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Level 25, 135 King Street,
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Franchising Review Secretariat Unit
Small and Family Business Division
The Treasury
Langton Crescent
PARKES ACT 2600

29 September 2023

Re: Australian Government Review of the Franchising Code of Conduct

Dear Dr. Schaper,

We appreciate the opportunity to submit a response to the Review of the Franchising Code of Conduct, as described in the Consultation Paper of August 2023.

With a more-than-100-year history of developing and growing hospitality infrastructure and bringing international standards of hospitality and tourism to countries around the world, we are confident in the value of franchising to our franchisees, their employees, and the communities they serve.

Tourism has a bright future in Australia, with the sector projected to continue its recovery this year as we emerge from the pandemic, creating nearly 10% of the country's GDP (up 23% versus 2022) and just under 10% of all jobs (up 8.2% on last year).¹

Our responses to the Review's questions follow a short outline of the principles that guide our approach as well as some background on Hilton and how we operate.

We look forward to the opportunity to discuss our submission in greater detail and welcome any questions or comment you or your secretariat may have.

With best regards,

Paul Hutton
Area Vice President – APAC
Head of Australasia/South Pacific

¹ World Travel and Tourism Council: Australia 2023 Annual Research: Key Highlights

Guiding principles:

We are highly supportive of the Review's aim to ensure fairness and transparency between franchisors and franchisees. Fairness and transparency are key to ensure the promotion of this business model and is a principle that we as Hilton live by.

All proposals made in our response to this Review keep these goals at the forefront and aim to enhance franchisor-franchisee relations while supporting the growth of the hotel sector, tourism in Australia, and the franchise business model. When the franchisee is supported appropriately and relationships are balanced, as you see in the Hilton model, the franchise business model is highly advantageous to franchisees and the communities in which they operate.

As noted in the Review, almost all franchisors and franchisees in Australia are small businesses. This is not the case in the hotel industry, however, where most franchisees are sophisticated investors and established businesses. The needs of this cohort of franchisees are significantly different to the needs of small business franchisees, making a single approach in every aspect of the Code impractical.

In line with international best practice, we recommend tailoring the Code to focus on where its provisions are needed most: small businesses. We encourage the Independent Reviewer to ensure protections target small businesses thereby **reducing unnecessary administrative burden and unintended consequences** for more sophisticated parties **that impact the hospitality sector in Australia**. We share what we consider international best practice based on our experience of what works in the 123 countries and territories in which we operate. We make proposals for where transparency could be boosted; with the requirement that required disclosure documents be posted on a governmental website, for example. This in turn would boost ease of access and comparability for franchisees and in turn, the accountability of franchisors.

Finally, in terms of ensuring an individual business remains at the forefront in terms of **quality standards and innovation**, benefiting from the insights, best practice, and experience a franchisor can bring, we highlight the need to retain flexibility around capital expenditure requirements to support the success of both franchisees and franchisors. This is particularly important in the hotel industry, where we face competition for tourist and visitor spend from international destinations globally.

Please see further information about Hilton and how we operate below.

Hilton – an overview

Hilton is one of the oldest hospitality companies in the world, having opened our first hotel in 1919 and granting our first franchise in 1965. Today Hilton is one of the leading hospitality companies, with 20 lodging brands spanning across every segment of the market – luxury, full service, focused-service, premium economy, extended-stay, all-inclusive, and time share vacation properties – encompassing about 7,300 hotels with over 1.1 million guest rooms, serving nearly

200 million guests last year in 123 countries.² These include the more than 158 million members of our award-winning customer loyalty program, Hilton Honors.

Hilton's scale, global presence, leading brands, marketing and loyalty programs drive customer satisfaction and financial returns for our franchisees, creating growth and economic opportunity for the communities they serve.

How we operate: Our Franchise Business Model

We use different business models to bring new hotels into our system. We own, lease, manage, franchise, and/or otherwise license new properties in different ways. Among these models, franchising is the largest and fastest-growing segment, currently comprising about 87% of our hotels globally.

Under franchise agreements we license our intellectual property, including our brand names, trademarks, and operating systems (including our central reservation system) to hotel owners. We do not own, manage, or operate franchised hotels.³ We do not own or control the real estate at our franchised hotels. We do not employ our franchisees or the individuals working at their properties, and do not exercise any direction over their employees. Our franchisees own and operate their own businesses, on their own premises, and operate them with their own employees; and in many cases, our franchisees hire independent third-party management companies to operate their hotels on their behalf.

Globally, our franchisees are often large, sophisticated companies and investor groups. They include, for example, real estate investment trusts and hotelier companies that have multiple properties in their portfolios. These franchisees have their own attorneys, accountants, and other professional advisors who guide them in their decision to invest in a franchise, understand the terms of the franchise agreement, and to manage their own business practices (or oversee their management companies doing so). Our franchise system also includes smaller family-owned companies that are in the early stages of growing their businesses, although that represents a small percentage of the hotel owners in our system.

Our franchise agreements typically have terms of up to 23 years for new construction hotels, and 10 to 20 years for existing hotels that join our system. Financially, we share the business risk with our franchisees so our interests are aligned. Under our model, our royalties are a percentage of the hotel's revenue. Specifically, our basic royalties currently range from approximately 3.5% to 6% of rooms revenue.⁴ Our driving goal – together with our franchisees – is to help them be successful.

² Our brands include Waldorf Astoria Hotels & Resorts, Conrad Hotels & Resorts, LXR Hotels & Resorts, Signia by Hilton, Hilton Hotels & Resorts, DoubleTree by Hilton, Canopy by Hilton, Curio Collection by Hilton, Tapestry Collection by Hilton, Embassy Suites by Hilton, Hilton Garden Inn, Hampton by Hilton, Homewood Suites by Hilton, Home2 Suites by Hilton, Motto by Hilton, Spark by Hilton, Tempo by Hilton, and Tru by Hilton, Hilton Grand Vacations, and our newest addition, Project H3 by Hilton, which is the working name of a new extended-stay brand we launched this May.

³ We may manage a franchised hotel if the owner hires us to do so under a separate management agreement. We do not provide management services under a franchise agreement.

⁴ For most of our brands, we do not charge any royalty on food and beverage sales or certain other revenue streams, such as retail outlets within a hotel.

Maintaining relevance and driving innovation

A key part of the value offered to franchisees is tied to brand standards. We maintain written standards for each of our brands. These standards are critical to preserve each brand's unique identity by providing a consistent guest experience regardless of where the hotel is located. Our standards are designed to ensure that each hotel meets Hilton's requirements for safety, security, cleanliness, the quality of the property, the amenities the hotel offers, and the level of service needed to maintain a high-quality guest experience that is backed by the Hilton name. The ability to modify our standards over time is what allows our brands to remain competitive in the ever-changing marketplace and adapt to new innovations. For example, everything from our ESG initiatives (such as the Hilton LightStay™ Program⁵), to our high-speed guest Wi-Fi systems, are all managed through our brand standards. Maintaining world class standards builds brand awareness and reputation, which is what gives a brand its value. Guests want to know what they will receive when they book a hotel stay. Without a consistent and reliable customer experience, the value proposition of a hotel franchise would be lost.

Support for our franchisees

To assist our franchisees, we provide regular ongoing support in person through our brand and operations teams, and in regular communications such as electronic newsletters. We also provide on-site quality assurance audits that occur twice a year, and more often if needed. Outside of day-to-day operations, we engage with our franchisees in a variety of ways including hosting Owner Advisory Councils, conducting Owner Sentiment Surveys, and holding annual Brand Conferences. We are pleased to enjoy positive and mutually beneficial working relationships with our franchisees worldwide.

We believe our franchisees benefit from being part of our system, evidenced by the fact that in our home market the United States, which is also our largest market, about 80% of all new franchises are granted to existing franchisees who want to continue growing their business with us. Typically, less than 2% of franchises are terminated each year, and our franchised estate has been growing at a rate of about 5% annually since 2012. When issues arise we seek to resolve them in a fair manner – notably, in the U.S. we have about 5,200 franchises and fewer than 10 reported franchise lawsuits.

Consultation response

Our answers below relate to the questions of most relevance to our experience. We would be happy to elaborate on these and answer any additional questions on other aspects of the Review as required.

A. The Scope of Regulation (Question 4)

Does the general scope of coverage of the Franchising Code remain appropriate? Is the scope of coverage flexible enough having regard to the diversity of the franchising industry?

⁵ In 2009, Hilton launched LightStay, a custom-built system designed to track hotels' environmental performance. Today, LightStay is our award-winning, comprehensive platform for all environmental and social impact reporting, used by every Hilton property around the globe. LightStay enables hotels to measure and manage energy, water and waste using variables such as occupancy and weather, and to forecast future consumption]

Sophisticated Investments. As noted in the Foreword and on page 6 of the Consultation Paper, the franchise business model is used across almost all business sectors, including our own. While this is a testament to the strength of the business model, it can present a challenge when attempting to regulate franchising as if it was a single industry. Rules that make sense in one type of business may cause unintended consequences in another.

The current Franchising Code of Conduct (the “Code”) recognizes these differences in some respects by exempting or excluding a few specific types of business relationships from its coverage. Given the growing diversity of the franchise sector and the different levels of sophistication of franchisees, which you reference on page 10, we believe additional criteria would benefit the development of franchising in Australia; and the hotel industry in particular.

Large and sophisticated companies making complex business investments – such as hotel owners that are developing new hotels and resorts – require fewer protections than smaller, less sophisticated parties, who may have less experience and fewer resources, and may be less able to protect themselves from unfair contract terms or business practices. In our experience, imposing requirements designed for small business owners on large businesses can add to unnecessary burdens for both parties.

The Review should consider creating exemptions for franchise transactions that involve sophisticated investors, experienced franchisees, and large franchise investments (collectively “sophisticated transactions”). Several jurisdictions outside Australia have these exemptions in their franchise laws, and they work well. Examples of this include in Japan and the United States.⁶ These laws exempt or exclude sophisticated transactions because: (1) they fall outside of the traditional small-business franchises that the laws are designed for such as restaurants, petrol stations, and corner shops; (2) they don’t present the risk of harm that the franchise laws are intended to prevent; and (3) the government recognizes the regulatory burden and difficulties these laws can impose on sophisticated transactions, when they aren’t needed to protect the parties in those transactions.

To help illustrate this point, consider a DoubleTree by Hilton franchise. The construction and opening of a franchised DoubleTree hotel in Australia could cost a franchisee over \$80 million AUD.⁷ A prospective franchisee that is considering making this kind of investment typically is a corporation that has expertise in the lodging industry, professional legal and financial staff, detailed business plans, and complex financing arrangements with lenders and investors. These hotel owners often engage in extensive research and negotiations with multiple parties before entering into a franchise agreement. The Code as it stands requires Hilton to advise hotel owners that a franchise agreement “is legally binding if you sign it” and to have the owners sign a

⁶ See, e.g., Japan Medium-Small Retail Business Promotion Act (1973) (Act No 101) and Guidelines on Franchising under the Antimonopoly Act; Ministerial Order Implementing the Medium-Small Retail Business Act (1973) (Order No 100) (as amended). The FTC Franchise Rule, 16 C.F.R. § 436 (2007); California Franchise Investment Law, CAL. CORP. CODE § 31000 et seq.; Hawaii Franchise Investment Law, HRS § 482-E1 et seq.; Illinois Franchise Disclosure Act, 815 ILCS 705/1 et seq.; Indiana Franchise Act, IND. CODE ANN. § 23-2-2.5 et seq.; Maryland Franchise Registration and Disclosure Law, MD BUSINESS CODE ANN., BUS. REG. § 14-201 et seq.; Michigan Franchise Investment Law, MICH. COMP. L. § 445.1501 et seq.; Minnesota Franchise Act, MINN. STAT. § 80C.01 et seq. New York Franchise Sales Act, NY GEN. BUS. L. § 680 et seq.; North Dakota Franchise Investment Law, NDCC § 51-19-01 et seq.; Rhode Island Franchise Investment Act, R.I. GEN. LAWS § 19-28.1-1 et seq.; South Dakota Franchise Investment Law, SD ST. § 37-5B-1 et seq.; Virginia Retail Franchising Act, VA. CODE ANN. § 13.1-557 et seq.; Washington Franchise Investment Protection Act, RCW § 19,100.010 et seq.; and Wisconsin Franchise Investment Law, WIS. STAT. § 553.01 et seq..

⁷ Based on a prototype DoubleTree by Hilton hotel with 150 guest rooms.

statement affirming that they have been given advice by an independent legal advisor, business advisor, or accountant. Our disclosure document for a DoubleTree franchise in Australia is currently 369 pages long. In the context of a sophisticated transaction such as this, the disclosure requirement and holding period is burdensome for both parties, unnecessary for the prospective franchisee, and inapposite to the transaction. The Code's *Annexure 2 – Information Statement for Prospective Franchisee* further makes this clear.

In considering this type of exemption, the U.S. experience may be helpful. The U.S. Federal Trade Commission ("FTC") Franchise Rule was first adopted in 1978.⁸ After nearly 30 years of experience with disclosure requirements and exemptions, in 2007 the FTC added exemptions for three categories of sophisticated transactions.⁹ In explaining its decision, the FTC stated:

After reviewing the comments, we are persuaded that a large investment exemption is warranted. Since the Rule's inception, the Commission has considered a prospective franchisee's level of investment as one measure of sophistication. . . We are also convinced that the large investment exemption offers tangible benefits to franchisors. Clearly, there are franchise systems, such as lodging, where the typical franchise investment is likely to exceed [the exemption's] monetary threshold. Accordingly, the large investment exemption will provide regulatory relief in those instances. . . the costs of providing disclosure to all franchisees, including those above the threshold, may not be large, but neither is the potential benefit to the purchaser. Indeed, the argument that sophisticated investors could benefit from disclosure misses the mark. The basis for the large investment exemption is not that sophisticated investors do not need pre-sale disclosure, but that they will demand and obtain material information with which to make an investment decision regardless of the application of the Rule. Where prospective franchisees are likely to demand and obtain pre-sale material information regardless of external prompting or compulsion, the case for federal intervention is not compelling. Further, the Rule's costs and burdens are unwarranted in situations where the likelihood of abuse is low.¹⁰

Hilton does not dispute that the disclosure requirements are warranted for small business franchisees in Australia. However, based on the essential purpose of the Code, we believe the same rationale applies in Australia, where an exemption for sophisticated transactions would relieve an unnecessary regulatory burden and support large investments in Australia. However, if this Review should assess that statutory exemptions for sophisticated transactions would not be the best solution for Australia, then as an alternative, implementing a process whereby a franchisor could apply for a discretionary exemption from the Australian Competition and Consumer Commission (ACCC) could be an option. That kind of process would allow ACCC to determine whether the Code should apply to a particular franchisor and its franchise offerings, or not, based on the factual circumstances.

B. Before Entering into a Franchise Agreement (Question 9)

⁸ The FTC Franchise Rule, 16 C.F.R. § 436 and 473, Statement of Basis and Purpose, 72 Fed. Reg. 61, pg. 15444 (Mar. 30, 2007).

⁹ Id. at 15520.

¹⁰ Id. at 15523.

How effective are the requirements of the Franchising Code that ensure franchisors make information available to franchisees prior to entry into a franchise agreement? If possible, please comment on the effectiveness and content required for inclusion in each of the Franchise Disclosure Register, Information Statement, Key Facts Sheet and Disclosure Document.

Public Disclosure Documents. For instances in which disclosure is required, the Franchise Disclosure Register would better serve the goal of making information available to franchisees prior to entry into a franchise agreement if it required franchisors to submit complete disclosure documents and made those disclosure documents publicly available on the Register's website. This would enable prospective franchisees to compare franchise offerings from competing franchisors quickly and easily. It would also enable franchisors to research competitors' offerings, and thereby have information to make their own offers better. Making disclosure documents public is one of the most effective ways of promoting competition.

By way of example, disclosure documents that are filed in certain U.S. states are posted on those states' government websites¹¹ and franchisors generally do not consider that a deterrent to doing business in those states. Hilton has voluntarily posted our U.S. disclosure documents on our own public website for several years.¹² We do this because we have found it to be benefit to our business. This is only possible because our competitors' disclosure documents are public as well, generally, via the state government websites and other sources. This transparency provides a level playing field. In contrast, we must keep our Australian disclosure documents confidential because our competitors' Australian disclosure documents are confidential. If we revealed our business information alone, then our competitors would have an unfair advantage in the marketplace as we compete for new franchisees.

Financial Reports. The Code currently requires a franchisor to update its disclosure document within four months after the end of its financial year.¹³ The Code also requires the disclosure document to contain the franchisor's financial reports for the last two completed financial years.¹⁴ Ostensibly this presumes that the franchisor's financial reports are prepared and available within four months after the close of each financial year, but this may not always be the case for foreign franchisors. The Code also permits a foreign franchisor's financial reports to be prepared in accordance with the franchisor's governing law, specifically the foreign equivalent of the *Corporations Act 2001*.¹⁵

When taken together, these requirements are ambiguous and potentially in conflict when applied to the circumstance where a foreign franchisor's financial reports are not completed within four months after the end of its financial year, because the franchisor's governing law does not require them to be completed in that timeframe. By way of example, private company franchisors formed and operating under the laws of England and Wales need not produce financial reports and file

¹¹ See, e.g., the Wisconsin Dept. of Financial Institutions franchise filings at <https://dfi.wi.gov/Pages/Securities/Filings/Franchising.aspx>.

¹² See, <https://www.hilton.com/en/corporate/development/disclosure-documents/>

¹³ *Franchising Code of Conduct*, Pt. 2, Div. 2, §8(6) (2014).

¹⁴ *Franchising Code of Conduct*, Sch. 1, Div. 4, §21.2 (2014).

¹⁵ *Id.*

them with the UK Companies House until nine months after the close of their financial year¹⁶ – long after the first four months have passed.

To resolve this issue, where disclosure documents are required, the Code should be amended to expressly allow the franchisor to include its financial reports for the two most recent years that were prepared in accordance with the franchisor's governing law (foreign equivalent of the *Corporations Act 2001*), even if that does not include the most recent financial year concluded. The franchisor could then amend or supplement its disclosure document when its financial reports for the most recent financial year become available.

C. Enduring Obligations in Franchise Relationships (Questions 13-14)

How well does the Franchising Code support franchisors and franchisees during the term of the franchise agreement? In particular, does the Franchising Code provide adequate minimum standards relating to structural and/or operational change management?

How effective are the 2021 reforms which restricted the franchisors' capacity to require a franchisee to undertake significant capital expenditure?

Change Management and Brand Standards. As outlined above, a key part of the value proposition offered to franchisees is the strength of the Hilton brand. To maintain this, we reserve the ability to make changes to our standards throughout the term of the franchise. This flexibility is an essential element of the business and is not exercised lightly. We make changes to our brand standards only after careful review, and we are particularly sensitive to the cost implications of certain types of changes. Accordingly, we seek to make such changes in collaboration with our franchisees. In the ordinary case, we share updates with our franchisees well in advance of implementation, so they have an opportunity to ask questions, plan ahead, and budget for them as applicable. Then, when appropriate, we deploy changes over time to ease the transition (whatever time makes sense for that particular change).¹⁷

In certain instances, however, we must make changes more quickly. For example, we implemented the Hilton CleanStay® Program in response to the COVID-19 pandemic to help provide additional safety for guests and staff worldwide. That program helped individual franchisees, our company, and our system withstand the devastating impact of the pandemic by reassuring guests of the cleanliness standards in place at all Hilton-branded hotels worldwide. It would have been impossible to implement CleanStay® without the ability to change our standards quickly.

Hotels bear the costs of changes that pertain to them just as they bear the cost of repairing and maintaining the property on an ongoing basis. Consistently maintaining the hotel in good condition

¹⁶ UK Companies Act § 442(2)(a). See also, Companies House accounts guidance at: <https://www.gov.uk/government/publications/life-of-a-company-annual-requirements/life-of-a-company-part-1-accounts>.

¹⁷ For example, we are currently updating our computer property management system (PMS). Deploying this new PMS across our system could take 2 years or more. This new PMS is less costly than the old PMS it replaces, has better functionality, requires less hardware, and our franchisees have praised the change. And although changing over to the new PMS is voluntary in most of our brands now, we have disclosed that we anticipate this will become a brand standard at some point in the future. This helps everyone to plan ahead and implement the change in a way that works best.

is a fundamental requirement of our standards, and this is a normal cost of doing business in hospitality. For example, hotel soft goods (such as linens) and case goods (such as furniture) have limited useful lifespans and must be replaced periodically – or sooner if needed due to damage, wear and tear. Our ability to improve the system fits into this broader context. For example, being able to require that old, tired chairs be replaced with a new modern style of chair is consistent with the owner’s need to replace the old chairs at some point anyway, and to do so in a manner that keeps the hotel fresh, consistent with the brand identity, and competitive in the marketplace.

Without the ability to improve, update, and adapt our brands over the course of 20-year contracts we could not operate a successful franchise system. The business landscape is constantly changing. This is demonstrated in the rapid advance of customer conveniences (such as apps that allow guests to use their mobile phone as their room key), new building technologies (such as LED lighting and energy management systems), new computer technologies (such as above-property reservation systems in the cloud), and all the attendant issues that come with each new improvement (such as new privacy and data security controls).

Our ability to adapt our standards is fully disclosed and well understood by our franchisees before they enter into a franchise relationship with us. Indeed, it is Hilton's innovation that attracts hotel franchisees and guests alike. We are proud to have been the first hotel system to offer room service in 1931 and we have continued to offer many “firsts” in hospitality since that time. Looking forward, it is difficult to predict how new innovations will improve travel over the next 20 years, but it is our intention to be at the forefront of them.

Hotels come in all shapes and sizes, with different room counts, food and beverage outlets, meeting spaces, recreational facilities, and other amenities, products, and services for guests and patrons. When one considers the wide variation in hotel maintenance needs, together with new advancements and innovations that may arise in the future, it is impossible to precisely predict the financial cost of such reinvestments over 20-year term.

As noted in the Consultation Paper, the Franchising Code of Conduct prohibits a franchisor from requiring a franchisee to undertake significant capital expenditures during the term of the franchise agreement unless certain conditions are met, and the ‘business case’ exemption that previously existed was removed from this law.¹⁸

In view of the changes that occur in the ordinary course of the hotel business, we are concerned that the law potentially could be ambiguous when applied to certain types of reinvestment requirements. **The ‘business case’ exemption should therefore be restored for sophisticated transactions.** Furthermore, the law should reflect a rebuttable presumption that a franchisor’s change to its brand standards (for the whole of the brand as reflected in its application to all or a majority of its branded locations, including franchisor-owned or managed locations) are reasonably necessary for legitimate purposes and do not inherently create significant imbalance in the franchise relationship. **We recognize the need to limit unfair additional capital expenses for small business franchisees, and we support the principle that franchisees should have legal recourse if a franchisor imposes a new requirement or cost deceptively or for an improper purpose.** But in a complex business like a hotel, a

¹⁸ See Australian Government, *Review of the Franchising Code of Conduct*, p.20 (August 15, 2023), <https://treasury.gov.au/sites/default/files/2023-08/c2023-436091cp.pdf>.

requirement should not be subject to challenge merely because it is new, involves a cost to the hotel owner, and wasn't specifically identified in a Franchise Disclosure Document 10 or 15 years ago -- especially when such changes are a routine part of the business.

To illustrate this point, when one considers the state of the internet 15 years ago, it's unlikely that one would have expected that the guest check-in process could have been conducted on a mobile phone, whereas today that is the norm. Today, if online check-in was available for some hotels but not others the customer experience would suffer badly and the brand reputation with it.

The purpose of a hotel brand is consistency - to provide guests with reliable, friendly, and consistent high-quality experiences that they can depend on. A big part of the reason why guests book reservations at Hilton hotels they have never been to before is because they know what kind of stay a Hilton brand hotel will provide for them and their families. This is what gives a franchise its value – the goodwill of the brand – which is diminished for *both franchisees and franchisors* if franchisors cannot ensure consistency by requiring minimum standards across the brand.

In the hospitality industry, the cost of meeting brand standards varies by hotel, necessarily, because hotels vary so much in type, size, and amenities, along with the age and condition of their buildings, furniture, fixtures, equipment, and technology. As a result, a particular brand standard update might require a “significant capital expenditure” by some hotels and not others, and/or by some owners and not others, depending on their own particular circumstances. In this context the Code provides no specific direction on what “significant” actually means and highlights how franchisees could refuse or challenge brand standards changes for their own purposes to the detriment of the brand as a whole.

By way of example, consider a hotel franchisor's effort to improve guest Wi-Fi access and reliability. The cost to upgrade commercial internet connectivity, hardware, and software, would cost different franchisees different amounts based on the specific circumstances and technology needs at their individual properties. Nevertheless, a quality Wi-Fi connection is important for the brand as a whole because it is important for guests everywhere. Indeed, guests may deliberately choose or avoid a hotel brand based on its internet reliability (both individual travelers and large groups such as conferences and weddings). Accordingly, a franchisor should not be prevented from requiring a minimum level of Wi-Fi service in Australia that is consistent with the brand's minimum Wi-Fi standards globally, merely because it might involve a capital expenditure that is significant to one hotel but not others, or significant to one owner but not others, and may or may not actually be “significant” at all when compared to myriad other financial and operational factors at the hotel level and/or the owner's organization level (which may include a portfolio of hotels and other businesses), or otherwise.

There are many examples like this that one can easily imagine. For example, consider a hotel franchisor requiring franchisees to provide its housekeeping staff with panic buttons (to improve personal safety),¹⁹ or to upgrade television sets in all guest rooms (to enable internet streaming), or to install new carpet (to implement an elevated brand design feature).

¹⁹ We further note that Code does not contain any express exception for expenditures required for health or safety reasons. Yet some franchisors may wish to offer greater protections for workers than those required by local law,

Hotels are not static investments. Maintaining a hotel requires regular reinvestment. Keeping a hotel brand current and competitive in the global hospitality marketplace also requires regular reinvestment. Hotel owners know this. Requiring franchisee consent for a brand-wide global upgrade that was not foreseen and disclosed many years ago doesn't make sense. Likewise, requiring a worldwide or nationwide vote across thousands of franchisees is impractical at best. Over time the current Code's restrictions on franchisors' ability to maintain their franchise systems (by placing limits on capital expenditure requirements) will cause Australian hotels to fall behind in the global marketplace.

We advocate restoring the 'business case' exemption for sophisticated transactions as the best solution. However, if this Review should prefer not to restore the 'business case' exemption, we submit that clause 30 of the Code be modified to allow system-wide changes in sophisticated transactions while retaining the assurance that they are in fact system-wide changes for the good of the brand as a whole, such as the following:²⁰

- (2) For the purposes of subclause (1), **significant capital expenditure** excludes the following:

(b) if the expenditure is to be incurred by all or a majority of franchisees—expenditure approved by a majority of those franchisees; **except in the case of Sophisticated Transactions where the expenditure is incurred by a majority of franchisees and the franchisor's owned and managed outlets operating under the same brand—approval by a majority of those franchisees is not required;**

(Note, the term "Sophisticated Transactions" as being defined in the Code.)

Conclusion

Hilton is proud to be a leader in an industry that looks forward to expanding and bringing new generations of opportunity in hospitality in Australia.

Thank you for the opportunity to provide comments for this Review. We would be pleased to provide additional information upon request.

such as panic buttons for staff. The previous 'business case' exemption allowed franchisors to make such decisions for their brand without undue restrictions.

²⁰ *Franchising Code of Conduct*, Pt. 3, Div. 6, §30(2)(b) (2014).