



6th December 2019

The Department of Employment, Skills, Small and Family Business
Attn: Franchising Task Force

Via email to franchising@employment.gov.au.

Dear Sir/Madam

Re: Franchising Task Force Regulatory Impact Statement

Please find below our comments **in blue** in connection with the RIS.

Please feel free to contact us if you would like to discuss any of these in further detail.

For your reference, you can find more information about our business at www.franchiseaccountingandtax.com.au. You may like to note that we deal with accounting advice for around 50 prospective franchisees per year.

Kind regards

Peter Knight FCPA
Director

Principle 1. Prospective franchisees should be able to make reasonable assessments of the value (including costs, obligations, benefits and risks) of a franchise before entering into a contract with a franchisor

Options considered under this principle include simplifying disclosure by requiring franchisors to provide important information to franchisees in a summary document, and government establishing a national franchise register where franchisors would be required to lodge their disclosure documents and template franchise agreements.

1. What are the critical pieces of information that should be contained in a summary document?

1. Name of Franchisor, Key Personnel and date of establishment
2. Number of franchise units in operation
3. Summary of the business (what the franchise is)
4. Length of the franchise term and renewal options
5. Total initial investment – Equipment, Fitout, Franchise and training fee etc (Appendix 1)
6. First 12 months sales (Appendix 2)
7. Summary financial information (Appendix 3)
8. Effect of rent increases over the period of the lease, example attached (Appendix 4)
9. Wages estimate based on staffing guidelines at their relevant award rates (Appendix 5)
10. Expectations regarding time commitment by franchisee and their role in the business

Regarding the inclusion of BAS. This does not provide meaningful information as it only shows sales, GST on sales, and GST on purchase, plus total wages.

A business that is for sale should provide financial statements for the previous two financial years (if business has been trading that long) as prepared by their accountant or from their financial records. The BAS can be used to verify these.

2. If a national franchise register is established, what information should it contain? What would be the benefits and costs of a national franchise register?

If such a register were to be created, we believe it should contain only the most basic of information: the name of the franchisor, their principal place of business, date of establishment, directors of the company and number of franchisees.

Benefits of a Register

- A central list of all franchises being offered for sale, hence statistics can be better kept

Risks of a Register

- Perception in mind of prospective franchisee that a franchise on the Register is somehow 'safe' or 'approved' by the mere fact it is on the Register
- May lead to a rating system, which pits one franchise against another, based on the views of the organisation which maintains the Register. Such a rating implies one system is 'better' than another, which could lead to market distortions.

3. There are a number of existing educational resources on franchising. What additional education options for prospective franchisees should be made available? If there was an online educational resource which brought together the available franchising education options, what would its costs and benefits be?

No Comment Offered

Principle 2. Franchisees should have time to consider whether the relationship is right for them before committing to an agreement

Options considered under this principle discuss changes to the current seven day cooling off period in the Franchising Code. This cooling off period is separate to the 14 day disclosure period which operates before a franchise agreement is entered into, renewed or extended.

4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods.

Disclosure Period

- We think 14 days is insufficient time to obtain professional advice from both a franchise accountant and lawyer. It is also inadequate to conduct full investigations as part of their due diligence.
- We think 28 days is appropriate.

Benefits of increasing disclosure period

- Potential franchisees have more time to undertake a more thorough due diligence, including professional advice and contacting current and former franchisees
- This means they have the opportunity to have a more measured consideration with the facts in front of them rather than a rush to get things done within the 14 days.

Costs of increasing disclosure period

- We believe no additional cost to franchisor or potential franchisees

5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?

We would think reasonable estimates can definitely be provided

6. How often are leasing arrangements finalised after the cooling off period expires? What are the implications of having the cooling off period commence after a lease is finalised?

No Comment Offered

Principle 3. Each party to a franchise agreement should be able to verify the other party is meeting its obligations and is generating value for both parties

Many franchise systems have a central marketing fund, made up of fees paid by franchisees to franchisors, to support marketing and advertising activities. Options considered under this principle include changes to the way marketing funds operate.

7. What would 'meaningful information' look like in terms of marketing fund disclosure?

Annual financial statements provided to franchisees reports by 1 October

Show separately for each of the following:

- Revenue Received from:
 - Franchisee units
 - Franchisor units
 - Franchisor additional contributions
 - Rebates received
 - Recharges
 - Sponsorship funds received

- Expenses
 - Accounting and audit fees
 - Advertising, split between, online, tv / radio, print
 - Creative Development
 - Media Placement
 - Exhibitions / conferences (for marketing purposes)
 - External consultants (with explanatory detail)
 - Marketing collateral
 - Costs of artwork and design
 - Print and distribution
 - Merchandise and promotional items
 - Telephone & technology
 - Travel & Accommodation
 - Wages and admin costs (of the franchisor) being charged to the marketing fund
 - Website
 - Development
 - Hosting and related costs

8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?

We think annual is sufficient. We think more than this is meaningless (eg some costs are seasonal) and confusing. Costs of compliance outweigh any benefits.

Principle 4. A healthy franchising model fosters mutually beneficial cooperation between the franchisor and the franchisee, with shared risk and reward, free from exploitation and conflicts of interest

No Comment Offered

Principle 5. Where disagreements turn into disputes, there is a resolution process that is fair, timely and cost effective for both parties

No Comment Offered

Principle 6. Franchisees and franchisors should be able to exit in a way that is reasonable to both parties

Options considered under the principle discuss franchisees exiting their agreements, including on a 'no fault' basis where the business is unviable.

14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?

No Comment Offered

15. If goodwill was required to be fully clarified in the franchise agreement, how might this be done in practice? What would be the costs and benefits of this approach?

There is a difference between the value of a business and goodwill.

The value of a business is what a willing buyer and a willing seller agree a business is worth in a free market with no undue pressure. There are a number of ways of determining the value of a business, and many factors to be considered and which vary over time.

Goodwill only arises and can only be accurately determined when a business is sold.

Goodwill is determined by deducting the value of the net tangible assets of a business from the sale price (or estimated value) of the business. For instance, if the value of a business is \$500,000 and the net tangible assets of the business were valued at \$350,000, then the goodwill is \$150,000



Goodwill is typically determined on a going concern basis. If the business is not a going concern, then there is typically minimal or no goodwill. For instance, at the end of the lease, the business may not be a going concern. If the site is closing after the term, then there is no goodwill.

Principle 7. The framework for industry codes should support regulatory compliance, enforcement and appropriate consistency

No Comment Offered

Appendix 1 – Summary of total initial investment

	\$ including GST
Initial Franchise Fee	
Training Fee	
Initial Marketing Fees (for new franchise marketing program)	
Vehicle	
Equipment	
Plans & Project Management	
Fitout	
Fixtures and Fittings	
Other equipment	
Other lump sum payments	
Bond for property	
Initial stock	

Appendix 2 – First 12 months sales

	1	2	3	4	5	6	etc
Number of stores							
High \$							
Middle \$							
Low \$							

This shows the highest, lowest and median sales excluding GST for all locations opened in the last 36 months.

Appendix 3 – Operating Costs Averages

- Cost of Goods Sold
- Wages
- Rent
- Royalty / Marketing levy

Appendix 4 - Rent increases

Starting base rent in the range \$X to \$Y

Base Rent increases of X% per year

This means rent increases as follows: (example showing \$100,000 base rent, 3.5% increase)

	Year 1	Year 2	Year 3	Year 4
Base Rent	\$100,000	\$103,500	\$107,122.50	etc

Appendix 5 - Wages (Example)

In order to operate the business you require the following minimum staff numbers:

- Full time owner/manager – x hours per week
- Assistant manager – x hours per week
- Staff level 1 – x hours per week
- Staff level 2 – x hours per week

The relevant Modern Award is xxxxxxxxx.

Base rates of pay under the Award are as follows:

(Summarise as appropriate)