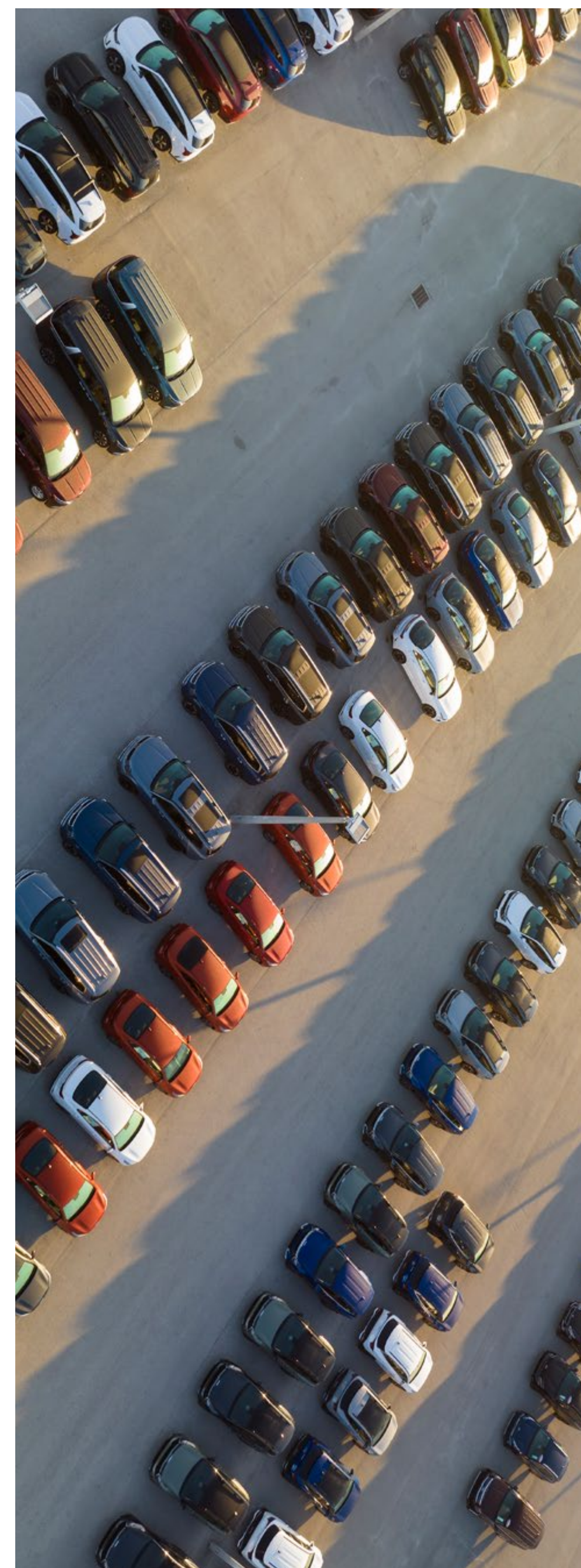
The Report considered the possibility of adopting a licensing based regulatory system (where, for example, a government authority would provide approval, or a licence, for an entity to conduct business), and recommended that the government investigate this further.

While the Report noted the potential for a licensing regime to offer better regulation and oversight of franchisors, which could lead to improved standards and practices within the franchising sector, it also acknowledged that a licensing regime could potentially create a high barrier to entry to the franchising industry. The more regulation and higher penalties, the less likely businesses will consider franchising as a business model when looking to expand. Other drawbacks may include increased costs of implementing the regime being passed on to franchisors, and limited flexibility for franchisors to innovate or adapt their business model to local needs.

Automotive sector

The Code contains unique protections for new vehicle dealerships that currently do not apply to any other forms of franchising. However, other franchisees in the automotive sector are still captured by the general provisions of the Code. One of the Report's recommendations in relation to the automotive sector was that service and repair work conducted by motor vehicle dealerships should be explicitly captured by the Code.

There seems to be a continued focus on the automotive sector, and the recent Mercedes-Benz decision (which considered the obligation to act in good faith and found that Mercedes' service and parts agreement with dealers came under the definition of a franchise agreement) continues to have an industry-wide impact.



Conclusion

The government has indicated that it will carefully consider the Report and its recommendations and will continue to consult with the franchising sector and other stakeholders before making any changes to the Code.

While we consider the recommendations of the Report to be measured and sensible, there is clearly a struggle to strike the correct balance between the need to protect franchisees and not creating a system that is burdensome and confusing for franchisors, which could stifle the industry. Clearly there is a sentiment that the intentions of the Code need to be made clearer, and reduce any unnecessary complexity, in order to avoid any uncertainties and inconsistencies.

A key item to play out is the impact of the expanded unfair contract terms regime. As was noted in the Report, this may be expected to have a significant and positive impact on the fairness of franchise agreements and could see many points of complaint and concern raised by MPs and senators in the past become far less of a concern.

The government's response, likely to be issued later this year, will be an interesting read both in terms of responses to recommendations for amendments to the Code as part of the re-making of the Code and with respect to the broader policy issues for further consideration. Some of these may fall within the purview of the government's broader review of competition policy.

Gadens can assist franchisors to navigate, prepare for, and implement the changes once more information becomes available.

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1. *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* (Cth) sch 1 ('Franchising Code of Conduct').
2. Dr Michael Schaper, Independent Review of the Franchising Code of Conduct (Report, December 2023) ('Report').

Case study: How Gadens played a part in the Sara Lee sale

By James Roland, Partner and Breanna Davies, Partner

In late 2023, Australian dessert manufacturer Sara Lee entered voluntary administration. Gadens acted for FTI Consulting, advising on all aspects of the administration and the sale process, which completed in February 2024.

The Gadens team drew on cross-practice expertise, to play its part in ensuring this iconic brand remains a household name that can continue to bring delicious desserts to the Australian and New Zealand markets.

Established in New South Wales in 1971, Sara Lee is a well-known FMCG company which supplies the major supermarkets. In October 2023 FTI Consulting was appointed as voluntary administrator. After a well-publicised and complex sale process involving Australian and international interest, a binding agreement was entered into with a private company owned by Klark and Brooke Quinn to sell Sara Lee's Australian and New Zealand operations.

Gadens assisted FTI on all aspects of the administration and sale process including advising in relation to issues including PPSR queries and disputes, employment law obligations, intellectual property ownership and control, negotiation and preparation of the suite of transaction documents (including deed of company arrangement), advising on the implications of the sale on external foreign stakeholders, and with undertaking the steps required for completion of the sale. Gadens restructuring and insolvency experts prepared and appeared in the application to extend the administration convening period in the Supreme Court of NSW.

The sale involved managing complicated and challenging issues. It was critical that a sale was achieved to preserve the brand and business, and also to ensure that all 200 staff would continue to be employed.

James Roland said:

> ***"It was great to work in close collaboration with FTI to help them achieve an excellent outcome for Sara Lee and its employees."***

The cross-practice team was led by partner James Roland and supported by Breanna Davies, Elliot Raleigh, Louise Rumble, Marina Olsen and Sean Prater (Partners), Isabella Barnes (Special Counsel), Kevin McVeigh and Sera Park (Senior Associates), Polina Safonova (Associate), William Doble and Ahmed El-Jaam (Lawyers) and Jenna Wall and Ray Mainsbridge (Paralegals). Drawing on expertise from across many specialisations within the firm, Gadens was able to advise on the full administration and sale process.

We are so proud to have been a part of this! It was a pleasure for our team to work with FTI Consulting, to achieve this successful outcome for an iconic Australian brand.

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