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Submission on the proposed Franchise Disclosure Registry

FRANdata Australia Pty Ltd (**FRANdata**) welcomes the opportunity to provide some input to the Department on the proposed **Franchise Disclosure Registry**.

FRANdata and The Australian Franchise Registry™

FRANdata is an international franchise research, reporting and ratings business, founded in the US in 1989. Its US Franchise Registry service has now collected more than 50,000 Franchise Disclosure Documents and these provide the basis for objective fact based information services that support key strategic decisions in the franchise sector.

FRANdata commenced operations in Australia in July 2013 and launched The Australian Franchise Registry™ (**the Registry**) in 2014. The Registry operates in a similar manner to the US with the key difference being it relies upon the voluntary provision of documentation from brands seeking to promote their transparency.

FRANdata's library on the Australian Franchise Sector and Australian Franchise Data Warehouse sources information from:

- The collection of Disclosure Documents through the Australian Franchise Registry (covering more than 30% of the reported units operating in the Australian franchise sector)
- The collection of factual information from franchisors used to prepare and update Bank Credit Reports, Franchise Underwriting Scores, Franchise Brand Overviews for Lenders and Australian Franchise Rating Scale outcomes for more than 50 Australian Franchise Systems
- Customised research and advisory services for nearly 40 additional franchise systems, lenders, professional services firms and other users.
- Quarterly "Pulse Check" surveys on Australian franchise systems
- Adhoc straw polls on topical issues
- FRANdata's US Franchise Data Warehouse
- Other industry and public information sources

Concerns with the proposed Franchise Disclosure Register

The intentions of the Government's new "Franchise Disclosure Register" (transparency and informed decision enabling) are good and intended to protect prospective franchisees from entering into a franchise agreement based on weak or missing information.

However, as proposed the new register poses two significant concerns.

1. The risk of unintended consequences, and
2. The missing of a significant opportunity to arm franchisees with meaningful and relevant information.

1. The risk of unintended consequences

a. Access and use of sensitive information

The practical lodging of a Disclosure Document is not necessarily an issue for many quality franchise systems with more than two hundred Australian franchise systems (covering more than 25,000 small businesses) having already provided their Disclosure Document to the existing voluntary **Australian Franchise Registry™**.

The issue is not about providing the actual document but the legitimate concerns about how that document will be used, how their confidential information will be stored and who has access to the contents.

Proposed public access to disclosure requirements (particularly following the 2021 code revisions) has franchisors particularly concerned about:

- their obligations under existing commercial and confidential arrangements
- competitor access to sensitive information
- competitor and recruitment firms access to key personnel details
- access to sensitive information by media, activists and litigation scouts.

These concerns were captured in the **September 2020 Australian Franchise Sector "Pulse Check" Survey** where 109 Australian franchise systems covering 17,661 businesses revealed significant anxiety and resistance towards the establishment of a new public registry.

In that survey franchisors responded strongly to questions around the "**establishment of a new public franchise registry**".

A high or very high level of importance was placed on any new registry providing:

- Security, preservation and confidentiality of their information (91%)
- Ease of access and relative simplicity (87.7%)

- Objective and factually correct and aggregated information (83.7%)
- Independence from regulators, industry bodies and others with potential conflicts of interest (80.7%)
- Low compliance and registration costs for franchisors and free of charge access (83.5%)
- External promotion to create awareness (71.7%)

b. Users inadvertently arriving at misleading conclusions

Prospective franchisees or other sector observers may be confused or arrive at misleading conclusions from a new registry. This could range from an assumption that all registered brands have achieved a certain standard or, and more dangerously for the government, a perception that brands appearing on the registry have been endorsed by the government leading to a reduced level of due diligence.

c. Increased red tape and compliance costs.

Franchisors, many who are small businesses themselves, have already faced additional costs amending and updating their documentation after the latest code amendments.

This latest addition to their regulatory and compliance burden, particularly in the current economic climate, introduces a new suite of costs and administrative tasks.

d. Reduced information

With serious concerns over who has access to the information included in their Disclosure Document some franchise system may also be tempted to take a minimalist approach to what is included.

e. Potential Conflicts

There are potential conflicts between the registry and statutory information gathering and enforcement roles for any regulators or connected government agencies.

f. Reduced Due Diligence

The ability to perform a quick and free review of a Key Fact Sheet or a Disclosure Document may lead to a weak due diligence review.

An effective due diligence that minimises the risk of capital loss and maximise the prospects of the best financial and lifestyle outcomes, cannot be achieved without:

- Specialist franchise financial advice
- Specialist franchise legal advice

- A pre-requisite understanding of the operation of a franchised business
- A pre-requisite understanding of the operation of a small business
- A pre-requisite personal profiling to ensure compatibility with operating a small business, operating under a franchise model and the particular franchise system

Simple access to a stand alone “Key Fact Sheet” or a publicly accessible franchise Disclosure Document will not position a prospect for success. In fact, access to a “Key Fact Sheet” may reduce the likelihood of a prospective franchisee reviewing the full Disclosure Document or engaging prudent professional advice.

Quality franchise systems also want franchisees to do their research and be well informed before entering into a franchise agreement. Indeed, an increasing number of franchise systems (and lenders) are going even further insisting that prospective franchisees obtain independent legal and financial advice before proceeding (or being funded).

g. Lender Concerns

Senior franchise lenders have also observed that public access to Disclosure Documents could be commercially damaging to franchise systems which in turn could reduce their capacity to support franchisees. With historical and anticipated franchisor support a key consideration in credit assessment of franchised lending, the prospects for tightened credit settings for these small businesses are real.

Access to finance remains a recurring theme in the franchise sector. Quality franchise systems providing strong information and sound loan quality maintain a distinct advantage over those that cannot establish a satisfactory level of franchise system performance or loan quality.

A key aspect in the assessment of franchise business loans is the lender being confident that the prospective franchisee is capable of successfully executing the business model and generating sufficient cash to meet their obligations. This process generally starts with reviewing a robust business plan which has been underpinned by an effective due diligence.

A further, and concerning, observation by franchise lenders is the new abbreviated fact sheet may reduce the engagement of professional advisors which in turn reduces the comfort from the business plan.

h. Misuse of information

Unfettered access to sensitive information may enable competitors or litigation scouts to attack franchise systems and inadvertently weaken a business model from which hundreds of small businesses derive their livelihoods.

2. The missing of a significant opportunity to arm franchisees with meaningful and relevant information.

In addition to the above unintended consequences, a new registry risks missing the significant opportunity available for providing franchisees with better rather than more information.

Challenges to the effectiveness of a new register are also expected to come from:

a. A lack of awareness

A new public registry risks being invisible without a significant investment to establish a basic level of awareness. Prospective franchisees come from a wide and diverse range of backgrounds which in turn presents great challenges in not only connecting with them but more importantly steering them towards helpful information sources.

b. A lack of utilization

Even if a base level of awareness can be achieved, a new registry is unlikely to be utilised by target users if access is not simple and its information not meaningful. For example, Disclosure Documents are generally lengthy documents and many prospective franchisees may struggle to extract and interpret the information they contain and the new Key Fact Sheet will still mean little to many.

c. A lack of meaningful information on which to base an informed decision

It will remain near impossible for prospective franchisees to undertake any meaningful comparison on franchise systems. Identifying similar brands or their peers, and how they perform against benchmarks or defined standards.

The established Australian Franchise Registry™ will continue as a gateway to information for participating brands but in reality is only likely to reflect information on many of the stronger franchise systems in the market. The greatest risk for prospective franchisees comes from exposure to many of the systems, that have avoided or passed on the opportunity to self-regulate.

Is there a simple solution?

A simple and more cost-effective solution is already in place with the infrastructure and acceptance that is already in place with the **existing voluntary Australian Franchise Registry™**.

In the same 2020 survey, when asked about the existing and voluntary Australian Franchise Registry™:

- 24% of respondents advise they were already filing their documents annually
- 22% advise they are happy to file their documents
- 20% would like more information on the existing registry
- 16% were not aware of the registry, and
- 10% advise they are not prepared to file their document

Significant taxpayer savings may be achieved and unintended consequences avoided simply by using the existing voluntary Australian Franchise Registry™ which was established more than 7 years ago and has collected Disclosure Documents on more than 30% of the reported franchise sector (by unit).

The registry functionality could be delivered well under the allocated budget allowance, provide prospective franchisees with meaningful information, insulate the government and small businesses from significant unintended consequences and deliver a superior level of information to guide future policy decisions.

We trust this information assists and would be pleased to provide additional or assistance should the Department require it.