

Good afternoon,

My name is Todd Sarris and I am the Managing Partner of Spartan Partners – a boutique franchise consulting and franchise mortgage advisory firm based in Sydney NSW.

Prior to establishing Spartan Partners in late 2020, for close to 7yrs I was a National Franchise Manager as part of the Commonwealth Banks Corporate Financial Services arm. My team exclusively managed a pure franchise banking portfolio made up of domestic and international franchisors, individual franchisees, and small to large multi-site franchisees. We supported with all lending and transactional banking requirements, but also managed the franchisor banking accreditation process.

On account of the above, I am very privileged to hold a very unique franchise industry perspective. My team and I were directly exposed to all things accounting, and legal with regards to both franchisor and franchisees. But most importantly, as dedicated franchise bankers there were many instances whereby prospective franchisees would approach us first – prior to engaging with the franchisor, their accountant or lawyer. As such, it is very likely that we were exposed to far more interactions than any other industry peers.

Moving forward, given my strong passion for the franchise industry, I look forward to contributing my humble feedback with regards to the proposed changes incorporated within the Exposure Draft.

The below relates to the attached: “Franchise Disclosure Register: Guide to Exposure Draft Regulations Sept 21” and seeks to answer questions contained on Page 15 of the document.

## **QUESTIONS:**

### **Draft Regulations**

#### **1. Are the amendments in the Exposure Draft likely to produce any unintended consequences?**

*Respectfully – absolutely. I personally believe there will be substantial unintended consequences of maintaining a public register of franchise disclosure documents. My greatest concerns can be broken down in to three key areas:*

- **MEDIA:** *I fear that the government has respectfully grossly underestimated the risk of intense and unrelenting media attention that will transpire from their ability to view every single franchise disclosure document at whim. The media will download disclosure document information, they will store information, they will compile spreadsheets, and they will begin to compare changes to a franchise system on a year-on-year basis. Should a franchise system – either at fault or due to external drivers outside of control – demonstrate negative outcomes (reduction in franchise sites, lacklustre growth relative to peers etc) it will likely be broadcast to the public. As a consequence, the specific franchise system may find their growth prospects heavily curtailed due to the negative media publicity and this could further have damaging outcomes to existing franchisee profitability and livelihood. Detailed media scrutiny poses a substantial threat to the franchise industry. More 7-Eleven scenarios will eventuate. Another Senate Enquiry will eventuate. It may create a vicious never ending cycle of media critique, senate enquiry, regulatory change etc.*

- **QUALITY AND CONSISTENCY:** *In my prior role as a National Franchise Manager for a major bank, I was privy to view many disclosure documents over my career. The quality of information contained varied starkly. Franchisors that had the ability to hire professional and experienced franchise consultants had Disclosure Documents that stood very far apart from franchisors that perhaps used – with all due respect - lower grade inexperienced franchise consultants. As a consequence, I fear an unintended consequence of making all franchise disclosure documents discoverable is that prospective franchisees may be subconsciously swayed by the quality of disclosure document in comparison as opposed to being properly swayed by marrying a franchise concept to their primary skills, experience, and abilities.*
- **SUBJECTIVE COMPARISON:** *A last major unintended consequence of amendments in the Exposure Draft is that I fear new companies may pop up whereby they charge a fee to prospective franchisees on account that they have perhaps consolidated and summarised all Disclosure Documents to a point that information can be sorted and ranked. The fee will be in return to gaining access to this information. This already takes place with some independent businesses subjectively “ranking” franchise brands by providing stars of which I strongly disagree with the practise. But it could morph further where the ranking is based on royalty and advertising fee structures etc. As an experienced franchise banker, new “ranking” or “data mining” businesses post a substantial risk to the industry. Maintaining strict privacy, a common theme to franchise banking customers whom excelled in their chosen brand was that there was a strong synergy between the successful franchisees skills, ambition, and drive to that of the franchisor, its brand and processes. The converse is also true, franchise banking customers whom had fallen in to loan default on average held a disconnect to the franchisor, its brand and processes (of course there were select instances where default was outside the franchisee control too). If prospective franchisees gain access to new franchise disclosure “data mining” type companies, they may start to rank franchise brands to invest in strangely primarily based on upfront fees, royalty and advertising fees etc as opposed to aligning themselves based on their strengths, skills, and personality matches etc. I suspect a larger proportion of prospective franchisees will end up making incorrect choices and thus create more noise for the industry as a consequence.*

**2. Are there any consequential amendments to the Franchising Code which may be required which aren't reflected in the Exposure Draft?**

*With the above dot points in mind, only dot point (2) presents an opportunity to suggest an amendment:*

- **QUALITY AND CONSISTENCY:** *I would highly recommend an “accreditation” program be established whereby 5-10 firms per State & Territory be designated as exclusive drafters of Franchise Disclosure Documents. The drafters would undertake a government vetting process. What this would do is create a complete level playing field whereby prospective franchisees do not arbitrarily and subconsciously rank franchise brands based on the quality of their Disclosure Document. All franchise disclosure documents would be of an equal calibre of quality. In line with this recommendation, I too would highly recommend the government sets standardised franchise disclosure preparation & maintenance fees. This would ensure that small, medium, and large franchisors have equal access to the highest quality of disclosure document drafting possible. Both recommendations would set a level playing field.*

**Information on the Register**

**3. Is the information to be included on the Register appropriate?**

*Yes. Most information to be contained in the Register will be appropriate. I highly agree that the Register abide by privacy provisions and not include any franchisee individual contact information.*

**4. Are there other types of information, not within the existing scope of disclosure, that are important for the prospective franchisees to compare?**

*Yes. As a long term franchise banker, the one piece of information that prospective franchisees so desperately require to assist in their due diligence process is access to comparable financial benchmarks for the particular franchise brand. In the quick service restaurant (QSR) industry as an example, a food court site operates completely differently to a street strip site that operates completely differently to a standalone site that operates completely differently to a drive thru site. If a prospective franchisee does not have access to compartmentalised financial benchmarks (sales, COGs, common expenses etc) relative to site description – then financial due diligence may be fundamentally incorrect. This can be overcome by the franchisor being mandated to disclose this information. The financial benchmark information can be disclosed to prospective franchisees with certainty given franchisors always have direct access to sales, COGs, and other known expense information (rent etc). My small reservation in this proposal is that the media too could obtain access to this information and could present a threat to the industry if negative outcomes were communicated to the wider public. A balance somehow needs to be achieved.*

*Without question, poor financial due diligence is the single greatest contributor to a prospective franchise failing. This failure rate needs to be reduced as much as possible. This can part be achieved through the access of accurate compartmentalised financial benchmark information.*

**5. Is the information to be redacted from the franchisors Disclosure Documents appropriate?**

*No. Respectfully, as a long term franchise banker, I fundamentally believe that franchise systems flourish on the basis of trust. At the end of the day there is a tripartite relationship established between the franchisee, the franchisor, and the funding bank. Trust gets eroded when the franchisor withholds critical information from the franchisee and vice versa. On this point, I strongly believe that franchisor supplier rebates must be fully disclosed. They do not need to be disclosed at the micro level as I appreciate this has wider competition ramifications. However I strongly believe it should be reported as an average percentage of average sales. That way the prospective franchisee can accurately quantify if the royalty and advertising fees are low on account that the net difference is made up from supplier rebates and vice versa.*

**Traditional Arrangements**

**6. Are the transitional arrangements appropriate?**

*Yes – but to the extent that additional amendments following this consultation do not place greater strain on franchisors to have to meet new requirements. Covid appreciably has been very stressful for many franchise brands.*

**Online Portal**

**7. Is the proposed portal functionality fit-for-purpose?**

*Further to my comments made above, my idea of the purpose to making franchise Disclosure Documents publicly available is that it elevates the onus on the franchisor to maintain timely and accurate information for prospective franchisee benefit. However, I please urge the government avoid scenarios where prospective franchisees have the capacity to download all disclosure documents, sort, and then rank based on arbitrary items such as fees charged by franchise systems etc. If this is allowed, I am confident that the franchise industry will experience more franchisee failures given mismatch in franchisee to franchisor. As such, the public should not have access to all information. They should be required to individually place the name of the brand they have an interest in and only that disclosure document be displayed. This hopefully will remove the prospects urge to compare to widely.*

**8. Do you have any other suggestions on how to ensure franchisees and users of the portal understand that information on the Franchise Disclosure Register is not endorsed or checked by the Government?**

*With all due respect, this warning needs to be shown at the interval before the searched disclosure document is presented. So when the prospect searches "Subway" as an example, a disclaimer window pops up that warns the person that the information contained has not been checked or endorsed by the Government etc. I though do believe that should a 7-Eleven type scenario present itself in the future, the media will seek to pass some blame on the government for not checking key trends presented through the year-on-year upload of information.*

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I hope the above answers have been valuable.

You are most welcome to reach out to me individually should you need any clarification of further information. I am always happy to help. I have a strong passion for the franchise industry and would love to see it succeed and flourish.

Kindest regards



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