



**The Cheesecake Shop Pty Ltd**  
ABN 54 059 134 431  
PO Box 202, Villawood, NSW, 2163  
2 Lisbon St, Villawood, NSW, 2165  
P: 02 9723 1011

28<sup>th</sup> October 2021

Small and Family Business Division  
Treasury  
Langton Cres  
Parkes ACT 2600

Email: [franchisedisclosureregister@treasury.gov.au](mailto:franchisedisclosureregister@treasury.gov.au)

## **SUMISSION BY THE CHEESECAKE SHOP FRANCHISE DISCLOSRE REGISTER**

**Summary:** A logical flaw is apparent in the proposed legislation. The purpose of a Disclosure Document is to inform prospective franchisees of the commercially relevant information to make an informed decision and such information by its nature is commercially sensitive. Redacting all such commercially sensitive information will therefore render a Disclosure Document useless for the purpose it is intended. People who are not intending to use the information for a genuine purchase or for legal compliance reasons, have no need to see the Disclosure Document.

**Proposal:** The Franchise Disclosure Register should only be available for access by the ACCC or other relevant government agencies on the condition of confidentiality.

**Background on The Cheesecake Shop:** The Cheesecake Shop is a business format franchise system established for over 30 years with 224 The Cheesecake Shops throughout Australia and New Zealand. We are a two-time winner of the Franchise Council of Australia's, 'Franchise System of the Year', most recently in 2020. We pride ourselves on a high level of transparency and detailed disclosure of historical financial information to our current and prospective franchisees.

**Commercially Sensitive Data Should be in the Disclosure Document:** A good disclosure document needs to reveal detailed historical financial data and confidential information throughout the Disclosure Document. Most sections of the current disclosure document are improved when actual and accurate financial ratios and revenue and expense ranges are disclosed.

**The Disclosure Document is Already provided to Those That Need It:** The Franchising Code already provides for distribution of the Disclosure Document to a prospective franchisee or a current franchisee renewing and agreement. These recipients will have demonstrated a genuine need to see this information and executed a non-disclosure agreement.

**ACCC Already Has Access to Disclosure Documents:** The ACCC currently has powers under section 51ADD of the Competition and Consumer Act 2010 to request a copy of a disclosure document and critique the document as it sees fit.

**The General Public and Competitors Should Not Have Access to Commercially Sensitive Information:** What reason does the public, including our competitors, landlords, other suppliers, have to see our commercially sensitive information? We do not think there is a case for this. Showing them, is commercially damaging, providing insights to our competitors or information to our suppliers which may unfairly enable them to negotiate.

**Redacting Commercially Sensitive Information should make a Disclosure Document Meaningless:** If the purpose of the Disclosure Document is to provide sufficient insight to a prospective franchisee about the commercial situation of a franchise opportunity, then commercially sensitive information must by its nature be central to the purpose of the document. It therefore follows, that if redacting all such commercially sensitive information is proposed, then the result should be meaningless information provided by way of any public register.

**Disclosing Commercially Sensitive Information Disadvantages a Franchisor AND Its Franchisees:** If redaction of all commercially sensitive information is not permitted or is limited in some way, then this places Franchise systems at a commercial disadvantage to its competitors and suppliers. Franchising provides much benefit to the economy and supports and encourages small business that is compliant with regulations and standards, including Fairwork obligations. What social purpose or fairness is exhibited if franchising is subject to a level of disclosure that disadvantages it and for which competitors are not subject.