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Australian franchising research: Review, synthesis and future research directions

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ABSTRACT

This article represents a brief history of the development of franchising in Australia and its regulatory framework and links this to an analysis of relevant research. Findings indicate a disparate ad hoc approach to research including scoping studies at the embryonic stage of franchise development; significant evidence of census style research culminating in a trajectory of disparate studies utilising more sophisticated research methods. For franchising research to advance there appears to be a need to interface with other research domains in SME and entrepreneurship research, extend the range of issues which are the subject of franchising research; begin longitudinal studies in order to better understand change over time; promote studies which have a sectoral focus in order to improve knowledge and understanding at that level of analysis; and, increase the representation of cross-border/cultural research in the volume of work being undertaken.

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1. Introduction

The Australian franchising sector has rapidly grown in the past three decades in Australia (Frazer et al., 2006, 2008, 2010; Bureau of Industry Economics, 1981, 1990) with the sector currently represented by 69,900 franchise system units contributing \$128 billion in sales of goods and services to Australia's Gross Domestic Product each year (Frazer et al., 2010). Through this period a significant body of sectoral and academic research has developed. In order to contextualise this research, the history of franchising and the development of its unique regulatory regime governing the sector in Australia is presented. An extensive review and synthesis is then made, highlighting the limited strategic direction taken by researchers through this period. Suggestions are put forward for a future research agenda.

2. A history of franchising in Australia

Little evidence of franchising existed in Australia prior to 1970, except for product franchising in the petroleum and motor vehicle industries (McCosker, 1994). The introduction of fast food franchises such as KFC and McDonalds, began a trend in the 1960s and 1970s toward locally based systems resulting in further expansion (Terry, 1996). Increased intensity in business competition

during this period resulted in the failure of many small and medium sized businesses, encouraging growth in franchising. This perceived safe alternative to independent operations provided a means for new small business people to benefit from established business systems and a recognised brand name (Terry, 1991). This growth in franchising is attributed to the absence of intrusive regulatory controls at state and federal level, an increasingly affluent local population, and a willingness of the Australian people to accept new ideas and foreign investment (Lim and Frazer, 2001; Terry, 1996).

Franchising continued to grow at an accelerated rate during the 1980s, attributed to an increase in interest from the financial and public sectors. However, media interest in the failure of a number of high profile franchises prompted questions about franchising as an appropriate medium of distribution (Frazer, 2000). While franchise survival rates were greater than those of independent small businesses, interest grew in the need for greater consumer protection and sector regulation (Williams, 1992). This increased concern in franchising sector regulation led to the formation of the Franchisors Association of Australia (FAA) in 1981. Later, in 1993, this private association extended its membership to include franchisees and became known as the Franchise Association of Australia and New Zealand (FAANZ). With the growth in membership and international affiliations, FAANZ became known as the Franchise Council of Australia (FCA) in 1998 (with the New Zealand Chapter forming its own organisation). The aims of the association are to represent equally franchisors, franchisees and other franchising entities including marketing consultants, advisors, solicitors, accountants and brokers (FCA, 2007). This initiative represents

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one, of a number, affecting franchises through the 1990s. The increased focus on regulation, described in the next section, highlights a number of other decisions that impacted on the sector through this period.

3. The legal framework

The development of franchising, described in Section 2, is reflected in Australia's current approach to regulation. Since 1 July 1998, franchising practices exist within the framework of a mandatory Franchising Code of Conduct (The Code). The Code is operationalized through the *Trade Practices Act 1974* (Cth) (TPA). The purpose of the Code is to assist franchisors and franchisees, to make informed decisions prior to entering franchise agreements and provide enforceable guidelines for efficient dispute resolution (Franchising Code of Conduct 1998). Although industry professionals have cited limitations, such as costs and legal ambiguity, the Code represents a positive progression away from the regulatory failures experienced in the past (Spencer, 2008).

Prior to the introduction of the Code, the legal framework of franchising in Australia had not changed significantly for the past 30 years. Pre-1981, franchising was largely unregulated with no specific statute governing the sector apart from the commonwealth *Petroleum Retail Franchise Act 1980* (Terry, 1996; Terry and Giugni, 2005). The franchising sector was bound by general laws governing commercial trading activity, in particular the TPA with most litigation arising from Section 52 of the TPA where franchisees could seek recourse from franchisors regarding alleged misleading or deceptive conduct (Terry, 1996).

During the period 1981–1987, the sector operated in an undefined legal environment arising from a landmark case, *Hamilton* (Commissioner for Corporate Affairs) v *Casnot Pty Ltd* 1981 CLC 40-704, in which the Western Australian Supreme Court determined the prescribed interest provisions of Corporation's law covered franchisee recruitment practices. As a result, the National Companies and Securities Commission, as the corporate regulator, required franchisors to abide by the relevant statutory provisions set out in the Corporations Law (Terry and Giugni, 2005). This period of quasi-regulation ended in 1987 after a period of uncertain compliance by franchisors, reverting to a deregulated environment until 1993. Deregulation was promoted by including (in the TPA) a concept known as full-line forcing – where suppliers (franchisors) refuse to supply goods or a service unless the intended purchasers (franchisees) agree not to buy goods of a particular kind or description from a competitor; resupply goods of a particular kind or description acquired from a competitor; resupply goods of a particular kind acquired from the company to a particular place or classes of places (ACCC, 2010), thereby enhancing macroeconomic competition through facilitating market access to new products and promoting inter-brand competition (Corones, 1999; OECD, 1994).

Although franchising was deregulated between 1987 and 1993 (Terry, 1996), the Franchising Task Force identified a variety of problems in 1991. Subsequently, a voluntary Franchising Code of Practice was instigated under the administration of the Franchising Code Council. Therefore, franchisors needed to comply with a number of requirements. These included the provision of a disclosure document containing information about the franchise system prior to signing the franchise agreement and a seven-day cooling-off period after signing the agreement. In addition the use of alternative dispute resolution methods involving mutual negotiation were imposed (Terry, 1996).

The Gardini report (1994) found approximately half of all franchisors remained registered with the Franchise Code Council at that time and subsequently recommended franchising self-regu-

late within the framework of Corporations' law. However, the Federal government chose to strengthen the TPA to provide a stronger underpinning of the Code of Practice and establish a small business unit to monitor the actions of unregistered franchisors (Terry and Giugni, 2005). So from 1993 to 1996 the sector attempted self-regulation (Terry and Giugni, 2005). The noted failure of the self-regulating Code of Practice to address prominent franchising problems led to the disbanding of the Franchising Code Council in 1996 with a subsequent reversion to deregulation in 1997 (Gardini, 1994; Terry and Giugni, 2005). A further rise in disputes in 1997–98 led to demands for a review of the regulatory framework and the subsequent introduction of the mandatory Franchising Code of Conduct in 1998 (Lim and Frazer, 2001; McCosker and Frazer, 1998).

Rubin (1978), pp. 223–233 argued a highly regulated legal framework could negatively influence franchisors away from franchising if regulatory intervention deeply affected the franchising relationship. However, current trends indicate that rather than redirect ownership to company-owned operations, franchisors developed new strategies within the sector to continue franchised expansion processes. So, despite this increase in regulation the franchising sector in Australia has continued to grow with the number of franchises increasing from 560 in 1998 to over 1050 in 2010 (Frazer and McCosker, 1999; Frazer and Weaven, 2002, 2004; Frazer et al., 2006; Frazer et al., 2008; Frazer et al., 2010). As a result, a high level of franchising per capita in Australia has occurred compared to the United States (Frazer, 2000; Wright and Frazer, 2004). However, this level of growth may result from small business failure or converting independent retail businesses to franchised operations (Frazer, 2000; Wright and Frazer, 2004). Nevertheless, since the introduction of the Code, franchisors face significant difficulties in attracting and recruiting suitable franchisees (Frazer and Weaven, 2002).

4. Method

No previous review of Australian franchising research has been published. Hence, a range of search methods and databases were utilised to gather as much formal Australian marketing related literature as possible. For example, a number of articles from previous research provided an initial platform. A range of digital database indices, including Google and Google Scholar, were searched highlighting more articles and government funded/based studies. These articles and studies were reference checked ascertaining other research in the area. A brief summary of each study was written. A broad analysis of the studies was undertaken in an attempt to form research or method based categories. These are presented in Table 1. As the analysis progressed categorical determination became increasingly difficult as the disparate nature of research and methods became apparent. This process is explained in Section 5.

5. Overview of the research

Early exploratory and descriptive studies reflect the embryonic development of franchising through the 1980s. At that time, the sector came under review, with comparisons made between self-regulation and mandatory regulation. Hence, a logical conclusion is, studies were initiated by government or sector interests, to characterise (for or against) relevant franchising activities. Data were mainly limited to sectoral growth attributes highlighting franchising's economic value through the provision of census style data. For example, the FAA identified specific industries such as fast food and restaurants as major contributors to economic activity with a significant percentage of these companies franchising

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