

29 October 2021

Mr Simon Arnold
Director of Justice
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Markets Group
The Treasury
Langton Crescent
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via email: Simon.Arnold@Treasury.gov.au

Dear Mr Arnold

Franchise Disclosure Registry Exposure Draft Consultation

Thank you for the opportunity to comment on the exposure draft for the Franchise Disclosure Registry (the Registry). The Registry will be a valuable tool to improve transparency by providing a concise and convenient source for disclosure information. Further, the Registry will help to build confidence in the sector by improving transparency.

Over the six-month period of 1 April to 30 September 2021 our Office received 301 calls seeking information about disputes under the Franchise Code of Conduct (the Code). We provide the below feedback informed by our experience with the Code:

1. **Accessibility:** The Registry should aim to provide information in clear and concise language. It should have a stated aim to avoid unnecessary legal terms and jargon, with an intent to be easily understood by the general population and prospective franchisees.
2. **Portal:** The intent to make the Registry a portal, rather than uploading copies of disclosure documents, should help to enable effective functionality. Our Office is keen to see a Registry that is searchable, readable and functional, to allow prospective franchisees to compare potential franchises meaningfully. To optimise the functionality we suggest the below:
 - a. **Expected content:** Similar to recent changes to ensure that “agency” models in the automotive sector are covered by the Code, it will be important to ensure that “agency” models are still expected to upload to the portal. This will assist the Registry in meeting the expectations of prospective franchisees. Further, it will ensure the Registry reflects the franchise landscape accurately.
 - b. **Industry search:** The initiative to include Australia and New Zealand Standard Industrial Classification (ANZSIC) codes to assist searches by industry is positive. This will help prospective franchisees search the Registry more effectively, noting that the current ANZSIC codes have not been comprehensively updated since 2006 and may be limited in their effectiveness. As such, we would encourage engagement by the Department in any ANZSIC code review processes to ensure the Registry is up to date and matches consumer expectations.
 - c. **Important searchable information:** Alongside search by industry, it will be beneficial for prospective franchisees to have the capability to search and compare capital

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costs, periods of agreements and termination clauses. This ability will allow prospective franchisees to complete these searches without the need for third party assistance, noting they should still seek professional advice before entering a franchise agreement.

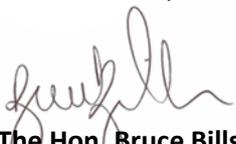
- d. Data cleanliness:** Clean and rich data will be necessary for the portal to function optimally and to allow prospective franchisees to search the portal effectively. We acknowledge (as stated below) that the data is not validated, however, it will be important for resources to be allocated to clean data and assist franchisors in uploading data appropriately.
- 3. Validating information:** As discussed in the information pack, it is important to highlight to consumers that the information on the Registry is not verified and is uploaded at the discretion of the franchisors and their team. To help address this concern we suggest:
 - a. Clear messaging:** A clear and visible message on each screen of the portal that identifies that the information is not independently verified.
 - b. Checklist for due diligence:** The Registry should include a home screen that provides a checklist for effective due diligence. This could be linked to the ACCCs '[Franchising: Is it for you?](#)' webpage, to ensure consistency.
 - c. Communication campaign:** Our Office would be pleased to work with the Treasury and the Australian Competition & Consumer Commission (ACCC) to communicate to prospective franchisees and the public that the Registry is only one part of due diligence and more research should be conducted and advice from experts sought.
- 4. Highlighting best practice:** The information on the Registry portal should be presented in a straightforward manner and not used as a potential marketing tool by franchisors. By including the facts in a clear, searchable, and comparable manner, the Registry will naturally highlight best practice and help prospective franchisees to compare potential franchises in a meaningful way.
- 5. Further information:** The Registry would benefit from a clear intent early on in its implementation that it will include further information as it matures and all parties become more familiar with the Registry and trust its use. This is already alluded to through the current requirement for updates to include 'materially relevant facts'. Consideration should be given to future inclusion of:
 - a. Key Facts Sheet:** As the Key Facts Sheet is intended to present information on a disclosure document in a clear and concise manner, it would be beneficial to include the Key Facts Sheet on the Registry.
 - b. Franchise Agreements:** The franchise agreement is where much of the detail about how the relationship between the franchisor and franchisee will operate in practice is held. As such, it could be useful to consider including *pro forma* franchise agreements on the Registry, once the Registry is established and trusted.
 - c. Prompt further inquiry:** Similar to the key Facts Sheet, which prompts prospective franchisees to seek further information regarding certain content, the Registry could include prompts to inquire further about particular items. Specifically, it should include prompts for items regarding the winding up of a franchise system. For example, the contents of item 6.4 of the disclosure document should be accompanied by a prompt to seek further information from the franchisor about the circumstances of transfers, terminations and buy-backs and to seek professional advice about the details.
 - d. Master Franchisor:** There should be a focus on distilling the information about which party is the master franchisor and displaying this information clearly and accurately.
- 6. Redacted information:** We respect the need to redact some information due to commercial sensitivity or privacy concerns. However, there should be additional information provided to

assist prospective franchisees to navigate the redacted parts of the Registry. As such we suggest the following:

- a. **Disclaimer:** If information is redacted it should be accompanied by a disclaimer that the franchisor is obligated to provide the information to the prospective franchisee prior to entering into an agreement. Prompts to push a prospective franchisee to explicitly seek the redacted information should also be included.
 - b. **Reason for redaction:** Franchisors should include reasons why the information is redacted. This will help build trust in the Registry and help to ensure the Registry has robust and useful data.
 - c. **Commitment to transparency:** There should be an ongoing commitment by the Department to continue to push for a Registry that redacts as little information as possible. This approach will need to be supported by a Registry that is effective and trusted so that franchisors are willing to commit more information as they use the Registry more and trust its usefulness.
7. **Transition period:** We believe the transition period is reasonable. Franchisors have been aware of the impending changes for a substantial time and should already have up to date disclosure documents. As such, October 2022 for a live Registry is appropriate.
8. **Continued engagement:** The proposed clause 53F 'Obligation to give certain information if franchisor is not required to update disclosure document relating to franchise' is a positive addition. Subclause 53F(1) that makes the obligation apply to 'a franchisor if the franchisor is not required under subclause 8(7) to update the disclosure document relating to a franchise' means that even if a franchisor does not need to update the disclosure document they will need to interact with, and update the Registry. This applies when the franchisor did not enter into a franchise agreement, or only entered into one franchise agreement, during the year and does not intend to enter into another franchise agreement the following year. Subclause 53F(2)(e), which requires the franchisor to give the reason why they do not need to update their disclosure document will help to maintain the completeness of the Registry; ensure franchisors are consistently engaged with the Registry; and help to build trust in the Registry as an effective tool.

We appreciate the opportunity to provide feedback and are keen to continue to work together to make the Registry a valuable asset to the franchise landscape. If you would like to discuss this matter further, please contact Mr Luke Collins on 02 5114 6117 or at Luke.Collins@asbfeo.gov.au.

Yours sincerely



The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman