Creating a more dynamic and resilient economy inquiry

Questionnaire response 40

Name: Franchise Council of Australia Ltd

Submission date: 4/06/2025

1. Support business investment through corporate tax reform

1. What features of the Australian business environment have encouraged or restrained investment over the past 10 years?

The participant did not respond to this question.

2. What elements of the corporate tax system encourage and/or discourage investment and risk-taking?

The participant did not respond to this question.

3. Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the business/company tax system be reduced?

The participant did not respond to this question.

2. Reduce the impact of regulation on business dynamism

1. What areas of regulation do you see as enhancing business dynamism and resilience? What are the reasons for your answer?

The FCA believes that self-regulatory and co-regulatory models enhance business dynamism and firm resilience. For example, the FCA notes the self-regulatory model under which the travel industry operates an effective and efficient self-regulatory, industry-led accreditation scheme. This is a de facto licensing regime. The travel industry model is a world-leading approach which includes a voluntary code of conduct. The scheme includes a complaints and disputes resolution function, with no cost to consumers.

The Australian Travel Industry Association (ATIA) represents over 1,600 members and over 19,000 employees nationwide. Through its 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.

All State and Territory governments supported this model and repealed their respective Travel Agents Acts, under which travel agents were previously required to be licensed in order to do business as a travel agent. The last remaining piece of legislation was the WA Travel Agents Act, which was repealed in 2014.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 ATIA Travel Accreditation Scheme (ATAS). It is working very effectively after 12 years of operation and two independent scheme reviews. A third independent scheme review is currently underway.

ATAS 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’ logo, a symbol of quality and professionalism.

ATIA conducts comprehensive consumer education campaigns to encourage consumers booking travel to use ATIA accredited travel advisers. ATIA applies robust accreditation screening processes and reports that approximately 25% of accreditation applications are rejected. Accreditation requirements are set out in the ATAS Charter, with full transparency for all industry participants.

Travel intermediaries do not have to be current members of ATIA (the industry association) to be accredited under ATAS (the accreditation scheme). All accredited travel intermediaries are required to agree to abide by the ATIA Charter and the ATIA Code of Conduct. This is a voluntary self-regulatory Code which is not prescribed by any Federal, State or Territory legislation. The ATIA Code is an attachment to the ATIA Charter. The Code of Conduct is updated regularly and is currently in its 8th version (6 May 2024).

Business dynamism reporting and data

ATIA undertakes annual solvency and daily Directorship checks to ensure that accredited businesses are stable and not at risk. 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.

Under this approach all industry participants have access to fully transparent and up-to-date business dynamism statistics and data on a monthly basis. There is credible evidence of the extent to which the industry-led self-regulatory model has enhanced business dynamism within the travel sector and provided timely resolution of consumer complaints.

The franchising sector is seeking to establish a similar industry-led co-regulatory approach for franchising, without licensing, to further enhance business dynamism in the franchising sector.

2. How has your regulatory burden changed over time?

The franchising sector is subject to the mandatory 2024 Franchising Code of Conduct (the 2024 Code) under the Competition and Consumer Act 2010 (CCA). The ACCC is the regulator of the 2024 Code and the Federal Treasury has several key regulatory functions (see below). Predecessor codes were a 1998 Code and a 2014 Code. The Codes have been subject to multiple Government, Parliamentary and statutory (10 year sunsetting) reviews.

The franchising sector has been subject to a dramatically increasing regulatory burden in the last 10 years. Australia has, arguably, the most highly regulated franchising sector in the world.

The FCA has compiled a detailed Franchising Regulatory Burden Timeline (2014 – 2024) summarising these reviews and the accompanying regulation changes. The Timeline highlights the frequency and complexity of regulatory reviews in the sector. The FCA is not aware of any other sector of the economy which has been subject to such intensity of regulatory review and imposition of additional regulatory requirements. This Franchising Regulatory Burden Timeline will be attached as a Supporting Document to this response.

The regulatory burdens on franchisors have been growing over time, as a result of the implementation of the recommendations of these reviews. For example, the Federal Treasury now administers a publicly accessible Francise Disclosure Register (FDR) onto which franchisors are required to upload prescribed information. The 2024 Code also specifies in extraordinary detail the precise content of the Disclosure Document (DD) which all franchisors must provide to potential new franchisees prior to execution of the franchise agreement. These requirements include, for example, the precise information to be included on the first page of the DD and which entries on that page must be in bold upper case. This level of regulatory prescription hardly enhances business dynamism in the sector.

The FCA is extremely concerned regarding the possibility of the imposition of a heavy licensing regime as a result of the current Government/Treasury franchising licensing review. The sector opposes possible licensing as a further inhibitor of business dynamism and resilience in the sector. The sector has estimated the cost of such a regime as potentially being between $20m - $100m in net compliance costs.

3. What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience? What are the reasons for your answer?

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, similar to the travel sector model. Under this model an industry-led entity, the Franchising Accreditation and Mediation Organisation (FAMO) would oversee accreditation of franchisors and their listing on the Franchise Disclosure Register (FDR). It is widely confirmed that the FDR in its current government led format has little exposure and impact, something that an industry-led model would remedy.

The FCA does not support a heavy regulation licensing regime for franchising. A licensing regime is unnecessary, it will not address harms under the Australian Consumer Law (ACL), will substantially increase compliance costs and will constrain business dynamism.

Any harms in the sector, especially in relation to breaches of the ACL, need to be mitigated effectively and efficiently. There is no persuasive current evidence to justify heavy regulation licensing. The FCA is unaware of any compelling evidence of systemic Code-related harms in the sector since 2021.

The FCA is also concerned regarding the likelihood that a licensing regime will impose significant business costs, including unnecessary regulatory oversight, transitional, ongoing and operational constraints.

In summary, a heavy licensing regulatory regime is more likely to increase (not reduce) the barriers to business dynamism. It will also deter (rather than enhance) higher entry rates in franchising. Such a licensing approach is effectively likely to impede the development of more agile 'frontier firms' in franchising. Licensing is not supported by the sector.

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

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

FCA has recently become aware of some major global franchise networks who have chosen not to enter the Australian market because of concerns regarding the risk of licensing being imposed under the new 2024 Code.

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

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 licensing being imposed under the new 2024 Code.

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.

4. Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?

The ACCC and the Federal Treasury can be considered to be regulators of the 2024 Code.

ACCC: The FCA commends the ACCC for providing transparent data on the level of franchisee complaints it receives which may be an indicator of current Code-related harms. The clearest available data on the variations in harms over time has been provided by the ACCC in its submission to the Schaper review of the 2014 Code. In particular, the ACCC provided an extremely helpful summary of franchising-related reports and enquiries over a 15 year period (2008 – 30 June 2023).

The FCA notes that the ACCC's complaints indicator shows that most of the likely harms relate to conduct of more than 3 years ago. The ACCC specifically observed a " … reduction in franchising contacts since 2020 …".

The significantly higher levels of contacts prior to 2021 certainly corroborate the proposition that there are fewer harms now than in previous years.

Franchisee contacts with the ACCC regarding franchising issues are clearly trending downwards substantially and are at their lowest trend level since 2008. These are clear indicators that the 2024 Code (as amended) can continue to work well. The sector aspires to see those levels of contacts and complaints continue to fall.

The ACCC advised that it (then) received around 300 contacts per year (75% of which, or 225 approximately, were from franchisees). Of these, only 1 in 5 franchisee contacts (or 45 approximately) related to allegations of misconduct by a larger franchisor. The FCA is concerned regarding the issues potentially in dispute in every one of these complaints. Gathering more information regarding the nature of these issues is critical to enable the FCA to develop appropriately targeted educational materials for franchisors and franchisees alike.

The ACCC observed that the majority of current contacts are 'one-offs' (ie that a contact is the only one received about that franchise system for the year). This is hardly persuasive evidence of current systemic harms which need to be addressed by licensing.

From one perspective, 225/70,735 franchisees contacted the ACCC in that year. These are extremely low rates, by international standards. They clearly do not provide a sufficient rationale for introducing a heavy regulation licensing regime to replace the Code.

Treasury: As mentioned earlier, the Treasury now administers the FDR and the Secretary to the Treasury has regulatory authority to make Determinations regarding what categories of information are required to be disclosed by franchisors on the FDR. Several such Determinations have been made.

The FCA wishes to provide 2 examples of how policy makers and the Treasury, in particular, have recently demonstrated a beneficial understanding of the need to reduce the regulatory burden on the franchising sector.

The newly made 2024 Code contained unique grandfathering provisions which ensured that all 70,735 existing franchise agreements (entered into prior to 1 April 2025) would not be required to be remade to include the new provisions of the 2024 Code. The FCA and the sector had specifically sought such grandfathering provisions in their responses to the consultation process on the draft new Code. The Government's decision (presumably based on Treasury advice resulting from the outcome of those consultation processes) minimised unnecessary disruption on the entire franchising sector.

The FCA appreciates the fact that, in principle, those 70.735 franchise agreements did not need to be remade prior to 1 April 2025 as a direct result of this regulatory decision. The saving in compliance costs as a result was significant. The FCA commends the Government for taking this approach and notes that there were no similar grandfathering provisions at the time of the replacement of the 1998 Code with the 2014 Code.

Secondly, significant new provisions in the 2024 Code have a delayed commencement date of 1 November 2025. The Government's decision (presumably based on Treasury advice resulting from the outcome of the comprehensive consultation on the draft new Code) has provided the sector with adequate lead times (ie an additional 7 months) to accommodate these provisions in new franchise agreements entered into on and after 1 November 2025. The FCA and the sector had specifically sought, in the consultation process, a reasonable lead time before those new provisions became operative. The saving in compliance costs in not having to redraft existing franchise agreements to include these provisions by 1 April 2025 was significant.

Both of these policy recommendations by the Treasury demonstrated a beneficial understanding of the unnecessary administrative regulatory burdens which would have been imposed on the sector if grandfathering had not been provided, and if adequate lead times had not been prescribed for major new changes.

Cover sheet: Supporting document #1

PC: Business Dynamism – Supporting Document

Franchising Regulatory Burden Timeline

Highlights: 2014 - 2024

2024 – Schaper Review released, Government response, Exposure Draft of new Code, new Code made, licensing review commences
2023 – Schaper Review (sunsetting, 2 statutory reviews, PIR review)
2022 – Franchise Disclosure Register (FDR) amendments, RIS for FDR; penalties amendments
2021 – *Fairness in Franchising* amendments
2020 – New Vehicle Dealer Agreements (NVDA) amendments, RIS for *Fairness in Franchising* changes
2019 - Parliamentary Joint Committee (PJC) inquiry report: *Fairness in Franchising*; Taskforce.

Date	Initiative	Index	Further background
2024 Schaper Review released – Govt response - Exposure Draft of new Code – licensing review underway			
Nov 2024	*Licensing Review – Issues Paper released*	1	Feasibility of licensing (options) to be subject to a Cost Benefit Analysis by Treasury Licensing Taskforce
Nov 2024	*2024 Code released*		2024 Code to apply from 1 April 2025 (all pre-existing franchise agreements grandfathered); key new provisions commence on 1 November 2025 for all new franchise agreements
Oct 2024	*Exposure Draft of new Code released*	2	"*… reasonable opportunity*" provision for all new franchising agreements included in Draft
May 2024	*Govt Response to Schaper Review*	3	Treasury Taskforce to be established
February 2024	*Schaper Review - Post-Implementation Review of the 2021 NVDA provisions **	4	PIR, due to then PM's exemption from a RIS for the 2021 NVDA provisions
February 2024	*Schaper Report – statutory review of 2021 NVDA provisions*	5	Statutory review of 2021 NVDA provisions
February 2024	*Schaper Report – statutory review of FDR*	6	Statutory review of 2022 FDR provisions
February 2024	*Schaper Report released – sunsetting review*	7	
2023 Schaper Review – sunsetting review – 2 statutory reviews – Post-Implementation Review for NDVAs -			
September 2023	ACCC submission to Schaper Review	8	Identifies *de facto* licensing regime option (strengthening FDR) and includes detailed data on contacts/complaints (2008 – 2023) and Outcomes under the 2014 Code
August 2023	Schaper Review Consultation Paper	9	Treasury
August 2023	Schaper Review announced Terms of Reference	10	Treasury Secretariat

Date	Initiative	Index	Further background
2022 FDR amendments – FDR RIS – Penalties amended			
June 2022	***Franchise Disclosure Register (FRD) Regs***	11	***Competition and Consumer (Industry Codes-Franchising) Amendment (Franchise Disclosure Register) Regulations 2022***
June 2022	FDR 2022 Regs – *Explanatory Statement* tabled	12	Implements FDR recommendations from *Fairness in Franchising*
June 2022	Regulation Impact Statement (RIS) on FDR	13	Attachment C to the *Explanatory Statement* of the FDR 2022 Regs An Addendum to the August 2020 RIS on *Franchising Fairness*
2022	**Code penalties Regs**	14	***Competition and Consumer (Industry Codes-Franchising) Amendment (Penalties and Other Matters) Regulations 2022***
June 2020	Code Penalties 2022 Regs - *Explanatory Statement* tabled	15	
2021 *Fairness in Franchising* amendments			
September 2021	Exposure Draft – *FDR Regulations*	16	Treasury
September 2021	Government tables response to the Senate Inquiry	17	
August 2021	Treasury Discussion Paper: *Automotive Franchising*	18	Possible standalone automotive franchising code and options for mandatory binding arbitration.
June 2021	NVDA measures exempted by PM from Regulation Impact Analysis	19	A post-implementation review (PIR) of the NVDA provisions will be required.
June 2021	***Fairness in Franchising* and NVDA Regs** Implements response to *Fairness in Franchising*, and includes the second tranche of NVDA provisions – with effect from 1 July 2021	20	***Competition and Consumer (Industry Codes-Franchising) Amendment (Fairness in Franchising) Regulations 2021*** * inserts mandatory NVDA Clauses 46A and 46B, based on " … *substantial imbalance in bargaining power between vehicle manufacturers and dealers*." Does not incl FDR (to follow 1 yr later).
June 2021	*Fairness in Franchising* and NVDA 2021 Regs - Explanatory Statement tabled	21	
May 2021	2021-22 Budget provides funding for FDR	22	
April 2021	The small business function (and responsibility for the Code) is transferred to Treasury	23	
March 2021	PM and Minister announce that NVD Voluntary Principles will be made mandatory under the Code	24	
March 2021	*Senate Education and Employment References Committee* tables its inquiry report into new vehicle dealer franchising	25	***"Driving a Fairer Deal: Regulation of the Relationship between Car Manufacturers and car Dealers in Australia" – Senate inquiry***

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2020 NVDA amendments – RIS *Fairness in Franchising* amendments (excl FDR)			
December 2020	Minister releases 6 voluntary Best Practice principles to improve fairness and transparency in new vehicle arrangements	26	
June 2020	***NVDA Regulations 2020** tabled*	27	***Competition and Consumer (Industry Codes-Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020.*** Does not incl FDR (to follow 2 yrs later).
June 2020	NVDA 2020 Regs – *Explanatory Statement* tabled	28	First sector specific (ie automotive) part of the Code
August 2020	*DISER: Regulation Impact Statement: Changes to the Regulatory Framework Applying to the Franchise Sector (Final)*	29	Implementing *Fairness in Franchising* (excl FDR, to follow in 2022)
August 2020	*Government Response to the PJC Report "Fairness in Franchising"*	30	
2019 PJC "Fairness in Franchising" – Taskforce			
2019	DISER: Consultation DRAFT RIS on *Franchising Fairness response*	31	Excludes FDR
2019	Franchising Taskforce: *Issues Paper*	32	
June 2019	Govt Response to PJC	33	Minister establishes Interdepartmental Taskforce (DISER, Trsy and PM&C)
March 2019	*Parliamentary Joint Committee on Corporations and Financial Services* (PJC) tables inquiry report into the operation and effectiveness of the Code	34	***"Fairness in Franchising" – PJC.*** "information asymmetry" identified Does NOT recommend licensing 71 recommendations Recommends a Franchising Taskforce
2018 – New Car Dealers issues			
Dec 2018	Regulation Impact Statement on New Car Dealers - Treasury	35	Treasury released *Regulation Impact Statement (Franchise Relationships between Car Manufacturers and New Car Dealers)*
2018	*Parliamentary Joint Committee (PJC) on Corporations and Financial Services* – Inquiry into the operation and effectiveness of the 2014 Code	36	Announced inquiry
2017 – New car dealers issues			
2017	ACCC *Market Study of New Car Retailing*	37	
2015 New Code takes effect			
2015 2014	New **2014 Code** takes effect New 2014 Code made Explanatory Statement tabled	38	***Competition and Consumer (Industry Codes-Franchising) Regulations 2014.*** Took effect from **1 Jan 2015**. Applies to **conduct occurring on or after 1 January 2015** in relation to a franchise agreement entered into (or renewed, extended or transferred) from 1 Oct 1998.[1]

[1] *Annotated Franchising Code of Conduct*, S Giles, 3rd ed, p 10.

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