

29 October 2021

To: Small and Family Business Division, Treasury

By email: [franchisedisclosureregister@treasury.gov.au](mailto:franchisedisclosureregister@treasury.gov.au)

Dear Sir/Madam

## **Submission relating to proposed Franchise Disclosure Register**

Bakers Delight Holdings (BDH) is aware of plans to establish a Franchise Disclosure Register and we welcome the opportunity to provide feedback on the proposal.

As a proud family-owned business that is made up of hundreds of smaller family-owned businesses, we welcome any initiative that allows and empowers Franchisees to better understand the commitments/liabilities associated with owning their own business. However, we are concerned that the requirement to publish our Disclosure Document (redacted or otherwise) comes with some significant risks to our business and in some case, may unwittingly create an anti—competitive environment.

The following information provides a broad outline of the key areas we are concerned about, chiefly:

- The risk of misinterpretation
- Our preference for sharing the Key Fact Sheet rather than a redacted version of the Disclosure Document
- The business risk associated with publicly sharing sensitive supplier details
- Additional legal costs
- The need for a trial and feedback period

We remain available at any time to discuss these concerns in detail should further explanation be required.

### **The risk of misinterpretation**

While we understand the intention behind the requirement to publicly share the Disclosure Document, we believe most prospective franchisees would be unlikely to take the time to read and understand the complex information it contains. Furthermore, we believe this would not contribute to the stated objective of helping franchisees to make informed decisions about a franchise they may join or a business they may purchase.

Our business has been franchised since the 1980s and during that time, we have found the majority of franchisees do not have the time, patience or in some cases, the appropriate level of business acumen to fully analyse the complete document. In most cases, franchisees are more

likely to either engage the services of a lawyer and accountant for interpretation, skim read it or simply not bother at all.

The full document contains important but complex information regarding fees, rights, terms of the agreement, termination etc and we agree that franchisees entering into an agreement with us should understand what this means for them. However simply relying on them to read and absorb the information contained in the full document creates the very real risk of misinterpretation of key information.

## **Key fact sheet**

We believe the provision of the Key Fact Sheet is far more likely to resonate with the average prospective franchisee than simply supplying them with a redacted version of the Disclosure Document and expecting them to understand and absorb the information.

Written in plain, easy to understand language with clearly summarised key points of the Disclosure Document should be more than enough for most prospective franchisees to understand the benefits and general terms of any agreement with a franchisor.

## **Disclosure of sensitive information**

With each Disclosure Document containing a full overview of the Franchisor's systems, technology and strategic direction, there are some significant business risks associated with sharing it through a public register.

We are specifically concerned about the risk of competitors being able to access the details of each franchisor's sensitive business information and using it for competitive gain. These concerns extend to the public disclosure of each franchisor's supplier arrangements which could also be used by competitors to undermine or disrupt existing agreements to their advantage.

In fact, allowing this information to be publicly shared could encourage anti-competitive behaviour and an unintended consequence of the proposal.

## **Additional legal costs**

As outlined above, our experience tells us that the majority of franchisees need to consult lawyers to interpret and understand the contents and context of the Disclosure Document.

We believe our franchise sale procedures are among the best in the business and seeking independent legal and financial advice is a vital part of the due diligence process we make incoming franchisees complete before entering into a Franchise Agreement. Therefore, we do not believe that putting them into a situation where they may need to seek costly legal advice just to understand the redacted version of the Disclosure Document while finding their ideal franchisor will help make things any easier for them.

The requirement for franchisors to upload a redacted version of the Disclosure Documents to the Register will require additional legal advice and cost to the Franchisor.

In our view, the biggest winners from the proposal will likely be the law firms.

## **Trial and feedback period**

We believe there is merit in delaying the launch of the Disclosure Document Register by 12 months and using that time to further refine and promote the key fact sheet as a primary tool for helping franchisees to fully understand what they are entering into.

As part of this, pilot groups made up of franchisees and franchisor representatives should be established to assess the benefits of the key fact sheets and determine what information should and shouldn't be included to ensure both groups are clear and satisfied with the arrangement they are entering into.

At the completion of the pilot program, both franchisees and franchisors should be surveyed about their experiences so any decisions on the establishment of a public Disclosure Document register vs a key fact sheet are fully informed.

## **In summary**

While we welcome initiatives that promote greater understanding and trust between franchisee and franchisor, we are concerned about some of the unintended consequences of any requirement to upload Disclosure Documents to a public Register.

We do not believe that providing the redacted disclosure document will make it any easier for prospective franchisees to understand the details of the agreement they may enter into and that the sensitive information the document contains could be obtained by our competitors and used against us.

We fully support the use of the key fact sheet as a means of providing clarity and understanding for franchisees and encourage the adoption of a 12 month trial and feedback period in order to better understand the level of details franchisees truly need to make an informed and independent decision about their business.

We look forward to seeing the outcome of the change process and reiterate our availability to discuss or participate further wherever required.