

EXPOSURE DRAFT



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Competition and Consumer (Industry Codes— Franchising) Amendment (Franchise Disclosure Register) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Stuart Robert [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Employment, Workforce, Skills, Small and Family Business

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1 Name

This instrument is the *Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	31 March 2022.	31 March 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 51AE of the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

1 Subclause 4(1) of Schedule 1

Insert:

ANZSIC division and subdivision codes means the division and subdivision codes for an industry that are specified in the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006, published by the Australian Bureau of Statistics, as in force or existing on 31 March 2022.

Register means the Franchise Disclosure Register established and maintained under clause 53.

Secretary means the Secretary of the Department that is administered by the Minister administering the *Australian Small Business and Family Enterprise Ombudsman Act 2015*.

2 After Part 5 of Schedule 1

Insert:

Part 5A—Franchise Disclosure Register

Division 1—Establishment and content

53 Establishment of register

- (1) The Secretary must establish and keep a register for the purposes of this Part.
- (2) The register is to be known as the Franchise Disclosure Register.
- (3) The Register must be kept by electronic means.
- (4) The Register must be made available for public inspection, without charge, on the internet.
- (5) The Register is not a legislative instrument.

53A Contents of the register

- (1) The Register must contain for each franchise the information and disclosure document relating to the franchise that are provided in accordance with Division 2 for inclusion in the Register.
- (2) The Register may contain information and documents relating to a franchise that are provided (other than under Division 2) by a franchisor of the franchise for inclusion in the Register.

53B Secretary may correct clerical errors and remove, update and replace certain information and documents

- (1) The Secretary may correct, or cause to be corrected, any clerical errors or obvious mistakes in the Register.
- (2) The Secretary must remove or replace a document or information relating to a franchise that is included in the Register if:
 - (a) the Secretary receives a request from the franchisor asking for the document or information to be removed because the franchise has ceased to exist; or
 - (b) the franchisor gives information to replace information included in the Register; or
 - (c) the franchisor gives a document to replace a document included in the Register.
- (3) The Secretary may remove a disclosure document relating to a franchise from the Register if:
 - (a) the disclosure document has been in the Register for a period of at least 18 months commencing on the last day of the financial year to which the document relates; and
 - (b) during that period the franchisor for the franchise has not provided:
 - (i) an updated disclosure document relating to the franchise for inclusion in the Register; or
 - (ii) information required to be provided in relation to the franchise under clause 53F.

Division 2—Obligation to provide information and documents relating to franchise for inclusion in the Register

53C Initial obligation to provide information and documents for inclusion in the Register

- (1) This clause applies to a franchisor if:
 - (a) the franchisor has given a copy of the disclosure document relating to a franchise to:
 - (i) a franchisee who has a franchise agreement with the franchisor in relation to the franchise; or
 - (ii) a prospective franchisee in relation to the franchise; and
 - (b) the copy is given on or before 30 June 2022.

Obligation to provide information and documents

- (2) The franchisor must provide, in accordance with subclause (3), the following information and documents relating to the franchise for inclusion in the Register:
 - (a) the name of the franchisor;
 - (b) the name under which the franchisor carries on business in Australia relevant to the franchise;
 - (c) the address, or addresses, of the franchisor's registered office and principal place of business in Australia;

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Schedule 1 Amendments

- (d) the ANZSIC division and subdivision codes that apply in relation to the industry in which the business operated under the franchise operates;
- (e) any information required to be provided to the Secretary in relation to the franchise under subclause (5);
- (f) a copy of:
 - (i) if the franchisor is required under subclause 8(6) to update the disclosure document relating to the franchise within 4 months after the end of the financial year ending on 30 June 2022—the updated disclosure document relating to the franchise; or
 - (ii) otherwise—the most recently updated disclosure document relating to the franchise.

Note: Persons other than the franchisor may provide the information or documents (see Division 3).

Civil penalty: 600 penalty units.

- (3) The information and documents must be provided:
 - (a) in a form and manner approved by the Secretary; and
 - (b) during the period beginning on 1 July 2022 and ending on 31 October 2022.

Redacting information from disclosure document

- (4) Before a franchisor provides a copy of a disclosure document under paragraph (2)(f), the franchisor:
 - (a) must redact from the document the following information:
 - (i) any personal information that relates to an individual that is included in the document;
 - (ii) any information that relates to a particular franchisee, or a particular site being occupied by a franchisee, that is required under items 6.5, 9, 13, 14, 16 or 20 of Annexure 1 to be included in the document; and
 - (b) may redact from the document information required under subparagraph 10.1(k)(iii) of Annexure 1 to be included in the document.

Secretary may require a franchisor to provide information

- (5) The Secretary may require a franchisor of a franchise to provide to the Secretary information about matters relating to the franchise for inclusion in the Register if the information is required to be:
 - (a) included in a disclosure document relating to the franchise; or
 - (b) given to a franchisee under this code.

53D Obligation to provide information and documents relating to franchise for inclusion in the Register

- (1) This clause applies to a franchisor if:
 - (a) the franchisor is required under subclause 8(6) to update a disclosure document relating to a franchise after the end of a financial year ending after 30 June 2022; or

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- (b) the franchisor is required under subclause 8(8) to update a disclosure document relating to a franchise following a request made by a franchisee under subclause 16(1) after 30 June 2022.

Obligation to provide information and documents

- (2) The franchisor must provide, in accordance with subclause (3), the following information and documents relating to the franchise for inclusion in the Register:
 - (a) a copy of the updated disclosure document relating to the franchise;
 - (b) any information required to be provided to the Secretary in relation to the franchise under subclause (5);
 - (c) to the extent that the following information has not previously been provided by the franchisor for inclusion in the Register—the following information:
 - (i) the name of the franchisor;
 - (ii) the name under which the franchisor carries on business in Australia relevant to the franchise;
 - (iii) the address, or addresses, of the franchisor’s registered office and principal place of business in Australia;
 - (iv) the ANZSIC division and subdivision codes that apply in relation to the industry in which the business operated under the franchise operates.

Note: Persons other than the franchisor may provide the information or documents (see Division 3).

Civil penalty: 600 penalty units.

- (3) The information and documents must be provided:
 - (a) in a form and manner approved by the Secretary; and
 - (b) within the following period:
 - (i) if the franchisor is required under subclause 8(6) to update the document after the end of a financial year—within 4 months after the end of that financial year;
 - (ii) if the franchisor is required under subclause 8(8) to update the document because of a request made by a franchisee under subclause 16(1)—within 2 months after the date the franchisor received that request.

Redacting information from disclosure document

- (4) Before a franchisor provides a copy of an updated disclosure document under paragraph (2)(a), the franchisor:
 - (a) must redact from the document the following information:
 - (i) any personal information that relates to an individual that is included in the document;
 - (ii) any information that relates to a particular franchisee, or a particular site being occupied by a franchisee, that is required under items 6.5, 9, 13, 14, 16 or 20 of Annexure 1 to be included in the document; and
 - (b) may redact from the document information required under subparagraph 10.1(k)(iii) of Annexure 1 to be included in the document.

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Schedule 1 Amendments

Secretary may require a franchisor to provide information

- (5) The Secretary may require a franchisor of a franchise to provide to the Secretary information about matters relating to the franchise for inclusion in the Register if the information is required to be:
 - (a) included in a disclosure document relating to the franchise; or
 - (b) given to a franchisee under this code.

53E Obligation to provide information about certain matters not included in disclosure document

- (1) This clause applies to a franchisor if:
 - (a) a matter mentioned in subclause 17(3) was not mentioned in a disclosure document relating to a franchise of the franchisor; and
 - (b) the disclosure document was provided for inclusion in the Register under clause 53C or 53D; and
 - (c) the franchisor is required under subclause 17(2) to tell a franchisee or prospective franchisee about the matter.
- (2) The franchisor must provide, in accordance with subclause (3), a copy of the information provided to the franchisee or prospective franchisee for inclusion in the Register.

Note: Persons other than the franchisor may provide the information (see Division 3).

Civil penalty: 600 penalty units.

- (3) The information must be provided:
 - (a) in a form and manner approved by the Secretary; and
 - (b) within 14 days after the franchisor becomes aware of the matter.

53F Obligation to give certain information if franchisor is not required to update disclosure document relating to franchise

- (1) This clause applies to a franchisor if the franchisor is not required under subclause 8(7) to update the disclosure document relating to a franchise after the end of a financial year ending after 30 June 2022.
- (2) The franchisor must give, in accordance with subclause (3), the following information for inclusion in the Register:
 - (a) the name of the franchisor;
 - (b) the name under which the franchisor carries on business in Australia relevant to the franchise;
 - (c) the address, or addresses, of the franchisor's registered office and principal place of business in Australia;
 - (d) the financial year to which the information relates;
 - (e) the reason why the franchisor need not update the disclosure document for the financial year.

Note 1: Persons other than the franchisor may give the information (see Division 3).

Note 2: For the reasons why a franchisor need not update the disclosure document relating to a franchise, see subclause 8(7).

Civil penalty: 600 penalty units.

- (3) The information must be given:
- (a) in a form and manner approved by the Secretary; and
 - (b) within the period of 4 months after the end of the financial year to which the information relates.

Division 3—Giving of documents and information by agents

53G Agents may provide documents and information

A franchisor required under a clause in Division 2 to provide a document or information, or to give information, relating to a franchise is taken to have complied with the requirement if someone else provides or gives the document or information in accordance with the clause, on the franchisor's behalf.