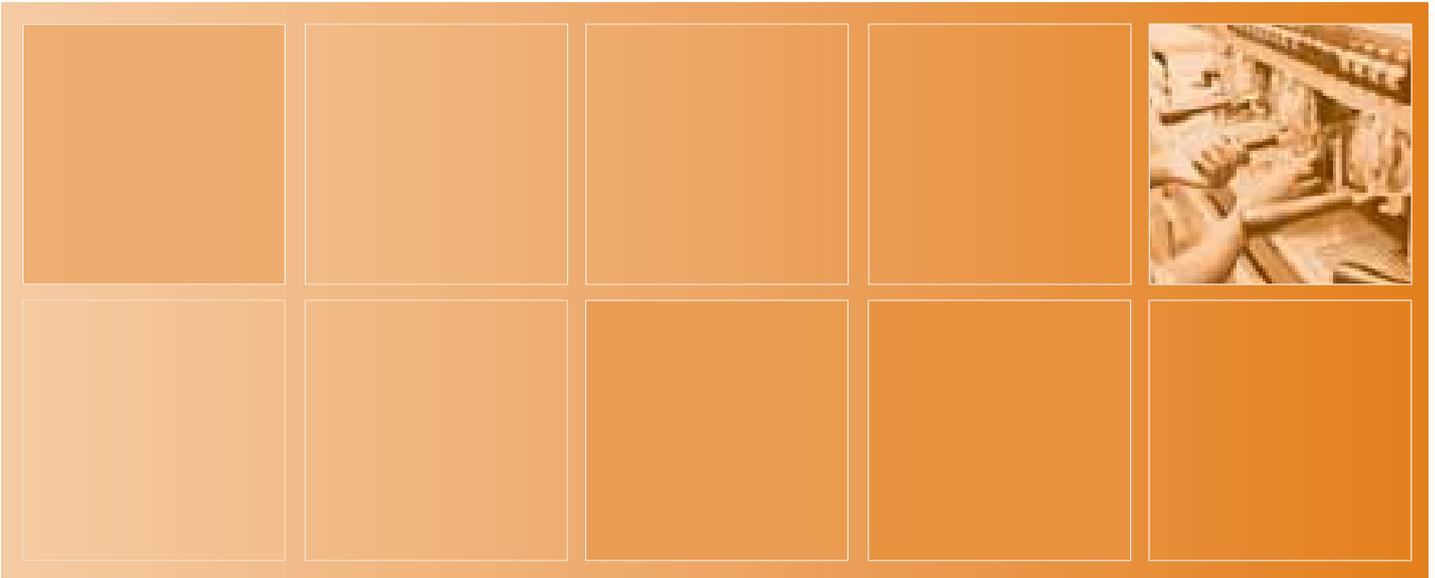




Australian
Competition &
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Commission

FRANCHISING CODE OF CONDUCT COMPLIANCE MANUAL

for franchisors and master franchisees

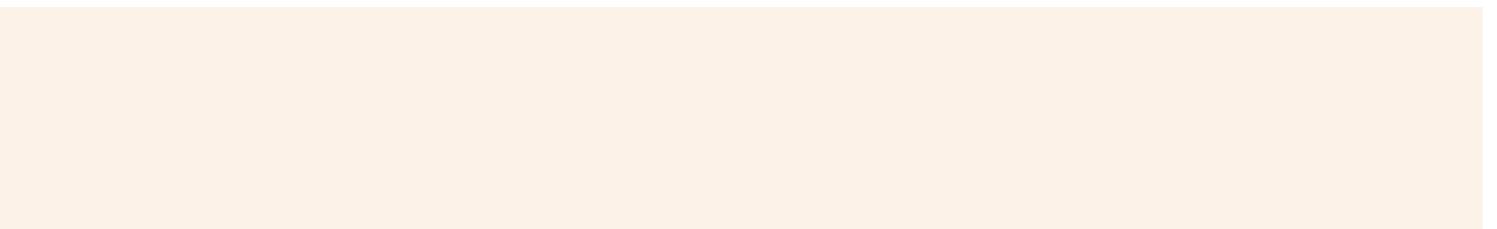
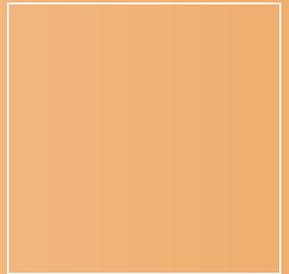
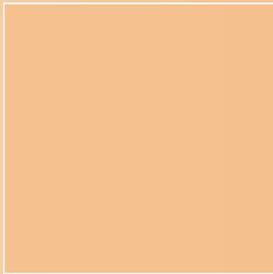
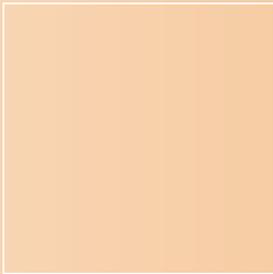
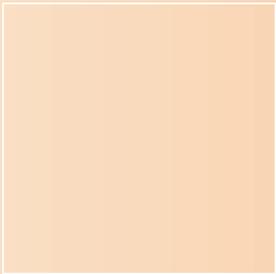
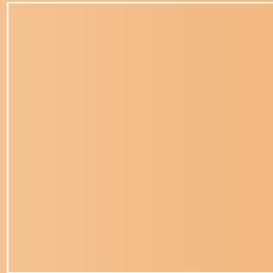
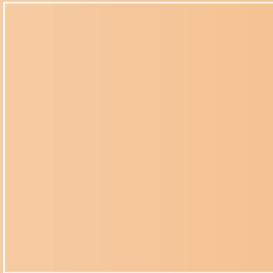
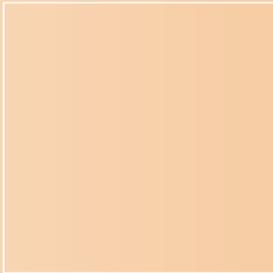
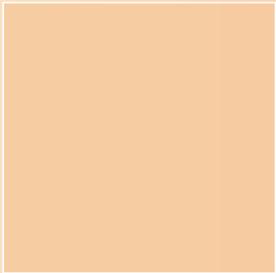




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Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory 2601

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GLOSSARY

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| associate | <p>A person who has a relationship that is relevant to the franchising system—including supplying goods, real property or services to a franchisee—with the franchisor, and who:</p> <ul style="list-style-type: none">• is a director of the franchisor or• is a related body corporate, or a director of a related body corporate, of the franchisor or• is a partner in the franchisor or• owns or controls—or has voting powers of—at least 15 per cent of the issued voting shares in a franchisor that is a proprietary company. |
| franchise | <p>Includes the following:</p> <ul style="list-style-type: none">• the rights and obligations under a franchise agreement• a master franchise• a subfranchise• an interest in a franchise. |
| franchise agreement | <p>An agreement (either written, verbal or implied) between a franchisor and a franchisee that has the following characteristics:</p> <ul style="list-style-type: none">• one party (the franchisor) grants another party (the franchisee) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, suggested or controlled by the franchisor or their associate• the franchise business will be substantially or materially associated with a trademark, advertising or commercial symbol owned, used, licensed or specified by the franchisor• the franchisee is required to pay, or to agree to pay, a fee before starting or continuing the business. |
| franchisee | <p>Includes the following:</p> <ul style="list-style-type: none">• a person to whom a franchise is granted• a person who otherwise participates in a franchise as a franchisee• a subfranchisor in their relationship with a franchisor• a subfranchisee in their relationship with a subfranchisor. |
| franchise system | <p>Includes a business system in which a franchisor grants a franchise to a franchisee.</p> |

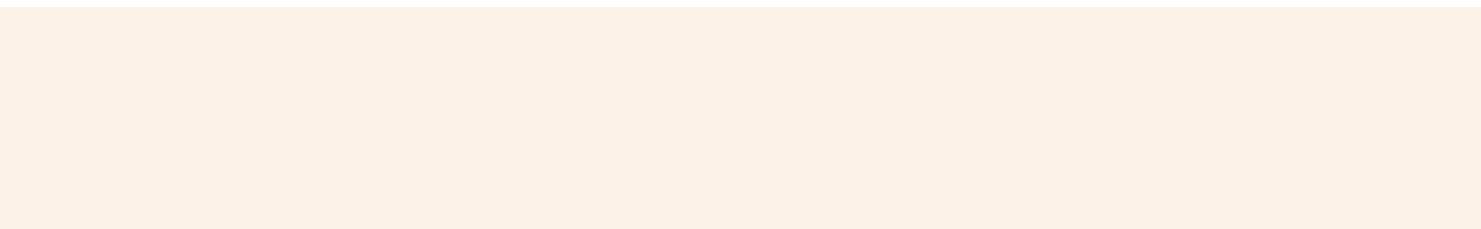
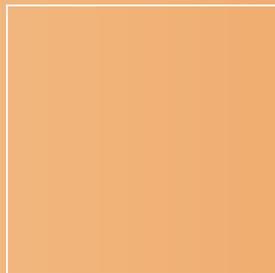
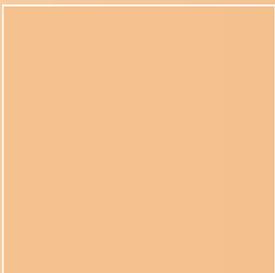
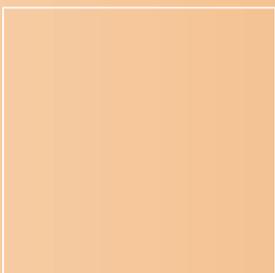
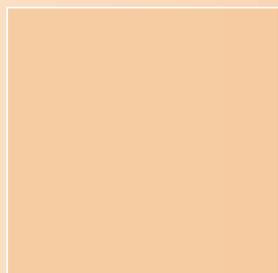
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| franchisor | <p>Includes the following:</p> <ul style="list-style-type: none">• a person who grants a franchise• a person who otherwise participates in a franchise as a franchisor• a subfranchisor in their relationship with a subfranchisee• a master franchisee in a master franchise system• a master franchisee in their relationship with a franchisee. |
| interest in a franchise | <p>Includes a legal or beneficial interest in:</p> <ul style="list-style-type: none">• a franchise agreement or franchised business• shares or voting rights in a corporation (other than a listed corporation) that owns a franchised business• units or voting rights in a unit or other trust that owns a franchised business• the capital or income of a partnership that owns a franchised business. |
| master franchise | <p>A franchise in which the franchisor grants to a subfranchisor or master franchisee the right to:</p> <ul style="list-style-type: none">• grant a subfranchise or• participate in a subfranchise. |
| master franchisee or subfranchisor | <p>A person who is:</p> <ul style="list-style-type: none">• a franchisee in relation to a master franchise and• a franchisor in relation to a subfranchise granted under the master franchise. <p>Note: Master franchisee and subfranchisor have the same meaning under the Franchising Code of Conduct (the code).</p> |
| motor vehicle dealership | <p>A business of buying, selling, exchanging or leasing motor vehicles that is conducted by a person other than a person who is only involved as a credit provider, or provider of other financial services, in the purchase, sale, exchange or lease.</p> |
| novation | <p>The termination of a franchise and entry into a new franchise with a proposed transferee on the same terms as the terminated franchise.</p> |
| prospective franchisee | <p>A person who deals with a franchisor for the right to be granted a franchise.</p> |

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| serious offence | <ul style="list-style-type: none"> • An offence under any law of the Commonwealth or a state or territory for which, if the act or omission had taken place in the Jervis Bay Territory, a person would be liable, on first conviction, to imprisonment for a period of not less than five years, or • A contravention of any provision of the <i>Corporations Act 2001</i>. |
| the Act | The <i>Competition and Consumer Act 2010</i> |
| trademark | A sign (including any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent (or any combination of these)) used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person (Trade Marks Act 1995, s. 17). |
| transfer | Includes an arrangement in which a franchise is granted, transferred or sold to another party. |
| transferee | A franchisee who seeks to acquire a franchise business through either transfer or novation of the franchised business. |

Note: The following terms used in this manual have the meanings set out in the *Corporations Act 2001*:

- accounting standard
- ACN
- ARBN
- body corporate
- consolidated entity
- director
- externally-administered body corporate
- insolvent under administration
- listed corporation
- misconduct
- officer
- proprietary company
- registered company auditor
- registered office
- related body corporate
- small proprietary company.

1. INTRODUCTION



1.1 About this manual

This compliance manual outlines the rights and obligations of industry participants as set out in the Franchising Code of Conduct (the code). It has been designed to reflect the structure of the code for ease of reference.

The manual is designed to help franchisors:

- understand and comply with their responsibilities and obligations under the code and the *Competition and Consumer Act 2010* (the Act)
- understand the minimum business conduct and disclosure requirements under the code
- understand how to resolve disputes under the code
- establish a framework for an effective compliance program.

Structure of this manual

This manual is divided into seven chapters:

Chapter 1: Introduction—outlines the structure of the manual and provides an introduction to franchising in Australia as well as information on the background, purpose and application of the code.

Chapter 2: Disclosure relating to franchise agreements—outlines the information that must be provided to franchisees before entering into and during the term of a franchise agreement, as well as the advice which should be sought by a franchisee. It also includes a checklist for disclosure documents under the code.

Chapter 3: Conditions relating to franchise agreements—covers conditions relating to franchise agreements, including the cooling-off period, franchisee associations and the transfer and termination of franchise agreements. It also includes a checklist for the conditions of franchise agreements.

Chapter 4: Dealing with disputes—discusses options available for dispute resolution generally and, in particular, the procedures provided in the code for appointing a mediator for a dispute. It also includes a checklist for resolving disputes.

Chapter 5: What if you don't comply?—discusses who is liable for a breach of the code, what you should do if you believe you are in breach of the code and the remedies available for a breach of the code.

Chapter 6: Other obligations under the Act—describes other obligations under the Act, including those relating to unconscionable conduct, misleading conduct and anti-competitive conduct, and when the ACCC can grant authorisation or accept notification of certain actions that may otherwise be unlawful under the Act.

Chapter 7: Compliance programs—briefly summarises the key principles for compliance contained in *Australian Standard 3806–2006: Compliance programs* and provides a framework for how an effective compliance strategy can be implemented to achieve compliance with the code.

Checklists and other documents

A disk containing the following is available with the hard copy of this manual:

- the electronic version of this manual
- the checklists from the manual
- sample disclosure documents.

Note: these disclosure documents are sample documents only and should be modified to meet your particular needs.

1.2 An introduction to franchising in Australia

The franchising sector

Franchising has become a popular way of doing business in Australia. Over the past decade, the franchising sector has become a thriving small business sector that makes a significant contribution to the Australian economy. The franchising sector attracts many people to become franchisors and franchisees and employs hundreds of thousands of Australians in many different and varied industries.

Becoming a franchisor or a franchisee is a major decision. Franchising often requires a significant investment of both finances and hard work. Someone who is deciding to enter a franchise arrangement should consider their options very carefully and should base their decision on accurate information and sound advice.

There are many successful franchise businesses in Australia—and by doing your homework, ensuring you comply with the law and making the right decisions you too could be a success story.

Franchisor–franchisee relationships

While many franchises are successful, as with any business there are risks involved. It is vital to a franchise system that the franchisor and their franchisees have a good working relationship. Because you are both working toward the same goal—a successful franchise—it is important that you are careful to select a franchisee that is a good fit for your franchise business. It is equally important that you properly support the franchisee in understanding whether entering into your franchise is a good fit for them. For this reason the code, which will be discussed in more detail throughout this manual, requires you to provide the franchisee with specific information in a disclosure document before entering into a franchise agreement. To assist them in making their decision, you are also required to advise the franchisee to seek independent legal, accounting or business advice before entering into the franchise agreement.

Another way you can assist your prospective franchisee is to advise them to complete a franchisee pre-entry education program.

1.3 About the code

Background and purpose of the code

In 1998, the Australian Government introduced the code as a mandatory industry code prescribed under the Act.

As a prescribed industry code of conduct, the code has the force of law and is binding on franchisors and franchisees.

The code aims to regulate the conduct of participants in franchising towards each other and aims to ensure that franchisees are sufficiently informed about the franchise before entering into it. The code also provides a mechanism for franchisees and franchisors to try to resolve disputes by using a cost-effective dispute resolution procedure.

You and the franchisee will also be required to adhere to other legislation (for example, the fair trading acts in the states and territories) as well as other obligations under the Act. Some of the other obligations under the Act—relating to, for example, misleading, unconscionable and anti-competitive conduct—are discussed in chapter 6 of this manual.

Information about other regulations relevant to your business can be found at www.business.gov.au.

Franchising policy

The ACCC is not responsible for franchising policy. The Department of Innovation, Industry, Science and Research (DIISR), as a part of its policy responsibilities, provides policy advice and support to the Australian Government on franchising matters. Further information on the role of DIISR is available on the DIISR website (www.innovation.gov.au).

Structure of the code

The code is divided into four parts:

Part 1: Preliminary—this sets out who the code applies to and key definitions under the code.

Part 2: Disclosure—this outlines the information which must be provided to franchisees prior to entering into and during the term of a franchise agreement, as well as the advice which should be sought by a franchisee.

Part 3: Conditions of the franchise agreement—this sets out the requirement to include certain terms in your franchise agreement and regulates the transfer, termination and renewal of franchise agreements.

Part 4: Resolving disputes—this sets out a process for dealing with disputes, including a mediation requirement.

1.4 Does the code apply to you?

You will need to ask yourself a number of questions to determine whether the code applies to you. Answering these questions will help you understand your obligations under the code.

What is a franchise?

A franchise is a specific type of business that is regulated by the code. In a general sense a franchise is a business arrangement in which knowledge, expertise and a trademark or trade name are licensed to a franchisee, for an initial fee and under specific conditions. These arrangements are formalised in a franchise agreement between a franchisor and its franchisees. A franchise agreement has a specific meaning under the code.

So that you are properly able to understand your rights and obligations under the code you will need the answers to the following questions.

- Am I a franchisor?
- What is a master franchisee or subfranchisor?
- Who is a franchisee?
- Do I have a franchise agreement?
- When doesn't the code apply to a franchise agreement?

Am I a franchisor?

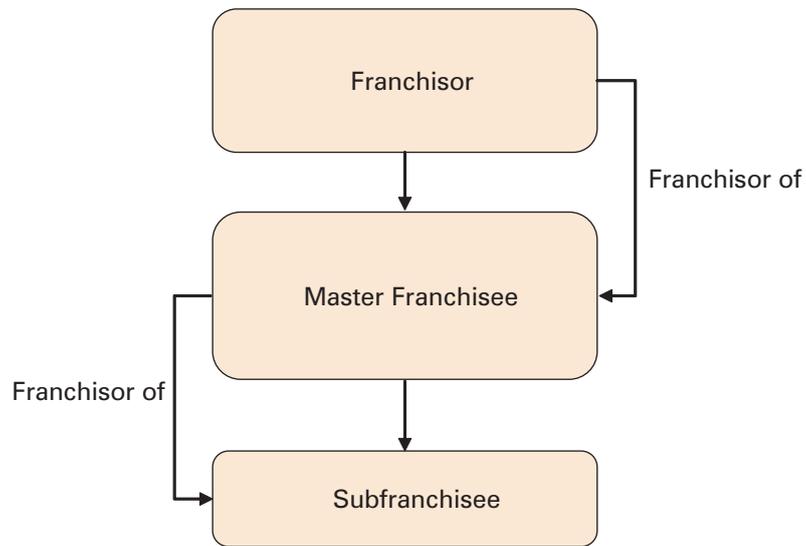
The code applies to franchisors and franchisees as they are defined in clause 3 of the code. If you are a franchisor you will need to be aware of your obligations under the code.

Who is a master franchisee or subfranchisor?

If you are a master franchisee you will need to ensure that you are aware of your responsibilities under the code because you will have the same responsibilities as a franchisor.

In general, a master franchisee is someone who has been given the right, by a franchisor, to operate a master franchise. Given that there are often many franchisees in a franchise system, the franchisor may appoint a master franchisee to coordinate the franchise in a particular geographical area (for example they may put one master franchisee in each state and territory).

Figure 1 should help you understand where a master franchisee sits in a master franchise system. It also demonstrates that there can be more than one franchisor in a master franchise system. The code applies equally to both franchisors in this master franchise system.

Figure 1: Franchisors in a master franchise

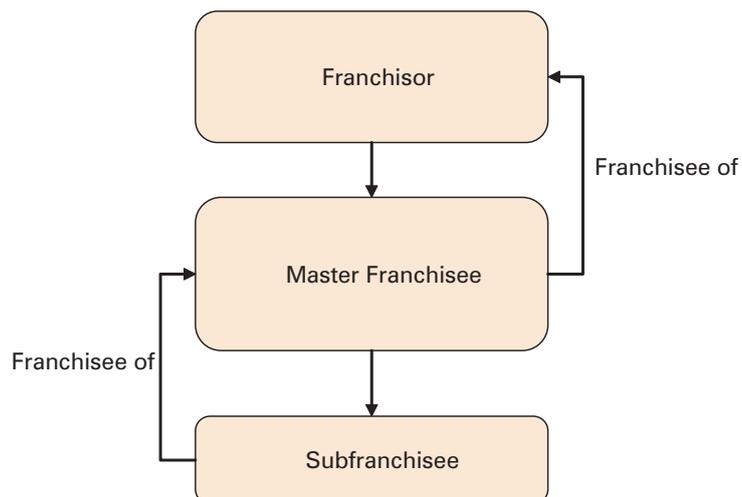
Who is a franchisee?

In its most simple form, a franchisee is a person to whom a franchise is granted.

It may, however, be more difficult to work out who is a franchisee in a master franchise system.

Figure 1 shows that there can be more than one franchisor as defined in the code in a master franchise structure. Similarly, there can be more than one franchisee in a master franchise. A master franchisee will have obligations to their subfranchisees and rights in relation to their master franchisor.

This is more clearly demonstrated in figure 2.

Figure 2: Franchisees in a master franchise

While they are not technically a franchisee as yet, it should also be noted that prospective franchisees also have certain rights under the code. A prospective franchisee is a person who deals with a franchisor for the right to be granted a franchise.

Do I have a franchise agreement?

Now that we have identified the different parties involved in a franchise or master franchise system, we need to understand what a franchise agreement is. Essentially the franchise agreement encompasses the terms and conditions on which a franchise will operate. If you enter into, renew, extend or extend the scope of a franchise agreement, you will need to ensure that you comply with the code.

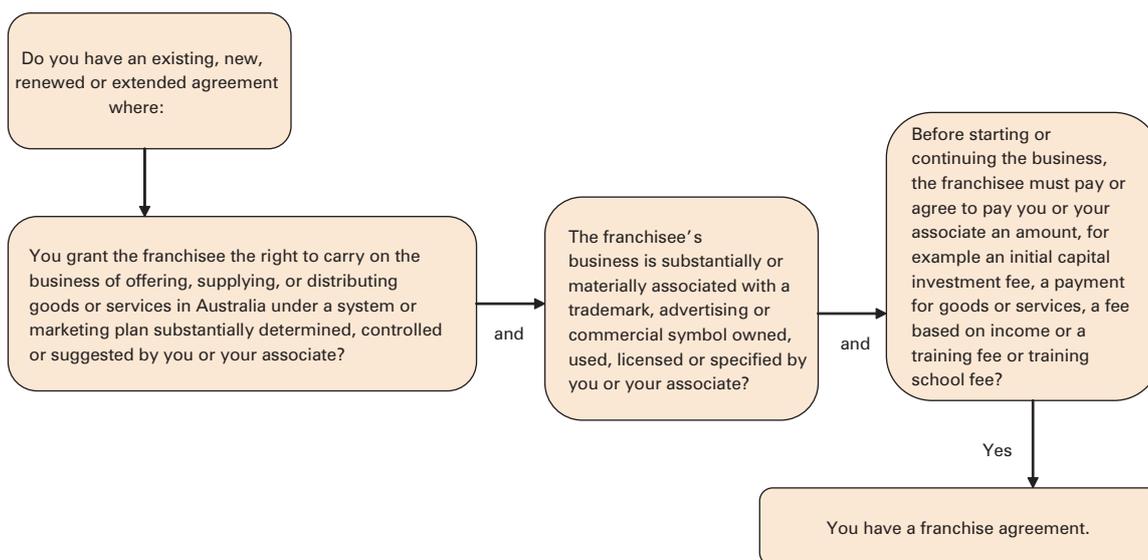
So what is a franchise agreement? A franchise agreement under the code is an agreement (either written, verbal or implied) between a franchisor and a franchisee, with the following characteristics:

- the franchisor gives to the franchisee the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor
- the operation of the business is substantially or materially associated with a trademark, advertising or commercial symbol that is owned, used, licensed or specified by the franchisor (or an associate of the franchisor)
- the franchisee is required to pay, or agree to pay, a fee to the franchisor (or their associate) before starting or continuing the business, which may be:
 - an initial capital investment fee
 - a payment for goods or services
 - a fee based on a percentage of gross or net income
 - a training fee or training school fee.¹

The term franchise agreement also includes a transfer, renewal or extension of a franchise agreement, and a motor vehicle dealership agreement.

If you have an agreement that is not a motor vehicle dealership agreement, the following diagram (figure 3) should help you work out whether you have a franchise agreement.

Figure 3: Do I have a franchise agreement?



Note: If any of the above elements are missing, you do not have a franchise agreement.

¹ Excludes payment for goods or services at or below their wholesale price, repayment by the franchisee of a loan from the franchisor, payment of the usual wholesale price of goods taken on consignment, and payment of market value of a purchase or lease of real property, fixtures, equipment or supplies that are needed to start or continue business under a franchise agreement.

The code specifies that the following relationships do not in themselves constitute a franchise agreement:

- employer and employee
- partnership
- landlord and tenant
- mortgagor and mortgagee
- lender and borrower
- members of a cooperative registered, incorporated or formed in Australia under the relevant legislation.

When doesn't the code apply to franchise agreements?

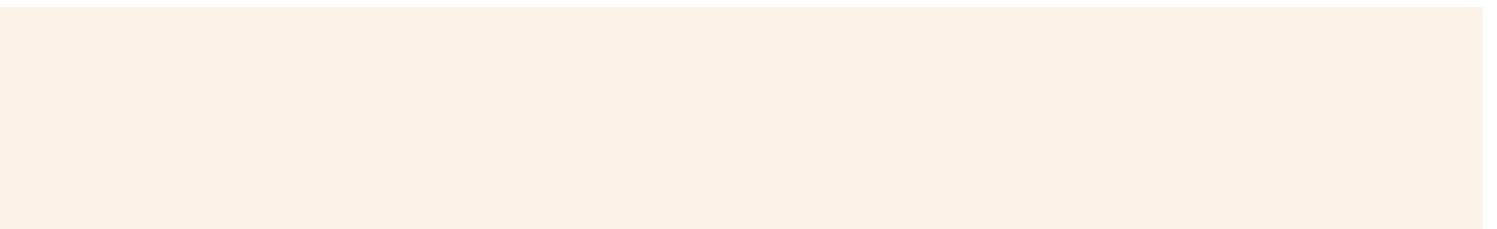
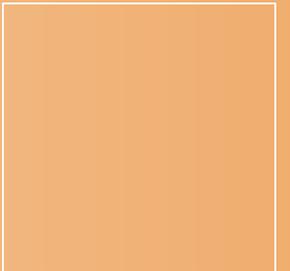
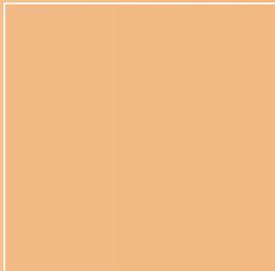
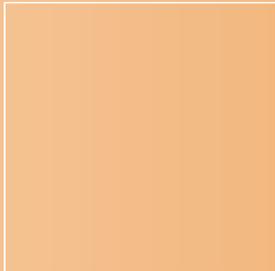
The code does not apply to a franchise agreement in some limited circumstances. These are:

- where another mandatory industry code prescribed under s. 51AE of the Act (for example, the Oilcode) applies to the agreement, or
- where all of the following apply:
 - the franchise agreement is for goods or services that are substantially the same as those supplied by the franchisee before entering into the franchise agreement
 - the franchisee has supplied those goods or services for at least two years immediately before entering into the franchise agreement
 - sales under the franchise are likely to provide no more than 20 per cent of the franchisee's gross turnover for goods or services of that kind for the first year of the franchise.²

² If sales under the franchise provide more than 20 per cent of the franchisee's gross turnover for three years and the franchisee has told you of this then this exception ceases to apply.

2. DISCLOSURE RELATING TO FRANCHISE AGREEMENTS

The code requires that you disclose specific information to franchisees and prospective franchisees. These obligations are outlined in this chapter.



2.1 Disclosure requirements before entering into a franchise agreement

One of the aims of the code is to ensure that prospective franchisees have enough information to make a reasonably informed decision about whether to enter into a franchise agreement. Consequently, the code requires you to provide a disclosure document to franchisees when they propose to enter into a franchise agreement. A disclosure document must also be provided when renewing, extending or extending the scope of a franchise agreement so franchisees receive current information about the franchise that is relevant to the proper running of their franchise.

When to create disclosure documents

Naturally, you will need to create a disclosure document before you provide one to a prospective franchisee or a franchisee who proposes to renew or extend their franchise. You are also required to create and maintain a disclosure document within four months after the end of each financial year.

Content and layout of disclosure documents

The code provides that a disclosure document must be in a specific format outlined in the code, depending on the expected annual turnover of the franchise. The code presupposes that the more the franchisee invests up front, the more information should be provided so that the franchisee can make a reasonably informed decision about the franchise.

Franchised businesses with an annual turnover of more than \$50 000

When a franchise expects an annual turnover of more than \$50 000 at any time during the term of the franchise agreement, the disclosure document must be a long-form disclosure document (in accordance with annexure 1 of the code). A template of the long-form disclosure document is contained in annexure 1 of this manual.

Franchised businesses with an annual turnover of less than \$50 000

When a franchise expects an annual turnover of less than \$50 000, the disclosure document may be either a short-form disclosure document (in accordance with annexure 2 of the code) or a long-form disclosure document (in accordance with annexure 1 of the code). A template of the short-form disclosure document is contained in annexure 2 of this manual.

Signing the disclosure document

So that the franchisee can verify that the information in the disclosure document about the specific franchise system was produced by the franchisor, the disclosure document must be signed by the franchisor or a director, officer or authorised agent of the franchisor.

When to provide the disclosure document, the code and the franchise agreement

There are certain requirements as to when a franchisee must be provided a copy of a disclosure document in the specified form.

When a person **proposes to become a franchisee**, you must give them a copy of the code, the franchise agreement in the form in which it is to be executed and your current disclosure document at least 14 days before that person:

- enters into a franchise agreement or an agreement to enter into a franchise agreement, or
- pays any non-refundable money or other valuable consideration to you or an associate in connection with the franchise agreement.

Where a franchisee **proposes to renew, extend or extend the scope of** a franchise agreement, you must give the franchisee a copy of the code, the franchise agreement in the form in which it is to be executed and your current disclosure document at least 14 days before the franchise agreement is renewed or extended.

Other documents you must provide

If the franchisee is entitled to a long-form disclosure document, you must also give the franchisee a copy of all of the following agreements (where applicable) that the franchisee³ is required to enter into under the franchise agreement:

- a lease, sublease, licence or other agreement under which the franchisee can occupy the premises of their business
- a chattel lease or hire purchase agreement
- an agreement under which the franchisee gains ownership of, or is authorised to use, any intellectual property
- a security agreement, including a guarantee, mortgage, security deposit, indemnity, loan agreement or obligation to provide a bank guarantee to a third party
- a confidentiality agreement
- an agreement not to carry on business within an area or for a time after the franchise agreement is terminated.

You must give these documents to the franchisee at least 14 days before the franchise agreement is signed or as soon as they become available.

Lease or leasing arrangement documentation you must provide

When the franchisee leases premises from you (or your associate) for their franchise, you must give the franchisee a copy of the lease or agreement to lease within one month after the document is signed by the parties.

³ Or directors, shareholders, beneficiaries, owners or partners of the franchisee.

Similarly, when a franchisee occupies premises leased by you (or your associate) without a lease, you are required to provide the franchisee with one of the following documents:

- a copy of your (or your associate's) lease or agreement to lease, within one month after occupation
- a copy of the documents that give the franchisee the right to occupy the premises, within one month of their signing
- written details of the conditions of occupation, within one month of occupation.

Explaining that franchises can fail

You are required to include in your disclosure document a warning that, like any business, the franchise (or franchisor) could fail during the franchise term, and that this could have consequences for the franchisee.

Costs of dispute resolution

You must also disclose whether you will attribute the costs you incur in dispute resolution (including legal costs) to the franchisee.

Unilateral variation of franchise agreement

If you enter into a franchise agreement in the financial year commencing on 1 July 2011, 1 July 2012 or 1 July 2013, you must disclose the circumstances in which you have unilaterally varied a franchise agreement since 1 July 2010.

If you enter into a franchise agreement in a financial year commencing after 1 July 2013, you must disclose the circumstances in which you have unilaterally varied a franchise agreement in the last three financial years.

You also need to disclose the circumstances in which the franchise agreement may be unilaterally varied by you in the future.

Confidentiality obligations

You must disclose whether you will impose a confidentiality obligation on the franchisee. If you will impose a confidentiality obligation, you must provide details of the matters that the obligation may cover, including:

- outcomes of mediation
- settlements
- intellectual property
- trade secrets
- particular aspects of individual agreements, such as fees.

Possible unforeseen capital expenditure

You need to disclose whether you will require the franchisee (through the franchise agreement, the operations manual or any other means) to undertake unforeseen significant capital expenditure not disclosed by you before the franchisee entered into the franchise agreement.

Arrangements to apply at the end of the franchise agreement

You are required to disclose details of the process for determining arrangements to apply at the end of the franchise agreement, including:

- whether the prospective franchisee will have any option to renew, extend or extend the scope of the franchise agreement or enter into a new franchise agreement and, if so, the processes you will use to determine whether to renew, extend or extend the scope of the franchise agreement or enter into a new franchise agreement
- whether the prospective franchisee will be entitled to an exit payment at the end of the franchise agreement and, if so, how the exit payment will be determined or earned
- details of the arrangements that will apply to unsold stock, marketing material, equipment and other assets purchased when the franchise agreement was entered into, including:
 - whether you will purchase the assets
 - if you will purchase the assets, how prices will be determined
- whether the prospective franchisee will have the right to sell the business at the end of the franchise agreement and, if so, whether you will have first right of refusal and how market value will be determined
- whether you will consider any significant capital expenditure undertaken by the franchisee during the franchise agreement in determining the arrangements to apply at the end of the franchise agreement.

If you enter into a franchise agreement in the financial year commencing on 1 July 2011, 1 July 2012 or 1 July 2013, you must also disclose details of whether you have since 1 July 2010 considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of franchise agreements between you and those franchisees.

If you enter into a franchise agreement in a financial year commencing after 1 July 2013, you must disclose details of whether you have in the last three financial years considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of franchise agreements between you and those franchisees.

Amendment of the franchise agreement on transfer or novation

You need to disclose whether you will amend (or require the amendment of) the franchise agreement on or before the transfer or novation of the franchise.

Additional information

Where you have given the franchisee a short-form disclosure document (see annexure 2) and the franchisee asks you to provide them with additional information (referred to in annexure 1) as outlined below, you must provide that information to the franchisee.

Such information may include:

- information about the relevant business experience of each officer of the franchisor
- the name of the agent, where you must make payments to an agent in connection with the introduction or recruitment of a franchisee

- information about existing franchises, such as:
 - the number of existing franchisees, their locations and contact details, and when each started operating the franchised business, or
 - if there are more than 50 franchisees, the location and contact details of each franchisee in the state, region or metropolitan area in which the franchise is to be operated
- information about past franchises, such as:
 - the number of franchised businesses that were transferred, terminated, bought back or not renewed in the last three financial years
 - the name, location and contact details of each of the former franchisees who ran these businesses, if the information is available
- details of your requirements for the supply of goods or services to the franchisee (e.g. whether the franchisee will be offered the right to be supplied with the whole range of products you supply)
- details of your requirements for the supply of goods or services by the franchisee (e.g. whether the franchisee must supply the whole range of goods and services of the franchise)
- your policy as franchisor, or that of your associate, regarding the site to be occupied by the franchise and the territory in which the franchise will operate
- whether the proposed territory or site of the franchise was the territory or site of a previous franchise granted by the franchisor and, if so, details of the previous franchise, including the circumstances in which the previous franchisee ceased to operate
- the conditions of financing arrangements offered or required by you
- references to the conditions of the franchise agreement that deal with certain matters such as the term, variation, renewal or extension and termination of the franchise agreement
- any obligations for the franchisee to enter into other agreements (e.g. leases, subleases, hire purchase agreements or security agreements)
- earnings information about the franchise, based on reasonable grounds
- updates in relation to ‘materially relevant facts’ (see page 23).

If there is other information relevant to the franchise that is not covered by the headings in the disclosure document templates, you should include it in the disclosure document under the heading ‘Other relevant disclosure information’.

Financial information

You are required to provide certain financial information with the disclosure document. Specifically, you must include:

- a document signed by at least one director of the franchisor stating whether in their opinion, as at the end of the last financial year, there are reasonable grounds for believing that the franchisor will be able to pay their debts as and when they fall due
- either:
 - financial reports for each of the last two completed financial years, prepared by you in accordance with ss. 295 to 297 of the *Corporations Act 2001* (or a foreign equivalent of that Act for a foreign franchisor)

- a copy of an independent audit supporting the director’s statement that the franchisor is able to pay their debts as and when they fall due, provided by a registered company auditor (or foreign equivalent for a foreign franchisor) within 12 months after the end of the financial year covered by the statement.

If the franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001* (or a foreign equivalent of that Act), you must also include those reports for each of the last two completed financial years if a franchisee requests them (unless the director’s statement discussed above is supported by an independent audit).

Information about the franchise site and territory

If the franchisee is entitled to a long-form disclosure document, you must also give them details—in a separate document with the disclosure document—about whether the proposed territory or site of their business was the site of a previous franchise granted by the franchisor and, if so, details of the previous franchise, including the circumstances in which the previous franchisee ceased to operate.

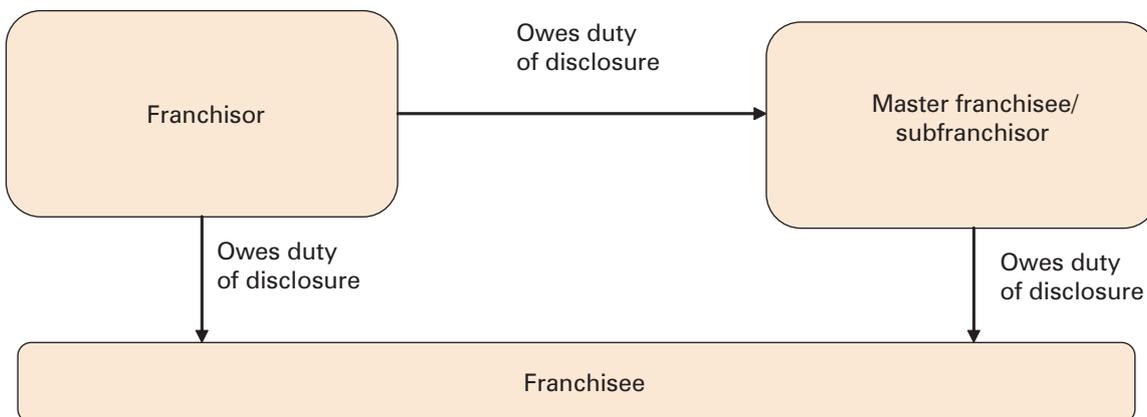
Master franchisees and subfranchisors

Under the code, a master franchisee or subfranchisor has the same disclosure obligations as the master franchisor. In particular, both the master franchisor and the master franchisee or subfranchisor must either:

- provide the prospective subfranchisee with both a disclosure document from the franchisor for the master franchise and a disclosure document from the master franchisee or subfranchisor for the subfranchise
- provide the subfranchisee with a joint disclosure document that details the respective obligations of the franchisor and the master franchisee in the operation of the franchise.

Figure 4 should help you understand your disclosure obligations if you are a master franchisee or subfranchisor.

Figure 4: Disclosure obligations in a master franchise



Advice required before entering into a franchising agreement

As a franchisor, you must not enter into, extend, renew or receive any non-refundable payment in relation to a franchise agreement or an agreement to enter into a franchise agreement if you have not received a written statement from the franchisee or prospective franchisee that they have received, read and had a reasonable opportunity to understand the disclosure document and the code.

You must not enter into a franchise agreement⁴ before receiving a statement, signed by the prospective franchisee, indicating that the prospective franchisee has:

- received advice about the proposed franchise agreement or franchised business from:
 - an independent legal adviser or
 - an independent business adviser or
 - an independent accountant, or
- been told that they should obtain advice of that kind but decided not to seek it.

2.2 Disclosure during the agreement

Your disclosure obligations do not stop after providing specific information before entering, renewing or extending a franchise. You also have certain disclosure obligations during the life of the agreement.

This information enables the franchisee to understand the current status of the franchise system of which they are a part.

Updating the disclosure document

Once you have entered into a franchise agreement, the code requires you to update your disclosure document within four months after the end of each financial year.

Making the current disclosure document available

Under the code, a franchisee can request a copy of the current disclosure document from the franchisor. They can only make this request once in any 12-month period. The code specifies that you must provide a franchisee with a copy of the current disclosure document within 14 days of the franchisee's written request.

Materially relevant facts

There are some very important matters that may arise after providing a disclosure document to your franchisees. Information about these matters will be vital for the franchisee to remain informed about the immediate status of the franchise system. Consequently, if your disclosure document does not include a matter mentioned below, you must tell a franchisee or prospective franchisee about it, in writing, within a reasonable time (but not more than 14 days) of you becoming aware of it.

⁴ This does not apply to the renewal or extension of a franchise agreement.

Materially relevant facts include:

- a change in the franchisor's majority ownership or control
- court proceedings by a public agency against the franchisor, or a director of the franchisor, alleging any of the following:
 - a breach of a franchise agreement
 - a contravention of trade practices law
 - a contravention of the *Corporations Act 2001*
 - unconscionable conduct
 - misconduct
 - an offence of dishonesty
- a judgment in civil or criminal proceedings against the franchisor, or a director of the franchisor, identifying any of the matters mentioned above
- an award in an arbitration in Australia against the franchisor, or a director of the franchisor, identifying any of the matters mentioned above
- the existence and content of any undertaking or order under s. 87B of the Act given by or made against the franchisor
- a judgment against the franchisor under:
 - Part 3 of the *Independent Contractors Act 2006* or
 - s. 106 of the *Industrial Relations Act 1996* (NSW) or
 - s. 276 of the *Industrial Relations Act 1999* (Qld)
- the franchisor, or a director of the franchisor, being convicted in the last 10 years of any serious offence as outlined below (or an equivalent offence outside Australia):
 - an offence for which a person, on first conviction, would be liable to imprisonment for five years or more
 - any contravention of the *Corporations Act 2001*
- civil proceedings in Australia against the franchisor or a franchise director by at least 10 per cent or 10 (whichever is the lower number) of their franchisees in Australia
- any judgment against the franchisor in Australia that is not discharged within 28 days, of at least:
 - \$100 000 (for a small proprietary company) or
 - \$1 million (for any other company)
- the franchisor, or a director of the franchisor, having been:
 - in the last five years, subject to final judgment in civil proceedings for any of the following matters:
 - breach of a franchise agreement
 - contravention of trade practices law
 - contravention of the *Corporations Act 2001*
 - unconscionable conduct
 - misconduct
 - an offence of dishonesty

- in the last 10 years, bankrupt, insolvent under administration or an externally administered body corporate in Australia or elsewhere
- the franchisor becoming an externally administered body corporate (in which case you must provide the name and address of the administrator, controller or liquidator)
- a change in the intellectual property, or ownership or control of the intellectual property, that is material to the franchise system.

When disclosing a materially relevant fact relating to court or arbitration proceedings, you must also tell the franchisee:

- the names of the parties to the proceedings
- the name of the court or tribunal
- the case name
- the general nature of the proceedings.

Marketing and other cooperative funds

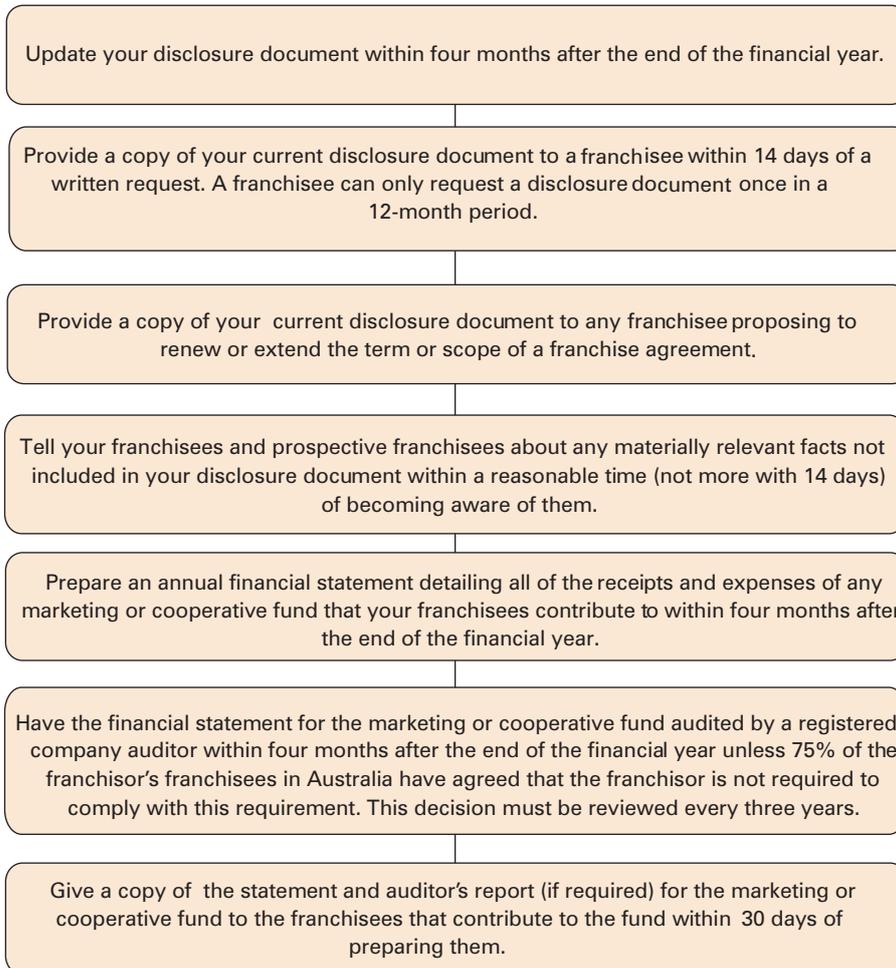
If a franchise agreement requires a franchisee to pay money to a marketing or other cooperative fund, a franchisor must provide certain information to the franchisee about the status and expenses of the fund. In particular the franchisor must:

- prepare an annual financial statement detailing all of the fund's receipts and expenses, within four months of the end of the last financial year
- have the statement audited by a registered company auditor within four months of the end of the financial year to which it relates, unless 75 per cent of the franchisees in Australia that contribute to the fund have voted to agree that the franchisor is not required to comply with the requirement (this decision must be revisited every three years)
- give a copy of the statement and the auditor's report (if required) to the franchisees that contribute to the fund, within 30 days of their preparation.

If you require a franchisee to pay money to such a fund, reasonable costs to audit and administer it must be paid from that fund.

Figure 5 may help you understand your disclosure obligations during a franchise agreement.

Figure 5: Your disclosure obligations during the franchise agreement



2.3 Checklist—disclosure

Am I a franchisor?

You are a franchisor if you:

- grant a franchise or
- otherwise participate in a franchise as a franchisor or
- are a subfranchisor in relation to a subfranchisee or
- are a master franchisee in a master franchise system or
- are a master franchisee in relation to a franchisee.

Do I have a franchise agreement?

A franchise agreement is an agreement (written, verbal or implied) between a franchisor and a franchisee that has all the following characteristics:

- one party (the franchisor) grants another party (the franchisee) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, suggested or controlled by the franchisor or their associate
- the franchise business is substantially or materially associated with a trademark, advertising or commercial symbol owned, used, licensed or specified by the franchisor
- the franchisee is required to pay, or agree to pay, a fee to the franchisor before starting or continuing the business.

When must I create a disclosure document?

You must create and maintain a disclosure document to issue to prospective franchisees and when proposing to renew or extend the scope or term of a franchise agreement.

You must also create a disclosure document relating to the franchise agreement no later than four months after the end of the financial year (that is, between 1 July and 31 October each year).

How do I create a disclosure document?

When the franchise expects to have an annual turnover of more than \$50 000 at any time during the franchise agreement, your disclosure document must be in accordance with the long-form disclosure document set out in annexure 1 of the code. When the franchise expects to have an annual turnover of less than \$50 000, your disclosure document may be in accordance with either the short-form disclosure document (see annexure 2) or the long-form disclosure document (see annexure 1).

A disclosure document may also contain other information, in a section headed 'Other relevant disclosure information'.

When must I give a disclosure document and to whom must I give it?

You must give a copy of your current disclosure document (and a copy of the franchise agreement in the form in which it is to be executed) to:

- a person who proposes to become a franchisee
- a franchisee proposing to renew or extend the scope or term of a franchise agreement.

Where a person proposes to become a franchisee, you must give them a copy of the code, the franchise agreement in the form in which it is to be executed and the relevant disclosure document at least 14 days before they either:

- enter into a franchise agreement or an agreement to enter into a franchise agreement
- pay any non-refundable money or other valuable consideration to you or your associate in connection with such an agreement.

Where a franchisee proposes to renew or extend a franchise agreement, you must give them a copy of the code, the franchise agreement in the form in which it is to be executed and the relevant disclosure document at least 14 days before renewal, extension, or extension of the scope of the agreement.

You must provide a franchisee with a current disclosure document within 14 days of their written request. A franchisee can request a disclosure document only once in any 12-month period.

If a master franchisee proposes to grant a subfranchise to a prospective subfranchisee, the franchisor and the master franchisee must provide the prospective subfranchisee with either:

- a disclosure document from the franchisor for the master franchise *and* a disclosure document from the master franchisee for the subfranchise
- a joint disclosure document that details the respective obligations of the franchisor and the master franchisee in the operation of the franchise.

When must I give information in addition to a disclosure document?

Where you have given a short-form disclosure document (see annexure 2) and the franchisee asks you to provide them with certain information as outlined below (referred to in annexure 1), you must provide that information to the franchisee. This may include:

- information about the relevant business experience of each officer of the franchisor
- the name of the agent, where you must make payments to an agent in connection with the introduction or recruitment of a franchisee
- information about existing franchises such as:
 - the number, locations and contact details, and when each started operating the franchised business, or
 - if there are more than 50 franchises, the location and contact details of each franchisee in the state, region or metropolitan area in which the franchise is to be operated
- information about past franchises such as:
 - the number of franchised businesses that were transferred, terminated, bought back or not renewed in the last three financial years
 - the name, location and contact details of each of the former franchisees who ran these businesses, if the information is available

- details of your requirements for the supply of goods or services to the franchisee (e.g. whether the franchisee will be offered the right to be supplied with the whole range of products you supply)
- details of your requirements for the supply of goods or services by the franchisee (e.g. whether the franchisee must supply the whole range of goods and services of the franchise)
- your policy as franchisor, or that of your associate, regarding the site to be occupied by the franchise and the territory in which the franchise will operate
- whether the proposed territory or site of the franchise was the territory or site of a previous franchise granted by the franchisor and, if so, details of the previous franchise, including the circumstances in which the previous franchisee ceased to operate
- the conditions of financing arrangements offered or required by you
- references to the conditions of the franchise agreement that deal with certain matters such as the term, variation, renewal or extension and termination of the franchise agreement
- any obligations for the franchisee to enter into other agreements (e.g. leases, subleases, hire purchase agreements or security agreements)
- earnings information about the franchise, based on reasonable grounds
- updates on ‘materially relevant facts’.

If there is other information relevant to the franchise that is not covered by the headings in the disclosure document templates, you should include it in the disclosure document under the heading ‘Other relevant disclosure information’.

What are the ‘materially relevant facts’ I must disclose?

If they are not already mentioned in the disclosure document, you must disclose issues listed in the code as materially relevant facts within a reasonable time (not more than 14 days) of becoming aware of them. Materially relevant facts include:

- a change in the franchisor’s majority ownership
- details of criminal and civil legal proceedings involving the franchisor
- an award in arbitration against the franchisor
- the existence and content of undertakings or orders under s. 87B of the Act given by or made against the franchisor
- insolvency matters.

More detailed information about the requirements to disclose materially relevant facts is on page 23.

You should seek advice from your legal or business advisers regarding action relating to the circumstances listed above. You should have procedures in place to ensure disclosure not only at the time of entering an agreement but also on an ongoing basis so that your franchisees are kept up to date on such matters.

- What other responsibilities do I have before entering into a franchise agreement?

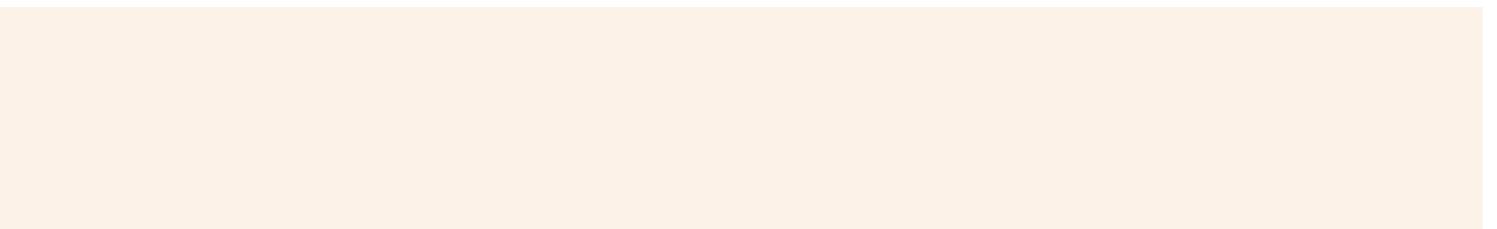
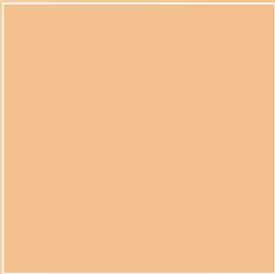
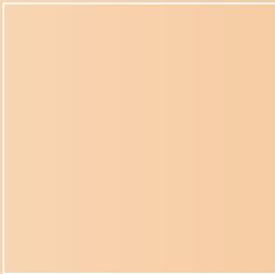
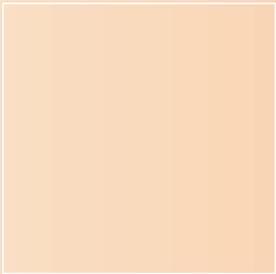
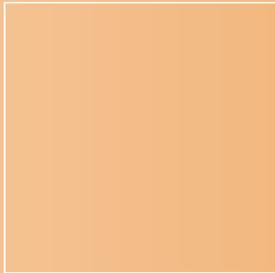
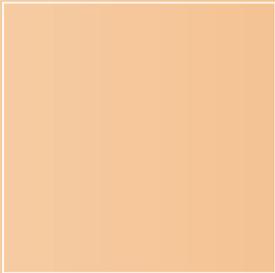
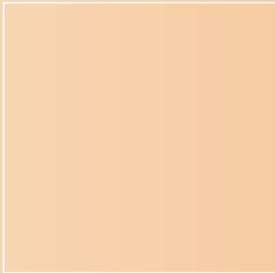
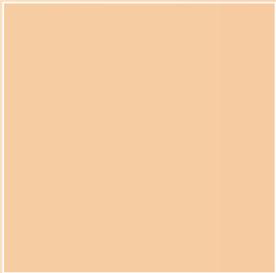
Before you enter into, extend or renew, or receive any non-refundable payment relating to a franchise agreement or an agreement to do any of these things, you will need to obtain a written statement from the prospective franchisee indicating that they have received, read and had a reasonable opportunity to understand the disclosure document and the code.

You must not enter into a franchise agreement before you have received a statement, signed by the prospective franchisee, confirming that they:

- (a) have been given advice about the proposed franchise agreement by:
 - an independent legal adviser or
 - an independent business adviser or
 - an independent accountant, or
- (b) have been given that kind of advice about the proposed franchise agreement or franchised business, or
- (c) have been told that they should obtain advice of that kind but have decided not to seek it.

3. CONDITIONS RELATING TO FRANCHISE AGREEMENTS

The code requires that you provide your franchisees with certain rights relating to franchise agreements. These conditions are outlined in this chapter.



3.1 General conditions

Cooling-off period

The code provides that a prospective franchisee is entitled to a cooling-off period of seven days after entering into a new franchise agreement (not a renewal, extension or transfer) or making any payment under the agreement, whichever occurs earlier.

In the event that the franchisee terminates the agreement within the cooling-off period, you must fully refund all payments made by the franchisee under the agreement within 14 days. However, you may deduct your reasonable expenses from the amount to be repaid if the expenses or their method of calculation have been set out in the agreement.

Association of franchisees and prospective franchisees

You are prohibited from inducing franchisees or prospective franchisees not to:

- form an association or
- associate with other franchisees or prospective franchisees for a lawful purpose.⁵

General release from liability and waivers of representations

A franchise agreement entered into on or after 1 July 1998 must not contain, or require a franchisee to sign, a statement that releases you from general liability towards the franchisee.

In addition, a franchise agreement entered into on or after 1 March 2008 must not contain, or require a franchisee to sign, a waiver of any verbal or written representation that you have made.

3.2 Transfer or novation of a franchise agreement

The code provides for the transfer or novation of a franchise agreement to a third party. A request to transfer or novate a franchise agreement must be put in writing by the franchisee. You will be taken to have consented to the transfer or novation if you do not object within 42 days of the written notice.

The code specifies that you must not unreasonably withhold consent to the transfer or novation of a franchise agreement. However, in a number of circumstances you are permitted under the code to reasonably withhold consent to the transfer or novation of a franchise agreement. These circumstances include when:

- the proposed transferee is unlikely to be able to meet their financial obligations under the franchise agreement
- the proposed transferee does not meet a reasonable requirement in the franchise agreement for the transfer of a franchise
- the proposed transferee does not meet your selection criteria
- agreement to the transfer or novation will have a significantly adverse effect on the franchise system

⁵ It is unlawful for franchisees to meet and make a contract or arrangement, or arrive at an understanding, for the purpose of fixing, controlling or maintaining the price that they will charge for goods or services.

- the proposed transferee does not agree in writing to comply with the obligations of the franchisee under the franchise agreement
- the franchisee has not paid or made reasonable provision to pay an amount owing to the franchisor
- the franchisee has breached the franchise agreement and has not remedied the breach.

Generally, the decision as to whether you are able to reasonably withhold consent is in your hands.

However, care should be taken when exercising this discretion to avoid the possibility of exercising your discretion unconscionably (see page 53).

3.3 End of term arrangements—notification by franchisor

The code does not require that you renew a franchise agreement once it expires. However, if the term of the franchise agreement is six months or longer, you must notify the franchisee at least six months before the end of the term of the franchise agreement of your decision to either:

- renew or not renew the franchise agreement
- enter into a new franchise agreement.

If the term of the franchise agreement is less than six months, you must notify the franchisee of your decision at least one month before the end of the term of the franchise agreement.

If you do not wish to renew the franchise agreement or enter into a new agreement (or if the franchisee has an option to renew but decides not to exercise that option), you should discuss with the franchisee the procedures that will be followed when the agreement expires.

3.4 Termination of a franchise agreement

The code sets out the specific requirements where parties seek to terminate a franchise agreement.

Essentially, the code covers the requirements for terminating a franchising agreement in three circumstances:

- a breach by the franchisee
- special circumstances
- no breach by the franchisee, where there is provision for termination of the franchise agreement in the agreement and the franchisee has not consented to termination.

Breach by franchisee

Where you seek to terminate the franchise agreement because of a breach of the agreement by the franchisee, you must first give the franchisee reasonable notice of your intention to terminate the agreement because of the breach. You must notify the franchisee of what they must do to remedy the breach and allow them a reasonable time to remedy the breach. You are not required to allow more than 30 days.

If the breach is remedied within the prescribed time frame, you must not proceed with the termination as a result of that breach unless a special circumstance outlined below applies.

If you and the franchisee are still unable to reach agreement, the Mediation Adviser may help you do so (see page 41).

Special circumstances

The code sets out specific circumstances in which you are not required to provide a franchisee with the opportunity to remedy a breach before proceeding to terminate the franchise agreement.

These circumstances are where the franchisee:

- no longer holds a licence required to carry on the franchise, or
- becomes bankrupt, insolvent under administration or an externally administered body corporate, or
- voluntarily abandons the franchise or the franchise relationship, or
- is convicted of a serious offence, or
- operates the franchise in a way that endangers public health or safety, or
- is fraudulent in connection with the operation of the franchise, or
- agrees to the termination of the franchise agreement.

No breach by franchisee

You may have a right, under the terms of the franchise agreement, to terminate the agreement before it expires, even if the franchisee has not breached the agreement or consented to the termination.

If you have such a right under the franchise agreement, and you elect to terminate the agreement before it expires without the consent of the franchisee, you must give the franchisee reasonable notice of the proposed termination and the reasons for it.

It is important to note that the mere inclusion of a condition in a franchise agreement that the franchisor can terminate the agreement without the consent of the franchisee will not be taken to be consent.

The agreement may specify the amount of notice you must give before terminating the agreement. However, if the matter goes to court, the court may decide what reasonable notice to terminate the agreement is in the particular circumstances of the case, irrespective of the terms of the agreement.

If the franchisee has not breached the franchise agreement and you wish to terminate the agreement without the franchisee's consent in accordance with the agreement, you should seek legal advice about what is reasonable notice for terminating the agreement based on the facts of your case. You should also take care to ensure that you do not act unconscionably when terminating a franchise agreement (see page 53).

If you do proceed to terminate the agreement, the franchisee has the right to use the dispute resolution procedure outlined in Part 4 of the code (see chapter 4 of this manual).

3.5 Good faith

The code provides that nothing in the code limits any obligations imposed by the common law on the parties to a franchise agreement to act in good faith.

3.6 Checklist—conditions of a franchise agreement

What are the conditions of a franchise agreement?

The code prescribes a number of specific conditions for franchise agreements. These include provisions in relation to:

- **the cooling-off period**

The code provides that a prospective franchisee is entitled to a cooling-off period of seven days after entering into a **new** franchise agreement (not a renewal, extension or transfer) or making any payment under the agreement, whichever occurs earlier.

In the event that the franchisee terminates the agreement within the cooling-off period, you must fully refund all payments made by the franchisee under the agreement within 14 days.

However, you may deduct your reasonable expenses from the amount to be repaid if the expenses or their method of calculation have been set out in the agreement.

- **the association of franchisees and prospective franchisees**

You are prohibited from inducing franchisees or prospective franchisees not to:

- form an association or
- associate with other franchisees or prospective franchisees for a lawful purpose.⁶

- **the prohibition on general release from liability and waivers of representations**

A franchise agreement entered into on or after 1 July 1998 must not contain, or require a franchisee to sign, a statement that releases you from general liability towards the franchisee.

A franchise agreement entered into on or after 1 March 2008 also must not contain, or require a franchisee to sign, a waiver of any verbal or written representation made by you.

When can I transfer or novate a franchise agreement?

The code provides for the transfer or novation of a franchise agreement to a third party. A request to transfer or novate a franchise agreement must be put in writing to you, and you must not unreasonably withhold consent. Circumstances considered reasonable for refusing the transfer or novation of a franchise agreement include when:

- the proposed transferee is unlikely to be able to meet the financial obligations of the franchise agreement
- the proposed transferee does not meet a reasonable transfer requirement of the franchise agreement
- the proposed transferee does not meet your selection criteria
- agreement to the transfer or novation will have a significantly adverse effect on the franchise system
- the proposed transferee does not agree in writing to comply with the obligations of the franchisee under the franchise agreement
- the franchisee has breached the franchise agreement and has not remedied the breach.

⁶ It is unlawful for franchisees to meet and make a contract or arrangement, or arrive at an understanding, for the purpose of fixing, controlling or maintaining the price that they will charge for goods or services.

You will be taken to have consented to the transfer or novation if you do not object within 42 days of the written notice.

It is also important to note that, while you have the right to exercise your discretion in this instance, such discretion should not be exercised unconscionably.

Do I have to renew the agreement when it expires?

No. However, if the term of the franchise agreement is six months or longer, you must notify the franchisee at least six months before the end of the term of the franchise agreement of your decision to either:

- renew or not renew the franchise agreement
- enter into a new franchise agreement.

If the term of the franchise agreement is less than six months, you must notify the franchisee of your decision at least one month before the end of the term of the franchise agreement.

What if I or the franchisee want to terminate the franchise agreement?

The code sets out the specific requirements where parties seek to terminate a franchise agreement. The requirements will depend on whether termination is sought in circumstances where:

- the franchisee has breached the franchise agreement
- special circumstances apply in which the code permits you to terminate the agreement
- the franchisee has not breached the agreement and you seek to terminate the agreement in accordance with its terms without the consent of the franchisee.

Further information about the requirements to terminate a franchise agreement can be found on page 34.

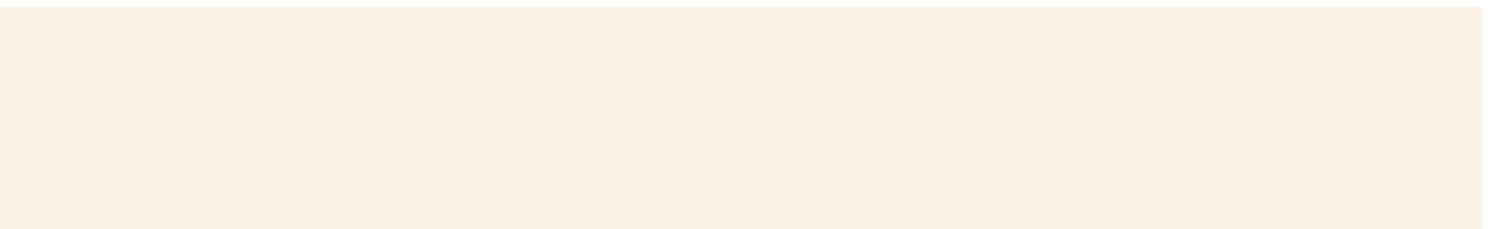
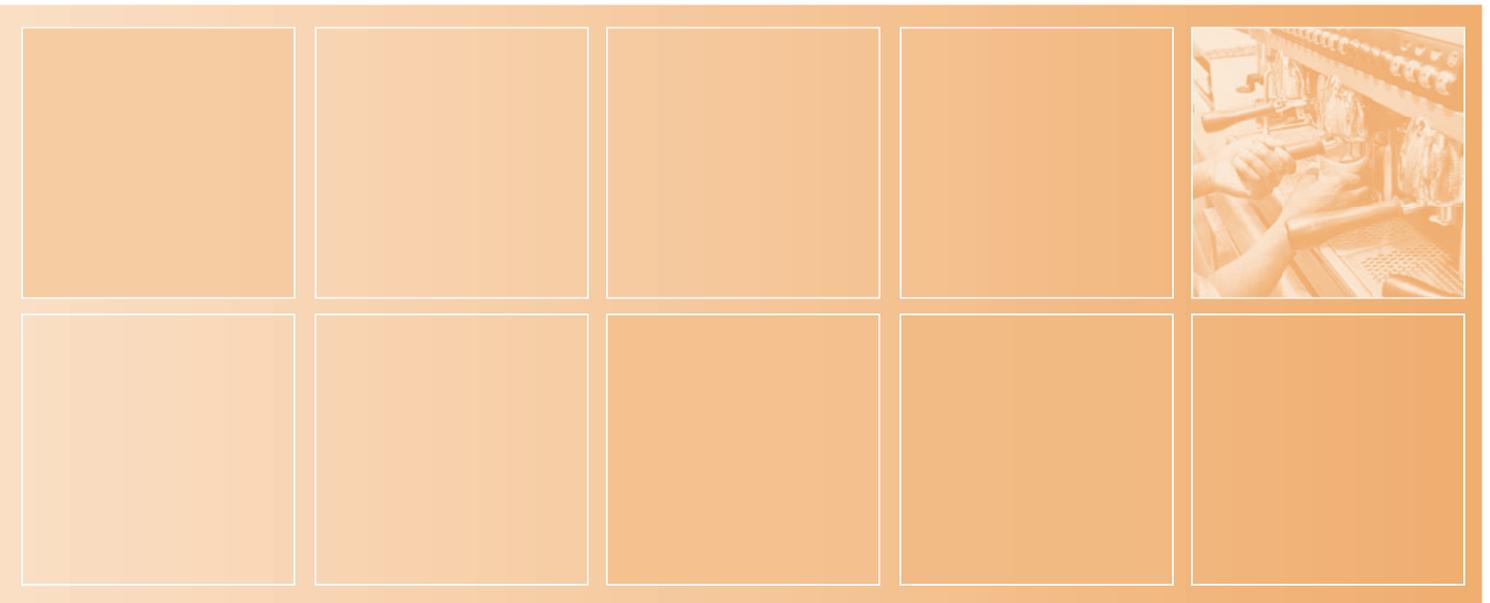
Is there a requirement that the parties must act in good faith?

The code provides that nothing in the code limits any obligations imposed by the common law on the parties to a franchise agreement to act in good faith.

4. DEALING WITH DISPUTES

A dispute is any disagreement between two or more parties to a franchise agreement.

There are numerous options available to the parties to resolve a dispute, ranging from the simple and cheap to the very complex and expensive.



4.1 Complaints-handling procedure in your agreement

It is important that each franchisor, whatever their size, has a dispute resolution procedure.

Such a procedure should aim to:

- provide a speedy, cost-efficient process for resolving most commercial disputes between franchisors and franchisees
- preserve the relationship between the parties to the dispute
- create a solution that is acceptable to the parties, commercially viable and takes into account the public interest
- empower the parties to negotiate their own solution.

Every franchise agreement entered into on or after 1 October 1998 must set out a dispute-handling procedure that complies with the code. These requirements are discussed below.

4.2 Dispute resolution procedure under the code

Any party to a franchise agreement that has a dispute with another party to the agreement may engage the code's dispute resolution procedure as follows.

Inform the other party of the dispute

Under the code, the complainant (this could either be you or the franchisee) must inform the respondent (the person with whom the complainant has a dispute) in writing of the dispute. In particular, the complainant must tell the respondent the nature of the dispute, the outcome they want and what action they think will settle the dispute.

Attempt to resolve the dispute

After the complainant has notified the respondent of the dispute in writing, the parties should then try to agree about how to resolve the dispute.

Appoint a mediator

If you cannot agree within three weeks about how to resolve the dispute, you or the franchisee may refer the matter to a mediator. If you cannot agree about who should be the mediator, either you or the franchisee may ask the Mediation Adviser to appoint a mediator.

Under the code, the Mediation Adviser must appoint a mediator for the dispute within 14 days of a request for the appointment of a mediator for the dispute.

The role of the Mediation Adviser is to help the parties resolve disputes that arise under the code.

The extent of the Mediation Adviser's involvement will depend on the nature of the dispute.

Further information about the role of the Mediation Adviser can be found on its website, www.franchisingmediationadviser.com.au, or by calling 1800 150 667 (toll-free within Australia) or (02) 9267 0167.

Location of mediation

Once a mediator is appointed (either by the parties or the Mediation Adviser) the mediator may decide the time and place for the mediation, although the mediation must be conducted in Australia.

Attendance at mediation

Once a mediator has been appointed and the location and time of the mediation decided, you and the franchisee must try to resolve the dispute through the mediation process.

You will be taken to be trying to resolve the dispute if you approach the resolution of the dispute in a reconciliatory manner, including by:

- attending and participating in meetings at reasonable times
- at the beginning of the mediation process, making your intention clear as to what you are trying to achieve through the mediation process
- observing any obligations relating to confidentiality that apply during or after the mediation process
- not taking action during the dispute (such as providing inferior goods, services or support) which has the effect of damaging the reputation of the franchise system
- not refusing to take action during the dispute (including not providing goods, services or support) if the refusal to act would have the effect of damaging the reputation of the franchise system.

You must attend the mediation or ensure that you are represented at the mediation by a person who has the authority to enter into an agreement to settle the dispute on your behalf.

There is no requirement to have legal representation. However, if you do decide to have your lawyer present, it is recommended that you inform the mediator of this prior to mediation, as the franchisee may also wish to be legally represented.

Preparation for mediation

Make sure you are properly prepared before attending mediation. While it is not required under the code, many mediators will have a pre-mediation conference with you and the franchisee and may require you to prepare a brief statement of issues in dispute.

Termination of mediation

If 30 days have elapsed since the start of the mediation of the dispute and the dispute has not been resolved and either you or the franchisee asks the mediator to terminate the mediation, the mediator is required to do so.

The mediator may also terminate the mediation without a request from either you or the franchisee at any time unless it is satisfied that a resolution of the dispute is imminent. If the mediation has not been successful and has been terminated, the mediator must issue a certificate of termination stating:

- the names of the parties
- the nature of the dispute
- that the mediation is finished
- that the dispute has not been resolved.

The mediator must then give a copy of this certificate to the Mediation Adviser and both you and the franchisee.

Cost of mediation

The code specifies that you need to state in the disclosure document whether you will attribute your costs, including legal costs, incurred in dispute resolution to the franchisee; otherwise the costs of mediation will be equally shared between you and the franchisee. Costs of mediation are outlined in the code as including:

- the cost of the mediator
- the cost of room hire
- the cost of any additional input (including expert reports) agreed by both parties to be necessary to the conduct of the mediation.

4.3 Alternatives to mediation

Although mediation is an effective way to resolve disputes, it may not always be the most appropriate action, and any action taken under the code dispute resolution scheme does not affect your right, or that of the franchisee, to commence private legal action. In addition, the dispute resolution scheme does not prevent you (or the franchisee) from approaching the ACCC directly.

When there has been a breach of the code, the affected party may be entitled to claim damages, obtain court orders to stop the contravention, or obtain other orders such as those requiring changes to the franchise agreement. You should seek legal advice on these issues.

Court action can be costly and time consuming; it can damage relationships, and there is no guarantee that it will provide the desired outcome. Given these aspects of court action, it may be more practical to try to resolve the dispute through the code dispute resolution scheme.

4.4 Checklist—resolving disputes

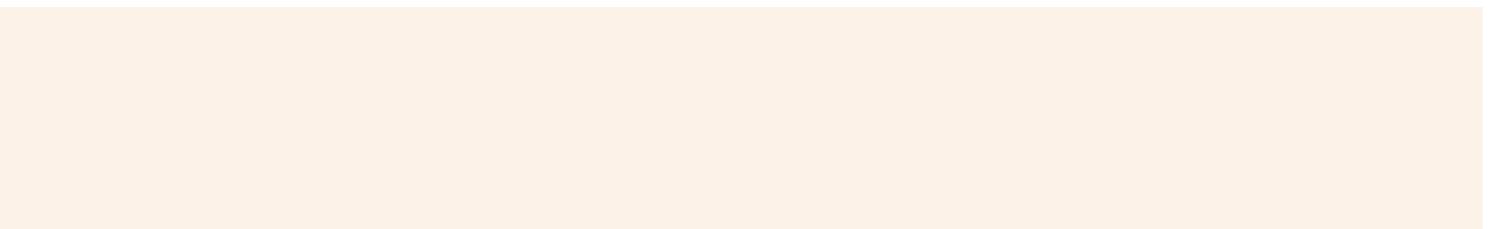
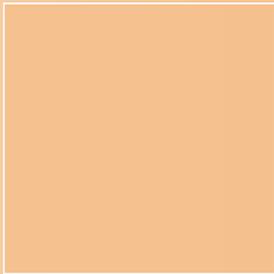
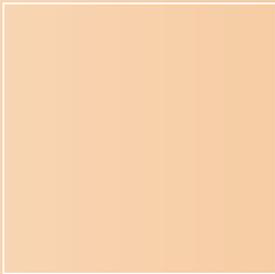
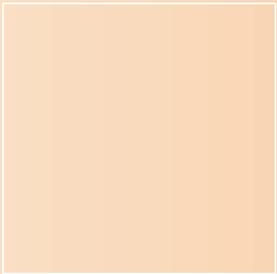
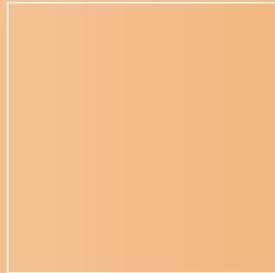
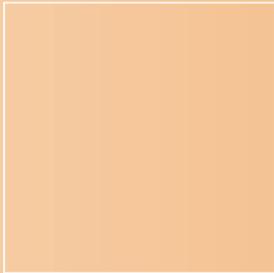
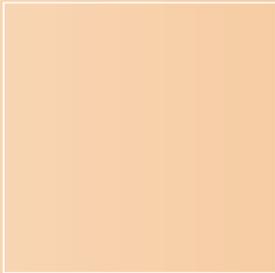
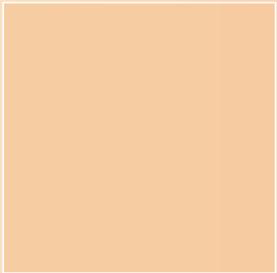
- Have I raised my concerns with the franchisee first?
- Have I informed the franchisee of the following in writing:
 - the nature of my particular problem
 - my desired outcome
 - what action I think will settle the dispute?

Note: You may also wish to include the alternatives you will consider if the matter is not resolved to your satisfaction.

- In determining what action to take, have I considered the following:
 - costs
 - the complexity of the issues in dispute
 - whether outcomes need to be flexible?
- Have I tried to agree with the franchisee about how to resolve the dispute?
- Where I cannot agree with the franchisee within three weeks about how to resolve the dispute, have I referred the matter to a mediator agreed on by both me and the franchisee?
- Where we cannot agree on who will be the mediator, have I referred the matter to the Mediation Adviser so that it can appoint a mediator?
- Have I fully prepared for mediation? (Check with the mediator about what preparation may be required.)
- If mediation has not been successful, have I considered other options such as contacting the ACCC or taking private legal action?

5. WHAT IF YOU DON'T COMPLY?

If you do not comply with the code, you will be in breach of the Act. The ACCC is responsible for ensuring compliance with the code and the Act and takes breaches very seriously. The following information should help you understand what to do when you believe you may be in breach of the code.



5.1 Who is liable for a breach of the code?

Section 51AD of the Act prohibits corporations from contravening an applicable industry code (such as the franchising code). However, individuals can also be liable for a breach of the code, and the ACCC may pursue an individual where it is necessary.

Individuals' liability can extend to the directors, the secretary, other officers or the board members of a company. Liability can also extend to employees of the company.

A person may be liable for a breach of the code if they:

- attempt to breach the code
- assist another party to breach the code
- induce another party to breach the code
- are a party to the contravention of the code
- are knowingly concerned with a breach of the code.

What should you do if you believe you are in breach of the code?

If you believe you may be in breach of the code you should:

- immediately stop the activity
- seek advice on whether you are in breach of the code
- attempt to resolve any disputes
- provide a remedy to the affected parties
- review how the breach came about
- put in place an effective compliance program to avoid future recurrences.

5.2 The ACCC and the code

The ACCC is an independent statutory authority which, while a government organisation, acts independently of government.

In relation to the code, the ACCC:

- enforces s. 51AD of the Act, which prohibits contraventions of applicable industry codes (including the Franchising Code)
- enforces Schedule 2, Part 2-2, s. 22 of the Act which allows courts making determinations on whether parties have engaged in unconscionable conduct to consider the requirements of any applicable industry code (including the Franchising Code)
- promotes compliance with the Act by educating industry participants about their rights and obligations under the code
- enforces the provisions of the code where necessary by seeking remedies available under the Act.

Investigations

Although the ACCC records and assesses every complaint it receives, not all complaints are pursued.

The information obtained from individual complaints is recorded on the ACCC's complaints database and may be used to establish a pattern of behaviour by a particular industry participant or part of an industry.

The ACCC gives priority to matters of complaint that:

- show a blatant disregard for the law
- will cause significant public detriment
- if pursued, will provide outcomes that will have educational or deterrent effects
- include unconscionable conduct against small business
- if pursued, will clarify the reach and meaning of the Act.

The ACCC is likely to direct disputes to the Mediation Adviser at first instance. However, if an industry participant has blatantly disregarded the code, the ACCC may take immediate action.

Information gathering powers

The ACCC can use a range of tools to gather information to assist investigations.

Power to obtain information, documents and evidence

Section 155 of the Act gives the ACCC the power to obtain information, documents and evidence when investigating possible contraventions of the Act (and in connection with some of its adjudicative and telecommunications functions). This power can be used by the ACCC where there is reason to believe that the information, documents or evidence being sought are relevant to the investigation. Penalties apply for failing to comply with a notice.

Substantiation notices

The ACCC can require you to substantiate a claim or representation you have made to a franchisee or prospective franchisee. If you are issued with a substantiation notice, you have 21 days to respond or you may face penalties.

Audit power

The ACCC can now obtain information or documents that you are required to generate, keep or publish under the Code. If you are issued with a written notice, you have 21 days to produce the documents or you may face penalties.

Sanctions

The Act provides for a number of sanctions and orders for a breach of the code and the Act, including:

- declarations that particular conduct breaches the code (and therefore the Act)
- injunctions to stop the prohibited conduct or to require some action to be taken
- compensation and damages
- orders for corrective advertising

- infringement notices imposing a financial penalty
- disqualification orders to prevent directors from managing corporations for a period of time
- warning notices to the public about the conduct of a franchisor
- orders for refunds or contract variations

Court enforceable undertakings

While the ACCC can institute legal proceedings against you if you breach the code, s. 87B and Schedule 2, Part 5-1, s. 218 of the Act also confer upon the ACCC the ability to accept formal administrative undertakings in which the parties agree to certain actions, such as stopping the offending conduct or reviewing a compliance program (or, in the absence of a such a program, setting one up). If one of these undertakings is breached, the Federal Court of Australia may make enforcement and compensation orders.

Legal action by other affected parties

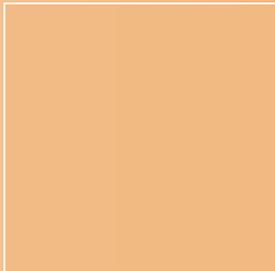
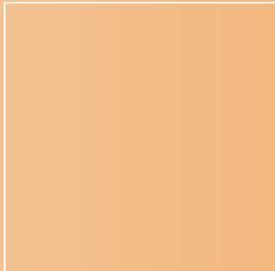
In addition to action by the ACCC, the Act also makes provision for other affected parties to take legal action for a breach of the code.

Commercial consequences of a breach of the code

If you are found to be in breach of the code, you may also face a number of commercial consequences—for example, poor publicity may have a detrimental effect on your company.

6. OTHER OBLIGATIONS UNDER THE ACT

The code is only one part of the Act. The broad objective of the Act is to enhance the welfare of Australians through promotion of competition and fair trading and provision for consumer protection.



The Act regulates three basic kinds of behaviour:

- unfair practices, including misleading conduct (see Schedule 2, Part 3-1 of the Act)
- unconscionable conduct (see Part Schedule 2, Part 2-2 of the Act)
- anti-competitive practices—for example, price fixing or market sharing (see Part IV of the Act).

As a franchisor, it is important to ensure that you are aware of your broader obligations under the Act as they apply to you and your business. These key parts of the Act are outlined below. However, if you have concerns about these requirements you should speak to your legal adviser.

6.1 Misleading conduct

The consumer protection provisions of the Act prohibit conduct that is misleading or deceptive or is likely to mislead or deceive. Even omissions of materially important facts may be a breach of these provisions.

You do not need to intend to mislead or deceive someone to breach the prohibition on misleading and deceptive conduct. An innocent or accidental misleading or deceptive statement will still breach the Act. Statements that may be literally true can be misleading or deceptive if they give the recipient the wrong impression or idea about the true situation.

Silence may constitute misleading or deceptive conduct in certain circumstances.

Misleading or deceptive conduct goes beyond advertisements or representations. Parties must not mislead or deceive, or conduct themselves in a manner which is likely to mislead or deceive, in any of their commercial dealings.

Prudent practice to avoid breaching this provision includes:

- openly and honestly disclosing the conditions of any agreement to the other party
- being able to substantiate claims
- ensuring that your documentation is clear and correct.

6.2 Unconscionable conduct

The Act prohibits unconscionable conduct. Specifically, unconscionable conduct is prohibited under Schedule 2, Part 2-2 of the Act, which is designed to help small businesses and consumers that find themselves victims of harsh or unfair behaviour by large or more powerful businesses. In determining whether certain conduct is in all circumstances unconscionable, a court may take the following factors into account:

- the parties' relative bargaining positions
- whether undue influence was exerted
- whether applicable conditions were not what was reasonably necessary to protect the legitimate interests of the stronger party
- whether the weaker party was able to understand the documentation
- the cost and circumstances under which the weaker party could supply the goods or services elsewhere

- whether the stronger party's conduct was consistent with its conduct in similar transactions with other like business consumers
- whether the stronger party unreasonably failed to disclose any intended future conduct which might affect the interests of the weaker party
- whether there was good faith and willingness to negotiate
- the requirements of any applicable industry code (such as the franchising code)
- the terms and conditions of any contract between the parties
- the conduct of the parties in complying with these terms and conditions
- the parties' conduct, in connection with their commercial relationship, after entering into the contract.

The parties' relative commercial strengths

In determining unconscionability, the courts may look to the relative strengths of the parties' bargaining positions—for example, the commercial relationship a large franchisor has with a small franchisee.

Whether undue influence was exerted

Undue influence generally refers to one party unconsciously using their position of influence over another party to obtain a benefit.

If the parties are not in a recognised relationship of presumed influence, the affected party has to prove that they were actually influenced by the other party to such an extent that their act was not of their own free or voluntary will.

Once a relationship of influence has been established, the onus lies on the party accepting the benefit under the transaction to establish that the other party exercised their own free or voluntary will in entering into the transaction.

Whether applicable conditions were not reasonably necessary to protect the legitimate interests of the stronger party

In determining unconscionable conduct in a transaction a court may take into account whether the victim, as a result of the stronger party's conduct, was required to comply with conditions that were not reasonably necessary to protect the stronger party's legal or commercial interests.

Such a condition might involve penalty provisions in an agreement that impose obligations upon a party disproportionate to the loss or damage caused by the breach.

Whether the weaker party was able to understand the documentation

In determining whether conduct has been unconscionable, the courts may also consider whether the smaller party was able to understand the content of documents used. For example, where a prospective franchisee has language difficulties, inexperience or lack of business acumen, they may not be able to understand the agreement. This may also relate to whether a business's conduct was misleading or

deceptive. The compliance message here is that your disclosure document and franchise agreement should be:

- understandable (which might require the use of plain language)
- correct and capable of being substantiated.

Another consideration is whether the smaller party was advised to seek independent advice when they did not understand the document. Under the code, franchisors are generally required to ensure that franchisees either seek independent advice or sign a statement that they decided not to seek advice on the operation of the franchise agreement before they entered into the agreement. It is critical that procedures are in place to ensure compliance with this provision.

The cost and circumstances under which the weaker party could supply goods or services elsewhere

When determining unconscionability the courts may also look at whether the weaker party had to supply goods or services at prices and on terms substantially different from those available from or to similar parties, and whether these differences could be commercially justified.

Whether the stronger party's conduct was consistent with its conduct in similar transactions with other like business consumers

The fact that some parties can negotiate better deals than others does not necessarily indicate unconscionability. In most cases, there will be valid commercial reasons for differences in prices and terms. When there were no such reasons and a weaker party paid considerably more than other parties for similar transactions, or other excessive terms were imposed, the court may find the conduct to be unconscionable.

Whether the stronger party unreasonably failed to disclose any intended future conduct which might affect the interests of the weaker party

Where a stronger party was aware of some future event that might adversely affect the interests of the weaker party and failed to disclose it, this failure to disclose may be taken into account when determining unconscionability.

Whether there was good faith and willingness to negotiate

When determining whether conduct is unconscionable, the courts may take into account whether a stronger party has acted in good faith. Acting in good faith may include the stronger party acting reasonably in all the circumstances. The courts may also take into account the stronger party's willingness to negotiate terms and conditions.

The requirements of any applicable industry code

In determining unconscionability under Schedule 2, Part 2-2 of the Act, the courts may take into account whether the industry code requirements were observed.

This particular element indicates the importance of ensuring compliance with the code.

The terms and conditions of any contract between the parties

When determining whether conduct is unconscionable, the courts may take into account the terms and conditions of any existing contract to assess whether excessive conditions are imposed on a party.

Whether the parties complied with the terms and conditions

The conduct of the parties' in complying with the terms and conditions of the contract may be taken into account in determining unconscionability. Where there has been a deliberate breach of the contract, the court may take this into consideration to decide whether the conduct is unconscionable.

The parties' conduct, in connection with their commercial relationship, after entering into the contract

In determining whether conduct is unconscionable, the courts may take into account the conduct of a party after they have entered into a contract.

6.3 Anti-competitive conduct

Part IV of the Act prohibits certain anti-competitive practices (also known as restrictive trade practices) such as those listed below.

- Making or giving effect to a contract, arrangement or understanding, where at least two of the parties are or would otherwise be competitors, containing a provision which (ss. 44ZZRD–44ZZRM):
 - has the purpose or actual or likely effect of fixing, controlling or maintaining the price for, or a discount, allowance, rebate or credit in relation to, goods or services to be supplied or acquired by one of the parties, or
 - has the purpose of:
 - restricting one of the parties' production, capacity or supply of goods or services, or
 - allocating customers, suppliers or geographical areas between the parties, or
 - ensuring that parties bid or do not bid to supply or acquire goods or services in particular ways.
- Anti-competitive agreements such as market sharing and primary and secondary boycotts:
 - A primary boycott is an arrangement between competitors that has the purpose of preventing, restricting or limiting dealings with a particular person or a particular class of persons—for example, where two suppliers agree not to supply a particular party or to do so only on certain terms and conditions. Market sharing is a form of primary boycott.
 - A secondary boycott occurs where two or more parties (which may or may not be competitors) combine to hinder or prevent someone from engaging in certain conduct, including dealing with another party (the target of the boycott).
- Making or giving effect to any contract, arrangement or understanding which has the purpose, effect or likely effect of substantially lessening competition in a market (s. 45).

- Misuse of market power (s. 46):
 - A company with a substantial degree of power in a market must not take advantage of that power for the purpose of substantially damaging a competitor, preventing a new market entry or deterring competitive conduct. A company may have substantial market power even though it is only one of several major firms in the market.
- Exclusive dealing (s. 47):
 - The Act prohibits certain kinds of conduct known as ‘exclusive dealing’. Most exclusive dealing conduct will only be in breach of the Act if it has the purpose, effect or likely effect of substantially lessening competition in the market.
 - Supplying goods or services to a customer on condition that the customer also acquires goods or services of a particular kind from a particular third party (unless it is a related body corporate) is a form of exclusive dealing (known as third line forcing) which is prohibited absolutely.
- Resale price maintenance (s. 48):
 - Resale price maintenance involves a supplier of goods trying to control the minimum price at which those goods are resold, advertised or displayed for sale by a customer. This prohibition applies to services as well as goods.
- Mergers that are likely to substantially lessen competition in a market (s. 50).

In some situations the prohibition is absolute (e.g. price fixing and market sharing). In others the effect on competition is tested—that is, it is only a breach of the Act if the relevant conduct has the effect, or likely effect, of substantially lessening competition in a market.

If you believe your future conduct may be at risk of breaching the anti-competitive practices provisions of the Act, you may be able to seek protection for that conduct under mechanisms in the Act—authorisations and notifications.

6.4 Authorisations

The authorisation process allows the ACCC to grant immunity on public benefit grounds for conduct that might otherwise raise concerns under the competition provisions of the Act. Authorisation protects people from being taken to court for engaging in conduct that may otherwise be prohibited by the competition provisions of the Act. The immunity from prosecution only extends to the specific conduct authorised by the ACCC, from the date of authorisation.

To grant authorisation the ACCC must be satisfied that the benefit to the public from the proposed conduct would outweigh any public detriment. This test is commonly referred to as the net public benefit test. The onus is on the person applying for authorisation (the applicant) to demonstrate that the net public benefit test is satisfied and that authorisation is justified. In doing so, the applicant must demonstrate a connection between the claimed public benefits and the conduct for which authorisation is sought. If the ACCC provides you with an authorisation, you are protected from legal proceedings under the competition provisions of the Act for that activity.

The ACCC may grant authorisation for conduct that might constitute:

- an anti-competitive agreement
- a secondary boycott
- exclusive dealing

- resale price maintenance
- an acquisition that occurs outside Australia.

Any conduct will not be protected from prosecution until the ACCC has made its decision on whether to authorise it.

A decision of the ACCC under the authorisation provisions can be reviewed by the Australian Competition Tribunal.

Authorisation is a public process, which means that the ACCC will publicly test your claims (however, you can claim confidentiality for market-sensitive information). As this is a public process, it takes time.

Given the cost and time involved, it is advisable to discuss a proposed application with the ACCC before making a formal application.

A fee must be paid when applying for authorisation. The ACCC has the discretion to waive, in whole or in part, the lodgement fee for applications for non-merger authorisations. Requests for the ACCC to waive a lodgement fee should be made in writing to the ACCC before an application for authorisation is lodged. Information about this process can be found on the ACCC website.

6.5 Notifications

Notifications provide immunity from legal action under the competition provisions of the Act unless the ACCC issues a notice removing the immunity.

A fee must be paid when applying for notification. Notification is a public process, which means that the ACCC will publicly test your claims (however, you can claim confidentiality for market-sensitive information). Given the cost involved, it is advisable to discuss the proposed notification with the ACCC before formally submitting the notification to the ACCC.

You may notify the ACCC for two types of conduct: exclusive dealing and collective bargaining. These are discussed below.

Notification of exclusive dealing

Exclusive dealing broadly involves one trader imposing restrictions on another's freedom to choose with whom, in what or where it deals. Third line forcing is prohibited outright. Other forms of exclusive dealing are only prohibited where they substantially lessen competition.

Therefore, there are two notification processes under the Act for obtaining immunity to engage in:

- third line forcing conduct
- exclusive dealing conduct other than third line forcing.

Third line forcing

Third line forcing involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition.

Third line forcing is prohibited outright, meaning that a breach of the Act can be established regardless of whether the conduct has the purpose, effect or likely effect of substantially lessening competition.

For third line forcing notifications, immunity will commence 14 days after notification is validly lodged, provided the ACCC does not formally object to it.

The immunity afforded by a third line forcing notification will only extend to the conduct which would or might constitute third line forcing as described in the notification. Immunity from legal action will not extend to any conduct engaged in before the third line forcing notification took effect.

The ACCC will assess third line forcing notifications by applying the public interest test outlined in s. 93(3A) of the Act. This test states that the ACCC may revoke a notification if it is satisfied that the likely public benefit will not outweigh the likely public detriment from the conduct.

Exclusive dealing other than third line forcing

The Act also prohibits other forms of exclusive dealing conduct. These include the supply of goods or services, or the supply of goods or services at a discount, on condition that the buyer:

- will not acquire, or will limit the acquisition of, goods or services from a competitor of the supplier
- will not resupply, or will resupply only to a limited extent, goods or services from a competitor of the supplier
- will not resupply the goods or services to others, or will resupply only to a limited extent to particular persons or classes of persons or in particular places.

These forms of exclusive dealing will only raise concerns under the Act if they substantially lessen competition.

For notifications involving exclusive dealing conduct other than third line forcing, immunity will commence from the date the notification is validly lodged.

The immunity afforded by the notification will only extend to the exclusive dealing conduct as described in the notification. Immunity from legal action will not extend to any conduct engaged in before the exclusive dealing notification was lodged.

The ACCC may revoke a notification involving exclusive dealing conduct other than third line forcing when it is satisfied that the conduct has the purpose, effect or likely effect of substantially lessening competition, the conduct has not resulted or is not likely to result in a benefit to the public, or the benefit would not outweigh the detriment to the public from a lessening of competition.

For further information you can download the ACCC's Guide to exclusive dealing notifications from the ACCC website or request a copy through the ACCC Infocentre.

Notification of collective bargaining arrangements

An ACCC notification process is available for collective bargaining, including by small businesses dealing with large businesses.

Collective bargaining refers to an arrangement whereby multiple competitors in an industry come together, either directly or through the appointment of a representative, to negotiate the terms and conditions of supply with another—usually larger—business.

Ordinarily such arrangements could breach the Act. However, the collective bargaining provisions in the Act:

- enable a small business to notify the ACCC of the collective action
- provide a notifying business with immunity from legal action under the Act for three years (if the ACCC raises no objection at the end of a specified period).

The ACCC can only revoke a notification if it is satisfied that the proposed collective bargaining arrangement is not in the public interest.

Notifications for collective bargaining arrangements can only be lodged for transactions valued at \$3 million or less (although this amount can be varied by regulation).

For further information you can download the ACCC's Guide to collective bargaining notifications from the ACCC website or request a copy through the ACCC Infocentre.

6.6 Available remedies and penalties

There are a range of remedies available to the affected party where a court finds that a breach of the Act has occurred. Ultimately it is the court's decision as to the appropriate remedies.

If the code or the unconscionable conduct provisions of the Act have been breached, the following remedies may be available:

- declarations that particular conduct breaches the Act
- injunctions to stop the prohibited conduct continuing, or to require some action to be taken
- damages
- rescission (setting aside or variation) of relevant contracts
- disqualification orders.

Civil pecuniary penalties (i.e. fines) are now also available for breaches of the unconscionable conduct provisions and the unfair practices provisions of the Act. The maximum penalties are \$1.1 million for corporations and \$220 000 for individuals.

The ACCC also has the power to issue an infringement notice where it has reasonable grounds to believe certain provisions of the Act have been breached.

The ACCC can also issue a warning notice to the public about the conduct of a corporation if it has reasonable grounds to suspect that the conduct may breach certain provisions of the Act, is satisfied that one or more people have suffered detriment and is satisfied that it is in the public interest to issue the notice.

Criminal consumer protection provisions of the Act

If you breach certain consumer protection provisions of the Act such as the prohibition on false or misleading representations, as distinct from failing to comply with the code, the Act provides for penalties as well as the sanctions referred to above.

A breach of the consumer protection provisions may attract maximum fines of:

- \$1.1 million for companies
- \$220 000 for individuals.

A breach of the Act's criminal consumer protection provisions also constitutes a criminal offence.

These offences are strict liability, meaning that it is not necessary to prove intent for you to be found to have committed the offence.

Remedies available for unconscionable conduct under the Act

If you breach the unconscionable conduct provisions of the Act, as distinct from failing to comply with the code, the Act provides for a number of remedies.

Rights of private parties under the Act

Parties that choose to take private action under the Act may seek damages, injunctions and/or certain other orders. Pecuniary penalties and criminal sanctions are not available to private parties for breaches of the unconscionable conduct provisions.

Remedies available to the ACCC under the Act

The ACCC may take action against a business or individual that has engaged in unconscionable conduct. As part of this action, the ACCC may accept a court enforceable undertaking (s. 87B or Schedule 2, Part 5-1, s. 218 of the Act) from the company concerned that it will stop the conduct and change its business practices, and make this understanding known to the public. If a matter cannot be resolved administratively, the ACCC may take court action. The ACCC can seek civil pecuniary penalties, injunctions or other orders (including community service orders, probation orders, disqualification orders and orders for disclosure of certain information) and corrective advertising.

The ACCC may also commence action on behalf of people who have suffered (or are likely to suffer) loss and damage as a result of unconscionable conduct by the business.

Remedies available for anti-competitive conduct under the Act

Each breach of the anti-competitive practices provisions of the Act may result in the following penalties:

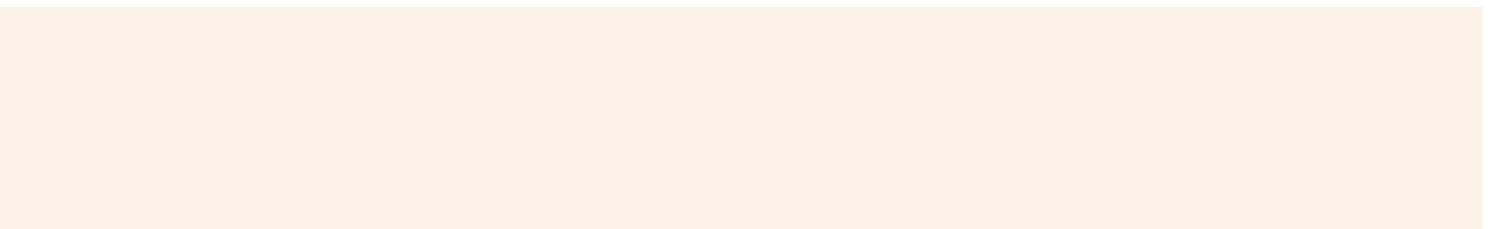
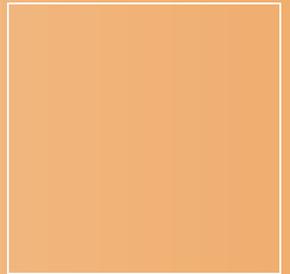
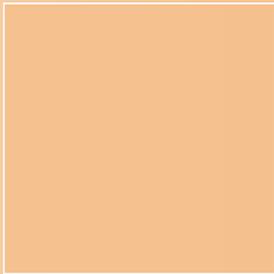
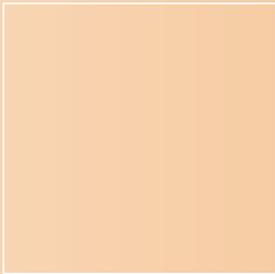
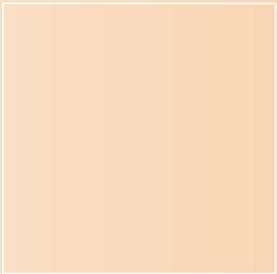
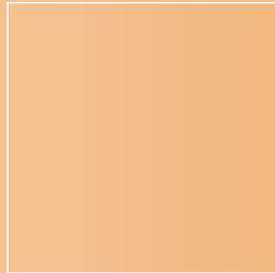
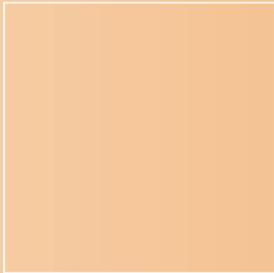
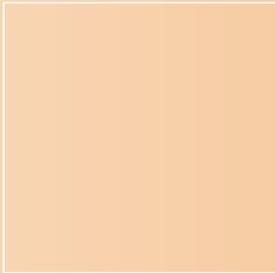
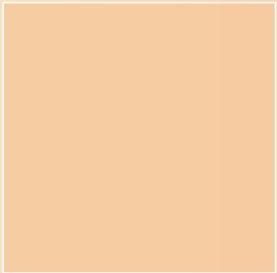
- For a corporation—a maximum of \$10 million or three times the gain from the contravention or, where the gain is not readily ascertainable, 10 per cent of the turnover of the body corporate and any related bodies, whichever is the greater.
- For an individual—a maximum of \$500 000 and possible disqualification from managing a corporation.

These penalties can be imposed by the Federal Court if the ACCC brings proceedings against you or a franchisee under Part IV of the Act. They do not apply simply for failing to comply with the code.

Remedies available to parties other than the ACCC

Remember: Parties other than the ACCC (including competitors) can sue you for a breach of the Act. While they cannot seek pecuniary penalties, they can seek alternative remedies, including damages.

7. COMPLIANCE PROGRAMS



7.1 What is a compliance program?

A compliance program helps businesses manage risk and comply with laws and regulations, including the code.

A number of ACCC publications—such as *Corporate trade practices compliance programs* and the *Small business guide to trade practices compliance programs*—provide further information on designing and implementing general trade practices compliance programs. These publications should be read in conjunction with *Australian Standard 3806–2006: Compliance programs* and *Australian Standard ISO 10002–2006: Customer satisfaction—guidelines for complaints handling in organizations*.

Why have a compliance program for the code?

As discussed in chapter 5, a breach of the code is a breach of the Act. Failure to comply with the provisions of the code may result in another party or the ACCC bringing legal action against your business, which could have serious consequences. Compliance programs are good risk management tools that help your business to comply with the code and avoid breaching the law.

The code requires industry participants to comply with a number of obligations. An effective compliance program will help to ensure you meet these obligations successfully.

The benefits of a compliance program include:

- minimising the risk of breaching the code
- minimising the risk of breaching provisions in the Act
- minimising the risk of breaching other statutory obligations
- helping parties to improve business practices and procedures
- minimising the risk to an organisation of costly court action
- promoting a culture of compliance within the organisation
- assisting the organisation to remain, or to become, a good corporate citizen.

Every organisation's circumstances are different and no generic compliance program can apply to businesses across the board. Depending on the size and risk profile of the organisation, a compliance program can be as simple as implementing a few systems or procedures and providing all relevant staff with training tailored to the regulatory risks of the organisation.

Typically an effective compliance system will include:

- sufficient resources to meet the requirements of the code that apply to the organisation
- the day-to-day operational requirements of a compliance system
- a monitoring and continuous improvement component.

7.2 Developing an effective code compliance program

The implementation and management elements of a compliance program will not be the same for all organisations, because of their different sizes, structures and activities. In the interests of efficiency, integrating compliance with the code into any pre-existing trade practices compliance and/or complaints-handling system may be desirable.

The following steps may be useful to consider when developing a code compliance program.

Giving someone responsibility for implementing the code

A compliance program is more likely to be effective when a person within the organisation is given specific responsibility for ensuring compliance with the code. This person should be knowledgeable about the code, have sufficient authority to implement the compliance program and be both an internal and external contact point on code issues.

In the small business environment, a compliance officer may be a director of the company or a person appointed by a director to ensure that the business complies with its code obligations.

Developing a code compliance plan

A code compliance plan is a road map—a blueprint—to help you set up and implement your compliance program. Typically such a plan will include:

- operational practices and procedures
- roles and responsibilities of relevant people
- resources needed
- priorities
- implementation dates
- monitoring dates (if required).

Identifying and allocating resources for code compliance

Resources necessary to set up and maintain an effective compliance program typically include:

- the creation of a position of code compliance officer
- access to external advice and specialised skills (e.g. legal)
- budgetary requirements for staff training
- adequate reference material.

Identifying your obligations under the code

You should systematically work through the code and determine which aspects of it apply to you. You may consider setting up a code compliance committee, particularly if your organisation is large. You could include staff with legal, accountancy, information technology and field skills.

Developing code compliance procedures

It is ineffective to simply have a compliance program on paper. A compliance program must be incorporated into the business and become part of the way the business functions. It is important to develop well-documented procedures (e.g. operating policies and procedures, work instructions and training) so that all employees are aware that systems are in place to ensure compliance with the code.

Implementing compliance procedures

Implementing code compliance procedures includes:

- identifying the appropriate business units and line managers
- allocating responsibilities for implementing procedures
- determining resources needed
- setting time frames for implementation
- checking that implementation has occurred.

Dealing with code complaints

You should have a visible and accessible complaints-handling system so that all code compliance failures can be identified and rectified quickly and comprehensively. Early detection can prevent problems from escalating. A complaints-handling system can also identify whether there are any systemic issues with code compliance, allowing appropriate remedial action to be taken. To avoid duplication, an existing complaints-handling mechanism could be extended to include code complaints.

Contact details for the code compliance officer and/or the person responsible for dealing with complaints should be readily available. It may be wise to provide the details of your code compliance officer for this purpose in your franchise agreements.

Keeping records

Record keeping is necessary to both monitor and provide evidence of compliance with the code and applicable legislation.

Code compliance records for a franchisor will typically include:

- established procedures
- action taken on issues
- allocation of roles and responsibilities for compliance
- training records
- information on compliance performance (including compliance reports)
- complaints and communications from the organisation's interested parties
- complaints resolution
- details of compliance failures and corrective and preventive actions
- results of reviews and audits of the compliance program and actions taken.

Monitoring performance

Monitoring of compliance performance can include identifying and rectifying:

- compliance failures
- instances where compliance inspections are not performed as scheduled.

It is important that the code compliance officer develops effective feedback systems to identify code compliance failures. Feedback on a business's compliance performance can come from various sources, including employees and customers (e.g. through a complaints hotline or a complaints-handling system). As noted earlier, it is important that a code compliance officer's role and contact details are highly visible and accessible.

If you have a code compliance program in place, it may be prudent to have the program audited periodically to ensure that it remains up to date and effective in helping your business comply with the law. Having such a review conducted by an external party may produce a more independent and objective assessment of the program.

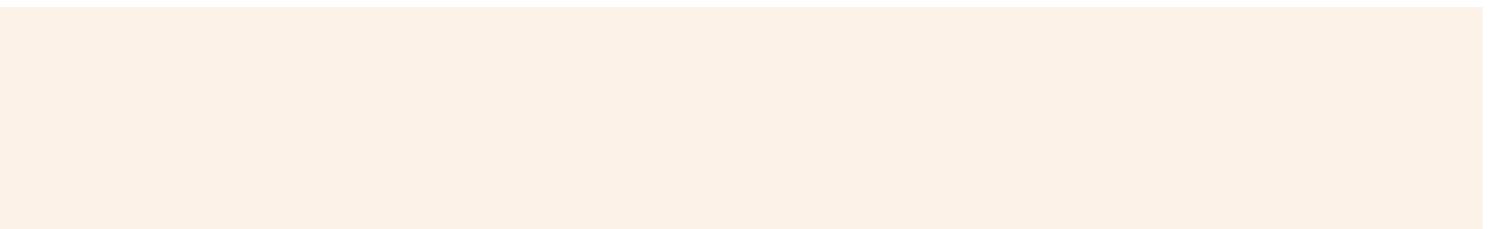
7.3 Checklist—compliance program

- Has someone been designated with overall responsibility for code compliance?
 - Does that person have sufficient ‘clout’—or access to a person with the authority—to ensure that code obligations are carried out?
 - Has a compliance plan been developed covering such things as:
 - roles and responsibilities of people implementing various aspects of and procedures for compliance with the code
 - time lines indicating when code obligations are to be carried out
 - resources to be applied in the compliance program
 - priorities
 - how compliance obligations will be embedded in operational practices and procedures
 - processes for identifying, reporting and responding to compliance failures?
- Has the compliance officer systematically worked through the code to determine what aspects of the code apply to your organisation and in what circumstances?
- Have workable code procedures, practices, documentation and processes been developed for those circumstances where the code applies?
- Has a system (including e.g. responsibilities and time lines) to implement these procedures, practices, documentation and processes been put in place?
- Has the compliance officer set up a code record-keeping system?
- Has the compliance officer set up a monitoring program to ensure compliance with procedures, practices, documentation and processes?
- Does your program include procedures for continual improvement (e.g. audits and reviews, preferably external)?

ANNEXURE 1: DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE— LONG FORM

The following pages give a recommended format for a long-form disclosure document for a franchisee or prospective franchisee in accordance with annexure 1 of the code.

| | | | | |
|--|--|--|--|---|
| | | | |  |
| | | | | |



LONG-FORM DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE

[See code subclause 6(1)]

| | |
|---|--|
| Franchisor's name | Franchisor's business address and phone number |
| Franchisor's ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor) | Date of disclosure document |
| <p>This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement.</p> <p>Entering into a franchise agreement is a serious undertaking.</p> <p>Franchising is a business and, like any business, the franchise (or franchisor) could fail during the franchise term. This could have consequences for the franchisee.</p> <p>A franchise agreement is legally binding on you if you sign it.</p> <p>You are entitled to a waiting period of 14 days before you enter into this agreement.</p> <p>If this agreement is a new franchise agreement (not a renewal, extension or transfer of an agreement), you will be entitled to a 7-day 'cooling-off' period after signing the agreement, during which you may terminate the agreement. If you decide to terminate the agreement during the cooling-off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor under the agreement. However, the franchisor may deduct from this amount the franchisor's reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.</p> <p>Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.</p> <p>You should make your own inquiries about the franchise and about the business of the franchise.</p> <p>You should get independent legal, accounting and business advice before signing the franchise agreement.</p> <p>It is often prudent to prepare a business plan and projections for profit and cash flow.</p> <p>You should also consider educational courses, particularly if you have not operated a business before.</p> | |

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Franchisor/director/officer/authorised agent of the franchisor

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| Clause no. | Title |
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| 7 | Intellectual property |
| 8 | Franchise site or territory |
| 9 | Supply of goods or services to a franchisee |
| 10 | Supply of goods or services by a franchisee |
| 11 | Sites or territories |
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| 13A | Unforeseen significant capital expenditure |
| 13B | Costs of dispute resolution |
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| 21 | Updates |
| 22 | Other relevant disclosure information |
| 23 | Receipt |

2. Franchisor details

| | | |
|-----|---|--|
| 2.1 | (a) Franchisor's name | |
| | (b) Address, or addresses of franchisor's registered office and principal place of business in Australia | |
| | (c) Franchisor's ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor) | |
| 2.2 | Name under which the franchisor carries on business in Australia relevant to the franchise | |
| 2.3 | A description of the kind of business operated under the franchise | |
| 2.4 | The name, ABN, ACN, or ARBN, address of the registered office and principal place of business of each associate of the franchisor that is a body corporate (if any) | |
| 2.5 | The name and address of each associate of the franchisor that is not a body corporate (if any) | |
| 2.6 | Name, position held and qualifications (if any) for each officer of the franchisor | |

3. Business experience

- 3.1 A summary of the relevant business experience in the last 10 years of each person mentioned in 2.6.
- 3.2 A summary of the relevant business experience of the franchisor in the last 10 years, including:
- (a) length of experience in:
 - (i) operating a business that is substantially the same as that of the franchise and
 - (ii) offering other franchises that are substantially the same as the franchise and
 - (b) whether the franchisor has offered franchises for other businesses and, if so:
 - (i) a description of each such business and
 - (ii) the length of time the franchisor offered franchises for each such business.

4. Litigation

4.1 Are there:

- (a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise against the franchisor or a franchisor director in Australia alleging:
- (i) breach of a franchise agreement or
 - (ii) contravention of trade practices law or
 - (iii) contravention of the *Corporations Act 2001* or
 - (iv) unconscionable conduct or
 - (v) misconduct or
 - (vi) an offence of dishonesty?

If yes for any of the above, provide details (where relevant) for each:

| | |
|--|--|
| The names of the parties to the proceedings | |
| The name of the court, tribunal or arbitrator | |
| The case number | |
| The general nature of the proceedings | |
| The current status of the proceedings | |
| The date and content of any undertaking or order under s. 87B of the Act | |
| The penalty or damages assessed or imposed | |

(b) proceedings against the franchisor under:

- (i) ss. 127A or 127B of the *Workplace Relations Act 1996* or
- (ii) s. 106 of the *Industrial Relations Act 1996* (NSW) or
- (iii) s. 276 of the *Industrial Relations Act 1999* (Qld)?

If yes for any of the above, provide the following details (where relevant) for each:

| | |
|---|--|
| The names of the parties to the proceedings | |
| The name of the court, tribunal or arbitrator | |
| The case number | |
| The general nature of the proceedings | |

| | |
|--|--|
| The current status of the proceedings | |
| The date and content of any undertaking or order under s. 87B of the Act | |
| The penalty or damages assessed or imposed | |

4.2 Has the franchisor or a director of the franchisor:

- (a) in the last 10 years been convicted of a serious offence or an equivalent offence outside Australia or
- (b) in the last five years been subject to final judgment in civil proceedings for a matter mentioned in 4.1(a)?

If yes for either of the above, provide the following details (where relevant) for each:

| | |
|--|--|
| The names of the parties to the proceedings | |
| The name of the court, tribunal or arbitrator | |
| The case number | |
| The general nature of the proceedings | |
| The current status of the proceedings | |
| The date and content of any undertaking or order under s. 87B of the Act | |
| The penalty or damages assessed or imposed | |

- (c) in the last 10 years been bankrupt, insolvent, under administration or an externally administered body corporate in Australia or elsewhere?

If yes, provide the details (where relevant) set out below:

| | |
|--|--|
| The names of the persons who are bankrupt, insolvent under administration or externally administered | |
| The period of the bankruptcy, insolvency under administration or external administration | |

5. Payment to agents

- 5.1 The name of the person who is not an officer, director or employee of the franchisor who is paid an amount, or given other valuable consideration, in connection with the introduction or recruitment of a franchisee (insert name/s)

6. Existing franchisees

- 6.1 The number, sorted by state, territory or region, of:

| | | NSW | Vic | Qld | SA | WA | NT | ACT | Tas |
|-----|--|-----|-----|-----|----|----|----|-----|-----|
| (a) | Existing franchised business | | | | | | | | |
| (b) | Existing franchisees | | | | | | | | |
| (c) | Businesses owned or operated by the franchisor in Australia that are substantially the same as the franchise | | | | | | | | |

- 6.2 For each existing franchisee:

| | | |
|-----|---|--|
| (a) | the business address, if this is not the franchisee's residential address | |
| (b) | the business phone number | |
| (c) | the year when the franchisee started operating the franchised business | |

- 6.3 If there are more than 50 franchisees, you may instead give the following details for all franchises in the state, region or metropolitan area in which the franchise is to be operated:

| | | |
|-----|---|--|
| (a) | the business address, if this is not the franchisee's residential address | |
| (b) | the business phone number | |
| (c) | the year when the franchisee started operating the franchised business | |

6.4 For each of the last three financial years, the number of franchisors for which any of the following events happened:

| | Details of events of each of the last three years | Year 1 | Year 2 | Year 3 |
|-----|---|--------|--------|--------|
| (a) | franchise transferred | | | |
| (b) | franchised business ceased to operate | | | |
| (c) | franchise agreement was terminated by the franchisor | | | |
| (d) | franchise agreement was terminated by the franchisee | | | |
| (e) | franchise agreement was not renewed when it expired | | | |
| (f) | franchised business was bought back by the franchisor | | | |
| (g) | franchise agreement was terminated and the franchised business was acquired by the franchisor | | | |

Note: An event may be counted more than once if more than one paragraph applies to it.

6.5 For each item mentioned in 6.4 (if the information is available):

| | | |
|-----|----------------------------------|--|
| (a) | the franchisee's name | |
| (b) | the franchisee's location | |
| (c) | the franchisee's contact details | |

6.6 A franchisor does not have to provide details of a franchisee if the franchisee has requested in writing that their details not be disclosed.

7. Intellectual property

7.1 For any trademark used to identify, and for any patent, design or copyright that is material to, the franchise system:

(a) description of the intellectual property:

| | Description |
|------------|-------------|
| Trademarks | |
| Patents | |
| Designs | |
| Copyright | |

(b) details of the franchisee's rights and obligations in connection with the use of the intellectual property:

| | Franchisee's rights | Franchisee's obligations |
|------------|---------------------|--------------------------|
| Trademarks | | |
| Patents | | |
| Designs | | |
| Copyright | | |

(c) whether the intellectual property is registered in Australia. If yes, provide the following details:

| | Registered? | Registration date | Registration no. | Place of registration |
|------------|-------------|-------------------|------------------|-----------------------|
| Trademarks | Yes/No | | | |
| Patents | Yes/No | | | |
| Designs | Yes/No | | | |
| Copyright | Yes/No | | | |

- (d) Is there any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property? Yes/No

If yes, provide the following details:

- (i) name of court or tribunal
- (ii) matter number
- (iii) summary of claim or judgment.
- (e) If the intellectual property is not owned by the franchisor, who owns it?

- (f) Details of any agreement that significantly affects the franchisor's right to use or give others the right to use the intellectual property. If agreement exists, provide details below:

| (i) Parties to the agreement | (ii) Nature and extent of limitation | (iii) Duration of agreement | (iv) Conditions under which agreement may be terminated |
|------------------------------|--------------------------------------|-----------------------------|---|
| | | | |

- 7.2 The franchisor is taken to have complied with 7.1 for any confidential information if it is listed below.

| (a) General description of subject matter | (b) Summary of conditions for use |
|---|-----------------------------------|
| | |

8. Franchise site or territory

8.1 Is the franchise:

- (a) for an exclusive or non-exclusive territory? Yes/No
- (b) limited to a particular site? Yes/No

8.2 Provide the following details for the territory:

| | Consideration | |
|-----|--|--------|
| (a) | Whether other franchisees may operate a business that is substantially the same as the franchise | Yes/No |
| (b) | Whether the franchisor or an associate of the franchisor may operate a business that is substantially the same as the franchise | Yes/No |
| (c) | Whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise | Yes/No |
| (d) | Whether the franchisee may operate a business that is substantially the same as the franchised business outside the territory of the franchise | Yes/No |
| (e) | Whether the franchisor may change the territory of the franchise | Yes/No |

9. Supply of goods or services to a franchisee

9.1 For the franchisor's requirements for the supply of goods or services to a franchisee, provide the following details:

| | | |
|-----|---|--|
| (a) | Any requirement for the franchisee to maintain a level of inventory or acquire an amount of goods or services | |
| (b) | Restrictions on acquisition of goods or services by the franchisee from other sources | |
| (c) | Ownership by the franchisor or an associate of the franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services | |
| (d) | The obligation of the franchisee to accept goods or services from the franchisor or an associate of the franchisor | |
| (e) | The franchisor's obligation to supply goods or services to the franchisee | |
| (f) | Whether the franchisee will be offered the right to be supplied with the whole range of the goods or services of the franchise | |
| (g) | Conditions under which the franchisee can return goods, and to whom | |
| (h) | Conditions under which the franchisee can obtain a refund for services provided by the franchisor, and from whom | |
| (i) | Whether the franchisor may change the range of goods or services and, if so, to what extent | |
| (j) | Whether the franchisor, or an associate of the franchisor, will receive a rebate or other financial benefit from the supply of goods or services to franchisees, including the name of the business providing the rebate or financial benefit | |
| (k) | Whether any rebate or financial benefit referred to in (j) is shared, directly or indirectly, with franchisees | |

Note: Before a requirement is made under (b) or (c), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Part VII of the Act).

10. Supply of goods or services by a franchisee

10.1 For the franchisor's requirements for supply of goods or services by a franchisee, provide the following details:

| | | |
|-----|--|--|
| (a) | Restrictions on the goods or services that the franchisee may supply | |
| (b) | Restrictions on the person(s) to whom the franchisee may supply | |
| (c) | Whether the franchisee must supply the whole range of goods or services of the franchise | |

Note: Before a requirement is made under (a) or (b), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Part VII of the Act).

11. Sites or territories

11.1 The policy of the franchisor or associate of the franchisor for selection of:

- (a) the site to be occupied by the franchised business
- (b) the territory in which the franchised business is to operate.

11.2 Has the site or territory for the franchised business been operated by a previous franchise granted by the franchisor? Yes/No

If yes, provide details of the previous franchised business, including the circumstances in which the previous franchisee ceased to operate.

11.3 The details mentioned in 11.2 must be provided:

- (a) in a separate document
- (b) with this disclosure document.

12. Marketing or other cooperative funds

12.1 Does the franchisor control or administer, or have controlled or administered for them, a marketing or cooperative fund to which the franchisee may be required to contribute? Yes/No

If yes, provide the following details:

| | | | |
|-----|--|---|--|
| (a) | The kinds of persons who contribute to the fund | e.g. franchisee, franchisor, outside supplier | |
| (b) | Whether the franchisor must contribute to the fund in relation to businesses owned or operated by the franchisor that are substantially the same as the franchised business | Yes/No | If yes, is the contribution worked out the same way as for a franchisee? |
| (c) | How much must the franchisee contribute to the fund? Must other franchisees contribute at a different rate? | Detail Yes/No | |
| (d) | Who controls or administers the fund? | Detail | |
| (e) | Is the fund audited? If so, by who and when? Include name of auditor and date fund was audited | Yes/No Name Date of audit | |
| (f) | Can the fund's financial statements be inspected by, or will they be given to, franchisees? | Yes/No | |
| (g) | The kinds of expenses for which the fund may be used | Detail | |
| (h) | Fund's expenses for last financial year, including the percentage spent on: <ul style="list-style-type: none"> • Production • Advertising • Administration • other stated expenses | | |
| (i) | Does the franchisor or its associates supply goods or services which the fund pays and, if so, what are the details of the goods or services? | Yes/No Detail | |
| (j) | Must the franchisor spend part of the fund on marketing, advertising or promoting the franchisee's business? | Yes/No | |

13. Payments

Pre-payments

13.1 Does the franchisor require a payment before the franchise agreement is entered into? Yes/No

If yes, provide the following details:

| | | |
|-----|---------------------------------|--|
| (a) | Why is the money required? | |
| (b) | How is the money to be applied? | |
| (c) | Who will hold the money? | |

13.2 The conditions under which a payment will be refunded

Establishment costs

13.3 The following are details of the range of costs to start operating the franchised business, based on current practice, for the following matters:

| Expenditures | 13.4(a) Description of payment | 13.4(b) Amount or formula used to calculate payment (if amount not easily calculable, provide upper and lower limits) | 13.4(c) To whom the payment is made | 13.4(d) When the payment is due | 13.4(e) Whether refundable — if so, under what conditions |
|--------------|--|--|---|--|--|
| (a) | Real property, including property type, location and building size | | | | |
| (b) | Equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements, decorating costs | | | | |
| (c) | Inventory required to begin operation | | | | |
| (d) | Security deposits, utility deposits, business licences, insurance and other prepaid expenses | | | | |
| (e) | Additional funds, including working capital required by the franchisee before operations begin | | | | |
| (f) | Other payments by a franchisee to begin operations | | | | |

Other payments

13.6 Are there any isolated or recurring payments payable by the franchisee to the franchisor or their associate, or to be collected by the franchisor or an associate of the franchisor for another person? Yes/No

If yes, provide the following details:

| Description of payment | Amount or formula used to calculate payment (if amount not easily calculable, provide upper and lower limits) | To whom the payment is made | When the payment is due | Whether refundable—if so, under what conditions |
|------------------------|---|-----------------------------|-------------------------|---|
| | | | | |

13.6A Are there any recurring or isolated payments, within the franchisor's knowledge or control or reasonably foreseeable by the franchisor, that are payable by the franchisee to a person other than the franchisor or an associate of the franchisor? Yes/No

If yes, provide the following details:

| Description of payment | Amount or formula used to calculate payment (if amount not easily calculable, provide upper and lower limits) | To whom the payment is made | When the payment is due | Whether refundable—if so, under what conditions |
|------------------------|---|-----------------------------|-------------------------|---|
| | | | | |

13.8 If two or more of items 13.1, 13.3 and 13.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.

13A Unforeseen significant capital expenditure

13A.1 Will the franchisor require the franchisee, through the franchise agreement, the operations manual (or equivalent), or any other means, to undertake unforeseen significant capital expenditure that was not disclosed by the franchisor before the franchisee entered into the franchise agreement? Yes/No

13B Costs of dispute resolution

13B.1 Will the franchisor attribute the franchisor's costs, including legal costs, incurred in dispute resolution, to the franchisee? Yes/No

14. Financing

14.1 Does the franchisor or its associate or agent offer financing arrangements to the franchisee for the establishment or operation of the franchised business? Yes/No

If yes, provide the material conditions of each financial arrangement, including but not limited to:

| | | |
|-----|---|--|
| (a) | Any requirement that the franchisee must provide a minimum amount of unborrowed working capital for the franchised business | |
| (b) | Any requirement that a franchisee must meet a stated debt-to-equity ratio in relation to the franchised business | |

15. Franchisor's obligations

15.1 The table below sets out references to the relevant conditions of the attached franchise agreement that deal with the obligations of the franchisor.

Note: You must include information about training.

(a) (i) Before the franchised business starts:

| | |
|------------------------------------|---|
| Obligations | References to the relevant condition/s of the attached franchise agreement that deal with the obligations of the franchisor |
| Any obligation to provide training | |
| | |

(ii) During the operation of the franchised business:

| | |
|------------------------------------|---|
| Obligations | References to the relevant condition/s of the attached franchise agreement that deal with the obligations of the franchisor |
| Any obligation to provide training | |
| | |

(b) After the franchised business ceases to operate:

| | |
|-------------|---|
| Obligations | References to the relevant condition/s of the attached franchise agreement that deal with the obligations of the franchisor |
| | |

16. Franchisee's obligations

16.1 The table below sets out references to the relevant conditions of the franchise agreement that deal with certain obligations of a franchisee. You must provide the following information:

| | Obligations | References to the relevant conditions of the franchise agreement |
|-----|--|--|
| (a) | Selection and acquisition of site and premises | |
| (b) | Requirements for starting the franchised business | |
| (c) | Development of the site, premises, vehicles and equipment | |
| (d) | Training: <ul style="list-style-type: none"> • before the franchised business starts • during operation of the franchised business | |
| (e) | Opening the franchised business | |
| (f) | Complying with standards or operations manuals | |
| (g) | Warranties and customer service | |
| (h) | Territorial development and minimum performance criteria | |
| (i) | Maintenance and appearance of site, premises, vehicles and equipment | |
| (j) | Insurance | |
| (k) | Marketing | |
| (l) | Indemnities and guarantees | |
| (m) | Participation requirements for the franchisee directors, management or employees | |
| (n) | Records and reports | |
| (o) | Inspections and audit | |

17. Other conditions of the agreement

17.1 The table below sets out references to the relevant conditions of the franchise agreement that deal with the following matters.

| | Condition | References to the relevant conditions of the franchise agreement |
|-----|---|--|
| (a) | Term of the franchise agreement | |
| (b) | Variation | |
| (c) | Renewal, extension or extension of the scope | |
| (d) | Conditions the franchisee must meet to renew, extend or extend the scope of the franchise agreement | |
| (e) | Termination by the franchisor | |
| (f) | Termination by the franchisee | |
| (g) | The franchisee's goodwill, if any, on termination or expiry | |
| (h) | The franchisee's obligations when a franchise agreement is terminated, expires or is not renewed | |
| (i) | The franchisor's rights to sell its business | |
| (j) | Transfer of a franchise | |
| (k) | Mediation | |
| (l) | Option or right of first refusal, if any, for the franchisor to buy the franchised business | |
| (m) | The franchisor's right, if any, to inspect financial and other records of the franchised business | |
| (n) | Confidentiality of the franchisee's records | |
| (o) | Death or disability of the franchisee or a director or shareholder of the franchisee | |

| | | |
|-----|---|--|
| (p) | Details of the operation or establishment of any franchisee representative council, e.g. Franchise Advisory Council | |
| (q) | Restrictions on the franchisee's operation of other businesses during or after the term of the franchise agreement | |
| (r) | Operations manual | |
| (s) | Choice of governing law | |

17A Unilateral variation of franchise agreement

17A.1 If the franchise agreement is entered into in a financial year commencing on 1 July 2011, 1 July 2012 or 1 July 2013—provide details of the circumstances in which the franchisor has unilaterally varied a franchise agreement since 1 July 2010 (if applicable).

| Date of variation/s | Details of unilateral variation |
|---------------------|---------------------------------|
| | |
| | |

17A.2 If a franchise agreement is entered into in a financial year commencing after 1 July 2013—provide details of the circumstances in which the franchisor has unilaterally varied a franchise agreement in the last 3 financial years (if applicable).

| Date of variation/s | Details of unilateral variation |
|---------------------|---------------------------------|
| | |
| | |

17A.3 In which circumstances may the franchise agreement be varied, unilaterally, by the franchisor in the future?

17B Confidentiality obligations

17B.1 Will a confidentiality obligation be imposed by the franchisor on the franchisee? Yes/No

17B.2 If a confidentiality obligation is to be imposed on the franchisee, provide details of the matters that the obligation may cover (e.g. outcomes of mediation; settlements; intellectual property; trade secrets; particular aspects of individual agreements, such as fees).

17C Arrangements to apply at the end of the franchise agreement

17C.1 Provide below details of the process that will apply in determining arrangements to apply at the end of the franchise agreement.

- (a) Will the prospective franchisee have any options to renew, or extend, or extend the scope of the franchise agreement or enter into a new franchise agreement? Yes/No

If so, what process will the franchisor use to determine whether to renew, extend, or extend the scope of the franchise agreement or enter into a new franchise agreement?

- (b) Will the prospective franchisee be entitled to an exit payment at the end of the franchise agreement? Yes/No

If so, how will the exit payment will be determined or earned?

- (c) Provide details of the arrangements that will apply to unsold stock, marketing material, equipment and other assets purchased when the franchise agreement was entered into, including:

- (i) will the franchisor purchase the stock, marketing material, equipment and other assets? Yes/No
- (ii) if yes, how will prices be determined?

- (d) Will the prospective franchisee have the right to sell the business at the end of the franchise agreement? Yes/No

(e) If the prospective franchisee will have the right to sell the business at the end of the franchise agreement:

- (i) will the franchisor have first right of refusal? Yes/No
- (ii) if so, how will market value be determined?

(f) Will the franchisor consider any significant capital expenditure undertaken by the franchisee during the franchise agreement in determining the arrangements to apply at the end of the franchise agreement? Yes/No

17C.2 If the franchise agreement is entered into in a financial year commencing on 1 July 2011, 1 July 2012 or 1 July 2013—provide details of whether the franchisor has, since 1 July 2010, considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of franchise agreements between the franchisor and those franchisees.

17C.3 If a franchise agreement is entered into in a financial year commencing after 1 July 2013—provide details of whether the franchisor has, in the last 3 financial years, considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of franchise agreements between the franchisor and those franchisees.

17D Amendment of franchise agreement on transfer or novation of franchise

17D.1 Will the franchisor amend (or require the amendment of) the franchise agreement on or before the transfer or novation of the franchise? Yes/No

18. Obligation to sign related agreements

18.1 The table below sets out in summary any requirements under the franchise agreement for the franchisee or directors, shareholders, beneficiaries, owners or partners of the franchisee to enter into any of the following agreements:

| | Agreement | Details |
|------|---|---------|
| (a) | A lease, sublease, licence or other agreement by which the franchisee can occupy the premises of the franchised business | |
| (b) | A chattel lease or hire purchase agreement | |
| (ba) | An agreement under which the franchisee gains ownership of, or is authorised to use, any intellectual property | |
| (c) | A security agreement, including a guarantee, mortgage, security deposit, indemnity, loan agreement or obligation to provide a bank guarantee to a third party | |
| (d) | A confidentiality agreement | |
| (e) | An agreement not to carry on business within an area or for a time after the franchise agreement is terminated | |

18.2 All documents mentioned in item 18.1 must be provided to the franchisee:

- (a) at least 14 days before the day on which the franchise agreement is signed, if they are available at that time, or
- (b) if they are not available at that time, when they become available.

19. Earnings information

19.1 Is earnings information to be given? Yes/No (If yes, this information must be based on reasonable grounds.)

If yes:

19.2 Earnings information may be given in a separate document attached to this disclosure document.

19.3 Earnings information includes information from which historical or future financial details of a franchise business can be assessed.

If no:

19.4 (Include the following statement.)

The franchisor does not give earnings information about [*insert type of franchise*] franchise.

Earnings may vary between businesses.

The franchisor cannot estimate earnings information for a particular franchise.

19.5 If the information includes projections or forecasts it must include the following details:

| | Subject matter | Details |
|-----|---|---------|
| (a) | The facts and assumptions on which the projection or forecast is based | |
| (b) | The extent of inquiries or research undertaken by the franchisor and any other compiler of the projection or forecast | |
| (c) | The period to which the projection or forecast relates | |
| (d) | An explanation of the choice or period covered by the projection or forecast | |
| (e) | Whether the projection or forecast includes depreciation, salary for the franchisee and the cost of servicing loans | |
| (f) | Assumptions about interest and tax | |

20. Financial details

20.1 (Insert the following statement.)

As at the end of the last financial year (insert), it is the opinion of the directors that there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.

.....

Director

Note: Statement must be signed by at least one director.

20.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the Corporations Act 2001, or a foreign equivalent of that Act applicable to the franchisor, prepared by the franchisor, have been attached (attach).

20.2A If:

- (a) the franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the consolidated entity and
- (b) a franchisee requests those financial reports

financial reports for each of the last 2 completed financial years, prepared by the consolidated entity, have been attached (attach).

20.3 **Note:** 20.2 and 20.2A do not apply when:

- (a) the statement under 20.1 is supported by an independent audit provided by:
 - (i) a registered company auditor or
 - (ii) if the franchisor is a foreign franchisor—a foreign equivalent for that franchisor within 12 months after the end of the financial year to which the statement relates, and
- (b) a copy of the independent audit report or statement is provided with the statement under 20.1 (attach).

21. Updates

21.1 Include any information given under clause 18 of the code that has changed between the date of the disclosure document and the date the disclosure document is given under the code.

22. Other relevant disclosure information

22.1 Attached is a copy of the franchise agreement in the form in which it is to be executed (attach).

22.2 Attached is a copy of the code (attach).

22.3 Attached is any other information (attach any information that the franchisor wants to give as long as it does not contradict other information required to be given).

23. Receipt

- (a) the prospective franchisee may keep this disclosure document
- (b) (a receipt should have the following wording)

To (insert name of franchisor)

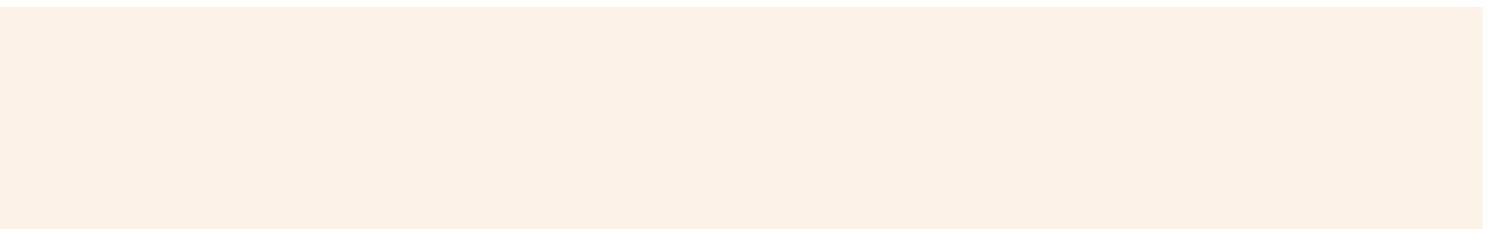
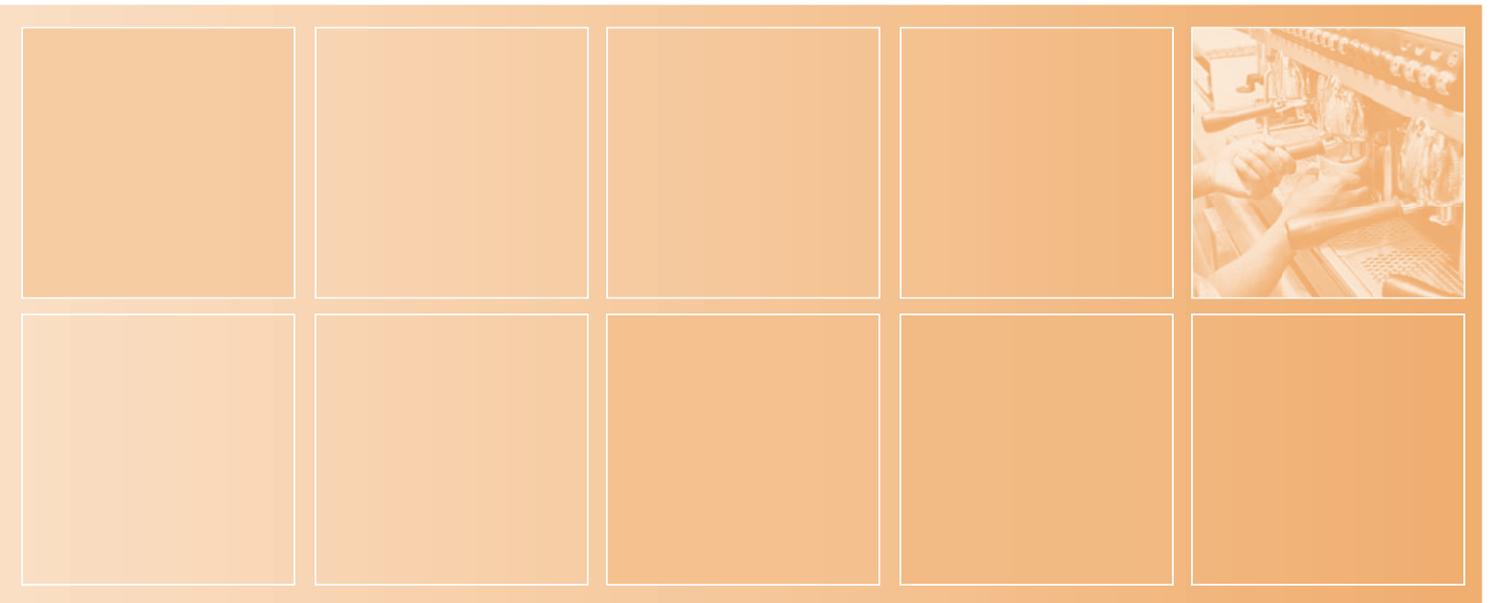
I (insert name of prospective franchisee)

hereby acknowledge receipt of this disclosure document which I, the prospective franchisee, may keep for my records.

.....

ANNEXURE 2: DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE— SHORT FORM

The following pages give a recommended format for a short-form disclosure document for a franchisee or prospective franchisee in accordance with annexure 2 of the code.



SHORT-FORM DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE

[See code subclause 6(2)]

| | |
|--|--|
| Franchisor's name | Franchisor's business address and phone number |
| Franchisor's ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor) | Date of disclosure document |
| <p>This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement.</p> <p>Entering into a franchise agreement is a serious undertaking.</p> <p>Franchising is a business and, like any business, the franchise (or franchisor) could fail during the franchise term. This could have consequences for the franchisee.</p> <p>A franchise agreement is legally binding on you if you sign it.</p> <p>You are entitled to a waiting period of 14 days before you enter into this agreement.</p> <p>If this agreement is a new franchise agreement (not a renewal, extension or transfer of an agreement), you will be entitled to a 7-day 'cooling-off' period after signing the agreement, during which you may terminate the agreement.</p> <p>If you decide to terminate the agreement during the cooling-off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor under the agreement. However, the franchisor may deduct from this amount the franchisor's reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.</p> <p>Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.</p> <p>You should make your own inquiries about the franchise and about the business of the franchise.</p> <p>You should get independent legal, accounting and business advice before signing the franchise agreement.</p> <p>It is often prudent to prepare a business plan and projections for profit and cash flow.</p> <p>You should also consider educational courses, particularly if you have not operated a business before.</p> | |

.....

Franchisor/director/officer/authorised agent of the franchisor

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| Clause no. | Title |
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| 12 | Receipt |

2. Franchisor details

| | | |
|-----|---|--|
| 2.1 | (a) Franchisor's name | |
| | (b) Address, or addresses of franchisor's registered office and principal place of business in Australia | |
| | (c) Franchisor's ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor) | |
| 2.2 | Name under which the franchisor carries on business in Australia relevant to the franchise | |
| 2.3 | A description of the kind of business operated under the franchise | |
| 2.4 | The name, ABN, ACN, or ARBN, address of the registered office and principal place of business of each associate of the franchisor that is a body corporate (if any) | |
| 2.5 | The name and address of each associate of the franchisor that is not a body corporate (if any) | |
| 2.6 | Name, position held and qualifications (if any) for each officer of the franchisor | |

3. Litigation

3.1 Are there:

- (a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise against the franchisor or a franchisor director in Australia alleging:
 - (i) breach of a franchise agreement or
 - (ii) contravention of trade practices law or
 - (iii) contravention of the *Corporations Act 2001* or
 - (iv) unconscionable conduct or
 - (v) misconduct or
 - (vi) an offence of dishonesty?

If yes for any of the above, provide details (where relevant) for each:

| | |
|--|--|
| The names of the parties to the proceedings | |
| The name of the court, tribunal or arbitrator | |
| The case number | |
| The general nature of the proceedings | |
| The current status of the proceedings | |
| The date and content of any undertaking or order under s. 87B of the Act | |
| The penalty or damages assessed or imposed | |

(b) proceedings against the franchisor under:

- (i) ss. 127A or 127B of the *Workplace Relations Act 1996* or
- (ii) s. 106 of the *Industrial Relations Act 1996* (NSW) or
- (iii) s. 276 of the *Industrial Relations Act 1999* (Qld)?

If yes for any of the above, provide the following details (where relevant) for each:

| | |
|--|--|
| The names of the parties to the proceedings | |
| The name of the court, tribunal or arbitrator | |
| The case number | |
| The general nature of the proceedings | |
| The current status of the proceedings | |
| The date and content of any undertaking or order under s. 87B of the Act | |
| The penalty or damages assessed or imposed | |

3.2 Has the franchisor or a director of the franchisor:

- (a) in the last 10 years been convicted of a serious offence or an equivalent offence outside Australia or
- (b) in the last five years been subject to final judgment in civil proceedings for a matter mentioned in 3.1(a)?

If yes for either of the above, provide the following details (where relevant) for each:

| | |
|--|--|
| The names of the parties to the proceedings | |
| The name of the court, tribunal or arbitrator | |
| The case number | |
| The general nature of the proceedings | |
| The current status of the proceedings | |
| The date and content of any undertaking or order under s. 87B of the Act | |
| The penalty or damages assessed or imposed | |

- (c) in the last 10 years been bankrupt, insolvent, under administration or an externally administered body corporate in Australia or elsewhere?

If yes, provide the details (where relevant) set out below:

| | |
|--|--|
| The names of the persons who are bankrupt, insolvent under administration or externally administered | |
| The period of the bankruptcy, insolvency under administration or external administration | |

4. Intellectual property

4.1 Trademark used to identify, and for any patent, design or copyright that is material to, the franchise system:

(a) Description of the intellectual property:

| | Description |
|------------|-------------|
| Trademarks | |
| Patents | |
| Designs | |
| Copyright | |

(b) Details of the franchisee's rights and obligations in connection with the use of the intellectual property:

| | Franchisee's rights | Franchisee's obligations |
|------------|---------------------|--------------------------|
| Trademarks | | |
| Patents | | |
| Designs | | |
| Copyright | | |

(c) Whether the intellectual property is registered in Australia. If yes, provide the following details:

| | Registered? | Registration date | Registration no. | Place of registration |
|------------|-------------|-------------------|------------------|-----------------------|
| Trademarks | Yes/No | | | |
| Patents | Yes/No | | | |
| Designs | Yes/No | | | |
| Copyright | Yes/No | | | |

- (d) Is there any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property? Yes/No

If yes, provide the following details:

- (i) name of court or tribunal
- (ii) matter number
- (iii) summary of claim or judgment.

- (e) If the intellectual property is not owned by the franchisor, who owns it?

- (f) Details of any agreement that significantly affects the franchisor’s right to use or give others the right to use the intellectual property. If agreement exists, provide details below:

| (i) Parties to the agreement | (ii) Nature and extent of limitation | (iii) Duration of agreement | (iv) Conditions under which agreement may be terminated |
|------------------------------|--------------------------------------|-----------------------------|---|
| | | | |

4.2 The franchisor is taken to have complied with 4.1 for any confidential information if it is listed below.

| (a) General description of subject matter | (b) Summary of conditions for use |
|---|-----------------------------------|
| | |

5. Franchise site or territory

5.1 Is the franchise:

- (a) for an exclusive or non-exclusive territory? Yes/No
- (b) limited to a particular site? Yes/No

5.2 Provide the following details for the territory:

| | Consideration | |
|-----|--|--------|
| (a) | Whether other franchisees may operate a business that is substantially the same as the franchise | Yes/No |
| (b) | Whether the franchisor or an associate of the franchisor may operate a business that is substantially the same as the franchise | Yes/No |
| (c) | Whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise | Yes/No |

| | | |
|-----|--|--------|
| (d) | Whether the franchisee may operate a business that is substantially the same as the franchised business outside the territory of the franchise | Yes/No |
| (e) | Whether the franchisor may change the territory of the franchise | Yes/No |

6. Marketing or other cooperative funds

6.1 Does the franchisor control or administer, or have controlled or administered for them, a marketing or cooperative fund to which the franchisee may be required to contribute? Yes/No

If yes, provide the following details:

| | | | |
|-----|--|---|--|
| (a) | The kinds of persons who contribute to the fund | e.g. franchisee, franchisor, outside supplier | |
| (b) | Whether the franchisor must contribute to the fund in relation to businesses owned or operated by the franchisor that are substantially the same as the franchised business | Yes/No | If yes, is the contribution worked out the same way as for a franchisee? |
| (c) | How much must the franchisee contribute to the fund? Must other franchisees contribute at a different rate? | Detail Yes/No | |
| (d) | Who controls or administers the fund? | Detail | |
| (e) | Is the fund audited? If so, by who and when? Include name of auditor and date fund was audited | Yes/No Name Date of audit | |
| (f) | Can the fund's financial statements be inspected by, or will they be given to, franchisees? | Yes/No | |
| (g) | The kinds of expenses for which the fund may be used | Detail | |
| (h) | Fund's expenses for last financial year, including the percentage spent on: <ul style="list-style-type: none"> • production • advertising • administration • other stated expenses | | |

| | | |
|-----|---|------------------|
| (i) | Does the franchisor or its associates supply goods or services which the fund pays and, if so, what are the details of the goods or services? | Yes/No Detail |
| (j) | Must the franchisor spend part of the fund on marketing, advertising or promoting the franchisee’s business? | Yes/No |

7. Payments

Pre-payments

7.1 Does the franchisor require a payment before the franchise agreement is entered into? Yes/No

If yes, provide the following details:

| | |
|-----|---------------------------------|
| (a) | Why is the money required? |
| (b) | How is the money to be applied? |
| (c) | Who will hold the money? |

7.2 The conditions under which a payment will be refunded

Establishment costs

7.3 The following are details of the range of costs to start operating the franchised business, based on current practice, for the following matters:

| Expenditures | 7.4(a) Description of payment | 7.4(b) Amount or formula used to calculate payment (if amount not easily calculable, provide upper and lower limits) | 7.4(c) To whom the payment is made | 7.4(d) When the payment is due | 7.4(e) Whether refundable — if so, under what conditions |
|--|-------------------------------------|---|---|---|---|
| (a) Real property, including property type, location and building size | | | | | |
| (b) Equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements, decorating costs | | | | | |
| (c) Inventory required to begin operation | | | | | |
| (d) Security deposits, utility deposits, business licences, insurance and other prepaid expenses | | | | | |
| (e) Additional funds, including working capital required by the franchisee before operations begin | | | | | |
| (f) Other payments by a franchisee to begin operations | | | | | |

Other payments

7.6 Are there any isolated or recurring payments payable by the franchisee to the franchisor or their associate, or to be collected by the franchisor or an associate of the franchisor for another person? Yes/No

If yes, provide the following details:

| Description of payment | Amount or formula used to calculate payment (if amount not easily calculable, provide upper and lower limits) | To whom the payment is made | When the payment is due | Whether refundable—if so, under what conditions |
|------------------------|---|-----------------------------|-------------------------|---|
| | | | | |

7.6A Are there any recurring or isolated payments, within the franchisor’s knowledge or control or reasonably foreseeable by the franchisor, that are payable by the franchisee to a person other than the franchisor or an associate of the franchisor? Yes/No

If yes, provide the following details:

| Description of payment | Amount or formula used to calculate payment (if amount not easily calculable, provide upper and lower limits) | To whom the payment is made | When the payment is due | Whether refundable—if so, under what conditions |
|------------------------|---|-----------------------------|-------------------------|---|
| | | | | |

7.8 If two or more of items 7.1, 7.3 and 7.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.

7A Unforeseen significant capital expenditure

7A.1 Will the franchisor require the franchisee, through the franchise agreement, the operations manual (or equivalent), or any other means, to undertake unforeseen significant capital expenditure that was not disclosed by the franchisor before the franchisee entered into the franchise agreement? Yes/No

7B Costs of dispute resolution

7B.1 Will the franchisor attribute the franchisor’s costs, including legal costs, incurred in dispute resolution, to the franchisee? Yes/No

8. Franchisor's obligations

8.1 The table below sets out references to the relevant conditions of the attached franchise agreement that deal with the obligations of the franchisor.

Note: You must include information about training.

(a) (i) Before the franchised business starts:

| | |
|------------------------------------|---|
| Obligations | References to the relevant condition/s of the attached franchise agreement that deal with the obligations of the franchisor |
| Any obligation to provide training | |

(ii) During the operation of the franchised business

| | |
|------------------------------------|---|
| Obligations | References to the relevant condition/s of the attached franchise agreement that deal with the obligations of the franchisor |
| Any obligation to provide training | |

(b) After the franchised business ceases to operate

| | |
|-------------|---|
| Obligations | References to the relevant condition/s of the attached franchise agreement that deal with the obligations of the franchisor |
| | |

9. Franchisee's obligations

9.1 The table below sets out references to the relevant conditions of the franchise agreement that deal with certain obligations of a franchisee. You must provide the following information:

| | Obligations | References to the relevant conditions of the franchise agreement |
|-----|--|--|
| (a) | Selection and acquisition of site and premises | |
| (b) | Requirements for starting the franchised business | |
| (c) | Development of the site, premises, vehicles and equipment | |
| (d) | Training: <ul style="list-style-type: none"> • before the franchised business starts • during operation of the franchised business | |
| (e) | Opening the franchised business | |
| (f) | Complying with standards or operations manuals | |
| (g) | Warranties and customer service | |
| (h) | Territorial development and minimum performance criteria | |
| (i) | Maintenance and appearance of site, premises, vehicles and equipment | |
| (j) | Insurance | |
| (k) | Marketing | |
| (l) | Indemnities and guarantees | |
| (m) | Participation requirements for the franchisee directors, management or employees | |
| (n) | Records and reports | |
| (o) | Inspections and audit | |

9A Unilateral variation of franchise agreement

9A.1 If the franchise agreement is entered into in a financial year commencing on 1 July 2011, 1 July 2012 or 1 July 2013—provide details of the circumstances in which the franchisor has unilaterally varied a franchise agreement since 1 July 2010 (if applicable).

| Date of variation/s | Details of unilateral variation |
|---------------------|---------------------------------|
| | |
| | |

9A.2 If a franchise agreement is entered into in a financial year commencing after 1 July 2013—provide details of the circumstances in which the franchisor has unilaterally varied a franchise agreement in the last 3 financial years (if applicable).

| Date of variation/s | Details of unilateral variation |
|---------------------|---------------------------------|
| | |
| | |

9A.3 In which circumstances may the franchise agreement be varied, unilaterally, by the franchisor in the future?

9B Confidentiality obligations

9B.1 Will a confidentiality obligation be imposed by the franchisor on the franchisee? Yes/No

9B.2 If a confidentiality obligation is to be imposed on the franchisee, provide details of the matters that the obligation may cover (e.g. outcomes of mediation; settlements; intellectual property; trade secrets; particular aspects of individual agreements, such as fees).

9C Arrangements to apply at the end of the franchise agreement

9C.1 Provide details of the process that will apply in determining arrangements to apply at the end of the franchise agreement.

- (a) Will the prospective franchisee have any options to renew, or extend, or extend the scope of the franchise agreement or enter into a new franchise agreement? Yes/No

If so, what process will the franchisor use to determine whether to renew, extend, or extend the scope of the franchise agreement or enter into a new franchise agreement?

- (b) Will the prospective franchisee be entitled to an exit payment at the end of the franchise agreement? Yes/No

If so, how will the exit payment will be determined or earned?

- (c) Provide details of the arrangements that will apply to unsold stock, marketing material, equipment and other assets purchased when the franchise agreement was entered into, including:
 - (i) will the franchisor purchase the stock, marketing material, equipment and other assets? Yes/No
 - (ii) if yes, how will prices be determined?

- (d) Will the prospective franchisee have the right to sell the business at the end of the franchise agreement? Yes/No
- (e) If the prospective franchisee will have the right to sell the business at the end of the franchise agreement:
 - (i) Will the franchisor have first right of refusal? Yes/No
 - (ii) If so, how will market value be determined?

- (f) Will the franchisor consider any significant capital expenditure undertaken by the franchisee during the franchise agreement in determining the arrangements to apply at the end of the franchise agreement? Yes/No

Other details

- 9C.2 If the franchise agreement is entered into in a financial year commencing on 1 July 2011, 1 July 2012 or 1 July 2013—provide details of whether the franchisor has, since 1 July 2010, considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of franchise agreements between the franchisor and those franchisees.

- 9C.3 If a franchise agreement is entered into in a financial year commencing after 1 July 2013—provide details of whether the franchisor has, in the last 3 financial years, considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of franchise agreements between the franchisor and those franchisees.

9D Amendment of franchise agreement on transfer or novation of franchise

- 9D.1 Will the franchisor amend (or require the amendment of) the franchise agreement on or before the transfer or novation of the franchise? Yes/No

10. Financial details

- 10.1 (Insert the following statement.)

As at the end of the last financial year (insert), it is the opinion of the directors that there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.

.....

Director

Note: Statement must be signed by at least one director.

- 10.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the franchisor, prepared by the franchisor, have been attached (attach).

- 10.3 If:

(a) the franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the consolidated entity and

(b) a franchisee requests those reports

the financial reports for each of the last 2 completed financial years, prepared by the consolidated entity, have been attached (attach).

10.4 **Note:** Items 10.2 and 10.3 do not apply when:

- (a) the statement under item 10.1 is supported by an independent audit provided by:
 - (i) a registered company auditor or
 - (ii) if the franchisor is a foreign franchisor—a foreign equivalent for that franchisor within 12 months after the end of the financial year to which the statement relates and
- (b) a copy of the independent audit is provided with the statement under item 10.1 (attach).

11. Other relevant disclosure information

- 11.1 Attached is a copy of the franchise agreement in the form in which it is to be executed (attach).
- 11.2 Attached is a copy of the code (attach).
- 11.3 Attached is any other information (attach any information that the franchisor wants to give as long as it does not contradict other information required to be given).

12. Receipt

- (a) the prospective franchisee may:
- (i) keep this disclosure document and
 - (ii) ask for the information referred to in the following sections of annexure 1 of the code:
 - section 3—Business experience
 - section 5—Payments to agents
 - section 6—Existing franchisees
 - section 9—Supply of goods or services to a franchisee
 - section 10—Supply of goods or services by a franchisee
 - section 11—Sites and territories
 - section 14—Financing
 - section 17—Summary of other conditions of agreement
 - section 18—Obligation to sign related agreements
 - section 19—Earnings information
 - section 21—Updates
 - section 22—Other relevant information

- (b) (a receipt should have the following wording)

To (insert name of franchisor)

I (insert name of prospective franchisee) hereby
acknowledge receipt of this disclosure document which I, the prospective franchisee, may keep
for my records.

.....

ACCC CONTACTS

Infocentre: 1300 302 502

Websites:

www.accc.gov.au

www.accc.gov.au/franchising

For other business information go to www.business.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service www.relayservice.com.au

TTY or modem users—phone 133 677 and ask for 1300 302 502

Voice-only (speak and listen) users—phone 1300 555 727 and ask for 1300 302 502

ACCC addresses

National office

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Tel: 02 6243 1111

Fax: 02 6243 1199

New South Wales

Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000

GPO Box 3648
Sydney NSW 2001

Tel: 02 9230 9133

Fax: 02 9223 1092

Victoria

Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

GPO Box 520
Melbourne Vic 3001

Tel: 03 9290 1800

Fax: 03 9663 3699

Queensland

Brisbane

Level 24, 400 George Street
Brisbane Qld 4000

PO Box 12241

George Street Post Shop

Brisbane Qld 4003

Tel: 07 3835 4666

Fax: 07 3835 4653

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370 Flinders Mall
Townsville Qld 4810

PO Box 2016

Townsville Qld 4810

Tel: 07 4729 2666

Fax: 07 4721 1538

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19 Grenfell Street
Adelaide SA 5000

GPO Box 922

Adelaide SA 5001

Tel: 08 8213 3444

Fax: 08 8410 4155

Western Australia

3rd floor, East Point Plaza
233 Adelaide Terrace
Perth WA 6000

PO Box 6381

East Perth WA 6892

Tel: 08 9325 0600

Fax: 08 9325 5976

Northern Territory

Level 8, National Mutual Centre
9–11 Cavenagh Street
Darwin NT 0800

GPO Box 3056

Darwin NT 0801

Tel: 08 8946 9666

Fax: 08 8946 9600

Tasmania

3rd floor, AMP Building
86 Collins Street
Hobart Tas 7000

GPO Box 1210

Hobart Tas 7001

Tel: 03 6215 9333

Fax: 03 6234 7796

Further information

The ACCC has produced a number of publications about compliance with the Act.

More information is available on the ACCC website or by contacting the ACCC Infocentre.

You should also consider seeking independent legal advice.

