

EXPOSURE DRAFT



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Competition and Consumer (Industry Codes— Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020

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 2020

David Hurley
Governor-General

By His Excellency's Command

Karen Andrews [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Industry, Science and Technology
for the Treasurer

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1 Name

This instrument is the *Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020*.

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. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	1 July 2020.	1 July 2020
3. Schedule 2	At the same time as section 15 of the <i>Road Vehicle Standards Act 2018</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made.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 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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 commencing 1 July 2020

Schedule 1—Amendments commencing 1 July 2020

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

1 Subclause 4(1) of Schedule 1

Insert:

new light goods vehicle means a new vehicle that is covered by clause 4.5.5 of the Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005.

new passenger vehicle means a new vehicle that is covered by clause 4.3 of the Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005.

new vehicle has the same meaning as in the *Motor Vehicle Standards Act 1989*.

new vehicle dealership agreement means a motor vehicle dealership agreement relating to a motor vehicle dealership that predominantly deals in new passenger vehicles or new light goods vehicles (or both).

2 Subclause 4(1) of Schedule 1 (definition of *significant capital expenditure*)

Repeal the definition, substitute:

significant capital expenditure:

- (a) in relation to a franchise agreement other than a new vehicle dealership agreement—has a meaning affected by subclause 30(2); and
- (b) in relation to a new vehicle dealership agreement—has a meaning affected by subclause 51(2).

3 Subdivision B of Division 2 of Part 3 of Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision B—Notification obligations (other than for new vehicle dealership agreements with a term of 12 months or longer)

4 Before clause 18 of Schedule 1

Insert:

17A Application of Subdivision

This Subdivision does not apply to a new vehicle dealership agreement if the term of the agreement is 12 months or longer.

Note: For new vehicle dealership agreements with a term of 12 months or longer, see Division 2 of Part 5.

5 At the end of clause 30 of Schedule 1

Add:

- (3) This clause does not apply in relation to a new vehicle dealership agreement.

Note: For new vehicle dealership agreements, see Division 3 of Part 5.

6 At the end of clause 35 of Schedule 1

Add:

Note: See also Division 4 of Part 5 in relation to new vehicle dealership agreements.

7 After Part 4 of Schedule 1

Insert:

Part 5—New vehicle dealership agreements

Division 1—Preliminary

46 Application of Part

This Part applies to new vehicle dealership agreements.

Division 2—End of term obligations for certain agreements

47 Application of Division

This Division applies to a new vehicle dealership agreement if the term of the agreement is 12 months or longer.

Note: Subdivision B of Division 2 of Part 3 does not apply to these agreements (see clause 17A).

48 Notification obligation—franchisor

- (1) The franchisor of a franchise agreement must notify the franchisee, in writing, whether the franchisor intends to:
- (a) extend the agreement; or
 - (b) enter into a new agreement.
- (2) The franchisor's notice must be given:
- (a) at least 12 months before the end of the term of the agreement; or
 - (b) if the parties agree on a later time—before that later time.

Civil penalty: 300 penalty units.

- (3) If the franchisor intends to enter into a new agreement, the franchisor's notice must include a statement to the effect that, subject to subclause 16(2), the franchisee may request a disclosure document under clause 16.

Civil penalty: 300 penalty units.

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Schedule 1 Amendments commencing 1 July 2020

- (4) If the franchisor gives a notice that the franchisor does not intend to extend the agreement, or that the franchisor does not intend to enter into a new agreement, the notice must include the reasons for the franchisor's intention.

Civil penalty: 300 penalty units.

49 Notification obligation—franchisee

- (1) The franchisee of a franchise agreement must notify the franchisor, in writing, whether the franchisee intends to:
 - (a) extend the agreement; or
 - (b) enter into a new agreement.
- (2) The franchisee's notice must be given:
 - (a) at least 12 months before the end of the term of the agreement; or
 - (b) if the parties agree on a later time—before that later time.
- (3) If the franchisee gives a notice to the franchisor that the franchisee does not intend to extend the agreement, or that the franchisee does not intend to enter into a new agreement, the notice must include the reasons for the franchisee's intention.

50 Obligation to manage winding down of agreement

- (1) This clause applies if, under clause 48 or 49, a party to a franchise agreement (the *first party*) notifies the other party that the first party does not intend to extend the agreement, or that the first party does not intend to enter into a new agreement.
- (2) The parties must agree to a written plan (with milestones) for managing the winding down of the dealership, including how stock (including new vehicles, spare parts and service and repair equipment) will be managed over the remaining term of the agreement.
- (3) The parties must work together to reduce stock over the remaining term of the agreement.

Division 3—Capital expenditure

51 Significant capital expenditure not to be required

- (1) A franchisor must not require a franchisee to undertake significant capital expenditure in relation to a franchised business during the term of the franchise agreement.
- (2) For the purposes of subclause (1), *significant capital expenditure* excludes the following:
 - (a) expenditure that is disclosed to the franchisee in the disclosure document that is given to the franchisee before:
 - (i) entering into or renewing the agreement; or
 - (ii) extending the term or scope of the agreement;

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Amendments commencing 1 July 2020 **Schedule 1**

- (b) if expenditure is to be incurred by all or a majority of franchisees—
expenditure approved by a majority of those franchisees;
- (c) expenditure incurred by the franchisee to comply with legislative obligations;
- (d) expenditure agreed by the franchisee.

Note: Clause 30 (capital expenditure) does not apply to new vehicle dealership arrangements (see subclause 30(3)).

52 Information and discussion about capital expenditure

- (1) This clause applies if a disclosure document for an agreement discloses expenditure of the kind mentioned in paragraph 51(2)(a).
- (2) The franchisor must include in the disclosure document as much information as practicable about the expenditure, including the following:
 - (a) the rationale for the expenditure;
 - (b) the amount, timing and nature of the expenditure;
 - (c) the anticipated outcomes and benefits of the expenditure;
 - (d) the expected risks associated with the expenditure.

Example: The information could include the type of any upgrades, any planned changes to the corporate identity of the franchisor's brand and indicative costs for any building materials.

- (3) Before entering into, renewing or extending the term or scope of the agreement, the franchisor and the franchisee or prospective franchisee must discuss the expenditure.
- (4) The discussion must include a discussion of the circumstances under which the franchisee or prospective franchisee is likely to recoup the expenditure, having regard to the geographical area of operations of the franchisee or prospective franchisee.

Division 4—Resolving disputes

53 Franchisees may request multi-franchisee dispute resolution

- (1) This clause applies if:
 - (a) a franchisor has entered into franchise agreements with 2 or more franchisees; and
 - (b) 2 or more of the franchisees each have a dispute of the same nature with the franchisor.
- (2) Two or more of the franchisees mentioned in paragraph (1)(b) may ask the franchisor to deal with the franchisees together about the dispute.

Note: See also Part 4 (resolving disputes).

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Schedule 1 Amendments commencing 1 July 2020

Part 6—Application, saving and transitional provisions

Division 1—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2019

54 Definitions

In this Division:

amending regulations means the *Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2019*.

commencement date means 1 July 2020.

55 End of term obligations

- (1) Division 2 of Part 5, as inserted by the amending regulations, applies to a new vehicle dealership agreement that is entered into, renewed or extended on or after the commencement date.
- (2) Despite the amendments made by the amending regulations, Subdivision B of Division 2 of Part 3, as in force immediately before the commencement date, continues to apply to a new vehicle dealership agreement that was entered into, renewed or extended before the commencement date.

56 Capital expenditure

Application of clause 51

- (1) Clause 51, as inserted by the amending regulations, applies to a new vehicle dealership agreement if:
 - (a) the disclosure document for the agreement is created or updated on or after the commencement date; and
 - (b) the agreement is entered into, renewed or extended after the creation or updating of the disclosure document.

Application of clause 30

- (2) Despite the amendments made by the amending regulations, clause 30, as in force immediately before the commencement date, continues to apply to a new vehicle dealership agreement that was entered into, renewed or extended before the commencement date.
- (3) Despite the amendments made by the amending regulations, clause 30, as in force immediately before the commencement date, also continues to apply to a new vehicle dealership agreement if:
 - (a) the disclosure document for the agreement was created, or most recently updated, before the commencement date; and
 - (b) the agreement is entered into, renewed or extended on or after the commencement date.

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Amendments commencing 1 July 2020 **Schedule 1**

Application of clause 52

- (4) Clause 52, as inserted by the amending regulations, applies in relation to a disclosure document:
- (a) that is created or updated on or after the commencement date; and
 - (b) that is for a new vehicle dealership agreement that is to be entered into, renewed or extended after the creation or updating of the disclosure document.

57 Resolving disputes

Clause 53, as inserted by the amending regulations, applies to a new vehicle dealership agreement that is entered into, renewed or extended before, on or after the commencement date.

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Schedule 2 Amendments relating to commencement of the Road Vehicle Standards Act 2018

Schedule 2—Amendments relating to commencement of the Road Vehicle Standards Act 2018

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

1 Subclause 4(1) of Schedule 1 (definition of *new light goods vehicle*)

Omit “new vehicle”, substitute “new road vehicle”.

2 Subclause 4(1) of Schedule 1 (definition of *new passenger vehicle*)

Omit “new vehicle”, substitute “new road vehicle”.

3 Subclause 4(1) of Schedule 1 (definition of *new vehicle*)

Repeal the definition.

4 Subclause 4(1) of Schedule 1

Insert:

new road vehicle has the same meaning as in section 78 of the *Road Vehicle Standards Act 2018*.