



AUSTRALIAN  
AUTOMOTIVE  
DEALER  
ASSOCIATION

# RESPONSE TO THE DRAFT LEGISLATION TO INCREASE TRANSPARENCY IN FRANCHISING (FRANCHISE DISCLOSURE REGISTER)

28 OCTOBER 2021



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# FOREWORD

The Australian Automotive Dealer Association (AADA) is the peak industry advocacy body exclusively representing franchised new car Dealers in Australia. We appreciate the opportunity to provide this submission in response to the Treasury Exposure Draft Legislation to increase transparency in franchising through the introduction of the Franchise Disclosure Register.

There are around 1,500 new car Dealers in Australia that operate more than 3,000 Dealerships. The new vehicle retailing sector employs almost 60,000 people including almost 4,500 apprentices. It contributes over 14.5 million in community donations nationally, has a total turnover/sales of almost \$59 billion and generates more than \$2.7 billion in tax revenue.

The AADA has, over the past five years, engaged in strong advocacy on the need for better protections for franchised new car Dealers in their relations with Manufacturers. New car franchising is characterised by a significant power imbalance between Manufacturer franchisors and their Dealer franchisees. It is unfortunate that some Manufacturers exploit this power imbalance to their advantage, worst case examples of which are evident in the recent actions of General Motors (GM) and Honda, both of whom are currently engaged in court action with ex-franchisees. Recent reforms of the Franchising Code of Conduct and the addition of a section in the Code dedicated to franchised new car Dealers is very positive progress and will be to the benefit of Dealers, who remain predominantly Australian owned and run and consumers who benefit from healthy competition in the sector.

During the time of the GM closure of Holden and its termination of the Holden Dealer network, there was much discussion and conjecture in the

industry and media about when GM had taken the decision to close the brand and how long it had known of that decision before it acted. Appallingly, GM owned Holden allowed and, in some cases, encouraged Holden Dealers to continue to invest in facilities, hiring staff and expanding showrooms and workshops, despite knowing the brand was about to be axed. Some dealerships were also bought or sold a short time before the closure, meaning Holden authorised franchisees to purchase a business that the franchisor knew was about to be wound up. Ultimately it proved impossible to determine when GM made the decision to close Holden, but the experience highlighted the need for franchisors to be honest and transparent with current and prospective franchisees regarding their plans.

The AADA fully supports the establishment of the Franchise Disclosure Register made publicly available through the business.gov.au website. The Register will serve an important function in providing critical information about a franchise to both prospective and existing franchisees. We believe however that there is an opportunity to strengthen the current Exposure Draft through the addition of five key recommendations discussed below.

We commend this submission to the Treasury and would welcome the opportunity to provide further information if required.



**James Voortman**  
**Chief Executive Officer**



# KEY RECOMMENDATIONS

- 1** Standard form franchise agreements or at a minimum, the important terms contained in them to be disclosed on the Register.
- 2** The Register to include disclosure of the number of dispute notifications and mediations generated within a franchise.
- 3** The Register to include any charges brought by the ACCC, or Civil Actions defended.
- 4** Franchise business owner and director names to show on the Register and be searchable.
- 5** Time, date and version numbering system for all register entries and changes.

## Section 2

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### **STANDARD FORM CONTRACTS AND CONTRACT TERMS**

One of the most important factors for prospective franchisees to consider before committing to a franchise are the terms of the franchise agreement which will ultimately govern the relationship between franchisee and franchisor and set the business rules that franchisees are expected to abide by. Franchise agreements tend to be standardised across a franchise and therefore the important terms relevant to franchisees are known to franchisors. We believe standard form agreements, or at least the terms contained in them, should be fully transparent and disclosed on the Register.

### **DISCLOSURE OF PRIOR ACTION TAKEN AGAINST FRANCHISORS**

The Register should provide prospective franchisees with all materially relevant information to allow them to make informed decisions about joining a franchise. Information pertaining to any previous disputes with suppliers, other franchisees, records of civil court action for which there is a conviction or enforceable undertakings given to the ACCC by a franchisor should also be recorded on the Register.

### **VERSION HISTORY AND POINT IN TIME REFERENCE**

Once established, the Register will become an important source of information for franchisees who are making business decisions about their futures. It is essential that the disclosure information that they use as the basis of these decisions is indelibly and permanently recorded to ensure its integrity, should it need to be referenced later. We recommend that a time and date stamped version numbering system be implemented to the Register so when a franchisor lists or makes changes to materially relevant facts, all parties can identify the particulars of the registration at a point in time and can refer to it in any franchise agreement entered in to.

### **HISTORICAL INFORMATION**

We agree with the provision for franchisors no longer in business to be able to delete their online profiles if they wind up the franchise or cease to be a franchisor. Care must be given however to prevent franchisors from shutting down troublesome franchises and simply rebirthing them under a different name. The previous franchising experience of franchise directors and business owners should be disclosed and searchable in the details of any franchise registration they are associated with.

# RESPONSES TO QUESTIONS FROM THE CONSULTATION PAPER

## DRAFT REGULATIONS

1. *Are the amendments in the Exposure Draft likely to produce any unintended consequences?*  
The AADA do not foresee any unintended consequences from the Exposure Draft or the recommendations above.
2. *Are there any consequential amendments to the Franchising Code which may be required which aren't reflected in the Exposure Draft?*  
Refer to key recommendations above.

## INFORMATION ON THE REGISTER

3. *Is the information to be included on the Register appropriate?*  
Yes, but it could be far more comprehensive to better inform prospective franchisees.
4. *Are there other types of information, not within the existing scope of disclosure, that are important for prospective franchisees to compare?*  
Yes, as per the recommendations above.
5. *Is the information to be redacted from franchisors Disclosure Documents appropriate?*  
The AADA agrees with certain information being redacted.

## TRANSITIONAL ARRANGEMENTS

6. *Are the transitional arrangements appropriate?*  
We agree with the transitional arrangements proposed and the requirement for all franchisors to have a disclosure available on the portal by 31 October 2022.

## ONLINE PORTAL

7. *Is the proposed portal functionality fit-for-purpose?*  
Yes, subject to user testing.
8. *Do you have any other suggestions on how to ensure franchisees and users of the portal understand that information on the Franchise Disclosure Register is not endorsed or checked by Government?*  
The portal should provide clear statements to users that information on the Register is unvetted and provided solely by franchisors. The ACCC provide extensive advice to prospective franchisees and we would recommend that links to the relevant [ACCC webpages](#) be provided also.  
The AADA would also recommend that the portal be user tested by industry, including franchisees and franchisors, prior to 31 October 2022.

# CONCLUSION

The provision of the Franchise Disclosure Register provides an important opportunity for prospective franchisees to determine the appeal and suitability of a franchise that they are considering investing funds in. Given that often this investment represents the life savings of the franchisee, their livelihood is dependent on their ability to be able to make an informed decision. The information provided by the Register should be sufficient for a prospective franchisee to decide if a franchise is right for them and form the basis of them embarking on a more detailed evaluation of a franchise that they feel shows promise. We believe that with the inclusion of the recommendations above, the Register can serve an important role for the franchise sector.

We would be happy to provide further information or discuss our submission in person.

Please contact me using the following details should you have any further queries:

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