

ARA SUBMISSION

CONSIDERATION OF A LICENSING REGIME FOR THE FRANCHISE SECTOR

DECEMBER 2024

The Australian Retailers Association (ARA) welcomes the opportunity to provide feedback on the Treasury's consultation paper regarding the feasibility of introducing a licensing regime for the franchising sector.

The ARA is the oldest, largest and most diverse national retail body, representing a \$430 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between. Within our membership are some of Australia's largest franchise operators and their networks of franchisees.

The ARA does not support the introduction of a licensing regime for franchising. Such a system would be an unnecessarily intrusive and heavy-handed regulatory intervention that would impose significant costs and burdens on franchisors and franchisees without delivering meaningful benefits. The Franchising Code of Conduct, while capable of refinement, already provides a robust and effective regulatory framework. We have previously provided comprehensive feedback on the Franchising Code of Conduct, including through our submission to the Independent Review of the Code.

EXECUTIVE SUMMARY

- The ARA supports the existing Franchising Code of Conduct as a robust regulatory framework that effectively balances the needs of franchisees and franchisors.
- We do not support the introduction of a licensing regime, considering it to be an overly prescriptive measure that would impose significant costs and burdens on franchisors and franchisees without delivering commensurate benefits.
- Licensing regimes are administratively complex, costly, and duplicative of existing regulatory mechanisms, such as the Franchising Code of Conduct.
- The current dispute resolution framework under the Code is highly effective, offering accessible and low-cost mechanisms for resolving disputes, but is underutilised. Before any changes to the dispute resolution process are made, an evaluation should be made as to whether this is due to the lack of awareness of the framework, or the operation of the framework itself. This critical feature of the Code would be undermined by unnecessary regulatory changes.
- A licensing regime would stifle innovation, create significant compliance burdens, and deter new entrants to the franchising sector. It risks damaging the growth and sustainability of franchising in

Australia. It also fails to acknowledge the diversity of size, type, complexity and sophistication of the franchise systems that operate in Australia.

- If, despite opposition, a licensing regime is pursued, the government must ensure that it is balanced, practical, and designed to minimise disruption to the franchising sector.

THE FRANCHISING CODE OF CONDUCT: A PROVEN FRAMEWORK

The ARA maintains that the current Franchising Code of Conduct is a robust regulatory framework that already serves the sector effectively. While there are opportunities for refinement, the Code is adaptable and capable of addressing most challenges without the need for further drastic regulatory measures.

Key strengths of the current Code include:

- **Dispute Resolution:** The dispute resolution framework is a core feature of the Code, offering cost-effective and accessible mechanisms that are taken seriously by industry participants. This system has contributed to a decline in the number of disputes, even as the sector has grown in size and complexity.
- **Adaptability:** The Code has evolved over time through targeted amendments, demonstrating its ability to address emerging issues while avoiding unnecessary regulatory burdens.

We caution against introducing regulatory measures, such as a licensing regime, that may unnecessarily burden franchisors or undermine the trust and efficiency built within the current framework.

OPPOSITION TO A LICENSING REGIME

The ARA strongly opposes the introduction of a licensing regime for the franchising sector, which we consider to be a disproportionate and inefficient response to the challenges identified. Such a regime would impose significant costs and operational burdens, deterring businesses from entering or expanding within the sector.

Key concerns include:

- **Cost and Complexity:** Licensing regimes are inherently expensive, requiring businesses to pay annual fees, maintain compliance with extensive licensing conditions, and manage complaints processes. These costs are ultimately borne by franchisees and consumers, reducing the sector's competitiveness and affordability. The ARA notes that a licensing regime is being proposed in the absence of a cost/benefit analysis on the impact on both business and government.
- **Duplication of Existing Regulation:** The Franchising Code of Conduct already regulates disclosure, dispute resolution, and other key aspects of franchising relationships. A licensing regime would overlap with these mechanisms, creating unnecessary complexity and confusion.
- **Impact on Innovation and Entry:** Stringent licensing conditions, such as requiring business models to demonstrate maturity before obtaining a licence, could stifle innovation and deter new entrants. Many business models naturally mature and evolve through franchising, and overly rigid preconditions may inhibit this progression.

RISKS OF DISRUPTION AND REGULATORY OVERREACH

If a licensing regime is introduced, it would cause significant disruption to the franchising sector, including:

- **Administrative Burdens:** Franchisors would need to submit extensive documentation to meet licensing requirements, including evidence of business viability, compliance with disclosure requirements, and timings.
- **Business risks:** Imposing an undefined expectation on franchisors to guarantee a return on investment for franchisees, coupled with associated penalties, presents an unreasonable risk for franchisors. This proposal does not reflect the practical realities of business operations. While it may be possible to project income based on comparable franchise models, the inherent variability of human behaviour cannot be regulated.
- **Hindrance to New Entrants:** Licensing preconditions could effectively block new entrants and smaller franchisors from participating in the market, consolidating power among larger operators and reducing competition.
- **Redundant Compliance Costs:** Franchisors would face overlapping compliance obligations under both the licensing regime and the Franchising Code, further increasing costs and complexity.

The government must avoid creating a regulatory framework that duplicates existing processes or imposes disproportionate burdens on industry participants.

PRESERVING EFFECTIVE DISPUTE RESOLUTION

The dispute resolution framework within the Franchising Code is one of its most effective features. It provides a low-cost, accessible pathway for resolving disputes, with a strong emphasis on mediation and good-faith negotiation.

These mechanisms are widely respected within the sector and have contributed to a significant decline in disputes relative to the size of the industry. Any new regulatory framework must preserve these strengths and ensure that internal resolution processes remain the first point of call for addressing issues.

Expanding the scope of complaints under a licensing regime, such as allowing representative groups or unions to lodge complaints, risks overwhelming the system and undermining its efficiency.

BROADER IMPLICATION OF LICENSING

The introduction of a licensing regime would have far-reaching consequences for the franchising sector, including:

- **Higher Costs:** Franchisors would face significant costs related to obtaining and maintaining licences, managing complaints, and complying with additional regulatory requirements. These costs would inevitably flow through to franchisees and consumers.
- **Stifled Growth:** Licensing conditions would create barriers to entry for new franchising businesses and limit opportunities for innovation and expansion.
- **Transition Risks:** If a licensing regime is pursued, the government must halt proposed changes to the Franchising Code to avoid businesses incurring redundant compliance costs during the transition period.

CONCLUSION AND RECOMMENDATIONS

The ARA opposes the introduction of a licensing regime for the franchising sector. Such a regime would be an unnecessary and overly prescriptive response that fails to address the real challenges facing the sector. We believe the existing Franchising Code of Conduct is a proven framework that, with targeted refinements, can continue to serve the sector effectively without imposing additional burdens.

If the government chooses to proceed with a licensing regime despite significant opposition, we recommend the following:

1. Ensure the regime is balanced, proportionate, and designed to minimise costs and disruptions to the sector.
2. The regime must apply obligations equitably to both franchisors and franchisees, ensuring that accountability is shared fairly.
3. Avoid duplicating or contradicting existing regulatory mechanisms under the Franchising Code.
4. Preserve the current dispute resolution framework, which is highly effective and widely respected.
5. The regime must avoid imposing excessive or uneven compliance burdens that could distort competition or inhibit the sector's growth.
6. Halt proposed changes to the Franchising Code to prevent redundant compliance requirements during the transition period.

The ARA remains committed to supporting a franchising system that fosters innovation, fairness, and sustainable growth. We urge the government to prioritise practical, evidence-based solutions that address the needs of both franchisors and franchisees without imposing unnecessary burdens. We look forward to continued dialogue with the government to ensure that regulatory reforms achieve these objectives.

Thank you again for the opportunity to comment on the feasibility of introducing a licensing regime for the franchising sector. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.