FCA
Franchise Council of Australia

Submission to the Productivity Commission Inquiry into ***Reducing Barriers to Business Dynamism*** *(2026)*

Franchising Accreditation and Mediation Organisation (FAMO)

An industry-led co-regulatory proposal for regulation of franchising
to enhance business dynamism in the sector.

July 2026

Document #1 – Submission
Document #2 - Attachments

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Part B: Franchising Accreditation and Mediation Organisation (FAMO)

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See separate *Document #2: Attachments*

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The Franchise Council of Australia

Who is the Franchise Council of Australia

The Franchise Council of Australia (FCA) is the peak industry body for the franchise industry in Australia. Representing franchisors, franchisees, industry advisers and suppliers, the FCA brings the entire franchise ecosystem together and educates, advocates and advances the franchise community.

The FCA represents the broad interests of the franchise sector and uses comprehensive engagement strategies to formulate policy positions and opinion in supporting the industry and advancing the interests of members and the broader franchise sector.

What the FCA brings to the FAMO concept

The FCA initially outlined the concept of a co-regulatory, industry-led entity under the *2024 Franchising Code of Conduct* (the 2024 Code) without licensing, in its formal response to the Treasury Taskforce paper: *Consideration of a licensing regime for the franchise sector* (FCA, December 2024).

That submission referred to a potential industry-led entity to be called the *Franchise Accreditation & Complaints Tribunal (FA&CT).*

An updated paper in June 2025 further refined that co-regulatory concept and renamed the industry-led entity to be the *Franchising Accreditation and Mediation Organisation* (FAMO). FAMO would be a company limited by guarantee and fully owned by FCA and its members.

Why the FCA is best placed to manage and implement FAMO

The FCA is the leading and the only peak industry body for general franchising in Australia. We have franchisors and franchisees as members. We have a continuous history of more than 40 years as an active policy contributor representing the interests of both franchisors, franchisees and service providers.

We have a deep tradition of contributing to the development of regulatory policy for franchising since the 1990's and earlier. We have

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several key policy advisory groups, including a Policy Committee and a Legal Committee which comprises the leading franchising legal advisers in Australia. Some of these professionals have been personally contributing to regulatory policy interactions with Government for almost 30 years.

We are active members of the *International Franchise Association* (IFA), based in Washington DC, and the *World Franchise Council* (WFC), based in London, and contribute to many global franchising policy and regulatory forums and processes. We attend international franchising conferences and gatherings to share regulatory policy developments and insights from Australia.

We have deep, mutually respectful and ongoing relationships with the peak franchising industry associations in other leading advanced economies, such as the USA, EU, UK, Germany, Japan, New Zealand, along with the Asia Pacific, India and the Middle East.

This international exposure and these connections have enabled us to rely on deep knowledge and experience of how franchising is regulated or, in some countries, not regulated, to formulate what we believe to be a new benchmark of a potential co-regulatory model in Australia.

We have contributed extensively to all major franchising regulatory policy review and development processes in recent years, including the Schaper Review (the Review) of the *2014 Franchising Code of Conduct* (the 2014 Code), the 10 year rewrite of the new 2024 Code and the recent Treasury *Licensing Taskforce* review of the feasibility of licensing for franchising.

Our CEO has deep personal experience in establishing the *Australian Travel Accreditation Scheme* (ATAS). This is a world-leading self-regulatory accreditation system for the travel sector – see further discussion in *Section A2*.

The FCA has strong and productive working relationships with other key peak industry bodies which represent sectors of the economy where franchising also takes place. The FCA also has strong and mutually respectful relationships with key consumer groups with an interest in issues impacting the sector.

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The FCA has a particular focus on assisting in the further enhancement of business dynamism and productivity improvements within firms across the sector.

We believe that the FCA is best placed to manage and implement an industry-led co-regulatory accreditation system, without heavier regulation, for the benefit of government, consumers, franchisors and franchisees.

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Executive Summary

Franchising is a $135bn sector, with over 1,300 franchise systems employing over 500,000. The FCA is the peak industry body, representing franchisors and franchisees.

The *Franchising Code of Conduct* (the Code) is a mandatory code under the *Competition and Consumer Act 2010*. It has been in place since 1998. However, the ACCC has concluded that the Code on its own cannot adequately protect franchisees.

In 2023, the ACCC therefore recommended either:

- a licensing regime to replace the Code; or
- a strengthened *Franchise Disclosure Register* (the Register) with similar functions as a licensing regime.

While Treasury consultation at the time focussed on the first option, the FCA has developed a proposal for a co-regulatory model based on the second option. This model can achieve the benefits of an alternative regime at much lower cost to government and industry.

Under the FCA's model, a new industry-operated body, provisionally called the *Franchising Accreditation and Mediation Organisation* (FAMO), would manage the Register and oversee accreditation and mediation functions. Each franchisor on the Register would be accredited with a star rating reflective of their compliance.

The star system for franchisors on the Register would function effectively as a licence, and to achieve the highest ratings of four and five stars, a franchisor would need to agree to binding arbitration. The Register, in conjunction with a star rating system, would meet the requirements the ACCC set in 2023 for a model based on a strengthened Register.

An advantage of this approach is that under the *Australian Constitution* binding arbitration must be entered into voluntarily to resolve disputes: it cannot be imposed by a mandatory Code of Conduct, by the Government or the Parliament.

The model proposed by the FCA has the benefit of allowing potential franchisees to compare the star rating of different franchise systems

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before entering into a franchise agreement. This would apply some competitive pressure on franchisors to improve their star ratings.

Crucially, the co-regulatory model would reduce the cost to government, with no ongoing funding requirement beyond an initial setup contribution of $5 million. FAMO, as an industry-led organisation, would help ensure regulation remained targeted at actual harm, avoiding the risk of excessive regulation that could dampen business dynamism. The flexibility of the star rating system also means there would be lower transition costs for industry: existing franchisors would be grandfathered into the new system with an automatic three star rating, but a four star rating or above would be required before they could take on new franchisees.

Under the FCA's proposal, this model would build on rather than replace the existing Code: the ACCC would continue to have responsibility for investigating and prosecuting breaches of the Code.

FAMO's Board would include representatives from relevant government agencies, such as the ACCC and Treasury. FAMO would be independently reviewed after two to three years of operation to ensure it was meeting its objectives.

This co-regulatory approach has a highly relevant precedent: the *Australian Travel Accreditation Scheme* (ATAS), an industry-led scheme, which has successfully been providing accreditation to travel agents for 12 years. The scheme has been independently reviewed twice to ensure it remains fit for purpose, with a third independent review underway.

Background

In late 2023, Dr Michael Schaper completed an independent review of the Code.

In its submission to the Schaper Review, the ACCC said:

> *"After over 25 years of a mandatory industry code of conduct, the ACCC considers that even an amended Code cannot prevent or address the persistent harms that arise in franchising." (p. 2)*

According to the ACCC, the limitation of the Code was that it was an *ex post* regulatory model:

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"Ex post enforcement alone cannot rapidly prevent or limit harm to prospective or current franchisees when there is a problem. The ACCC can only take action where the harm has occurred." (p. 2)

The ACCC acknowledged its capacity to deal with every complaint was limited, highlighting that it *"… is not a complaints resolution agency and rarely becomes involved in individual disputes".* It added that *" … the majority of franchise matters received by the ACCC each year do not meet the ACCC's priority factors"* (p. 8).

Consequently, the ACCC urged that a preventative approach to harm needed to be taken via an *ex ante* regulatory model: obligations would be imposed on franchisors before they could operate as franchisors. If a franchisor breached its obligations, the regulator could suspend or cancel its ability to operate.

The ACCC's requirements for such a model were:

- clear conditions on franchisors from the start;
- and throughout the franchise, including when seeking new franchisees;
- stronger regulatory tools to address localised and future harms to franchisees; and
- accessible, binding dispute resolution.

The ACCC saw licensing as one way to achieve these requirements but acknowledged the risk of regulation that was overly interventionist. It put forward a strengthened Register as being an alternative option. The ACCC suggested that a strengthened Register could achieve some of the benefits of licensing, provided:

- to be listed, a franchisor had to comply with certain requirements and agree to abide by accessible binding dispute resolution decisions; and
- the appropriate regulator could suspend, cancel or impose conditions on a franchisor to remain listed in the manner discussed above (p. 10).

The ACCC encouraged the Schaper Review to *" … seriously consider the benefits of replacing the Code with a licence regime* ***or strengthening the existing Franchise Disclosure Register framework.****"* (p. 10)(Emphasis added).

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A proposed co-regulatory entity

The FCA proposes a co-regulatory model combining an amended mandatory Code with an industry-led organisation to oversee a strengthened Register.

The FCA's model meets the two requirements set out by the ACCC of a strengthened Register, namely access for franchisees to binding dispute resolution and an ability to cancel, suspend or put conditions on a franchisor's accreditation.

The organisation, provisionally titled the *Franchising Accreditation and Mediation Organisation* (FAMO), would be owned and operated by the FCA and its members, though franchisors would not need to be FCA members to be listed on the Register.

The star system could be designed as follows:

- three stars would allow a franchisor to continue operating its existing franchise agreements;
- four stars would be available only to franchisors who had voluntarily agreed to binding arbitration and this would allow a franchisor to take on new franchising agreements; and
- five stars would be available only to franchisors who had voluntarily agreed to binding arbitration, who provided audited accounts and who met solvency tests.

Under this model, existing franchisors would be grandfathered and automatically granted a three star rating, meaning they would not be disrupted in their existing franchise agreements. Achieving the conditions of four (and five) stars would be required for the franchisors to take on new franchisees.

The FCA would welcome the opportunity to work with the ACCC and Treasury on what additional conditions would apply under the different star ratings.

The Code would continue to operate in parallel and be administered by the ACCC. An amendment to the Code could set out the minimum requirements on a franchisor to operate. Under extreme circumstances, such as persistent breaches of the Code, a franchisor's accreditation

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and listing on the Register could be cancelled (if this were constitutionally possible), in accordance with the amended Code.

FAMO Board structure

The FCA suggests the FAMO Board could include an independent chair, a representative of the ACCC, a representative of Treasury or another government agency, a franchisor representative and a franchisee representative. Such diverse representation would ensure the model would achieve the intended purpose of reducing harm to franchisees. The model could be independently reviewed every three years to ensure it remained fit-for-purpose. The government would of course retain the option of moving to the heavier regulation of a licensing regime if co-regulation proved ineffective.

Dispute resolution

FAMO would have a *Complaints and Mediation Committee* separate from administration of the Register. This would include binding arbitration for franchisees of four and five star-rated franchisors, incentivising franchisors to voluntarily agree to binding arbitration as a means to make their franchise as attractive as possible to prospective franchisees.

Timing and funding

The FCA believes it is feasible to have the co-regulatory model operating from 1 November 2028. It is seeking $5 million in Australian Government funding over two years to establish the Scheme. The model would not require ongoing government funding.

An existing precedent – the Australian Travel Accreditation Scheme (ATAS)

The *Australian Travel Industry Association* (ATIA) represents more than 1,100 members with over 28,000 employees nationwide. Its predecessor, the *Australian Federation of Travel Agents* (AFTA), received unanimous agreement from all levels of government in 2013 to establish an industry-led accreditation scheme. All State and Territory governments then repealed their *Travel Agents Acts*, which had required travel agents to be licensed.

The *Australian Travel Accreditation Scheme* (ATAS), administered by the ATIA, has operated effectively for 12 years and has undergone two independent reviews, with a third currently underway. ATAS operates under a voluntary code, whereas an industry-led franchising

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accreditation scheme would work with the current mandatory Code. ATAS, as with the proposed co-regulatory model for franchising, does not require ongoing government funding.

Productivity benefits

The FAMO model would reduce barriers to business dynamism, and therefore increase productivity, because it will enhance higher entry rates into franchising. There is evidence of growth in the number of agile *'frontier firms'* in franchising. The industry supports the FAMO proposal and does not support heavier regulation. FAMO, as an industry-led organisation, would help ensure regulation remained targeted at actual harm, avoiding the risk of excessive regulation that could dampen business dynamism (and thus harm productivity).

The flexibility of the star rating system also means there would be lower transition costs for industry: existing franchisors would be grandfathered into the new system with an automatic three star rating, but a four or five star rating would be required before they could take on new franchisees.

The FCA is aware of global franchise systems which are reticent to enter Australia due to the perceived risk of heavier regulation. Similarly, there are Australian franchise systems which are preferring to move offshore, due to the perceived risk of heavier regulation.

Budget sustainability

Under FAMO, the industry will administer the Register from, say, 1 November 2028. The ACCCC will no longer be responsible for the administration of the Register from that date, and this will ensure budget sustainability, after once-only set up funding of $5m.

The idea is Budget positive

FAMO will be budget positive over the *Forward Estimates*, with annual savings from FY30. The ACCC will no longer need to resource the administration of the Register from 1 November 2028. This will be a significant annual saving to the Budget after the commencement of FAMO. The industry seeks once-only $5m funding to establish the Scheme over 2 years ($2.5m in each of FY28 and FY29).

Next steps

While the ACCC said in its submission to the Schaper Review that a strengthened Register would achieve *some* of the benefits of licensing,

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the FCA cannot foresee any impediments to this co-regulatory approach achieving *all* of the benefits of heavier regulation. The FCA seeks to engage constructively with Treasury and the ACCC to explore how this co-regulatory model could achieve this outcome, while avoiding the acknowledged risks of heavier regulation.

We believe that the FCA is best placed to manage and implement an industry-led co-regulatory accreditation system for the benefit of government, consumers, franchisors and franchisees.

Structure of documents

The FAMO submission comprises 2 separate documents:

Document #1: This Submission
Document #2: Attachments

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The franchising sector – economic snapshot

Franchise sector

Franchising is a way of doing business which plays a dynamic role in many industries (including the retail, hospitality, services, health, wellness, aged care, NDIS, travel and automotive industries). This paper will refer to franchising as a 'sector'. [1] This is consistent with the approach taken by the Federal Treasury. [2]

Business contribution – networks, franchisees, employment, SME's

Franchising plays a vital role in the Australian economy, generating over $135 billion in revenue annually, supporting over 500,000 jobs and offering circa 70,000 small business owners (franchisees) a proven pathway to success.

The *Australian Bureau of Statistics* (ABS) estimated the franchise sector's 2023 metrics as follows:

> *Based on Franchise Disclosure Register (FDR) data, the ABS concluded that there are an estimated 1,144 franchise systems operating in Australia. Within these 1,144 franchise systems there are 70,735 franchisees. The franchising sector is forecast to generate an annual revenue of $135.2 billion in 2023 and provide work for around 522,877 individuals.* [3]

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[1] Franchising is deemed to be an 'industry' under the *Competition and Consumer Act 2010* (CCA) for the technical and legal purposes of enabling a Code of Conduct for franchising to be made under the 'Industry Codes' provisions of the CCA. This is a legal construct which does not accurately represent the dynamic economic role of the sector across many industries.

[2] FCA notes that the Treasury Licensing Taskforce consultation paper referred to the 'franchise sector'.

[3] Schaper Review, p 18.

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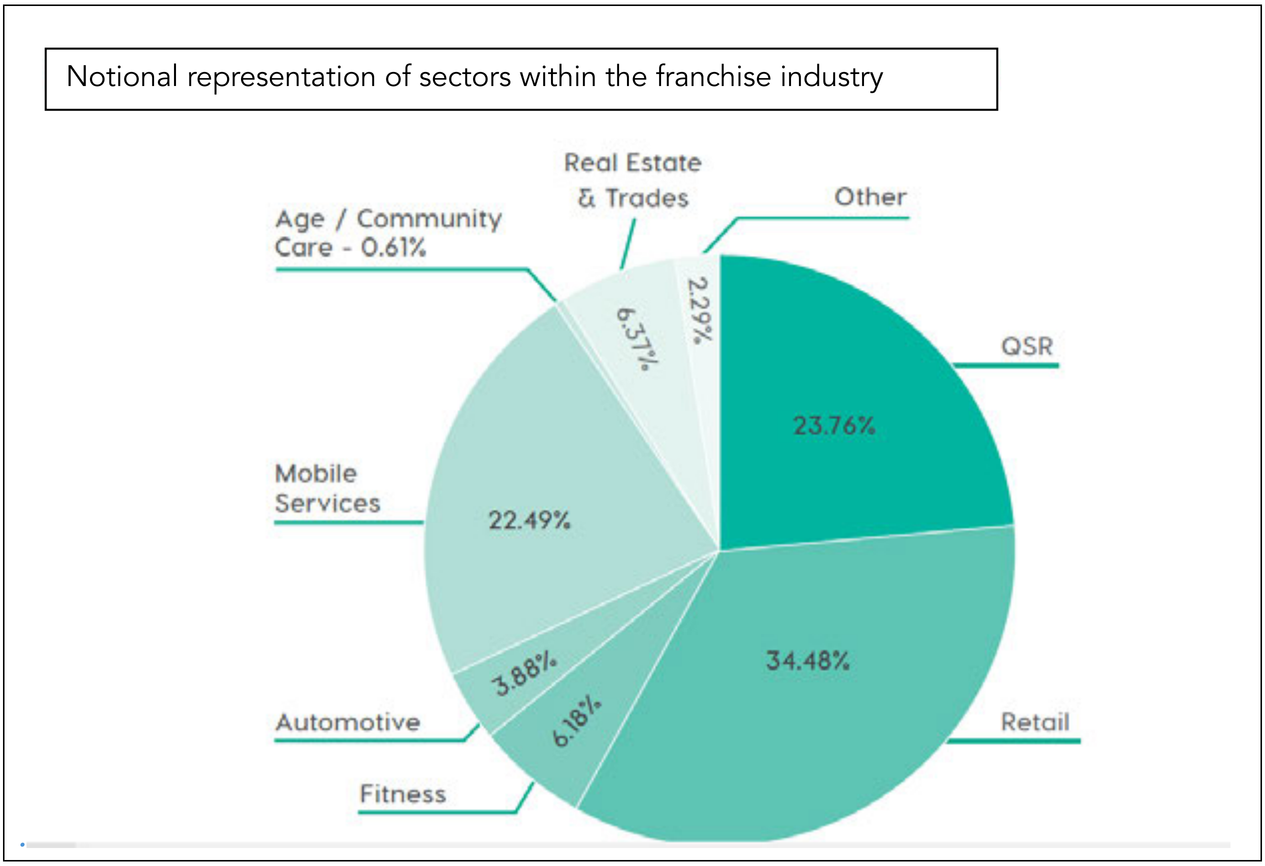
Industry breakdown

One unofficial FCA estimate of the proportions of the franchise workforce across various industries is set out in *Figure 1.*

Figure 1: Franchising workforce proportions by industry grouping



As can be seen, the majority of the franchise workforce is operating within the services sector of the economy (i.e. not manufacturing, mining or agriculture).

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Key franchising sector data

Key franchising sector data (2012 – 2016) includes:

- There are more franchise systems in Australia per head of population than in the USA;
- 60% of franchisors have been franchising for more than 10 years;
- Franchisees remain in their businesses for an average of 7 years;
- 92% of the franchise systems were Australian-based operations;
- 28% of franchise systems had expanded internationally; and
- Disputation in the sector remains very low, with only an estimated 1.8% of franchisees involved in a dispute that involved an external adviser. [4]

Structure of this submission

This submission is structured as follows:

Part A: Enhancing business dynamism in franchising
Part B: Franchising Accreditation and Mediation Organisation (FAMO)
Conclusion

Part A addresses the extent to which the co-regulatory FAMO model would reduce barriers and contribute to enhancing business dynamism and resilience amongst firms in the franchising sector.

Part B outlines the design architecture, proposed structures and detailed governance operations of the FAMO model.

[4] *Doing Business in Australia – franchising issues*, Stephen Giles and Maija Kerry, Norton Rose Fulbright, 2022. Data derived from the *Franchising Australia Surveys* from 2012, 2014 and 2016.

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Part A: Enhancing Business Dynamism in Franchising

A1. Franchising and Business Dynamism

Productivity Commission inquiry into Productivity Agenda Pillar #1: Creating a more dynamic and resilient economy

The FCA supported the Government's 5 pillar approach to improving productivity in the Australian economy. The Treasurer commissioned the PC to undertake 5 separate inquiries into *Pillars #1 - #5* of the Government's productivity agenda.

The PC *Pillar #1* inquiry related to *'Creating a more dynamic and resilient economy'*. One key dimension of the *Pillar #1* inquiry was the urgent need to *'reduce the impact of regulation on business dynamism and resilience'.*

The FCA notes that the Treasurer subsequently wrote to the PC to highlight the priority that is to be given, in each of the 5 inquiries, to reducing the impact of regulation on firms in the economy. See the Treasurer's letter of 4 February 2025 at *Attachment 1.*

The FCA provided a comprehensive, evidence-based submission to the *Pillar #1* inquiry recommending the co-regulatory, industry-led FAMO model, without heavier regulation, to enhance business dynamism in the sector. See *Attachment 2*

The FCA believes that the FAMO proposal is an extremely practical and timely example of how the Government can reduce the adverse impact of regulation on business dynamism and resilience in the franchising sector.

Current state of business dynamism in franchising

Franchising makes a significant contribution to the Australian economy. The franchise sector is a major employer and business contributor, with more than 70,000 franchisees across Australia and a workforce supporting more than 500,000 jobs.

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Franchising is the driver of small business success in Australia, with franchising a proven way of allowing small businesses to successfully compete against larger corporates regardless of industry. Franchising is the backbone that supports small business survival and that ensures small businesses can keep serving and supporting their communities.

Pathways to business entrepreneurism

Franchising presents the opportunity for Australians to transition from employment and jobs across all areas of the economy (with both blue collar and white collar experience) to embark on self-employment and entrepreneurship.

Franchising also provides a pathway for immigrants to Australia with the appropriate working rights and an *Australian Business Number* (ABN) to commence their new life in business via a franchise. This is an emerging and growing area of franchisee attraction and will help further build the business dynamism that franchising offers to the Australian economy.

Franchising supports and embraces a very diverse multicultural eco-system and presents a pathway to small business success because of the rigour and systems intrinsically designed within a franchise system.

FAMO may encourage more 'frontier firms' in franchising

The FCA is aware of the recent research in a 2022 *Treasury Working Paper* [5] in which the authors identify global trends in the prevalence of 'frontier firms' and 'laggard firms' in the context of the current issues of falling productivity in the Australian economy.

A *'frontier firm'* is an agile, competitive firm which is an early adopter of new technology. These firms have low margins and undercut established businesses which are less competitive. These firms have higher levels of productivity. These are dynamic businesses, and these characteristics are referred to as 'business dynamism'.

A *'laggard firm'* is a slower adopter of new technology. It is less agile, longer established, has higher margins and is slow to respond to new competitors. These firms have lower levels of productivity.

[5] Andrews et al, *Reaching for the stars: Australian firms and the global productivity frontier,* Treasury Working Paper, 2022-01 (the views are those of the authors not the Treasury nor the Government)

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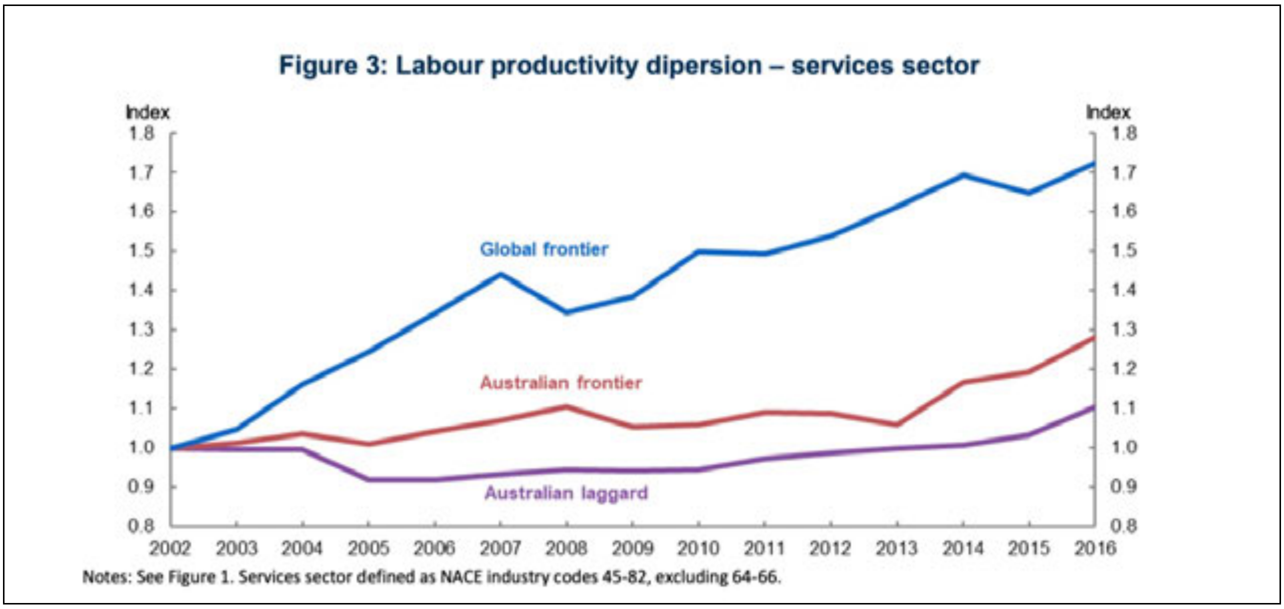
The *Treasury Working Paper* authors compare Australian 'frontier' firms and 'laggard' firms with global 'frontier' firms in different industries. The analysis shows that Australian 'frontier' firms are falling behind their global comparators. The evidence shows that the gap between the two groups is widening, as Australian productivity levels decline.

Most Australian franchise systems operate in the services sector. The FCA notes the extent to which Australian frontier firms in the services sector are lagging their global equivalents, as set out by the authors of the *Treasury Working Paper* [6] (See *Figure 2).*

Figure 2: Frontier firms in the services sector, global comparison



The authors of the *Treasury Working Paper* make the point that firms in industries with higher entry, exit and turnover rates catch up to the global frontier firms more quickly (pg 1). The FCA considers that there are already many examples of 'frontier firms' in franchising, across various segments of the services sector. Examples of these 'frontier firms' can be found, for example, in the latest list of the *Top 30 Franchise Executives in Australia, 2025.* [7]

The *Treasury Working Paper* authors reach conclusions regarding the extent to which new policies are needed in Australia to create more

[6] Ibid., Figure 3, page 7
[7] *Top 30 Franchise Executives 2025*, publication by Franchise Executives, *Octomedia Pty Ltd*.

dynamic businesses. It is expected that such policies would reduce the extent to which Australian frontier firms have fallen behind global frontier firms. In particular, the Paper concludes:

> *" … policies to* ***address barriers to business dynamism*** *and competitive pressures can improve Australia's productivity performance, by increasing incentives for firms to adopt, innovate and improve."* [8] *(Emphasis added).*

The FCA believes that the FAMO model will encourage higher entry rates in many of the industries into which new franchising models are accelerating. This is partly because the industry-led FAMO model is supported across the sector. Consequently, FAMO might encourage more frontier firms in the franchising sector.

There is evidence that the current regulatory burden on franchising and the risk of heavier regulation may be inhibiting business dynamism in the sector. See the following *Case Studies*, which highlight how the risk of heavier regulation is both deterring new global entrants to Australia and also driving Australian innovators offshore.

[8] Ibid., Abstract

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Case Study #1: Adverse regulation impacts on business dynamism in franchising – deterring new global entrants

The FCA has recently become aware of some major global franchise networks which have chosen not to enter the Australian market because of concerns regarding the risk of heavier regulation being imposed on the sector in the future.

The FCA believes that an industry-led, co-regulatory FAMO model would potentially lead to such global networks having the confidence to consider entering the Australian market. This would result in increased business dynamism and competitive pressures amongst firms in those industries.

Case Study #2: Adverse regulation impacts on business dynamism in franchising – sending Australian innovators overseas

The FCA has recently become aware of some innovative national franchise networks which have chosen not to further invest in the Australian market but rather to explore opportunities to expand overseas. The regulatory factors sending these innovators overseas are reported to include the risk of heavier regulation being imposed on the sector in the future.

The FCA believes that an industry-led, co-regulatory FAMO model would potentially lead to such national networks having the confidence to continue to expand in the Australian market. This would result in increased business dynamism and competitive pressures amongst firms in those industries.

Accelerated benefits of AI in franchising operations

Franchising firms are undergoing a significant transformation, resulting from the integration of advanced technologies such as mobile applications, online ordering systems and AI. [9]

[9] *Tech-Savvy Franchises: How Innovation is Driving Business Growth in Australia*, GrowthHive Media, 18 April 2025.

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Franchising firms are well positioned to more rapidly benefit from AI and Machine Learning (ML) compared with non-franchising firms …

> *" … this is because their operations are often similar across all locations. Thus machine learning can quickly pull together data from everywhere. It then provides insights aimed at boosting each unit's performance. With these high-tech tools, both the main franchisor and local managers (franchisees) can learn what works best. They use these insights to run smoother operations …. "* [10]

AI may enable a new wave of micro-franchising models and opportunities, " … *where individuals operate AI-driven vending machines, automated kiosks, or ghost kitchens with minimal human intervention …"* [11]

The FCA is considering gathering evidence of relevant examples of frontier firms involved in franchising in selected services industries which are leading in the adoption of AI and ML technologies. [12]

Possible high regulatory burdens to be imposed on franchising

The FCA wishes to see a co-regulatory regime which minimises harms in the franchising sector, enables an industry-led, preventative approach and contributes to business dynamism in the sector.

Any harms in the sector, especially in relation to breaches of the Australian Consumer Law (ACL), need to be mitigated effectively and efficiently by existing processes, without heavier regulation.

The FCA is unaware of any compelling evidence of systemic Code-related harms in the sector since 2021. The best available *Australian Competition and Consumer Commission* (ACCC) complaints data provides valuable insights on the current incidence of harm in the sector.

A detailed analysis of ACCC *Outcomes Data* for Franchising Code-related breaches shows that out of 10 matters under the 2014 Code,

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[10] *Why AI-Powered Franchise Solutions Are the Future of Business, Franchise Friend, 8 June 2024*

11 *The Potential Impact of AI on Franchising Over the Next Decade [Revisited]*, Paul Segreto, Acceler8Success Café, 27 May 2025

[12] The FCA is considering gathering evidence of examples within the industry codes set out in the *Australia New Zealand Industrial Classification* (ANZIC) framework, similar to the framework utilised for the *Treasury Working Paper* analysis.

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many were relatively minor and most related to conduct that took place more than 4 years ago, prior to COVID, and prior to recent amendments to the Code. See more details in *Attachment 3.*

As the previous *Minister for Small Business* (the Minister) advised the FCA, the Code is working "effectively and efficiently". The Review also found the Code to be fit-for-purpose.

Possible stand-alone Code for the automotive sector

Any harms resulting from an ongoing power imbalance in the automotive sector should lead to an analysis of the merits of a stand-alone Code for the automotive sector.

The FCA notes that should a stand-alone Code for the automotive sector be deemed appropriate, the co-regulatory model of FAMO may still be able to assist in the management for consistency of the automotive sector. This could apply even if a more defined and specific Automotive Code stood beside the 2024 Franchising Code, if that was deemed an applicable model.

The Way Forward

In the light of all of these factors, strengthening the existing FDR framework under a co-regulatory FAMO model is the most appropriate way forward, incorporating technical FDR-related recommendations by the ACCC (see *Section A3*) and other stakeholders.

The architecture of the FAMO structure and operating model will be designed to benefit from the actionable insights of the successful self-regulatory model in the travel sector: the *Australian Travel Accreditation Scheme (ATAS)* – see below.

A2. Travel industry case study: ATAS

Australian Travel Accreditation Scheme (ATAS)

The travel sector has developed a *de facto* licensing regime with an effective and efficient self-regulatory, industry-led accreditation scheme, with complaints handling, which provides a successful precedent for FAMO.

The *Australian Travel Industry Association* (ATIA) represents over 1,100 members and over 28,000 employees nationwide. Through its

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predecessor, the *Australian Federation of Travel* Agents (AFTA), it received unanimous Federal, State and Territory Government agreement in 2013 to establish a self-regulatory, industry-led accreditation scheme for businesses in the travel adviser sector, without licensing.

All State and Territory governments repealed their respective *Travel Agents Acts*, under which travel agents were previously required to be licensed in order to do business as a travel agent. The last remaining piece of legislation was the *WA Travel Agents Act*, which was repealed in 2014.

The self-regulatory, industry-led scheme is now known as the *Australian Travel Accreditation Scheme* (ATAS). (It was previously known as the *AFTA Travel Accreditation Scheme*). It is working very effectively after 12 years of operation and two independent scheme reviews. A third independent review is currently underway (see *Attachment 10*).

The FAMO proposal builds upon many of the policy design features, the governance framework and the actionable insights of the successful self-regulatory ATAS model. [13]

Accreditation

The ATAS Accreditation Scheme is open to all travel intermediaries (those that buy and sell travel) and the scheme benchmarks applicants against a range of criteria. Those that meet the requirements are awarded national accreditation and receive the right to use the *'ATIA Accredited'* symbol, a symbol of quality and professionalism. See *Figure 3.*

ATIA conducts comprehensive consumer education campaigns to encourage consumers booking travel to use ATIA accredited travel advisers. See *What is ATAS?* (*Attachment 4).*

[13] The current leadership of the FCA has personal experience in the establishment of ATAS.

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Figure 3: ATIA Accreditation Symbol

ATIA applies robust accreditation screening processes and reports that approximately 25% of accreditation applications are rejected. [14] Accreditation requirements are set out in the *ATAS Charter*, with full transparency for all industry participants.

We note that the ATAS Scheme is based on a *voluntary* accreditation approach which would be very different to the FAMO structure. Under FAMO, the ***2024 Franchising Code* would continue as a mandatory Code** and would remain as the government regulated aspect of franchising.

Membership

Travel intermediaries do not have to be current members of ATIA (the industry association) to be accredited under ATAS (the accreditation scheme). This is a key design feature which the FCA would apply in the development of the FAMO governance provisions. That is, membership of the FCA would **not** be a mandatory pre-condition for accreditation of franchisors and their listing on the FDR.

Structure

ATIA, as a peak industry association, has not set up a separate company (limited by guarantee, or otherwise) to operate the accreditation system. ATAS is effectively a division of ATIA, overseen by the ATIA Board and operated by ATIA staff.

In terms of governance arrangements, there is an *ATIA Advisory Committee* (AAC) which provides strategic advice to the ATIA Board regarding ATAS. The AAC plays a vital role in the ongoing preventative

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[14] *ATIA Accreditation: March 2025 Update* – see *Attachment 9.*

efforts of ATIA to improve and strengthen its accreditation processes. The AAC is a self-regulatory model, with no Government representation.

ATAS is governed by a *Charter* and a **voluntary** *Code of Conduct.* [15]

Consumer complaints are first addressed by the Scheme and there is an independent complaints appeals committee that has oversight and may issue sanctions in accordance with the Code. [16]

One key role within the ATIA administration is that of the *ATAS Compliance Manager.* This role is responsible to the CEO and to the Board for the day-to-day management of ATAS, overseeing the *ATAS Charter* and *Code* including setting ATAS policies and procedures.

Charter

The strategic objectives and operational administrative structures and processes of ATAS are set out in the *ATAS Charter.* This critical document is included in the cyclical independent reviews of the ATAS Scheme (see below).

The *ATAS Charter* is updated regularly and is currently in its 8th version (17 February 2025). See *Attachment 5.*

FAMO would propose to have a comprehensive *FAMO Charter* along similar lines, with one major difference being the interrelationship with the mandatory *2024 Franchising Code* (rather than with a voluntary self-regulatory Code – see below).

Code of Conduct

All accredited travel intermediaries are required to agree to abide by the *ATAS Charter* and the *ATAS Code of Conduct.* This is a voluntary self-regulatory Code which is not prescribed by any Federal, State or Territory legislation. The *ATAS Code* is an attachment to the *ATAS Charter.* The *ATAS Code of Conduct* is updated regularly and is currently in its 9th version (12 May 2025). See *Attachment 6.*

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[15] https://atia.travel/Accreditation/Scheme-Governance

[16] https://atia.travel/Accreditation/Scheme-Governance/ATAS-Complaint-Appeal-Committee-ACAC#64225-acac-committee

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Business dynamism reporting and data

ATIA undertakes annual solvency and daily Directorship checks to ensure that accredited businesses are stable and not at risk. [17] The *Solvency Definition* criteria are set out in *Attachment 7*.

ATIA provides state-of-the-art contemporary reporting of business dynamism data and monthly statistics, including the number of businesses that:

- were newly accredited businesses;
- ceased trading or closed;
- were transferred or sold;
- had their accreditation cancelled or withdrawn; or
- are operating under monitoring agreements, under which they are obliged to provide quarterly financial and operational disclosures. [18]

FAMO would implement a similar approach to provide fully transparent and up-to-date business dynamism statistics and data on a monthly basis for franchising.

Complaints handling

The *ATIA Accreditation Complaints Appeals Committee* (ACAC) is an independent body specifically established under ATAS to review and determine customer complaints and allegations of non-compliance with the *ATAS Charter* and *Code*. The *ACAC Terms of Reference* are updated regularly and are currently in their 8th version (28 January 2025). See *Attachment 8*.

ACAC comprises the following members:

- Independent Chair;
- Travel intermediary/industry representative;
- Alternate industry representative; and
- Consumer representative.

Issues may be referred to ACAC by a consumer or by the *ATAS Compliance Manager* in relation to an allegation of non-compliance with the *ATAS Code*. [19]

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[17] See the *Solvency Definition* criteria in *Attachment 7*.
[18] See the *ATIA Accreditation: March 2025 Update* at *Attachment 9*.
[19] See the *ATIA Accreditation Charter* – www.atia.travel

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Reviews

The ATAS Scheme is designed to be subject to regular independent reviews. Two independent scheme reviews have been conducted previously, leading to amendments to the *Charter* and the *Code of Conduct.* A third independent review is currently underway. See *Attachment 10*.

A3. Benefits of the co-regulatory FAMO model

Benefits to industry

The FCA considers that there will be extensive benefits to businesses operating in the franchising sector under the co-regulatory FAMO model. An industry-led approach will ensure that the industry takes responsibility for proactively identifying and taking pre-emptive action to deal with emerging issues in the sector.

FCA believes that such a co-regulatory approach, based on the successful ATAS model, will result in improved performance of firms participating in franchising (either as franchisors or franchisees). Similar robust accreditation pre-conditions to those applying under ATAS will maximise the likelihood that new entrants to franchising will be successful small and medium businesses.

The development and maintenance of monthly data on key indicators of business dynamism by FAMO will assist early identification of emerging business issues to be addressed with education and training programs.

Business dynamism and resilience in the sector will be enhanced by the requirement that new franchisee entrants will be required to undertake basic business skills training and education (see *Section B2*).

Benefits to government and the economy

Resource efficiencies

FCA believes that the industry-led FAMO co-regulatory model will enable significant efficiencies in government resource allocation. Under FAMO, responsibility for the operation and maintenance of the FDR would be undertaken by industry, not by government. This would result in significant resource savings for government and the ACCC, as regulator and administrator of the FDR.

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The ATAS self-regulatory model has yielded significant resource savings for all State and Territory governments. These governments no longer need to allocate resources to the process of receiving, assessing and annually issuing licences for over 1,600 travel intermediaries across the nation.

Data

The most accurate and current data on franchising come from the FCA and its research partners (including *Frandata*) in Australia and overseas. [20]

The FDR has added incrementally to that data set, but its utility is impacted by the necessary constraints on a framework where all data is publicly available. Research from *Frandata* shows that franchisors oppose having a public register that exposes their confidential data.

Franchise industry data is critical to the sector across a number of areas. Ensuring this industry data is proactively shared with government, regulators, suppliers and other stakeholders (including academics and researchers) can have critically important impacts on investment, regulations, market assessment and information sharing.

The FDR is a potentially valuable piece of data infrastructure that is held about the industry and, with appropriate de-identification, could support initiatives by the FCA and its research partners. It could potentially have wide use to the benefit of the sector and the Australian economy more broadly.

An annual report of aggregated data drawn from the FDR may be a possible option under the FAMO proposal.

The FCA and its research partners have extensive information at their disposal and will be developing a range of alternatives that will enable FAMO to report insightful sector data on business dynamism and resilience on a fully transparent and regular basis.

Benefits to consumers

FAMO would develop and execute comprehensive consumer and franchisee education campaigns regarding the accreditation of franchisors and their listing on the FDR. This approach would be as

[20] See ABS comments on the capacity of the FCA to provide useful data in the ABS submission to the Schaper Review.

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similarly effective as the consumer education campaigns in the travel sector regarding the benefits of using an accredited travel adviser.

Consumers and franchisees would be encouraged to make any complaints directly to the complaints handling service at FAMO. The industry would strive to ensure that effective and timely mediation services would ensure speedy resolution of consumer/franchisee complaints.

A fundamental aspect of FAMO accreditation would be that all franchise networks would be required to have a complaints handling process in place for both franchisees and consumers. FAMO would assist franchise systems to adopt best practice and would encourage matters to be resolved at the source by enabling parties to have a free complaints handling process which may include mediation, if required. This would ensure matters are dealt with effectively, efficiently and quickly in the interest of all parties.

Part A - ends

Part B: Franchising Accreditation and Mediation Organisation (FAMO)

B1. Why a co-regulatory model is needed and a recommended path forward

Outline of FAMO Proposal

The FCA notes that recent years have seen comprehensive franchising reviews (such as the Schaper Review), regulatory reforms and amendments which now comprise the 2024 Code. The wide ranging extent of these recent reforms justifies a deferral of any potential heavier regulation until the improvements can be fully evaluated.

The FCA is proposing an alternative co-regulatory regime which would minimise harms in the franchising sector, enable an industry-led,

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preventative approach and enhance business dynamism in the sector, without heavier regulation.

The FCA is recommending the establishment of a new co-regulatory entity to be called FAMO *(Franchising Accreditation and Mediation Organisation).*

Under this proposal:

- FAMO would be a stand-alone company limited by guarantee, 100% owned by the FCA and its members;
- the FCA would provide the necessary secretariat resources to support the operations of FAMO (see further discussion in *Section B2*);
- the 2024 Code will remain as a mandatory industry code under the *Competition and Consumer Act 2010* (CCA);
- the proposed 2024 Code review cycles would continue as currently prescribed;
- the investigative role of the ACCC would also continue, thus enabling it to focus on investigating and prosecuting the most serious breaches of the Code, the ACL and separate unfair contracts provisions;
- the ACCC would have no role in the operation of the FDR;
- Treasury would continue to lead on franchising policy reforms; and
- the industry would administer the FDR as prescribed by amendments to the 2024 Code – see further discussion below.

Roles and responsibilities – Government/Industry

The ACCC has recently become responsible for administration of the FDR.

The FCA proposes, under the co-regulatory model, that FAMO be prescribed in the 2024 Code as having responsibility for the administration and oversight of the FDR. Under this proposal, only franchisors who have been accredited by FAMO could be registered on the FDR, which would be a pre-condition to grant a new franchise. Existing franchise agreements would be grandfathered, in a similar way in which pre-1 April 2025 franchise agreements were grandfathered under the new 2024 Code.

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FCA proposes a co-regulatory model in which the Government participates (to the extent that it wishes) in the accreditation functions of the industry-led entity, FAMO. This Government involvement could be via membership (*ex officio*, or otherwise) of the Board [21] or by means of a prescribed advisory role to FAMO (see further details at *Section B2*).

Functions of an accreditation and mediation regime

There are five potential functions of a co-regulatory accreditation and mediation regime, as set out in Treasury's *Licensing Discussion Paper*. [22] Each of these is addressed in a separate section of this proposal, as follows:

- Function 1: Regulatory oversight – see *Section B4*
- Function 2: Dispute resolution - see *Section B5*
- Function 3: Disclosure of information – see *Section B4*
- Function 4: Business model preconditions to franchise – see *Section B4*
- Function 5: Education and resources – see *Section B6*.

Transforming the FDR into a tool regulating participation in the sector

The FCA agrees with the Review insight that there is the potential for the FDR to be transformed into a tool regulating participation in the sector. [23] FCA believes that an enhanced FDR does indeed have the potential to enhance a more dynamic franchising sector.

Industry-led administration of the FDR

FAMO would have two separate functional and operational activities:

1. Franchisor listing on the FDR, including vetting listing applications, suspending and cancelling listings, and maintaining the FDR; and
2. A stand-alone *FAMO Complaints and Mediation Committee* (FCMC).

Benefits of a co-regulatory, industry-led approach

Leveraging the existing FDR infrastructure and obligations has the potential to achieve many benefits for the sector.

[21] In a manner that will ensure that Government representatives will have no non-executive director liabilities.
22 Treasury Taskforce, *Consideration of a licensing regime for the franchise sector,* November 2024
23 The ACCC also identified such an approach in its September 2023 Submission to the Review.

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The potential benefits of a strengthened FDR framework could include sector ownership of problems and dispute resolution mechanisms. A strengthened FDR framework could also create the ability to sanction breaches more effectively and more quickly by either franchisors or franchisees through a more refined infringement notice and penalty framework (if desired).

FCA believes that the strengthening of the FDR framework, utilising a co-regulatory approach, would enable the development of a holistic and preventative approach to problems in the sector. This would be an authentic example of enhancing a new dimension of business dynamism in franchising.

FCA considers that a strengthened FDR framework has the potential to provide a more efficient and effective way to address any persistent issues in the sector. This approach could be taken without necessarily imposing a greater degree of complexity or regulatory burden than applies under the current 2024 Code.

In summary, the proposed co-regulatory FAMO model would enhance business dynamism and would achieve the Government's policy objectives for the sector by:

- **Reducing** ACCC responsibility for, and resource costs of, the administration of the FDR;
- **Leveraging** the FDR to act as a *de facto* licensing mechanism, with strengthened requirements for franchisors to participate in the sector;
- **Establishing** an industry-led body to oversee compliance, education and complaints handling, ensuring accountability and transparency without excessive regulatory intervention; and
- **Empowering** franchisors and franchisees through proactive education and support initiatives.

Strengthening the FDR within the Code

The ACCC proposed an alternative 'light touch' regulatory model to licensing in its submission to the Review. [24] Under this model, the Code would remain and the existing FDR framework would be enhanced in several key ways.

These amendments would include:

[24] ACCC submission, p 10

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- A requirement for franchisors to be listed on the FDR to grant new franchises;
- A requirement of listing that a franchisor had to comply with certain requirements;
- Conditions could be imposed on a franchisor to remain listed; and
- The listing of the franchisor on the FDR could be suspended or cancelled.

The FCA supports similar concepts as these being incorporated into the 2024 Code as part of the FAMO proposal.

Review support for an alternative approach

The Review made specific observations regarding this ACCC proposal, including:

> *"The ACCC suggested that the FDR could be leveraged to create tighter controls on the sector by becoming a **de facto licensing regime**."* [25] *(Emphasis added)*

The Review also observed that *"This idea was raised by other stakeholders"*. For example, one stakeholder suggestion for such an alternative approach included:

> *"The Disclosure Register could also be used as a form of control of over [sic] non-compliant franchisors, such that any franchisor who does not meet the criteria to register, or who is suspended or removed from the Register is effectively barred from granting further franchises (aside from resales of existing businesses on a franchisee to franchisee basis (versus franchisors on-selling company-owned outlets)).* [26]

The Review observed that:

> *" … there was … widespread support for it (the FDR) to remain a part of the regulatory environment."* [27]

The FCA supports these suggestions and believes that there are other industry-led improvements that would also significantly improve the

[25] Schaper Review, p 54
[26] J Gehrke, 2023 Submission to Franchising Code of Conduct Review p 3.
[27] Schaper Review p 55.

operation of the FDR and franchise sector regulation more broadly. These include:

- active monitoring of registration, FDR updating and compliance; and
- a program for substantially enhanced awareness of the existence of the FDR.

B2. The Franchising Accreditation & Mediation Organisation (FAMO)

Organisational purposes and structure

The organisational purposes of FAMO would include:

- **Confidence in the sector:** to strengthen compliance mechanisms, enhance transparency and build trust amongst franchisors, franchisees and consumers;
- **Preventative risk management:** to provide proactive education to minimise the likelihood of disputes and compliance issues (thus reducing reliance on reactive enforcement);
- **Business dynamism:** to provide a balanced co-regulatory approach which would support the entry of new, innovative firms and franchise models, fostering a dynamic and competitive market; and
- **Efficient regulation:** to avoid the high cost burdens associated with stand-alone licensing systems, thus ensuring efficient use of resources.

FAMO Charter

These objectives would be incorporated into a *FAMO Charter*. This would be prepared along similar lines as the *ATAS Charter* discussed in *Part A*. [28] The *FAMO Charter* would set out all of the high level strategic objectives and operational structures and processes within the FAMO approach. It would set out the legal and technical connectivity and interrelationship between FAMO, its Board and the mandatory 2024 Code.

Franchisors could be required to endorse the *Charter* as a pre-condition of accreditation (and thus listing on the FDR). It would be the *Charter* which would set out the industry-led requirements for accreditation, including requirements that franchisors agree to pay fees for

[28] See the *ATAS Charter* at *Attachment 5.*

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accreditation and fees for complaints lodged against their franchising systems. This would be a similar approach as applies under the ATAS model, and as also applies under the *Australian Financial Complaints Authority* (AFCA) model.

Organisational structure

FAMO could be a stand-alone company limited by guarantee, 100% owned by the FCA and its members. This model could operate in a similar manner under which the travel industry accreditation system is administered by ATIA (see *Section A2*).

The Board of FAMO would be essentially co-regulatory, and could include:

- an independent Chair;
- a representative of the ACCC;
- a representative of the Federal Treasury (or other Federal Government department);
- a franchisor representative; and
- a franchisee representative. [29]

FCA would provide the secretariat services to support FAMO, in a similar manner as under the successful ATIA self-regulatory approach.

Application of FAMO within industry – franchise management

There is a current approach under which *Franchise Advisory Councils* collaborate on change (and mitigate unforeseen negative effects of change) within individual franchise networks. The existing approach of *Franchise Advisory Councils* is best practice in franchise system management and collaboration.

In terms of existing internal change management systems, the FCA had developed a comprehensive list of *Franchisor and Franchisee Standards and Guidelines* to assist franchisors and franchisees to maintain effective and efficient internal change management systems. However, these are not in current use. The FCA will consider updating these *Standards and Guidelines* on an ongoing basis as a preventative initiative to support all franchisors and franchisees.

[29] A sector representative (e.g. from the FCA) could be included as an alternative/addition.

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Accreditation framework for franchisors

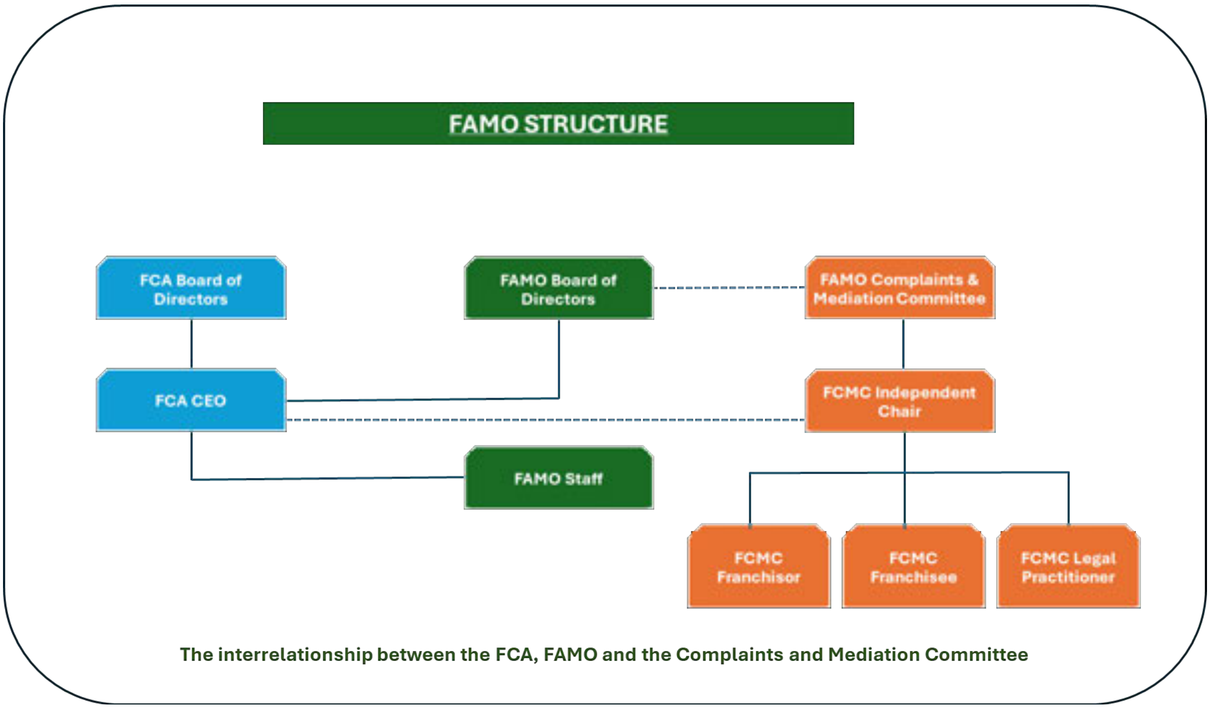
Franchisors would ***not*** be required to be FCA members to be accredited.

This is a critical element of the design of the FAMO co-regulatory model. As is the case with the ATAS model, travel advisers are not required, under the *ATAS Charter*, to be members of ATIA to obtain and hold accreditation under the *ATAS Scheme*. If accredited they are, however, required to agree to comply with their obligations and responsibilities under the *ATAS Charter.*

The establishment of FAMO as a separate company limited by guarantee would ensure the separation of the industry association role of the FCA from the accreditation and mediation/dispute settlement role of FAMO. Under one legal drafting option, an amended 2024 Code could refer to FAMO, but not to the FCA.

A flowchart of the architecture of FAMO is set out in *Figure 4* below.

Figure 4: Architecture of FAMO governance structure



Franchisee accreditation (new)

Increasing the rates of business success of new entrants and new firms as franchisees would be a key objective under the *FAMO Charter.*

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One option to further enhance business dynamism in the sector could be to require every franchisor listed on the FDR, as a minimum, to require future potential franchisees to undertake basic business skills training as determined by FAMO, prior to entering into a franchise agreement. This would not be a requirement for existing franchise agreements at the time of commencement of the FAMO model. That is, all existing franchise agreements at that time would be *'grandfathered'* and not required to comply with this obligation.

These minimum training requirements, able to be provided by multiple providers, would include a small number of essential business skills units as preconditions for participating in the sector as a franchisee. This would be a world-leading initiative with the specific aim of improving business dynamism and reducing firm failures in the franchising sector compared with other sectors of the Australian economy.

In terms of improved business dynamism, the aim would be to intentionally assist in the development of 'frontier firms' rather than 'laggard firms' across franchising. That is, to enhance the development of firms in the franchising sector with high levels of productivity, business dynamism and new technology uptake.

How FAMO would achieve the functions of a licensing system

As set out above, FAMO would seek to achieve all the functions of a heavy regulation licensing system, with reduced compliance and business costs for participants in the sector.

Timeline

The FCA proposes a *Timeline* for the implementation of the co-regulatory FAMO proposal which would target 1 November 2028 as the launch date.

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The individual milestones on this *Express Timeline* would be as follows:

FY27 (1 July '26 – 30 June '27)

- Government endorses a co-regulatory, industry-led approach without licensing;
- $5m funding (over 2 years, FY28 and FY29) for establishment of the co-regulatory model including FAMO, is announced in the MYEFO Nov/Dec 2026 or in the May 2027 Budget;

FY28 (1 July '27 – 30 June '28)

- Yr 1 of funding, to set up FAMO and the transition process;
- Co-funded by the industry;
- Treasury policy project to amend the 2024 Code to authorise FAMO to administer FDR (to launch on 1 November 2028), with new amended Code regulations to be made by the end of the 2027 calendar year (to allow 12 months prior lead time for all franchisors to achieve accreditation prior to 'launch');
- Education campaign for all franchisors to achieve accreditation with FAMO – 12 months duration – commences on publication of the amended Code in late 2027;

FY29 (1 July '28 – 30 June '29)

- Yr 2 of funding for FAMO, including preparation for transition of the FDR to FAMO;
- Co-funded by the industry;
- Education campaign for all franchisors to achieve accreditation with FAMO – 4-6 mths duration;
- **1 November 2028 -** FAMO accreditation precondition for FDR listing to grant new franchises goes 'live'**;**

FY30 (1 July '29 – 30 June '30)

- *No further government funding required for FAMO;*
- *Fully industry funded;*
- *One year anniversary – 1 November 2029;*
- *5 year cycle review of the 2024 Code takes place in calendar 2029, amendments to take effect from 1 April '30 – Treasury.*

FY31 (1 July '30 – 30 June '31)

- *Monitoring and independent review of the performance of the co-regulatory approach on 2nd anniversary (1 Nov '30).*

See the FAMO *Express Timeline* as set out in *Figure 5*.

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Figure 5: FAMO Express Timeline – 1 November 2028 Launch

Independent review

There could be an initial 2 year transitional period, during which Government would monitor and assess the effectiveness of the co-regulatory FAMO model. An independent review of FAMO could be undertaken after 2 or 3 years of operation. Amendments to the co-regulatory structure could be made during this period and in response to recommendations from the independent review.

The 5 year cyclical review of the 2024 Code is currently timed to take place in 2029, to enable amendments to be made with effect from 1 April 2030 (ie before the end of FY30). This process would proceed as planned.

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B3. Franchising Code of Conduct 2024

Continued application

The current 2024 Code would continue to operate under the FAMO model. The proposed review cycles for the Code would also continue to apply.

Regulatory Oversight by the ACCC

Under the FAMO proposal, the ACCC would continue to have responsibility for taking prosecution action for breaches of the 2024 Code (and for breaches of the ACL and the unfair contract provisions of the CCA, etc).

The ACCC already has early intervention powers to efficiently and effectively address many current issues in the franchising sector.

The ACCC provided helpful information in its submission to the Review regarding use of its compulsory information gathering power under the CCA (section 51ADD) as well as voluntary information requests to conduct early intervention 'compliance checks' on franchisors to assess their compliance with the Code. [30] For example, the ACCC undertook compliance checks of franchisors in the food services sector in 2019. The report *'Disclosure practices in food franchising'* was subsequently published and summarised key findings.

The FAMO proposal would effectively enable the ACCC to reallocate existing resources to further enhance these existing compliance activities.

Amendments required to apply FAMO

The *Online Safety Act 2021* (OSA) contains an extremely successful model of a co-regulatory, industry-led approach under which Codes of Practice are developed by peak industry bodies for approval by the *eSafety Commissioner*. These approved industry-led Codes then become mandatory under the OSA.

There is a process set out in the OSA under which the *eSafety Commissioner* has the authority to determine which peak industry

[30] ACCC submission, p 24.

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bodies will be responsible for producing the relevant draft Codes of Practice.

The OSA approach of specifically involving peak industry bodies in the development of regulatory provisions is an excellent precedent for an industry-led preventative approach in franchising.

This can be developed within the existing legislative framework of the CCA/Franchising Code structure, which already has an appropriate penalty regime. In the case of the FAMO proposal, FAMO would be specifically cited in the 2024 Code as the relevant body responsible for accreditation under the FDR framework and for mediation, alternatively the Code could refer to an entity/industry body approved by the Minister (similar to the OSA approach).

B4. Franchise disclosure register – accreditation function

Purpose

The Review found that the FDR regime was working well. [31] It also envisaged a future role for the FDR in a different regulation model.

Under FAMO there would be a strengthening of the FDR framework, and franchisors would be required to be listed on the register to grant new franchises. Additionally, to be listed on the FDR, a franchisor would be required to comply with certain requirements.

For example, a wide range of potential requirements could be included in the FDR framework as pre-conditions necessary to be satisfied in order to be listed on the FDR.

The 2024 Code would be amended to prescribe that FAMO, or an entity/industry body approved by the Minister, would have prescribed responsibilities in relation to the Code. [32] The Code would confer on that body the authority to list franchisors on the FDR and to impose conditions on a franchisor to remain listed where there were issues of concern regarding that franchise system. Similarly, FAMO would have the power under the Code to suspend or cancel the listing of franchisors on the FDR in prescribed circumstances.

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[31] Schaper Review, p 56.

[32] Similar to the *Online Safety Act/eSafety Commissioner* approach,

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FCA believes that the majority, if not all, of the benefits of heavier regulation under separate legislation can be realised with appropriate amendments and strengthening of the FDR framework, consistent with the ACCC *de facto* licensing proposal.

The FCA has a range of technical suggestions for further improving the functionality of the FDR, e.g. to better enable meaningful comparisons between alternative franchise systems.

No business model preconditions to franchise

FCA does not support the introduction of any business model preconditions for accreditation under the FAMO model.

As set out above, one option could be to require every franchisor listed on the FDR, as a minimum, to require potential new franchisees to undertake basic business skills training as determined by FAMO. These minimum training requirements, able to be provided by multiple providers, would include a small number of essential business skills units as preconditions for franchising.

Franchisors would be required to provide their *Annual Financial Return* to FAMO, which would conduct a solvency test on the accounts. This approach would be similar to the ATAS solvency testing methodology. If the franchisor did not satisfy the solvency test, FAMO would seek to work with the franchisor in an attempt to mitigate any possible insolvency event and/or make recommendations regarding remedial action options. This would essentially be a proactive approach.

A further consideration of accreditation would be to ensure that the franchise agreement being presented by the franchisor to the franchisee was compliant with the *2024 Franchising Code.*

Suspension

Under a strengthened FDR framework administered by FAMO, franchisors could have their listing suspended by FAMO, and thus not be able to grant any new franchise agreements until remedial and/or corrective action has been taken.

For example, a listed franchisor which breached a condition of its listing would be vulnerable to having that listing immediately suspended or cancelled in relation to the franchise activities. Possible sanctions could

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also include directions to rectify behaviour within a specified time period and committing to monthly financial reporting to FAMO. FAMO would be well placed given its extensive depth of industry experience to monitor behaviour and seek to assist the franchisor to undertake remedial actions with the express hope of a positive outcome prior to a business closure event.

Disclosure of information – education and resources

FCA considers that any criticisms of the level of awareness of the existing FDR could be overcome by the educational initiatives of FAMO.

This approach would ensure, for example, that any changes required to be made to the disclosure documentation under the FAMO model would thus become known very quickly by all potential franchisees.

B5. Mediation function and dispute resolution

Current resolution processes

There are relatively few barriers to accessing the current dispute resolution options. Mediation is fast and low cost. Costs are shared equally between franchisor and franchisee and the framework for identifying not only the nature of the dispute but also the views of the parties on how a dispute can be resolved is considered best practice globally.

One relatively minor existing barrier is the lack of awareness of mediation among existing and potential franchisees as a dispute resolution mechanism. This weakness would be directly addressed with industry education under the FAMO model.

Mediation is mainly requested by franchisees. Franchisors should be educated to be more proactive in the use of mediation to resolve disputes before they escalate and consume valuable organisational resources. This weakness would also be directly addressed with industry education under the FAMO model.

Improved complaints handling processes

The FCA wishes the sector to have effective and efficient complaints handling mechanisms and processes under the FAMO model.

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Franchisees who have genuine grievances or complaints regarding individual franchise systems should have easy and simple access to meaningful, timely and transparent complaints handling procedures.

The current harms within the sector can partially be addressed if franchisees are empowered by these mechanisms and processes to lodge complaints when they feel that such complaints are warranted.

There might also be opportunities to involve the franchise legal fraternity in improved complaints handling and referrals through education. A great number of the legal firms in Australia are active and contributing members of the FCA. They participate in FCA events, policy forums, webinars and conferences and would actively support an industry-led mediation service for their clients to seek remedies that bring mutual benefits to the parties.

FAMO would continuously seek to further improve the current mediation framework.

The alternative dispute resolution (ADR) processes through mediation or conciliation, have much lower costs than arbitration. The co-regulatory FAMO initiative would be a preferred approach to requiring mandatory binding arbitration (under possible amendments to the 2024 Code).

Complaints handling administration – FAMO Complaints and Mediation Committee (FCMC)

FAMO would have a *FAMO Complaints and Mediation Committee* (FCMC) separate from the FDR administration function.

FAMO would be prescribed to have the ability to deal directly with franchising complaints and address systemic issues as they emerge. FAMO would also be prescribed to have powers under the FDR framework to seek to satisfactorily resolve issues as they arise.

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The composition of the FCMC could include:

- An independent Chair;
- A franchisor representative;
- A franchisee representative; and
- A legal practitioner (retired or not in practice).

FAMO would become the first point of contact, and first port of call, for industry complaints relating to franchising. The complaints handing processes and protocols under the ATAS approach are operating extremely effectively and efficiently. Similar operational effectiveness could be achieved in an FCA-supported FCMC.

FAMO would seek to enhance cost-effective dispute resolution processes once formed.

FAMO could materially improve and enhance the current dispute resolution framework for franchising. This has been the experience of the ATAS dispute resolution outcomes in the travel sector.

The FAMO model, including the FCMC appeals process, proposes to follow the successful model of many large franchise systems which have their own internal complaints handling processes. These operate on the approach of a peer-to-peer review and they draw on mediators with specific industry experience (including experience of similar disputes during their time in franchising).

Self-regulatory approach of the Telecommunications Industry Ombudsman and AFCA

The *Telecommunications Industry Ombudsman* is a self-regulatory, non-government funded "free, fair and independent" ombudsman for phone and internet complaints by consumers (and businesses).

FAMO has the potential to achieve many of the successful outcomes of the industry-led Ombudsman approach in the telecommunications sector.

The FAMO model would also take a similar approach as generally applies under the *Australian Financial Complaints Authority* (AFCA) model.

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B6. Education and resources – franchisee focus

Background

Establishing FAMO to administer the FDR infrastructure would also enable more effective oversight of education and information dissemination by the sector itself.

As discussed earlier, the FCA wishes to proactively deepen its insights into the nature and substance of franchisee complaints in relation to franchise systems. This will enable FAMO to produce and refine targeted educational materials for franchisors and franchisees alike and to develop a range of appropriate preventative initiatives.

Pre-qualification for franchisees – business skills units

As discussed in *Section B4*, one initiative to advance the skill level of (potential) franchisees would require them to have completed a small set of essential business skills units before they entered into a franchise. This could become a requirement of an enhanced FDR with the objective of achieving higher levels of business dynamism in franchising.

These industry specific business skill units would be delivered by FAMO recognised providers. Details of the micro-credentials (on completion) would be housed in the FAMO database. This would enable FAMO accredited franchisors to validate via an *e-wallet* token system the completion of the required micro-credentials by potential franchisees.

Potential franchisees would also be able to confirm with FAMO that they are undertaking the approved business skills training with FAMO-approved providers. This would remove any risk of rogue or misguided providers falsely providing the credentials required.

The micro-credentials could consist of successful completion of the following essential business skills units:

a. Running a small business;
b. Cash flow for small business – obligations to government and staff;
c. Understanding the industrial relations system in small business; and
d. Understanding the Franchising Code.

There are many existing public and private providers in the market which provide such business skills training units. Consequently, it would

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be feasible for these courses to be embraced quickly and developed in line with the proposed implementation *Timeline.*

B7. Funding Model

$5m Government funding

The FAMO approach will be self-funding, after an initial set up period of 2 years. This was the approach that was successfully implemented in relation to the ATAS self-regulatory model.

$5m of Government funding is being sought for an initial 2 year set up and transition process (for FY28 and FY29). Industry would be co-contributing to funding costs in the initial 2 years.

FCA has prepared a detailed breakdown of the $5m budget funding proposal. The details of the proposed budget, across FY28 and FY29, are available on request.

FCA would provide secretariat services for payroll management, financial reporting, compliance and other functional oversights of FAMO.

Ongoing costs

The ongoing costs of the operation of FAMO would be derived from franchisor fees for being listed on the FDR and franchisor fees payable in relation to complaints handling. The ATAS self-regulatory model has not required any government funding contribution since the initial 2 year set up period. The FAMO proposal will operate on a similar basis.

Cost Benefit Analysis

FCA considers that a detailed *Cost Benefit Analysis* (CBA), utilising the framework preferred by the *Office of Impact Analysis* (OIA), will show that the co-regulatory FAMO proposal is likely to yield higher scores on business dynamism than any alternative heavy regulation model.

FCA is considering commissioning an independent CBA of the co-regulatory FAMO proposal.

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Conclusion

The *Franchising Accreditation and Mediation Organisation* (FAMO) would be a co-regulatory industry-led entity to oversee the regulation of franchising, without heavier regulation. This model could commence on 1 November 2028 and would be subject to an independent review after 2-3 years.

Such an approach would enhance business dynamism in the sector and is strongly supported by franchisors and franchisees.

July 2026

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Attachments – see separate *Document #2*

1 The Treasurer's letter to the Productivity Commission re regulatory reform priority
2 FCA response to the PC's online Questionnaire on *Pillar #1 Inquiry*
3 ACCC Complaints data
4 What is ATAS?
5 ATAS – *Charter*
6 ATAS – *Code of Conduct*
7 ATAS – *Solvency Definition criteria*
8 *ATIA Accreditation Complaints Appeals Committee* (ACAC) – Terms of Reference
9 ATAS – *Accreditation – March 2025 Update*
10 ATAS – Terms of current independent review

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