

EXPOSURE DRAFT



EXPOSURE DRAFT

Competition and Consumer (Industry Code— Franchising) Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Julie Collins **[DRAFT ONLY—NOT FOR SIGNATURE]**
Minister for Small Business

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Chapter 1—Preliminary

Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Industry Code—Franchising) Regulations 2024*.

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	1 April 2025.	1 April 2025

Note: This table relates only to the provisions of this instrument as originally made.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 Simplified outline of this instrument

This instrument prescribes a mandatory industry code for the franchising industry.

The Code requires franchisors, franchisees and prospective franchisees:

- (a) to act in good faith towards one another; and
- (b) to do certain things, and observe certain cooling-off periods, before entering into, renewing, extending, transferring or terminating franchise agreements; and
- (c) to do certain things in relation to disputes and dispute resolution.

The Code also includes:

- (a) requirements about the terms of franchise agreements; and
- (b) particular requirements for new motor vehicle dealership franchise agreements; and

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Chapter 1 Preliminary
Part 1 Preliminary

Section 5

- (c) requirements relating to the Franchise Disclosure Register; and
- (d) civil penalty provisions for contraventions of requirements.

The Code also confers functions on the Australian Small Business and Family Enterprise Ombudsman in relation to the Code.

5 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

Part 2—Definitions

6 Definitions [S4]

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) contract;
- (b) corporation;
- (c) personal information;
- (d) supply.

(1) In this instrument:

ABN has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

Act means the *Competition and Consumer Act 2010*.

ADR practitioner means a conciliator or mediator.

ADR process means conciliation or mediation.

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 existing on 1 April 2025.

associate, for a franchisor, means a person:

- (a) who:
 - (i) is a director or related body corporate, or a director of a related body corporate, of the franchisor; or
 - (ii) for a franchisor that is a proprietary company—directly or indirectly owns, controls, or holds with power to vote, at least 15% of the issued voting shares in the franchisor; or
 - (iii) is a partner of the franchisor; and
- (b) whose relationship with the franchisor is relevant to the franchise system, including because:
 - (i) the person supplies goods or services to a franchisee; or
 - (ii) the person gives the franchisee a right to occupy premises, whether under a lease or otherwise; or
 - (iii) the person owns intellectual property used in the franchise system; or
 - (iv) the person is involved in market research, market testing, market development, sales promotion or management of the franchise system.

Code means the industry code set out in Chapter 2.

complainant: see section 67.

Co-operatives National Law means the Law set out in the appendix to the *Co-operatives (Adoption of National Law) Act 2012* (NSW), as in force on 1 April 2025, and applying in a State or Territory under the following:

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- (a) the *Co-operatives (Adoption of National Law) Act 2012* (NSW);
- (b) the *Co-operatives National Law Application Act 2013* (Vic.);
- (c) the *Co-operatives National Law Act 2020* (Qld);
- (d) the *Co-operatives National Law (South Australia) Act 2013* (SA);
- (e) the *Co-operatives National Law (Tasmania) Act 2015* (Tas.);
- (f) the *Co-operatives National Law (ACT) Act 2017* (ACT);
- (g) the *Co-operatives (National Uniform Legislation) Act 2015* (NT).

Corporations Act means the *Corporations Act 2001*.

disclosure document means a document created in compliance, or purported compliance, with section 19.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

extend:

- (a) in relation to the scope of a franchise agreement, means a material change to:
 - (i) the terms and conditions of the agreement; or
 - (ii) the rights of a person under or in relation to the agreement; or
 - (iii) the liabilities that would be imposed on a person under or in relation to the agreement; or
- (b) in relation to the term of a franchise agreement, occurs when the period of the agreement is extended, other than because of an option exercisable by the franchisee during the term of the agreement.

Fair Work Act means the *Fair Work Act 2009*.

Fair Work civil remedy provision means a civil remedy provision within the meaning of the Fair Work Act.

Fair Work related offence provision means a related offence provision within the meaning of the Fair Work Act.

Fair Work serious contravention means a serious contravention within the meaning of the Fair Work Act.

financial year, in relation to a franchisor and a franchise, means a period of 12 months in respect of which financial statements relating to the franchise are prepared for the franchisor.

franchise includes the following:

- (a) the rights and obligations under a franchise agreement;
- (b) a master franchise;
- (c) a subfranchise;
- (d) an interest in a franchise.

franchise agreement: see section 7.

franchisee includes the following:

- (a) a person to whom a franchise is granted;
- (b) a person who otherwise participates in a franchise as a franchisee;
- (c) a subfranchisor in its relationship with a franchisor;
- (d) a subfranchisee in its relationship with a subfranchisor.

franchise system includes a business system in which a franchisor grants a franchise to a franchisee.

franchisor includes the following:

- (a) a person who grants a franchise;
- (b) a person who otherwise participates in a franchise as a franchisor;
- (c) a subfranchisor in its relationship with a subfranchisee;
- (d) a subfranchisor in a master franchise system;
- (e) a subfranchisor in its relationship with a franchisee.

fund administrator, of a specific purpose fund, means:

- (a) the franchisor or master franchisor who controls or administers the fund; or
- (b) if the franchisor or master franchisor has authorised an associate to control or administer the fund for the franchisor or master franchisor—the authorised associate.

industry code has the meaning given by subsection 51ACA(1) of the Act.

interest in a franchise includes a legal or beneficial interest in:

- (a) a franchise agreement or a franchised business, whether arising as a result of a guarantee of a franchisee's obligations under the agreement or otherwise; or
- (b) shares or voting rights in a corporation, not being a listed corporation, that owns a franchised business; or
- (c) units or voting rights in a unit or other trust that owns a franchised business; or
- (d) the capital or income of a partnership that owns a franchised business.

master franchise means a franchise in which the franchisor grants to a subfranchisor the right:

- (a) to grant a subfranchise; or
- (b) to participate in a subfranchise.

motor vehicle means a vehicle that uses, or is designed to use, volatile spirit, gas, oil, electricity or any other power (except human or animal power) as the principal means of propulsion, but does not include a vehicle used, or designed to be used, on a railway or tramway.

Note: Examples of motor vehicles are as follows:

- (a) motor car;
- (b) motorcycle;
- (c) tractor;
- (d) motorised farm machinery;
- (e) motorised construction machinery;
- (f) aircraft;
- (g) motor boat.

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Section 6

motor vehicle dealership:

- (a) means a business of:
 - (i) 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; and
 - (ii) any servicing or repairing of motor vehicles by that business; and
- (b) includes a business of:
 - (i) selling motor vehicles that is conducted by a person (for the purposes of this instrument, the franchisee) who sells the motor vehicles as an agent for a principal (for the purposes of this instrument, the franchisor); and
 - (ii) any servicing or repairing of motor vehicles by that business.

new light goods vehicle means a new road vehicle of the kind referred to in clause 4.5.5 of the Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005.

new passenger vehicle means a new road vehicle of a kind referred to in clause 4.3 of the Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005.

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

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).

Note: A motor vehicle dealership agreement is taken to be a franchise agreement (see paragraph 7(2)(c)).

obligation to act in good faith: see section 17.

old regulations means the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*, as in force before 1 April 2025.

Ombudsman means the Australian Small Business and Family Enterprise Ombudsman.

personal information has the same meaning as in the *Privacy Act 1988*.

prospective franchisee means a person:

- (a) who deals with a franchisor for the right to be granted a franchise; or
- (b) who seeks to acquire a franchise business through the transfer of a franchise agreement.

Register means the register established under clause 53 of Schedule 1 to the old regulations.

renew, in relation to a franchise agreement, occurs when the franchisee exercises an option during the term of the agreement to renew the agreement.

respondent: see section 67.

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

serious offence means:

- (a) an offence under any law of the Commonwealth or a State or a 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 5 years; or
- (b) a contravention of any provision of the Corporations Act.

Note: Jervis Bay Territory is mentioned because it is a jurisdiction in which the Commonwealth has control over the criminal law.

specific purpose fund means a fund:

- (a) that is controlled or administered:
 - (i) by a franchisor or a master franchisor; or
 - (ii) for a franchisor or a master franchisor by an associate for the franchisor or master franchisor; and
- (b) to which, under a franchise agreement, a franchisee is required to pay money (whether the franchisee is a franchisee or subfranchisee of the franchisor or master franchisor); and
- (c) that, under the franchise agreement, must be used for a specified common purpose relating to the operation of the franchised business.

Note: Examples of specific purpose funds could include a marketing fund for advertising or a cooperative fund for information technology.

subfranchisor means a person who is:

- (a) a franchisee in relation to a master franchise; and
- (b) a franchisor in relation to a subfranchise granted under the master franchise.

trade mark has the meaning given by the *Trade Marks Act 1995*.

Note: A **trade mark** is 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 (see sections 6 and 17 of the *Trade Marks Act 1995*).

transfer, in relation to a franchise agreement, includes a situation in which:

- (a) the agreement is terminated on the basis that a new franchise agreement is entered into between the franchisor and a prospective franchisee; or
- (b) the franchisee's rights and obligations under the agreement are assigned to a prospective franchisee; or
- (c) the agreement contemplates a transfer in specified circumstances and those circumstances happen.

virtual attendance technology means any technology that allows a person to attend an ADR process or an arbitration without being physically present at the ADR process or arbitration.

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Section 7

- (2) In this instrument, the following terms have the meanings given by the Corporations Act:
- (a) ACN;
 - (b) ARBN;
 - (c) body corporate;
 - (d) Chapter 5 body corporate;
 - (e) consolidated entity;
 - (f) director;
 - (g) insolvent under administration;
 - (h) listed corporation;
 - (i) misconduct;
 - (j) mutual entity;
 - (k) officer;
 - (l) proprietary company;
 - (m) registered company auditor;
 - (n) registered office;
 - (o) related body corporate;
 - (p) restructuring practitioner;
 - (q) small proprietary company.

7 Meaning of franchise agreement [S5]

- (1) A *franchise agreement* is an agreement:
- (a) that takes the form, in whole or part, of any of the following:
 - (i) a written agreement;
 - (ii) an oral agreement;
 - (iii) an implied agreement; and
 - (b) in which a person (the *franchisor*) grants to another person (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; and
 - (c) under which the operation of the business will be substantially or materially associated with a trade mark, marketing or a commercial symbol:
 - (i) owned, used or licensed by the franchisor or an associate of the franchisor; or
 - (ii) specified by the franchisor or an associate of the franchisor; and
 - (d) under which, before starting or continuing the business, the franchisee must pay or agree to pay to the franchisor or an associate of the franchisor an amount including, for example:
 - (i) an initial capital investment fee; or
 - (ii) a payment for goods or services; or
 - (iii) a fee based on a percentage of gross or net income whether or not called a royalty or franchise service fee; or
 - (iv) a training fee or training school fee;

but excluding:

- (v) payment for goods and services supplied on a genuine wholesale basis; or
- (vi) repayment by the franchisee of a loan from the franchisor or an associate of the franchisor; or
- (vii) payment for goods taken on consignment and supplied on a genuine wholesale basis; or
- (viii) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start business or to continue business under the franchise agreement.

(2) For the purposes of subsection (1), each of the following is taken to be a ***franchise agreement***:

- (a) the transfer or renewal of a franchise agreement;
- (b) the extension of the term or the scope of a franchise agreement;
- (c) a motor vehicle dealership agreement.

(3) However, none of the following in itself constitutes a ***franchise agreement***:

- (a) an employer and employee relationship;
- (b) a partnership relationship;
- (c) a landlord and tenant relationship;
- (d) a mortgagor and mortgagee relationship;
- (e) a lender and borrower relationship.

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Chapter 1 Preliminary

Part 3 Mandatory industry code

Section 8

Part 3—Mandatory industry code

8 Mandatory industry code [4]

For the purposes of section 51AE of the Act, the industry code set out in Chapter 2:

- (a) is prescribed for the purposes of Part IVB of the Act; and
- (b) is declared to be a mandatory industry code.

9 Franchise agreements to which the Code does not apply [S3(2) and (3) and S3A]

Franchise agreements to which another mandatory industry code applies

- (1) Subject to subsection (1A), the Code does not apply to a franchise agreement to which another mandatory industry code, prescribed under section 51AE of the Act, applies.
- (1A) However, the Code applies to a franchise agreement to which the industry code set out in Part 2 of the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024* applies.

Certain franchise agreements relating to pre-existing business relationships

- (2) The Code does not apply to a franchise agreement if:
 - (a) 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; and
 - (b) the franchisee has supplied those goods or services for at least 2 years immediately before entering into the franchise agreement; and
 - (c) sales under the franchise are likely to provide no more than 20% of the franchisee's gross turnover for goods or services of that kind for the first year of the franchise.
- (3) Subsection (2) ceases to apply to a franchise agreement if:
 - (a) sales under the franchise provide more than 20% of the franchisee's gross turnover for the goods or services for 3 consecutive years; and
 - (b) the franchisee tells the franchisor that paragraph (a) of this subsection applies.

Franchise agreements that form part of arrangements relating to certain co-operatives or mutual entities

- (4) The Code does not apply in relation to a franchise agreement that forms part of arrangements under which the franchisee is:
 - (a) a member of a co-operative that is entered on a register maintained under:
 - (i) the Co-operatives National Law; or
 - (ii) the *Co-operatives Act 2009* (WA), as in force on 1 April 2025; or
 - (b) a member with voting rights of a mutual entity.

Note: For *Co-operatives National Law*, see subsection 6(1). For *mutual entity*, see subsection 6(2) of this instrument and section 51M of the Corporations Act.

10 Civil penalty provisions of the Code

A provision of Chapter 2 that is of one of the following kinds and sets out at its foot a pecuniary penalty indicated by the words “civil penalty” is a civil penalty provision of the industry code set out in that Chapter for the purposes of Part IVB and section 76 of the Act:

- (a) a subsection;
- (b) a section that is not divided into subsections.

11 Reviews

- (1) The Minister must ensure that a review of this instrument is undertaken.
- (2) The review must commence before 1 April 2030.
- (3) The review must assess the role, impact and operation of this instrument.
- (4) The Minister must ensure that a written report of the review is prepared.
- (5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

12 Interaction with the *Privacy Act 1988*

Disclosure of personal information in accordance with item 6(5) of Schedule 1 is authorised for the purposes of Australian Privacy Principle 6.2(b) under the *Privacy Act 1988*.

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Chapter 2 Franchising industry code
Part 1 Preliminary

Section 13

Chapter 2—Franchising industry code

Part 1—Preliminary

13 Purpose of Chapter

This Chapter sets out an industry code that relates to the industry of franchising.

14 Purpose of Code [S2]

The purpose of this Code is to:

- (a) regulate the conduct of participants in franchising towards other participants in franchising, in particular to address the imbalance of power between franchisors and franchisees and prospective franchisees; and
- (b) improve standards of conduct and practice in the industry to minimise disputes through:
 - (i) better disclosure of information, to inform decision-making; and
 - (ii) setting out requirements for franchise agreements; and
- (c) provide a fair and equitable dispute resolution procedure for disputes arising under this Code or a franchise agreement.

15 Functions of Australian Small Business and Family Enterprise Ombudsman [4A]

The Australian Small Business and Family Enterprise Ombudsman has the following functions in relation to this Code:

- (a) keeping lists of persons who can provide services of arbitration, conciliation or mediation for the purposes of this Code or of a franchise agreement;
- (b) in accordance with this Code, appointing persons who can provide services of arbitration, conciliation or mediation of disputes for the purposes of this Code or a complaint handling procedure of a franchise agreement, on request by one or more of the parties;
- (c) receiving information about disputes that are being, or have been, dealt with under this Code or a complaint handling procedure of a franchise agreement;
- (d) regularly providing to the Minister statistical information relating to disputes that have been or are being dealt with under this Code or a complaint handling procedure of a franchise agreement;
- (e) in accordance with this Code, publicising the names of franchisors who refuse to engage in, or who withdraw from, an ADR process for a dispute.

16 Amount of civil penalty for certain contraventions by bodies corporate [S5A]

- (1) This section has effect for the purposes of the following civil penalty provisions of this Code:
 - (a) subsections 33(1) and (2);
 - (b) subsections 42(1), (2) and (4);

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- (c) section 43;
 - (d) section 61.
- (2) The amount of the pecuniary penalty for a contravention of a civil penalty provision referred to in subsection (1) by a body corporate is the greatest of the following:
- (a) \$10,000,000;
 - (b) if the Court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, has obtained directly or indirectly and that is reasonably attributable to the contravention—3 times the value of that benefit;
 - (c) if the Court cannot determine the value of that benefit—10% of the adjusted turnover of the body corporate during the period of 12 months ending at the end of the month in which the contravention occurred.

EXPOSURE DRAFT

Section 17

Part 2—Obligation to act in good faith

17 Obligation to act in good faith [S6]

Obligation to act in good faith

- (1) Each party to a franchise agreement must act towards another party with good faith, within the meaning of the unwritten law from time to time, in respect of any matter arising under or in relation to:
 - (a) the agreement; and
 - (b) this Code.

This is the *obligation to act in good faith*.

Civil penalty: 600 penalty units.

- (2) The obligation to act in good faith also applies to a person who proposes to become a party to a franchise agreement in respect of:
 - (a) any dealing or dispute relating to the proposed agreement; and
 - (b) the negotiation of the proposed agreement; and
 - (c) this Code.

Matters to which a court may and must have regard

- (3) Without limiting the matters to which a court may have regard for the purpose of determining whether a party to a franchise agreement has contravened subsection (1):
 - (a) for all agreements—the court may have regard to:
 - (i) whether the party acted honestly and not arbitrarily; and
 - (ii) whether the party cooperated to achieve the purposes of the agreement; and
 - (b) for a new vehicle dealership agreement—the court must have regard to whether the terms of the agreement are fair and reasonable.

Franchisor must not enter into franchise agreement that includes provision limiting or excluding obligation to act in good faith

- (4) A franchisor must not enter into a franchise agreement that includes a provision that limits or excludes, or purports to limit or exclude, the obligation to act in good faith.

Civil penalty: 600 penalty units.

- (5) A franchisor must not enter into a franchise agreement that includes a provision that limits or excludes, or purports to limit or exclude, the obligation to act in good faith by applying, adopting or incorporating, with or without modification, the words of another document, as in force at a particular time or as in force from time to time, in the agreement.

Civil penalty: 600 penalty units.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Obligation to act in good faith **Part 2**

Section 17

Other actions may be taken consistently with the obligation

- (6) To avoid doubt, the obligation to act in good faith does not prevent a party to a franchise agreement, or a person who proposes to become such a party, from acting in the party's, or the person's, legitimate commercial interests.
- (7) To avoid doubt, if a franchise agreement does not:
 - (a) give the franchisee an option to renew the agreement; or
 - (b) allow the franchisee to extend the agreement;this does not mean that the franchisor has not acted in good faith in negotiating or giving effect to the agreement.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 3 Requirements before entry into, renewal, extension or transfer of franchise agreements

Division 1 Application

Section 18

Part 3—Requirements before entry into, renewal, extension or transfer of franchise agreements

Division 1—Application

18 Application of Part—master franchisors [S7]

This Part does not apply to a master franchisor in relation to a subfranchisee.

EXPOSURE DRAFT

Division 2—Disclosure document

19 Franchisor must create disclosure document [S8, 30A(1) and (2)]

Disclosure document to inform franchisee or prospective franchisee

- (1) A franchisor must create a document relating to a franchise that complies with subsections (3) to (6).

Civil penalty: 600 penalty units.

- (2) The purpose of a disclosure document is to:
- (a) give a prospective franchisee proposing to enter into a franchise agreement information from the franchisor to help the prospective franchisee to make a reasonably informed decision about entering into the agreement; and
 - (b) give a franchisee proposing to renew a franchise agreement, or extend the term or scope of a franchise agreement, information from the franchisor to help the franchisee to make a reasonably informed decision about the proposed renewal or extension of the agreement; and
 - (c) give a franchisee current information from the franchisor that is material to the running of the franchised business.

Content and form of disclosure document—general

- (3) Information in a disclosure document must:
- (a) comply with the following:
 - (i) be set out in the form and order of Schedule 1;
 - (ii) use the headings and numbering of Schedule 1;
 - (iii) if applicable—include additional information under the heading “Updates”; or
 - (b) comply with the following:
 - (i) if particular items are applicable—use the headings and numbering of Schedule 1 for those items;
 - (ii) if particular items are not applicable—include an attachment that sets out the headings and numbering of Schedule 1 for those items.

Content of disclosure document—significant capital expenditure

- (4) A disclosure document must state:
- (a) whether the franchisor will require the franchisee to undertake significant capital expenditure in relation to the franchised business during the term of the franchise agreement; and
 - (b) as much information as practicable about any such expenditure, including the following:
 - (i) the rationale for the expenditure;
 - (ii) the amount, timing and nature of the expenditure;
 - (iii) the anticipated outcomes and benefits of the expenditure;
 - (iv) the expected risks associated with the expenditure.

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Part 3 Requirements before entry into, renewal, extension or transfer of franchise agreements

Division 2 Disclosure document

Section 20

Note: For example, the information could include the type of any upgrades to facilities or premises, any planned changes to the corporate identity of the franchisor's brand and indicative costs for any building materials.

Signature

- (5) A disclosure document must be signed by the franchisor, or a director, officer or authorised agent of the franchisor.

Note: For when a document may be signed electronically, see section 10 of the *Electronic Transactions Act 1999*.

Table of contents

- (6) A disclosure document must also have a table of contents based on the items in Schedule 1, indicating the page number on which each item begins. If the disclosure document attaches other documents, the table of contents must list these other documents too.

20 Updating disclosure document—general

- (1) This section applies to a franchisor if:
- (a) on the first day of a financial year (the **current financial year**), the franchisor is a party to a franchise agreement; and
 - (b) either:
 - (i) the franchisor entered into 2 or more franchise agreements in the previous financial year; or
 - (ii) the franchisor intends, or, if the franchisor is a company, its directors intend, to enter into another franchise agreement in the current financial year.
- (2) The franchisor must, within 4 months starting on the first day of the current financial year, update the disclosure document so that it reflects:
- (a) the position of the franchise and the franchisor as at the date of the update; and
 - (b) any relevant amendments made to this Code since the disclosure document was created or last updated.

Note: See also section 32 (giving updated disclosure document on request by franchisee).

Civil penalty: 600 penalty units.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Requirements before entry into, renewal, extension or transfer of franchise agreements **Part 3**
Information statement **Division 3**

Section 21

Division 3—Information statement

21 Information statement to be given by franchisors [S11]

- (1) If a prospective franchisee formally applies or expresses an interest in acquiring a franchised business, the franchisor must give the prospective franchisee a copy of the information statement relating to franchising that is published on the Commission's website:
 - (a) as soon as practicable, and not later than 7 days, after the prospective franchisee formally applies or expresses an interest in acquiring the franchised business; and
 - (b) before the franchisor gives the prospective franchisee any of the documents mentioned in subsection 22(2).

Civil penalty: 600 penalty units.

- (2) To avoid doubt, this section does not apply to:
 - (a) the renewal of a franchise agreement; or
 - (b) the extension of the term or scope of a franchise agreement.

Note: For when information in writing may be given electronically, see section 9 of the *Electronic Transactions Act 1999*.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 3 Requirements before entry into, renewal, extension or transfer of franchise agreements

Division 4 Considering documents

Section 22

Division 4—Considering documents

22 Entering into, renewing and extending franchise agreements [S9]

Application

- (1) This section applies to a franchisor if:
 - (a) the franchisor proposes to enter into a franchise agreement with a prospective franchisee; or
 - (b) the franchisor, or a franchisee (within the meaning of paragraph (a) of the definition of that expression), proposes to:
 - (i) renew a franchise agreement; or
 - (ii) extend the term or scope of a franchise agreement.

Documents that franchisor must give prospective franchisee

- (2) The franchisor must give the prospective franchisee the following documents:
 - (a) a copy of the franchise agreement, in the form in which it is to be executed;
 - (b) if:
 - (i) premises are leased to the franchisor or an associate of the franchisor; and
 - (ii) the franchisor or associate proposes to sublease the premises to the prospective franchisee for the purposes of a franchised business, or to permit the prospective franchisee to occupy the premises for those purposes without a lease;a copy of:
 - (iii) the lease of the premises to the franchisor or associate or, if the franchisor or associate is not in possession of the lease, a summary of the commercial terms negotiated by the franchisor or associate and the lessor of the premises (including any lease incentives); and
 - (iv) if the lessor of the premises to the franchisor or associate complies with a requirement by or under a law of a State or Territory to disclose to the franchisor or associate (as lessee) written information relating to the lease—that information or, if the franchisor or associate is not in possession of that information, any information of that kind of which the franchisor is aware;
 - (c) if the prospective franchisee has not given the franchisor a written notice under subsection (4)—the documents mentioned in subsection (5).

Note: If it is proposed that the prospective franchisee lease premises from, or occupy premises under another right granted by, the franchisor or an associate, section 47 lets the franchisee terminate the franchise agreement up to 14 days after being given a document setting out the terms of the lease or right to occupy the premises.

Changes to franchise agreement

- (3) If, after giving the prospective franchisee a copy of the franchise agreement, and before the agreement is executed, the franchisor makes a change to the agreement, the franchisor must give the prospective franchisee a copy of the changed agreement.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Requirements before entry into, renewal, extension or transfer of franchise agreements **Part 3**
Considering documents **Division 4**

Section 22

Documents that prospective franchisee may opt out of receiving

- (4) The prospective franchisee may, by written notice given to the franchisor, opt out of being given the documents mentioned in subsection (5) if:
- (a) the prospective franchisee has, or has recently had, another franchise agreement with the franchisor that is the same or substantially the same as the franchise agreement; and
 - (b) the business that is the subject of the franchise agreement is the same or substantially the same as the business that is or was the subject of the other franchise agreement.
- (5) For the purposes of paragraph (2)(c) and subsection (4), the documents are:
- (a) a copy of the disclosure document relating to the franchise:
 - (i) if the disclosure document was created in the financial year in which the franchisor gives the prospective franchisee documents under subsection (2)—as created under subsection 19(1); or
 - (ii) as most recently updated under section 20 or 32; or
 - (iii) if neither subparagraph (i) or (ii) applies—updated to reflect the position of the franchise as at the end of the financial year before the financial year in which the franchisor gives the prospective franchisee documents under subsection (2); and
 - (b) a copy of this Code.

Franchise agreement not to be executed until after consideration period

- (6) The franchisor must not execute the franchise agreement with the prospective franchisee before the end of the period (the **consideration period**) of 14 days after the latest of the following:
- (a) the day the franchisor gives the prospective franchisee the documents required by subsection (2);
 - (b) if, after the day mentioned in paragraph (a), the franchisor makes a change to the agreement other than a change mentioned in subsection (7)—the day the franchisor gives the prospective franchisee the changed agreement;
 - (c) if, after the day mentioned in paragraph (a) and before the franchise agreement is executed, the franchisor gives the prospective franchisee earnings information in relation to the franchise—the day the franchisor gives the prospective franchisee that information.

Civil penalty: 600 penalty units.

- (7) For the purposes of paragraph (6)(b), the changes are the following:
- (a) a change to give effect to a request by the prospective franchisee;
 - (b) a change to fill in required particulars;
 - (c) a change to reflect changes of address or other circumstances;
 - (d) a change for a clarification of a minor nature;
 - (e) a change to correct an error or reference.

Repayment of payments made by prospective franchisee in consideration period

- (8) If, in the consideration period for a franchise agreement:

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Chapter 2 Franchising industry code

Part 3 Requirements before entry into, renewal, extension or transfer of franchise agreements

Division 4 Considering documents

Section 23

- (a) the prospective franchisee makes a payment (whether of money or of other valuable consideration) of an amount to the franchisor or an associate of the franchisor in connection with the agreement; and
- (b) the prospective franchisee subsequently gives the franchisor a written notice requesting the repayment of the amount;

the franchisor must repay the amount to the prospective franchisee within 14 days after receiving the request.

Civil penalty: 600 penalty units.

23 Transferring franchise agreements

Application

- (1) This section applies to a franchisor if:
 - (a) a request is made under section 45 that the franchisor consent to the transfer of an existing franchise agreement to a prospective franchisee; and
 - (b) the transfer does not involve entry into a new franchise agreement.

Note: For paragraph (b), see section 22 for transfers that involve entry into a new franchise agreements.

Documents that franchisor must give prospective franchisee

- (2) The franchisor must give the prospective franchisee:
 - (a) a copy of the existing franchise agreement; and
 - (b) each other document (if any) the franchisor requires the prospective franchisee to sign to give effect to the transfer; and
 - (c) if applicable, a copy of the documents mentioned in paragraph 22(2)(b); and
 - (d) if the prospective franchisee has not given the franchisor a written notice under subsection (4) of this section—the documents mentioned in subsection 22(5).

Consent not to be given until after 14 day period

- (3) The franchisor must not give the consent before the end of 14 days after the later of the following:
 - (a) the day the franchisor gives the prospective franchisee the documents required by subsection (2);
 - (b) if, after the day mentioned in paragraph (a) and before the transfer occurs, the franchisor gives the prospective franchisee earnings information in relation to the franchise—the day the franchisor gives the prospective franchisee that information.

Civil penalty: 600 penalty units.

Documents that prospective franchisee may opt out of receiving

- (4) The prospective franchisee may, by written notice given to the franchisor, opt out of being given the documents mentioned in subsection 22(5) if:

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Franchising industry code **Chapter 2**
Requirements before entry into, renewal, extension or transfer of franchise agreements **Part 3**
Considering documents **Division 4**

Section 24

- (a) the prospective franchisee has another franchise agreement with the franchisor that is the same or substantially the same as the existing franchise agreement; and
- (b) the business that is the subject of the existing franchise agreement is the same or substantially the same as the business that is the subject of the other franchise agreement.

24 Form of documents to be given under this Division

- (1) A person to whom a franchisor must give documents under section 22 or 23 may, before the documents are given, request the franchisor to give the documents in printed form, electronic form or both.
- (2) If a request is made under subsection (1), the franchisor must comply with the request.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 3 Requirements before entry into, renewal, extension or transfer of franchise agreements

Division 5 Statements to be received by franchisors

Section 25

Division 5—Statements to be received by franchisors

25 Statements with respect to disclosure document and this Code [S10]

A franchisor must not:

- (a) enter into a franchise agreement; or
- (b) renew or transfer a franchise agreement; or
- (c) extend the term or scope of a franchise agreement; or
- (d) enter into an agreement to:
 - (i) enter into a franchise agreement; or
 - (ii) renew or transfer a franchise agreement; or
 - (iii) extend the term or scope of a franchise agreement;

unless the franchisor has received from the franchisee or prospective franchisee (as the case requires):

- (e) a written statement that the franchisee or prospective franchisee has received, read and had a reasonable opportunity to understand the disclosure document and this Code; or
- (f) a written notice under subsection 22(4) or 23(4) (as the case requires).

Civil penalty: 600 penalty units.

26 Statements with respect to independent advice

- (1) A franchisor must not enter into a franchise agreement unless the franchisor has received from the prospective franchisee, in respect of advice from each kind of adviser mentioned in subsection (2):
 - (a) a signed statement by that kind of adviser to the effect that the adviser has given the prospective franchisee advice about the proposed franchise agreement or franchised business; or
 - (b) a signed statement by the prospective franchisee to the effect that the prospective franchisee:
 - (i) has been given advice by that kind of adviser about the proposed franchise agreement or franchised business; or
 - (ii) is aware of the need to obtain advice from that kind of adviser but has decided not to obtain it.

Civil penalty: 600 penalty units.

- (2) For the purposes of subsection (1), the kinds of advisers are the following:
 - (a) an independent legal adviser;
 - (b) an independent business adviser;
 - (c) an independent accountant.

Exception to subsection (1)

- (3) Subsection (1) does not apply to:
 - (a) the renewal of a franchise agreement; or
 - (b) the extension of the term or scope of a franchise agreement.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Requirements before entry into, renewal, extension or transfer of franchise agreements **Part 3**
Statements to be received by franchisors **Division 5**

Section 26

Franchisor may require prospective franchisee to provide statements

- (4) Subsection (1) does not prevent the franchisor from requiring the prospective franchisee to give the franchisor a statement mentioned in paragraph (1)(a) before the franchisor enters into a franchise agreement with the prospective franchisee.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 4 Franchise agreements

Division 1 Application

Section 27

Part 4—Franchise agreements

Division 1—Application

27 Application of Part—master franchisors [S12]

- (1) This Part does not apply to a master franchisor in relation to a subfranchisee.
- (2) This section does not limit the effect of sections 30 and 58 (which relate to specific purpose funds).

EXPOSURE DRAFT

Franchising industry code **Chapter 2**

Franchise agreements **Part 4**

Franchisor's obligations **Division 2**

Section 28

Division 2—Franchisor's obligations

Subdivision A—Disclosure obligations

28 Copy of lease etc. [S13]

Occupying premises under lease

- (1) If a franchisee leases premises from the franchisor or an associate of the franchisor for the purposes of a franchised business, the franchisor or the associate must give the franchisee:
 - (a) either:
 - (i) a copy of the lease; or
 - (ii) a copy of the agreement to lease; and
 - (b) details of any incentive or financial benefit that the franchisor or associate is entitled to receive as a result of the lease or agreement to lease.

Civil penalty: 600 penalty units.

- (2) The copy and details must be given within 1 month after the lease or agreement to lease is signed by the parties.

Civil penalty: 600 penalty units.

- (3) If:
 - (a) premises are leased to the franchisor or an associate of the franchisor; and
 - (b) a franchisee subleases, or a prospective franchisee proposes to sublease, the premises for the purposes of a franchised business; and
 - (c) the lessor of the premises to the franchisor or associate complies with a requirement by or under a law of a State or Territory to disclose to the franchisor or associate (as lessee) written information relating to the lease;the franchisor or associate must, if requested to do so in writing, give the franchisee or prospective franchisee a copy of that information.

Note: A copy must also be given by the franchisor to a prospective franchisee before entering into a franchise agreement (see subsections 22(2) and (6)).

Civil penalty: 600 penalty units.

- (4) The copy requested under subsection (3) must be given as soon as reasonably practicable, and not later than 7 days, after the request is made.

Civil penalty: 600 penalty units.

- (5) If the franchisee occupies, without a lease, premises leased by the franchisor or an associate of the franchisor, the franchisor or the associate must give the following to the franchisee:
 - (a) a copy of the franchisor's lease or agreement to lease or of the associate's lease or agreement to lease;
 - (b) details of any incentive or financial benefit that the franchisor or associate is entitled to receive as a result of the lease or agreement to lease;

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 4 Franchise agreements

Division 2 Franchisor's obligations

Section 29

- (c) a copy of the documents that give the franchisee the right to occupy the premises;
- (d) written details of the conditions of occupation;
- (e) details of any incentive or financial benefit that the franchisor or associate is entitled to receive as a result of the franchisee's right to occupy the premises.

Civil penalty: 600 penalty units.

- (6) The copy and details must be given within 1 month after:
 - (a) the occupation commences; or
 - (b) for the documents mentioned in paragraph (5)(c)—the documents are signed by the parties.

Civil penalty: 600 penalty units.

- (7) If:
 - (a) a franchisee occupies, or a prospective franchisee proposes to occupy, without a lease, premises for the purposes of a franchised business under a right given or to be given by the franchisor or an associate of the franchisor; and
 - (b) the premises are leased to the franchisor or associate; and
 - (c) the lessor of the premises to the franchisor or associate complies with a requirement by or under a law of a State or Territory to disclose to the franchisor or associate (as lessee) written information relating to the lease;the franchisor or associate must, if requested to do so in writing, give the franchisee or prospective franchisee a copy of that information.

Note: A copy must also be given by the franchisor to a prospective franchisee before entering into a franchise agreement (see subsections 22(2) and (6)).

Civil penalty: 600 penalty units.

- (8) The copy requested under subsection (7) must be given as soon as reasonably practicable, and not later than 7 days, after the request is made.

Civil penalty: 600 penalty units.

Incentive or financial benefit

- (9) In this section, the details of any incentive or financial benefit must include the name of the business providing the incentive or financial benefit.

29 Copies of other agreements [S14]

- (1) If a franchise agreement requires:
 - (a) the franchisee; or
 - (b) directors, shareholders, beneficiaries, owners or partners of the franchisee;to enter into an agreement of a kind mentioned in subsection (2), the franchisor must give the franchisee a copy of the agreement in accordance with subsection (3).

Civil penalty: 600 penalty units.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**

Franchise agreements **Part 4**

Franchisor's obligations **Division 2**

Section 30

-
- (2) For the purposes of subsection (1), the kinds of agreements are the following:
- (a) a lease (other than a lease of premises which is covered by section 28) or hire purchase agreement;
 - (b) 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.
- (3) For the purposes of subsection (1), the agreement must be given:
- (a) at least 14 days before the day on which the franchise agreement is signed, if it is available at that time; or
 - (b) if it is not available at that time—when it becomes available.

30 Financial statements for specific purpose funds [S15]

- (1) This section applies if a franchise agreement requires the franchisee to pay money to a specific purpose fund.
- (2) The fund administrator of the fund must:
- (a) within 4 months after the end of a financial year, prepare an annual financial statement for the fund for the financial year that complies with subsection (3); and
 - (b) give the franchisee a copy of the financial statement within 30 days of preparing it; and
 - (c) unless subsection (4) applies in respect of the fund for the financial year:
 - (i) within 4 months after the end of the financial year, have the statement audited by a registered company auditor; and
 - (ii) give the franchisee a copy of the auditor's report within 30 days of receiving it.

Civil penalty: 600 penalty units.

- (3) For the purposes of paragraph (2)(a), the statement must detail all of the fund's receipts and expenses, including:
- (a) sufficient detail of the fund's receipts and expenses to give meaningful information about:
 - (i) sources of income; and
 - (ii) items of expenditure, particularly with respect to the specified common purpose; and
 - (b) the percentage of the total income spent on each of the following:
 - (i) the expenses mentioned in paragraph 58(4)(a);
 - (ii) the costs mentioned in paragraph 58(4)(b).
- (4) This subsection applies in respect of a specific purpose fund for a financial year if, within 3 months after the end of the financial year, 75% of the franchisees (whether franchisees or subfranchisees of the franchisor or master franchisor) in

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 4 Franchise agreements

Division 2 Franchisor's obligations

Section 31

Australia who paid money to the fund in the financial year vote to agree that the fund administrator does not have to do the things mentioned in paragraph (2)(c) in respect of the fund for the financial year.

31 Franchisee may request updated disclosure document [S16]

- (1) A franchisee may, in writing, request a franchisor to give the franchisee a copy of the disclosure document relating to the franchise.
- (2) A request under this section can be made only once every 12 months.
- (3) A request under this section may request that the disclosure document be given in printed form, electronic form or both.

32 Giving updated disclosure document on request by franchisee

If a franchisor receives a request from a franchisee in accordance with section 31, the franchisor must:

- (a) update the disclosure document so that it reflects the position of the franchise as at the end of the financial year before the financial year in which the request is made; and
- (b) give the franchisee a copy of the updated disclosure document:
 - (i) within 2 months of the date of the request; and
 - (ii) in the form or forms (if any) requested by the franchisee.

Civil penalty: 600 penalty units.

33 Disclosure of materially relevant facts [S17]

Financial details

- (1) If:
 - (a) either:
 - (i) a statement or declaration referred to in item 21 of Schedule 1 is made; or
 - (ii) a document referred to in that item comes into existence; and
 - (b) the statement or declaration is not reflected in, or the document is not provided together with, a disclosure document that has been updated under section 20 or 32;

the franchisor must give a franchisee or a prospective franchisee a copy of the statement, declaration or document:

- (c) as soon as reasonably practicable; and
- (d) in relation to a prospective franchisee—before the prospective franchisee enters into a franchise agreement with the franchisor.

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 16; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**

Franchise agreements **Part 4**

Franchisor's obligations **Division 2**

Section 33

Other matters

- (2) If a disclosure document does not mention a matter mentioned in subsection (3), the franchisor must tell a franchisee or prospective franchisee about the matter, in writing, within a reasonable time (but not more than 14 days) after the franchisor becomes aware of it.

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 16; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (3) For the purposes of subsection (2), the matters are the following:

- (a) change in majority ownership or control of:
 - (i) the franchisor or an associate of the franchisor; or
 - (ii) the franchise system;
- (b) proceedings by a public agency, a judgment in criminal or civil proceedings or an award in an arbitration against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor, in Australia alleging:
 - (i) breach of a franchise agreement; or
 - (ii) contravention of the Act; or
 - (iii) contravention of the Corporations Act; or
 - (iv) unconscionable conduct; or
 - (v) misconduct; or
 - (vi) an offence of dishonesty;
 - (vii) contravention of subsection 558B(1) or (2) of the Fair Work Act; or
- (c) civil proceedings in Australia against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate the franchisor, by at least 10%, or 10, of the franchisees in Australia of the franchisor (whichever is the lower);
- (d) any judgment that is entered against the franchisor or an associate of the franchisor in Australia, and is not discharged within 28 days, for at least:
 - (i) for a small proprietary company—\$100,000; or
 - (ii) for any other company—\$1,000,000;
- (e) any judgment that is entered against the franchisor or an associate of the franchisor in a matter mentioned in item 4 of Schedule 1;
- (f) the franchisor or an associate of the franchisor becoming a Chapter 5 body corporate;
- (g) a change in the intellectual property, or ownership or control of the intellectual property, that is material to the franchise system;
- (h) the existence and content of:
 - (i) any undertaking given by the franchisor or an associate of the franchisor under section 87B of the Act; and
 - (ii) any order made by the Federal Court of Australia under that section in relation to such an undertaking.

- (4) For the purposes of paragraphs (3)(b), (c), (d) and (e), the franchisor must tell the franchisee:

- (a) the names of the parties to the proceedings; and

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- (b) the name of the court or tribunal; and
 - (c) the case number; and
 - (d) the general nature of the proceedings.
- (5) For the purposes of paragraph (3)(f), the franchisor must tell the franchisee the name and address of the administrator, controller, liquidator or restructuring practitioner.

Note: Nothing in this Code affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

Subdivision B—Notification obligations (other than for new vehicle dealership agreements)

34 Application of Subdivision [S17A]

This Subdivision does not apply to a new vehicle dealership agreement.

Note: For new vehicle dealership agreements, see Division 2 of Part 6.

35 End of term arrangements [S18]

- (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 franchise agreement with the franchisee; or
 - (c) neither extend the agreement nor enter into a new franchise agreement with the franchisee.
- (2) The franchisor's notice must be given:
- (a) if the term of the franchise agreement is 6 months or longer—at least 6 months before the end of the term of the agreement; and
 - (b) if the term of the franchise agreement is less than 6 months—at least 1 month before the end of the term of the agreement.

Civil penalty: 600 penalty units.

- (3) If the franchisor intends to extend the franchise agreement, the franchisor's notice must include a statement to the effect that, subject to subsection 31(2), the franchisee may request a disclosure document under section 31.

Civil penalty: 600 penalty units.

Subdivision C—Record keeping obligations

36 Keeping certain information and documents [S19]

Things in writing given to a franchisor by a franchisee or prospective franchisee

- (1) If a franchisee or prospective franchisee gives something to a franchisor in writing, as required or permitted by this Code, the franchisor must keep the written thing or a copy of it for at least 6 years after the franchisor receives it.

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Civil penalty: 600 penalty units.

Supporting documents for disclosure documents

- (2) If a franchisor:
- (a) makes a statement or claim in the franchisor's disclosure document; and
 - (b) relies on a document (the *supporting document*) to support the statement or claim;

the franchisor must keep the supporting document for at least 6 years after the disclosure document was most recently provided to a franchisee or prospective franchisee.

Civil penalty: 600 penalty units.

Documents a franchisor is required to give to a franchisee or prospective franchisee

- (3) If a franchisor gives a document to a franchisee or prospective franchisee, as required or permitted by this Code, the franchisor must keep the written thing or a copy of it for at least 6 years after the franchisor gives it to the franchisee or prospective franchisee.

Civil penalty: 600 penalty units.

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Division 3—Terms of franchise agreements

37 Franchisor's legal costs relating to franchise agreement [S19A]

- (1) A franchisor must not enter into a franchise agreement that has the effect of:
 - (a) requiring the franchisee to pay all or part of the franchisor's costs of legal services relating to preparing, negotiating or executing the agreement or documents relating to the agreement; or
 - (b) allowing the franchisor or an associate of the franchisor to require the franchisee to pay all or part of those costs; other than as permitted under subsection (2).

Civil penalty: 600 penalty units.

- (2) The franchise agreement may require the franchisee to make a payment, before the franchisee starts the franchised business, of a fixed amount of dollars that:
 - (a) is specified in the agreement; and
 - (b) is stated in the agreement as being for the franchisor's costs of legal services relating to preparing, negotiating or executing the agreement; and
 - (c) does not exceed the reasonable and genuine costs of the services mentioned in paragraph (b); and
 - (d) is stated in the agreement not to include any amount for the franchisor's costs of legal services that will or may be provided, after the agreement is entered into, in relation to preparing, negotiating or executing other documents.

38 Prohibition on release from liability etc. [S20]

- (1) A franchisor must not enter into a franchise agreement that requires a franchisee to sign:
 - (a) a general release of the franchisor from liability towards the franchisee; or
 - (b) a waiver of any verbal or written representation made by the franchisor.

Civil penalty: 600 penalty units.

- (2) However, subsection (1) does not prevent a franchisee from settling a claim against the franchisor after entering into a franchise agreement.

39 Jurisdiction for settling disputes [S21]

- (1) A franchise agreement may contain a section that:
 - (a) if a party to the agreement wishes to bring an action or proceedings in relation to a dispute under the agreement, requires the party to bring the action or proceedings in a State or Territory in which the franchised business is based; or
 - (b) if a party to the agreement wishes to refer a dispute under the agreement to an ADR process, requires the ADR process to be conducted in a State or Territory in which the franchised business is based.

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- (2) A franchisor must not enter into a franchise agreement that contains a section that:
- (a) requires a party to the agreement to bring an action or proceedings in relation to a dispute under the agreement:
 - (i) in any State or Territory outside that in which the franchised business is based; or
 - (ii) in any jurisdiction outside Australia; or
 - (b) requires an ADR process for a dispute under the agreement to be conducted:
 - (i) in any other State or Territory outside that in which the franchised business is based; or
 - (ii) in any jurisdiction outside Australia.

Civil penalty: 600 penalty units.

40 Costs of settling disputes [S22]

A franchisor must not enter into a franchise agreement that includes a provision that requires the franchisee to pay costs incurred by the franchisor in relation to settling a dispute (whether the dispute is resolved as mentioned in Part 5 or otherwise).

Civil penalty: 600 penalty units.

41 Restraint of trade clause if franchise agreement not extended [S23]

A franchisor must not enter into a franchise agreement that includes (in the agreement, or in another document physically attached to the agreement, or in another document incorporated into the agreement by reference) a restraint of trade clause that would apply if:

- (a) the franchise agreement expires; and
- (b) before the expiry, the franchisee had given written notice to the franchisor seeking to renew or extend the agreement on substantially the same terms as those:
 - (i) contained in the franchisor's current franchise agreement; and
 - (ii) that apply to other franchisees or would apply to a prospective franchisee; and
- (c) immediately before the expiry, the franchisee was not in serious breach of the agreement or any related agreement; and
- (d) the franchisee had not infringed the intellectual property of, or a confidentiality agreement with, the franchisor during the term of the agreement; and
- (e) the franchisor did not renew or extend the agreement; and
- (f) either:
 - (i) the franchisee claimed compensation for goodwill because the agreement was not renewed or extended, but the compensation given was merely a nominal amount and did not provide genuine compensation for goodwill; or
 - (ii) the agreement did not allow the franchisee to claim compensation for goodwill in the event that it was not renewed or extended.

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Civil penalty: 600 penalty units.

42 Franchise agreement must provide for compensation for early termination [S46A]

- (1) A franchisor must not enter into a franchise agreement unless the agreement:
- (a) provides for the franchisee to be compensated if the agreement is terminated before it expires because the franchisor:
 - (i) withdraws from the Australian market; or
 - (ii) rationalises its networks in Australia; or
 - (iii) changes its distribution models in Australia; and
 - (b) specifies how the compensation is to be determined, with specific reference to the following:
 - (i) lost profit from direct and indirect revenue;
 - (ii) unamortised capital expenditure requested by the franchisor;
 - (iii) loss of opportunity in selling established goodwill;
 - (iv) costs of winding up the franchised business.

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 16; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (2) A franchisor must not enter into a franchise agreement unless the agreement contains provision for the franchisor to buy back or compensate the franchisee for the things mentioned in subsection (3) if:
- (a) the agreement is not renewed and the franchisor does not enter into a new franchise agreement with the franchisee; or
 - (b) the agreement is terminated before it expires because the franchisor:
 - (i) withdraws from the Australian market; or
 - (ii) rationalises its networks in Australia; or
 - (iii) changes its distribution models in Australia.

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 16; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (3) For the purposes of subsection (2), the things are the following:
- (a) all the outstanding stock of the franchise purchased by the franchisee that was specified by the franchisor and required in order to operate the franchise in accordance with the franchise agreement or any operations manual (however described);
 - (b) all the essential specialty equipment, branded product or merchandise purchased or maintained by the franchisee that could not be repurposed for a similar business;
 - (c) any other thing that the franchisee was required by the franchisor to purchase or maintain for the purposes of the franchise, in order to operate the franchise in accordance with the franchise agreement or any operations manual (however described);

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(d) if the agreement is a new vehicle dealership agreement—new road vehicles, spare parts and special tools.

- (4) A franchisor must not enter into a franchise agreement that contains a provision that purports to exclude any compensation to which the franchisee may be entitled, other than under the agreement, if the agreement is terminated before it expires other than because the franchisee has breached the agreement.

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 16; or
(b) for a contravention by a person who is not a body corporate—\$500,000.

43 Franchise agreement must provide reasonable opportunity for return on franchisee’s investment [S46B]

A franchisor must not enter into a franchise agreement unless the agreement provides the franchisee with a reasonable opportunity to make a return, during the term of the agreement, on any investment required by the franchisor as part of entering into, or under, the agreement.

Note: If expenditure is disclosed in a disclosure document for a franchise agreement, the circumstances in which the expenditure is likely to be recouped must be discussed (see section 44).

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 16; or
(b) for a contravention by a person who is not a body corporate—\$500,000.

44 Discussion about significant capital expenditure disclosed in disclosure document [S30A]

The franchisor must not enter into, renew or extend the term or scope of a franchise agreement unless the franchisor and the franchisee or prospective franchisee have discussed:

- (a) any significant capital expenditure disclosed in the disclosure document as mentioned in subsection 19(4); and
(b) the circumstances under which the franchisor considers that 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.

Civil penalty: 600 penalty units.

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Division 4—Transfer of franchise agreements

45 Request for franchisor’s consent to transfer [S24]

- (1) A person may request, in writing, that a franchisor consent to the transfer of a franchise agreement.
- (2) A request must be accompanied by all information that the franchisor would reasonably require and expect to be given to make an informed decision.
- (3) If the franchisor requires further information to make an informed decision, the franchisor may, in writing, request the person to provide specified information relevant to making the decision.

46 Franchisor’s consent to transfer [S25]

Giving consent

- (1) A franchisor must advise, in writing, a person who has made a request under section 45 for consent to the transfer of a franchise agreement:
 - (a) whether consent is given, and if not, give reasons why not; and
 - (b) if consent is given—whether the franchisor’s consent is subject to one or more conditions being satisfied.
- (2) A franchisor must not unreasonably withhold consent to the transfer of a franchise agreement.

Note: A franchisor may reasonably withhold consent to the transfer of a franchise agreement in the circumstances provided by subsection (6).

Civil penalty: 600 penalty units.

Consent taken to be given

- (3) If the franchisor does not advise the person, in writing, that the franchisor does not consent to the transfer of the franchise agreement within 42 days of the later of:
 - (a) the date the request is made; and
 - (b) if the franchisor seeks further information—the date the last of the information is provided to the franchisor;then:
 - (c) the franchisor is taken to have given consent; and
 - (d) that consent cannot be revoked under subsection (4).

Revoking consent

- (4) Within 14 days of giving consent, the franchisor may revoke it by advising the person, in writing, that the franchisor’s consent is revoked and the reasons why consent has been revoked.
- (5) A franchisor must not unreasonably revoke the franchisor’s consent to the transfer of a franchise agreement.

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Note: A franchisor may reasonably revoke the franchisor's consent to the transfer of a franchise agreement in the circumstances provided by subsection (6).

Civil penalty: 600 penalty units.

Circumstances in which franchisor's consent may reasonably be withheld or revoked

- (6) Without limiting the circumstances in which a franchisor's consent may be reasonably withheld or revoked, a franchisor may reasonably withhold consent, or reasonably revoke consent, to the transfer of a franchise agreement in the following circumstances:
- (a) the prospective franchisee is unlikely to be able to meet the financial obligations that the prospective franchisee would have under the franchise agreement;
 - (b) the prospective franchisee does not meet a reasonable requirement of the franchise agreement for the transfer of the franchise agreement;
 - (c) the prospective franchisee does not meet the selection criteria of the franchisor;
 - (d) the prospective franchisee does not agree, in writing, to comply with the obligations of the franchisee under the franchise agreement;
 - (e) the franchisee has not paid or made reasonable provision to pay an amount owing to the franchisor;
 - (f) the franchisee has not remedied a breach of the franchise agreement.

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Division 5 Termination of franchise agreements in cooling off periods

Section 47

Division 5—Termination of franchise agreements in cooling off periods

47 Termination by franchisee—cooling off periods for new franchise agreements [S26]

Cooling off period—general

- (1) A franchisee may terminate a franchise agreement within 14 days after entering into the agreement, unless the franchisee has given the franchisor a written notice under subsection (7) opting out of being able to terminate the franchise agreement under this subsection.

Cooling off period—lease or occupancy of premises

- (2) Subsections (3) and (4) apply if, immediately before the franchise agreement is entered into:
 - (a) there is a proposal that the franchisor, or an associate of the franchisor:
 - (i) lease premises for the franchised business to the franchisee; or
 - (ii) allow the franchisee to occupy premises for the franchised business under a right (an *occupancy right*) other than a lease; and
 - (b) the lease or occupancy right is not in force.
- (3) The franchisee may terminate the franchise agreement within 14 days after either of the following, unless the franchisee has given the franchisor a written notice under subsection (7) opting out of being able to terminate the franchise agreement under this subsection:
 - (a) the day the franchisee receives from the franchisor or associate the first document setting out the terms of the proposed lease or occupancy right;
 - (b) if, on a later day, the franchisee receives from the franchisor or associate a document setting out the terms of the proposed lease or occupancy that are not substantially identical to the terms set out in the first document (excluding changes to the terms that were requested by the franchisee)—that later day.
- (4) The franchisee may terminate the franchise agreement within 14 days after entering into the lease or being granted the occupancy right if:
 - (a) before entering into the lease or being granted the occupancy right, the franchisee did not receive from the franchisor or associate a document setting out terms of the proposed lease or occupancy right that are substantially identical to the actual terms of the lease or occupancy right (excluding changes to the actual terms of the lease or occupancy right that were requested by the franchisee); and
 - (b) the franchisee has not given the franchisor a written notice under subsection (7) opting out of being able to terminate the franchise agreement under this subsection.

Application of subsections (1), (3) and (4)

- (5) Subsections (1), (3) and (4) do not limit one another.
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Note: Those subsections do not provide for the franchisee to terminate another agreement with the franchisor (such as a lease of premises from the franchisor) or an agreement with anyone else.

- (6) Subsections (1), (3) and (4) do not apply to:
- (a) the renewal of an existing franchise agreement; or
 - (b) the extension of the term or scope of an existing franchise agreement; or
 - (c) the transfer of a franchise agreement that does not involve entry into a new franchise agreement between the prospective franchisee and the franchisor.

Note: Section 49 deals with cooling off after such a transfer.

Franchisee may opt out of cooling-off period

- (7) The franchisee may, by written notice given to the franchisor, opt out of being able to terminate the franchise agreement under subsection (1), (3) or (4) if:
- (a) the franchisee has, or has recently had, another franchise agreement (the **other agreement**) with the franchisor that is the same or substantially the same as the franchise agreement; and
 - (b) the business that is the subject of the franchise agreement is the same or substantially the same as the business that is or was the subject of the other agreement.

48 Repayments by franchisor after termination by franchisee

- (1) If a franchisee terminates a franchise agreement under subsection 47(1), (3) or (4), the franchisor must, within 14 days, repay all payments (whether of money or of other valuable consideration) made by the franchisee to the franchisor connected with the agreement, less any amount that may be deducted under subsection (2).

Civil penalty: 600 penalty units.

- (2) The franchisor may deduct an amount equal to the franchisor's reasonable expenses relating to the termination if those expenses or their method of calculation are set out in the agreement.

49 Termination by franchisee—cooling off period for transferred franchise agreements [S26A]

- (1) This section applies if:
- (a) a franchise agreement is transferred between a person (the **old franchisee**) who was the franchisee under the agreement and a person (the **new franchisee**) who becomes the franchisee for the purposes of the agreement; and
 - (b) the transfer does not involve a new franchise agreement being entered into by the new franchisee and the franchisor; and
 - (c) the new franchisee has not given the old franchisee and the franchisor a written notice under subsection (4).

Note: For a transfer that involves a new franchise agreement being entered into by the franchisor and the person to whom the transfer was made by the old franchisee, see section 47.

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- (2) The new franchisee may, by written notice given to the old franchisee and the franchisor before the time mentioned in subsection (3), do all of the following:
 - (a) cease to be the franchisee for the purposes of the agreement;
 - (b) if the old franchisee can become the franchisee for those purposes again—cause the old franchisee to do so;
 - (c) if there was an agreement (the *transfer agreement*) between the new franchisee and the old franchisee for the purposes of the transfer—terminate the transfer agreement.
- (3) For the purposes of subsection (2), the time is the earlier of the following:
 - (a) the end of the period of 14 days starting on the day after the new franchisee becomes the franchisee for the purposes of the franchise agreement;
 - (b) the day the new franchisee takes possession and control of the franchised business.

New franchisee may opt out of cooling-off period

- (4) The new franchisee may, by written notice given to the old franchisee and the franchisor, opt out of being able to do all of the things mentioned in subsection (2) if:
 - (a) the franchisee has another franchise agreement (the *other agreement*) with the franchisor that is the same or substantially the same as the franchise agreement; and
 - (b) the business that is the subject of the franchise agreement is the same or substantially the same as the business that is or was the subject of the other agreement.

50 Repayments following termination by new franchisee

Application

- (1) This section applies if, by notice given under subsection 49(2), a new franchisee ceases to be the franchisee for the purposes of a franchise agreement.

Repayments from franchisor to new franchisee

- (2) The franchisor must, within the period of 14 days starting on the day after the notice was given, repay all payments (whether of money or of other valuable consideration) made by the new franchisee to the franchisor under the franchise agreement, less any amount that may be deducted under subsection (3).

Civil penalty: 600 penalty units.

- (3) The franchisor may deduct an amount equal to the franchisor's reasonable expenses relating to the new franchisee ceasing to be the franchisee if those expenses or their method of calculation are set out in the agreement.

Repayments from old franchisee to new franchisee

- (4) The old franchisee must, within the period of 14 days starting on the day after the notice was given, repay all payments (whether of money or of other valuable

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consideration) made by the new franchisee to the old franchisee under the transfer agreement, less any amount that may be deducted under subsection (5).

Civil penalty: 600 penalty units.

- (5) The old franchisee may deduct an amount equal to the old franchisee's reasonable expenses relating to the termination of the transfer agreement if those expenses or their method of calculation are set out in the transfer agreement.

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Division 6 Termination of franchise agreements other than in cooling off periods

Section 51

Division 6—Termination of franchise agreements other than in cooling off periods

51 Franchisee may propose termination at any time [S26B]

- (1) A franchisee may, at any time, give the franchisor a written proposal for termination of their franchise agreement on the terms specified in the proposal, despite the agreement. The proposal must set out the reasons for the proposed termination.
- (2) If the franchisor is given a proposal under subsection (1), then, subject to subsections (3) and (4):
 - (a) the franchisor must give the franchisee a substantive written response to the proposal within 28 days; and
 - (b) if the franchisor's response is to refuse to terminate, or to refuse to agree to terminate, the franchise agreement on the terms proposed—the response must include the reasons for the refusal.

Note 1: If the response is to refuse to terminate, or to refuse to agree to terminate, the franchise agreement on the terms proposed, a dispute may arise. Under section 67, the dispute can be dealt with under Division 2 of Part 5.

Note 2: Each party to a franchise agreement is under an obligation to act in good faith in relation to the agreement (see section 17).

Civil penalty: 600 penalty units.

- (3) If the franchisor has given the franchisee a substantive written response to a proposal (the *earlier proposal*) under subsection (2), the franchisor is not required to give the franchisee another response to that proposal.
- (4) However, if the franchisee gives the franchisor another written proposal (the *later proposal*) for termination of their franchise agreement for a different reason from the reason given for the earlier proposal, the franchisor must comply with subsection (2) in relation to the later proposal.
- (5) This section is not intended to otherwise limit the rights or obligations of the franchisor or franchisee under a law of the Commonwealth or a State or Territory or under the franchise agreement.

52 Termination by franchisor—breach by franchisee [S27]

- (1) This section applies if:
 - (a) a franchisee breaches a franchise agreement; and
 - (b) the breach is not a ground for termination mentioned in subsection 54(1) or 55(1); and
 - (c) the franchisor proposes to terminate the franchise agreement because of the breach; and
 - (d) the franchisee does not agree to the termination.
- (2) The franchisor must give the franchisee a written notice setting out the following:

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- (a) that the franchisor proposes to terminate the franchise agreement because of the breach;
- (b) the things the franchisor requires to be done to remedy the breach;
- (c) the time (which must be a reasonable time, but need not be more than 30 days after the date of the notice) within which the franchisor requires those things to be done.

Civil penalty: 600 penalty units.

- (3) The franchisor must not terminate the franchise agreement because of the breach if the breach has been remedied in accordance with the matters set out in the notice under paragraphs (2)(b) and (c).

Civil penalty: 600 penalty units.

- (4) If the agreement is terminated because of the breach, Part 5 (resolving disputes) applies in relation to a dispute arising from the termination.

53 Termination by franchisor—no breach by franchisee [S28]

- (1) This section applies if:
 - (a) a franchisor proposes to terminate a franchise agreement:
 - (i) in accordance with the agreement; and
 - (ii) other than on a ground mentioned in subsection 54(1) or 55(1); and
 - (iii) before it expires; and
 - (iv) without the consent of the franchisee; and
 - (b) the franchisee has not breached the agreement.
- (2) For the purposes of subparagraph (1)(a)(iv), a condition of a franchise agreement that a franchisor can terminate the franchise agreement without the consent of the franchisee is not taken to be consent.
- (3) The franchisor must not terminate the franchise agreement unless the franchisor has given the franchisee reasonable written notice of the proposed termination, and reasons for it.

Civil penalty: 600 penalty units.

- (4) If the agreement is terminated as mentioned in this section, Part 5 (resolving disputes) applies in relation to a dispute arising from the termination.

54 Termination by franchisor with 7 days' notice on grounds for which franchisee may not notify dispute [S29]

- (1) This section applies if a franchise agreement gives the franchisor power to terminate the agreement on any of the following grounds:
 - (a) the franchisee no longer holds a licence that the franchisee must hold to carry on the franchised business;
 - (b) the franchisee becomes bankrupt, insolvent under administration or a Chapter 5 body corporate;
 - (c) the franchisee is a company that is deregistered by the Australian Securities and Investments Commission;

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- (d) in proceedings for an order in relation to a Fair Work serious contravention of a Fair Work civil remedy provision, a court is satisfied that the franchisee has committed that serious contravention;
- (e) in proceedings for a civil penalty order in relation to a contravention of section 245AAA, 245AAB or 245AAC of the *Migration Act 1958*, a court is satisfied that the franchisee has contravened the section concerned;
- (f) the franchisee is convicted of a serious offence;
- [(g) the franchisee is convicted of an offence against subsection 327A(1) of the Fair Work Act, or a Fair Work related offence provision that relates to an offence against that subsection;]
- (h) the franchisee is convicted of an offence against section 245AAA, 245AAB or 245AAC of the *Migration Act 1958*.

Note: Section 451E of the Corporations Act may affect a franchisor's power to terminate a franchise agreement on the ground mentioned in paragraph (1)(b).

- (2) The franchisor must not terminate the agreement on a ground mentioned in subsection (1) unless the franchisor has given the franchisee 7 days' written notice of the proposed termination and the ground for it.

Civil penalty: 600 penalty units.

55 Termination by franchisor on grounds for which franchisee may notify dispute

- (1) This section applies if a franchise agreement gives the franchisor power to terminate the agreement on any of the following grounds:
 - (a) the franchisee voluntarily abandons the franchised business or the franchise relationship;
 - (b) the franchisee operates the franchised business in a way that endangers public health or safety;
 - (c) the franchisee acts fraudulently in connection with the operation of the franchised business.
- (2) The franchisor must give the franchisee written notice (the **termination notice**) of the proposed termination and the ground for it.
- (3) The franchisor must not terminate the agreement before:
 - (a) if, within 7 days after the day the termination notice is given (the **notice period**), the franchisee does not give the franchisor written notice (a **dispute notice**) under subsection 69(1) or a corresponding provision of the franchise agreement about a dispute relating to the proposed termination—the end of the notice period; or
 - (b) if, within the notice period, the franchisee gives the franchisor a dispute notice—the end of 28 days after the day the dispute notice is given.

Civil penalty: 600 penalty units.

Rapid appointment of ADR practitioner or arbitrator for dispute

- (4) If, within the notice period, the franchisee gives the franchisor a dispute notice:

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- (a) despite subclauses 69(3), (4) and (5) or corresponding provisions of the franchise agreement:
 - (i) the franchisee may refer the matter to an ADR practitioner for an ADR process if the franchisee and franchisor do not agree promptly how to resolve the dispute; and
 - (ii) either the franchisee or the franchisor may request the Ombudsman to appoint an ADR practitioner for the ADR process relating to the dispute if the franchisee and franchisor do not agree promptly on who should be the ADR practitioner; and
 - (iii) if requested, the Ombudsman must appoint an ADR practitioner as soon as practicable; and
- (b) despite paragraph 77(4)(a), the Ombudsman must appoint an arbitrator for the dispute as soon as practicable after receiving a request from the parties to the franchise agreement to do so.

56 Requiring franchisee to cease operating franchised business on termination grounds

If:

- (a) a franchise agreement provides for the franchisor to take action to cause or require the franchisee not to operate all or part of the franchised business on a ground mentioned in subsection 54(1) or 55(1); and
- (b) that action would involve termination of the franchise agreement by the franchisor; and
- (c) the franchisor proposes to take that action;

the franchisor may, by written notice given to the franchisee, require the franchisee not to operate the business or the part of the business because of that ground.

Note: In this case, while subsections 54(2) and 55(3) prevent the franchisor from terminating the agreement before a certain time, the franchisor may, under this section, require the franchisee not to operate all or part of the franchised business.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 4 Franchise agreements

Division 7 Miscellaneous

Section 57

Division 7—Miscellaneous

57 Franchisor may require only certain significant capital expenditure [S30]

- (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, other than as permitted by subsection (2).

Civil penalty: 600 penalty units.

- (2) For the purposes of subsection (1), the significant capital expenditure that the franchisor may require the franchisee to undertake is the following:
 - (a) significant capital expenditure disclosed to the franchisee in a disclosure document as mentioned in subsection 19(4), if the disclosure document was given to the franchisee before the most recent of the following that is applicable:
 - (i) entry into the agreement;
 - (ii) renewal of the agreement;
 - (iii) extension of the term of the agreement;
 - (iv) extension of the scope of the agreement;
 - (b) significant capital expenditure that is to be incurred by all or a majority of franchisees and is approved by a majority of those franchisees;
 - (c) significant capital expenditure incurred by the franchisee to comply with legislative obligations;
 - (d) significant capital expenditure agreed by the franchisee.

58 Payments to and from specific purpose funds [S31]

- (1) This section applies if a franchise agreement requires the franchisee to pay money to a specific purpose fund.

Payments by franchisors

- (2) If the franchisor or master franchisor operates one or more units of a franchised business, the franchisor or master franchisor must make payments to the fund on behalf of each of those units on the same basis as franchisees of other units of the franchised business.

Civil penalty: 600 penalty units.

Obligations of fund administrators

- (3) The fund administrator of the fund must maintain a separate account with a financial institution for payments to the fund.

Civil penalty: 600 penalty units.

- (4) Despite any terms of the franchise agreement, the fund administrator must use the fund only to:
 - (a) meet expenses:

EXPOSURE DRAFT

Franchising industry code **Chapter 2**

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Miscellaneous **Division 7**

Section 59

- (i) of a kind that have been disclosed to franchisees in the disclosure document in accordance with paragraph 15.1(f) of Schedule 1; or
- (ii) that are legitimate expenses for the specified purpose for the fund; or
- (iii) that have been agreed to by a majority of franchisees that are required to make payments to the fund; or

(b) pay the reasonable costs of administering and auditing the fund.

Civil penalty: 600 penalty units.

59 Franchisor not to vary franchise agreement retrospectively without franchisee's consent [S31A]

A franchisor must not vary a franchise agreement with retrospective effect unless the franchisee has given written consent to the variation.

Civil penalty: 600 penalty units.

60 Disclosure of personal information of former franchisees [S32]

- (1) A former franchisee may give a franchisor a written request that the former franchisee's personal information not be disclosed to a prospective franchisee.
- (2) If such a request is made, the franchisor must not disclose the former franchisee's personal information to a prospective franchisee.

Civil penalty: 600 penalty units.

- (3) A franchisor must not engage in conduct with the intention of influencing a former franchisee to make, or not make, such a request.

Civil penalty: 600 penalty units.

61 Association of franchisees or prospective franchisees [S33]

A franchisor must not engage in conduct that would restrict or impair:

- (a) a franchisee or prospective franchisee's freedom to form an association; or
- (b) a franchisee or prospective franchisee's ability to associate with other franchisees or prospective franchisees for a lawful purpose.

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 16; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

62 Franchisor not to require franchisee to pay franchisor's legal costs relating to franchise agreement

- (1) A franchisor or an associate of the franchisor must not require a franchisee to pay all or part of the franchisor's costs of legal services relating to preparing, negotiating or executing a franchise agreement or documents relating to the agreement, other than as permitted under subsection (2).

Civil penalty: 600 penalty units.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 4 Franchise agreements

Division 7 Miscellaneous

Section 63

- (2) The franchisor may require the franchisee to make a payment, before the franchisee starts the franchised business, of a fixed amount of dollars that:
- (a) is specified in the franchise agreement; and
 - (b) is stated in the agreement as being for the franchisor's costs of legal services relating to preparing, negotiating or executing the agreement; and
 - (c) does not exceed the reasonable and genuine costs of the services mentioned in paragraph (b); and
 - (d) is stated in the agreement not to include any amount for the franchisor's costs of legal services that will or may be provided, after the agreement is entered into, in relation to preparing, negotiating or executing other documents.

63 Franchisor not to require franchisee to pay costs of settling disputes

A franchisor must not require a franchisee to pay costs incurred by the franchisor in relation to settling a dispute (whether the dispute is resolved as mentioned in Part 5 or otherwise).

Civil penalty: 600 penalty units.

64 Franchisor not to rely on restraint of trade clause if franchise agreement not extended

A franchisor must not rely on, or purport to rely on, a restraint of trade clause that would apply in the circumstances mentioned in section 41.

Civil penalty: 600 penalty units.

Part 5—Resolving disputes

Division 1—General

65 Right to bring proceedings unaffected by this Part [S37]

This Part does not affect the right of a party to a franchise agreement to bring legal proceedings, whether under the franchise agreement or otherwise.

66 Internal complaint handling procedure [S34]

A franchise agreement must provide for a complaint handling procedure that has the same effect as subsections 69(1) to (4) and section 71 except for providing for imposition of a civil penalty.

67 Resolving disputes [S35]

A party to a franchise agreement (the *complainant*) who has a dispute with another party to the franchise agreement (the *respondent*) may:

- (a) take action under the agreement's complaint handling procedure; or
- (b) take action in accordance with the procedure set out in Division 2 of this Part.

Note: See also Division 3 of Part 6 in relation to new vehicle dealership agreements.

68 When a party is taken to be trying to resolve a dispute [S36]

A party will be taken to be trying to resolve a dispute if the party approaches the resolution of the dispute in a reconciliatory manner, including doing any of the following:

- (a) attending and participating in meetings at reasonable times;
- (b) during the dispute, not taking an action or refusing to take an action if the action or refusal would damage the reputation of the franchise system;
- (c) if an ADR process is being used to try to resolve the dispute—both:
 - (i) making the party's intention clear, at the beginning of the process, as to what the party is trying to achieve through the process; and
 - (ii) observing any obligations relating to confidentiality that apply during or after the process.

Note: For paragraph (b):

- (a) an action of providing inferior goods, services, or support is an example of an action that would damage the reputation of the franchise system; and
- (b) a refusal to provide goods, services, or support is an example of a refusal that would damage the reputation of the franchise system.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 5 Resolving disputes

Division 2 Code complaint handling procedure

Section 69

Division 2—Code complaint handling procedure

Subdivision A—Notification of dispute

69 Notification of dispute [S40A]

- (1) The complainant must give the respondent written notice of:
 - (a) the nature of the dispute; and
 - (b) what outcome the complainant wants; and
 - (c) what action the complainant thinks will resolve the dispute.
- (2) The parties must then try to agree how to resolve the dispute.

Note: Arbitration could be one way the parties agree to resolve the dispute. In that case, Subdivision C will apply.
- (3) If the parties cannot agree how to resolve the dispute within 21 days, any party may refer the matter to an ADR practitioner for an ADR process under:
 - (a) a franchise agreement; or
 - (b) this Code.
- (4) If the parties cannot agree on who should be the ADR practitioner, any party may request the Ombudsman to appoint an ADR practitioner.
- (5) The Ombudsman must appoint an ADR practitioner within 14 days of the request, or a corresponding request under a provision of the franchise agreement corresponding to subsection (4).

70 Similar disputes between 2 or more franchisees and one franchisor [S40B]

- (1) This section applies if 2 or more franchisees have similar disputes under their franchise agreements with the same franchisor.
 - (2) The franchisees and the franchisor may agree to resolve their disputes in the same way.
 - (3) For the purpose of deciding whether to agree to resolve their disputes in the same way, the franchisees may discuss their disputes with each other, despite any confidentiality requirements provided in their franchise agreements.
 - (4) If any of the franchisees and the franchisor cannot agree how to resolve their disputes, all of the franchisees (who cannot agree) or the franchisor may refer the matter to a single ADR practitioner in accordance with subsection 69(3) for a single ADR process for all of their disputes.

Note: Each of the disputes remains separate, even if there is a single ADR process dealing with all of them.
 - (5) If any of the franchisees and the franchisor cannot agree on who should be the ADR practitioner, all of the franchisees (who cannot agree) or the franchisor may request the Ombudsman in accordance with subsection 69(4) to appoint a single ADR practitioner for a single ADR process for all of their disputes.
 - (6) If:
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Franchising industry code **Chapter 2**
Resolving disputes **Part 5**
Code complaint handling procedure **Division 2**

Section 71

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- (a) under subsection (4), all of the franchisees refer the matter to a single ADR practitioner for a single ADR process for all of their disputes; or
 - (b) under subsection (5), all of the franchisees request the appointment of a single ADR practitioner for a single ADR process for all their disputes and the appointment is made;

but the franchisor does not agree that there should be a single ADR process for all the disputes or does not agree to the appointment of the ADR practitioner, the ADR practitioner may conduct the ADR process despite the franchisor's disagreement.

Note: If the ADR practitioner conducts the ADR process despite the franchisor's disagreement, the franchisor is required to attend the ADR process and try to resolve the dispute (see subsections 71(3) and (4)). Section 68 (when a party is taken to be trying to resolve a dispute) applies in relation to all the parties to the disputes.

Subdivision B—ADR process

71 ADR process [S41A]

Conduct of ADR process

- (1) Subject to subsection (2), an ADR practitioner appointed for a dispute may decide the time and place for the ADR process for the dispute.
- (2) The ADR process must be conducted in Australia and may be conducted by means of virtual attendance technology.

Attendance at ADR process

- (3) Each party to the dispute must attend the ADR process.

Note: For when a party is taken to attend an ADR process, see section 72.

Civil penalty: 600 penalty units.

- (4) The parties must try to resolve the dispute.

Note: For when a party is taken to be trying to resolve a dispute, see section 68.

ADR practitioner to notify Ombudsman of start of ADR

- (5) Within 28 days after the ADR process starts, the ADR practitioner must advise the Ombudsman of that fact.

72 When a party is taken to attend an ADR process

A party to a dispute is taken to attend an ADR process for the dispute if the party is represented in the ADR process by a person who has the authority to enter an agreement to settle the dispute on behalf of the party.

73 Termination of ADR process by ADR practitioner [S41B]

- (1) This section applies to an ADR process for a dispute if:
 - (a) at least 30 days have elapsed after the day the ADR process began; and
 - (b) the dispute has not been resolved.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 5 Resolving disputes

Division 2 Code complaint handling procedure

Section 74

- (2) The ADR practitioner for the ADR process may terminate the ADR process at any time unless satisfied that a resolution of the dispute is imminent.
- (3) However, if a party asks the ADR practitioner to terminate the ADR process for the dispute and gives written reasons for the request, the ADR practitioner must terminate the ADR process to the extent that it relates to that party's dispute.
- (4) If the ADR practitioner terminates the ADR process for a dispute under this section, the ADR practitioner must issue a certificate stating:
 - (a) the names of the parties; and
 - (b) the nature of the dispute; and
 - (c) that the ADR process for the dispute has finished; and
 - (d) that the dispute has not been resolved; and
 - (e) the reason for terminating the ADR process for the dispute.
- (5) The ADR practitioner must give a copy of the certificate to:
 - (a) the Ombudsman; and
 - (b) each of the parties to the dispute.

74 Costs of ADR process [S41C]

- (1) The parties to a dispute are equally liable for the costs of an ADR process under this Subdivision for the dispute (including the cost of the ADR practitioner, the cost of room hire and the cost of any additional input (including expert reports) agreed by the parties to be necessary to conduct the ADR process), unless they agree otherwise.

Note: If a single ADR process is conducted under this Subdivision for multiple disputes, this section applies separately to each of the disputes, and the costs of the ADR process for each dispute will be the part of the overall cost of the ADR process that is attributable to that dispute.

- (2) The parties must pay for their own costs of attending the ADR process.

75 Ombudsman may publish franchisor's refusal to engage in ADR process

- (1) The Ombudsman may publicise, in any way that the Ombudsman thinks appropriate, either or both of the following:
 - (a) that a franchisor who is a party to a dispute has refused to engage in an ADR process for the dispute;
 - (b) that a franchisor who is a party to a dispute has withdrawn from an ADR process for the dispute.
- (2) This section does not:
 - (a) limit the power of the Ombudsman or anyone else to publicise a matter or a person's name; or
 - (b) prevent anyone else from publicising a matter or a person's name; or
 - (c) affect any obligation (however imposed) on anyone else to publicise a matter or a person's name.

Subdivision C—Arbitration

76 Arbitration by agreement for dispute resolution [S43A]

The dispute between the complainant and the respondent may, by written agreement, be resolved in whole or part by arbitration. The agreement may be the franchise agreement or a separate agreement.

77 Arbitration procedure [S43B]

- (1) This section applies if the complainant and the respondent agree, in writing, to have a dispute resolved by arbitration conducted in accordance with this Subdivision.

Appointment of arbitrator

- (2) The parties must request the Ombudsman to appoint an arbitrator for the dispute.
- (3) The parties may request the Ombudsman to appoint a particular arbitrator agreed on by the parties (who may or may not be included in the list kept by the Ombudsman under paragraph 15(a) of this instrument).
- (4) The Ombudsman must:
- (a) appoint an arbitrator within 14 days after receiving the request unless the Ombudsman is satisfied that the complaint giving rise to the dispute:
 - (i) is frivolous or vexatious; or
 - (ii) has previously been the subject of another arbitration; and
 - (b) if the parties have requested the Ombudsman to appoint a particular arbitrator—appoint that arbitrator; and
 - (c) give the parties to the dispute, in writing, details of the arbitrator appointed.

Conduct of arbitration

- (5) Subject to subsection (6), the arbitrator must decide:
- (a) how the arbitration is to be conducted (for example, by telephone or in meetings, including by means of virtual attendance technology); and
 - (b) the time and place for the arbitration; and
 - (c) the day the arbitration commences for the purposes of this Subdivision.
- (6) The arbitration must be conducted in Australia.

Arbitrator must notify Ombudsman that arbitration has commenced

- (7) Within 14 days after the arbitration has commenced, the arbitrator must notify the Ombudsman, in writing, that the arbitration has commenced and of the nature of the dispute.

Note: The arbitrator decides under paragraph (5)(c) when an arbitration commences.

Attendance at arbitration

- (8) Each party to the dispute must attend the arbitration.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 5 Resolving disputes

Division 2 Code complaint handling procedure

Section 78

Civil penalty: 600 penalty units.

- (9) For the purposes of subsection (8), a party is taken to attend an arbitration if the party is represented at the arbitration by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.

Arbitrator must give notice of successful arbitration

- (10) If the dispute is resolved, the arbitrator must, within 14 days after the dispute is resolved:
- (a) set out, in writing, the terms of the resolution; and
 - (b) give a copy of the terms to each party to the dispute; and
 - (c) notify the Ombudsman that the dispute has been resolved.

78 Termination of arbitration by arbitrator [S43C]

- (1) The arbitrator conducting an arbitration of a dispute in accordance with this Subdivision must terminate the arbitration if all parties to the dispute jointly request the arbitrator to do so.
- (2) If the arbitrator terminates an arbitration under subsection (1), the arbitrator must issue a certificate stating:
- (a) the names of the parties to the arbitration; and
 - (b) the nature of the dispute that was the subject of the arbitration; and
 - (c) that the arbitration has been terminated; and
 - (d) that the dispute has not been resolved.
- (3) The arbitrator must give a copy of the certificate to:
- (a) the Ombudsman; and
 - (b) each party to the dispute.

79 Costs of arbitration [S43D]

- (1) Each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay half of all reasonable costs (if any) associated with the conduct of the arbitration, unless the parties to the arbitration agree otherwise.
- (2) However, each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay that party's costs of attending the arbitration, unless the parties agree otherwise.

Subdivision D—Confidentiality

80 Confidentiality requirements [S44A]

The complainant and respondent must observe any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving the dispute by an ADR process or arbitration.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
New vehicle dealership agreements **Part 6**
Preliminary **Division 1**

Section 81

Part 6—New vehicle dealership agreements

Division 1—Preliminary

81 Application of Part [S46]

This Part applies to new vehicle dealership agreements.

Note: In this Part, a reference to a franchise agreement is a reference to a new vehicle dealership agreement.

EXPOSURE DRAFT

Chapter 2 Franchising industry code
Part 6 New vehicle dealership agreements
Division 2 End of term obligations

Section 82

Division 2—End of term obligations

Note: Subdivision B of Division 2 of Part 4 does not apply to new vehicle dealership agreements (see section 34).

82 Notification obligation—franchisor [S47]

- (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 franchise agreement with the franchisee; or
 - (c) neither extend the agreement nor enter into a new franchise agreement with the franchisee.
- (2) If the term of the agreement is 12 months or longer, 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 to the agreement agree on a later time—before that later time.

Civil penalty: 600 penalty units.

- (3) If the term of the agreement is less than 12 months, the franchisor's notice must be given:
 - (a) if the term of the agreement is 6 months or longer—at least 6 months before the end of the term of the agreement; and
 - (b) if the term of the agreement is less than 6 months—at least 1 month before the end of the term of the agreement.

Civil penalty: 600 penalty units.

- (4) If the franchisor intends to enter into a new franchise agreement with the franchisee, the franchisor's notice must include a statement to the effect that, subject to subsection 31(2), the franchisee may request a disclosure document under section 31.

Civil penalty: 600 penalty units.

- (5) If the franchisor gives a notice that the franchisor intends to neither extend the agreement nor enter into a new franchise agreement with the franchisee, the notice must include the reasons for the franchisor's intention.

Civil penalty: 600 penalty units.

83 Notification obligation—franchisee [S48]

- (1) The franchisee of a franchise agreement must notify the franchisor, in writing, whether the franchisee intends to:
 - (a) renew the agreement; or
 - (b) enter into a new franchise agreement with the franchisor; or
 - (c) neither extend the agreement nor enter into a new franchise agreement with the franchisor.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
New vehicle dealership agreements **Part 6**
End of term obligations **Division 2**

Section 84

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- (2) If the term of the agreement is 12 months or longer, 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 to the agreement agree on a later time—before that later time.
 - (3) If the term of the agreement is less than 12 months, the franchisee's notice must be given:
 - (a) if the term of the agreement is 6 months or longer—at least 6 months before the end of the term of the agreement; and
 - (b) if the term of the agreement is less than 6 months—at least 1 month before the end of the term of the agreement.
 - (4) If the franchisee gives a notice to the franchisor that the franchisee intends to neither renew the agreement nor enter into a new franchise agreement with the franchisor, the notice must include the reasons for the franchisee's intention.

84 Obligation to manage winding down of agreement [S49]

- (1) This section applies if:
 - (a) under section 82, the franchisor gives the franchisee a notice that the franchisor intends to neither extend the agreement nor enter into a new franchise agreement with the franchisee; or
 - (b) under section 83, the franchisee gives the franchisor a notice that the franchisee intends to neither renew the agreement nor enter into a new franchise agreement with the franchisor.
- (2) The franchisor and franchisee must, as soon as practicable, cooperate to develop and implement a written plan (with milestones) for managing the winding down of the dealership, including how the franchisee's stock (including new road vehicles, spare parts and service and repair equipment) will be managed over the remaining term of the agreement.

Note: Each party to a franchise agreement is under an obligation to act in good faith in relation to the agreement (see section 17).

Civil penalty: 600 penalty units.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 6 New vehicle dealership agreements

Division 3 Resolving disputes

Section 85

Division 3—Resolving disputes

85 Franchisees may request multi-franchisee dispute resolution [S52]

- (1) This section 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 5 (resolving disputes).

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Franchise Disclosure Register **Part 7**
Keeping and content of Register **Division 1**

Section 86

Part 7—Franchise Disclosure Register

Division 1—Keeping and content of Register

86 Secretary to keep Register [S53]

- (1) The Secretary must keep the Register.
- (2) The Register must be kept by electronic means.
- (3) The Register must be made available for public inspection, without charge, on the internet.

87 Contents of Register [S53A]

Information that the Register must contain

- (1) The Register must contain the information that is required to be provided by a franchisor under Division 2.

Information that the Register may contain

- (2) The Register may contain other information provided by a franchisor if:
 - (a) the information relates to the franchise system of the franchisor or is relevant to prospective franchisees or existing franchisees of a franchise agreement; and
 - (b) the information is not information mentioned in subsection (3).
- (3) For the purposes of paragraph (2)(b), the information is any of the following:
 - (a) personal information that relates to an individual other than the franchisor;
 - (b) information that relates to a particular franchisee of the franchisor;
 - (c) information that relates to a particular site being occupied by a franchisee of the franchisor.

Register may contain only certain documents provided by franchisors

- (4) The Register may only contain the following documents that are provided by a franchisor:
 - (a) the disclosure document created and updated by the franchisor;
 - (b) the standard form of the franchise agreement used by the franchisor;
 - (c) a logo of the franchisor.

Note: Before a document is provided for inclusion in the Register certain information must be redacted from the document (see Division 3).

88 Secretary may correct clerical errors and remove, update and replace certain information and documents [S53B]

- (1) The Secretary may correct, or cause to be corrected, any clerical errors or obvious mistakes in the Register.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 7 Franchise Disclosure Register

Division 1 Keeping and content of Register

Section 88

- (2) The Secretary must remove or replace a document or information that is included in the Register by a franchisor if:
 - (a) the Secretary receives a request from the franchisor asking for the document or information to be removed because the franchisor has ceased to operate a franchise or franchise system; 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 document or information included in the Register by a franchisor if:
 - (a) the document or information has been in the Register for a period of at least 18 months; and
 - (b) during that period the franchisor has not:
 - (i) given another document to replace the document included in the Register; or
 - (ii) updated the information included in the Register; or
 - (iii) notified the Secretary that the document or information included in the Register remains current.
- (4) The Secretary may remove from the Register a document or information included in the Register by a franchisor if the document contains, or the information is:
 - (a) information mentioned in subsection 87(3); or
 - (b) information of a kind determined under subsection (5).
- (5) The Secretary may, by legislative instrument, determine kinds of information for the purposes of paragraph (4)(b).

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Franchise Disclosure Register **Part 7**
Obligation to provide information for inclusion in the Register **Division 2**

Section 89

Division 2—Obligation to provide information for inclusion in the Register

89 Initial obligation to provide information for inclusion in Register [S53D]

Franchisors to which this section applies

- (1) This section applies to a franchisor if:
 - (a) the franchisor is proposing to enter into a franchise agreement with a prospective franchisee; and
 - (b) the franchisor is required to give the prospective franchisee a copy of the disclosure document relating to the franchise under section 22; and
 - (c) the franchisor has not previously provided information relating to the franchise for inclusion in the Register under:
 - (i) this section; or
 - (ii) clause 53C or 53D of Schedule 1 to the old regulations; and
 - (d) if the franchisor is the master franchisor in a master franchise system—the master franchise system has 2 or more subfranchisors.

Obligation to provide information

- (2) The franchisor must, in accordance with subsection (3), provide 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) if the franchisor has an ABN—the franchisor's ABN;
 - (d) the address, or addresses, of the franchisor's registered office and principal place of business in Australia;
 - (e) the business telephone number and email address of the franchisor;
 - (f) the ANZSIC division and subdivision codes for the industry in which the business operated under the franchise operates;
 - (g) any information required to be provided to the Secretary under a determination under subsection (4).

Note: Persons other than the franchisor may provide the information on behalf of the franchisor (see Division 4).

Civil penalty: 600 penalty units.

- (3) The information must be provided:
 - (a) in a form and manner approved by the Secretary in writing; and
 - (b) at least 14 days before the franchisor enters into the franchise agreement with the prospective franchisee.

Information the Secretary may require franchisors to provide

- (4) The Secretary may, by legislative instrument, determine that each or a specified franchisor must provide to the Secretary information that is required to be

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 7 Franchise Disclosure Register

Division 2 Obligation to provide information for inclusion in the Register

Section 90

included in a disclosure document created by the franchisor that is not information mentioned in subsection 87(3).

Note 1: For specification of one or more classes of franchisors, see subsection 13(3) of the *Legislation Act 2003*.

Note 2: Section 19 of this instrument requires certain information to be included in a disclosure document.

90 Obligation to annually update or confirm information included in Register [S53E]

Franchisors to which this section applies

- (1) This section applies to a franchisor if:
 - (a) information is included, or was required to be included, in the Register under:
 - (i) section 89; or
 - (ii) clause 53C or 53D of Schedule 1 to the old regulations; and
 - (b) if the franchisor is the master franchisor in a master franchise system—the master franchise system has 2 or more subfranchisors.

Obligation to update or confirm information

- (2) The franchisor must, in accordance with subsection (3), do the following:
 - (a) if information included by the franchisor in the Register remains current—confirm that the information is correct;
 - (b) to the extent that the following information is incorrect, out-of-date or has not previously been provided by the franchisor for inclusion in the Register—provide or update the information mentioned in subsection 89(2):
 - (c) provide any information required to be provided to the Secretary under a determination under subsection (4) of this section.

Note: Persons other than the franchisor may provide the information on behalf of the franchisor (see Division 4).

Civil penalty: 600 penalty units.

- (3) The information must be provided:
 - (a) in a form and manner approved by the Secretary in writing; and
 - (b) either:
 - (i) unless subparagraph (ii) applies—at least once for each financial year;
 - (ii) if the franchisor was required by section 89 to provide information for inclusion in the Register for a franchise agreement the franchisor is proposing to enter into—at least once for each financial year that ends after the day the franchisor enters into the franchise agreement; and
 - (c) on or before the 14th day of the fifth month following the end of the financial year.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Franchise Disclosure Register **Part 7**
Obligation to provide information for inclusion in the Register **Division 2**

Section 90

Franchisors may be required to provide information to the Secretary

- (4) The Secretary may, by legislative instrument, determine that each or a specified franchisor must provide to the Secretary information that is required to be included in a disclosure document created by the franchisor that is not information mentioned in subsection 87(3).

Note 1: For specification of one or more classes of franchisors, see subsection 13(3) of the *Legislation Act 2003*.

Note 2: Section 19 of this instrument requires certain information to be included in a disclosure document.

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 7 Franchise Disclosure Register

Division 3 Redacting certain information from documents

Section 91

Division 3—Redacting certain information from documents

91 Redacting certain information from documents [S53F]

- (1) This section applies to a franchisor if the franchisor is providing for inclusion in the Register:
 - (a) a document referred to in subsection 87(4); or
 - (b) a link to a website that publishes such a document.
- (2) Before the franchisor provides the document or link for inclusion in the Register, the franchisor must redact from the document information mentioned in subsection 87(3).

Civil penalty: 600 penalty units.

- (3) Before the franchisor provides the document or link for inclusion in the Register, the franchisor may redact from the document information that is of a commercial nature and is commercially sensitive.

EXPOSURE DRAFT

Franchising industry code **Chapter 2**
Franchise Disclosure Register **Part 7**
Giving of information by agents **Division 4**

Section 92

Division 4—Giving of information by agents

92 Agents may provide or give information [S53G]

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

EXPOSURE DRAFT

Chapter 2 Franchising industry code

Part 7 Franchise Disclosure Register

Division 5 Other matters

Section 93

Division 5—Other matters

93 Delegations by Secretary [S53H]

- (1) The Secretary may, in writing, delegate all or any of the Secretary's functions or powers under this Part to an SES employee, or acting SES employee, in the Department.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

EXPOSURE DRAFT

Application, saving and transitional provisions **Chapter 3**
Provisions relating to this instrument as made **Part 1**

Section 94

Chapter 3—Application, saving and transitional provisions

Part 1—Provisions relating to this instrument as made

94 Saving—*Competition and Consumer (Industry Codes—Franchising) (Additional Information Required by the Secretary) Determination 2022*

Despite the repeal of the old regulations on 1 April 2025, the *Competition and Consumer (Industry Codes—Franchising) (Additional Information Required by the Secretary) Determination 2022*, as in force immediately before that day, continues in force, and has effect for the purposes of section 89 of this instrument, as if:

- (a) the reference in the definition of *Franchising Code of Conduct* in section 4 of that determination to Schedule 1 to the old regulations were a reference to Chapter 2 of this instrument; and
- (b) the references in subsection 6(1) of that determination to subclause 53D(4) and clause 53D were references to subsection 89(4) and section 89; and
- (c) the references in section 7 of that determination to items of Annexure 1 to the Franchising Code of Conduct were references to clauses of Schedule 1 to this instrument.

EXPOSURE DRAFT

Schedule 1 Disclosure document for franchisee or prospective franchisee

Section 1

Schedule 1—Disclosure document for franchisee or prospective franchisee

Note: See subsection 19(3).

1 First page

- (1) On the first page:
 - (a) in bold upper case:
DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE; and
 - (b) the franchisor's:
 - (i) name; and
 - (ii) business address and phone number; and
 - (iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor); and
 - (c) the signature of the franchisor, or of a director, officer or authorised agent of the franchisor; and

Note: For when a document may be signed electronically, see section 10 of the *Electronic Transactions Act 1999*.

- (d) the preparation date of the disclosure document; and
- (e) the following statement:

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. It should be read together with the information statement you have received.

Entering into a franchise agreement is a serious undertaking. 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. A franchise agreement is legally binding on you if you sign it.

You are entitled to a waiting period of 14 days (not 14 business days) before you enter into this agreement.

If this is a new franchise agreement (not the renewal of a franchise agreement, nor the extension of the term or the scope of a franchise agreement), you will be entitled to a “cooling off” period of 14 days (not 14 business days) after signing the agreement, during which you may terminate the agreement. (In some circumstances a “cooling off” period may end later.)

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.

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.

EXPOSURE DRAFT

Disclosure document for franchisee or prospective franchisee **Schedule 1**

Section 2

You should make your own enquiries about the franchise and about the business of the franchise.

You should get independent legal, accounting and business advice before signing the franchise agreement.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

If you request the franchisor to give you this disclosure document, any attachments to it, the proposed franchise agreement and the Franchising Code of Conduct in printed form, electronic form or both, the franchisor must comply with your request.

2 Franchisor details

- (1) The franchisor's:
 - (a) name; and
 - (b) address, or addresses, of registered office and principal place of business in Australia; and
 - (c) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).
- (2) The name under which the franchisor carries on business in Australia relevant to the franchise.
- (3) A description of the kind of business operated under the franchise.
- (4) The number of years that the franchise or franchise system has operated in Australia.
- (5) The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the franchisor that is a body corporate (if any).
- (6) The name and address of each associate of the franchisor that is not a body corporate (if any), and if applicable, each associate's ABN or ARBN.
- (7) A description of the relationship between:
 - (a) each associate mentioned in item 2(5) and the franchisor; and
 - (b) each associate mentioned in item 2(6) and the franchisor;and of the relevance of the relationship to the franchise system and the franchise.
- (8) For each officer of the franchisor—name, position held and qualifications (if any).

3 Business experience

- (1) A summary of the relevant business experience of each person mentioned in item 2(8) for the past 10 years, including length of experience in:
 - (a) working in the franchise system; and
 - (b) working for the franchisor.

EXPOSURE DRAFT

Schedule 1 Disclosure document for franchisee or prospective franchisee

Section 4

- (2) A summary of relevant business experience of the franchisor for the past 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) for how long the franchisor offered franchises for each such business.

4 Litigation

- (1) Details of:
- (a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor, in Australia alleging:
 - (i) breach of a franchise agreement; or
 - (ii) contravention of the Act; or
 - (iii) contravention of the Corporations Act; or
 - (iv) unconscionable conduct; or
 - (v) misconduct; or
 - (vi) an offence of dishonesty; and
 - (b) current proceedings against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor, other than for unfair dismissal of an employee, under:
 - (ia) subsection 558B(1) or (2) of the Fair Work Act; or
 - (i) Part 3 of the *Independent Contractors Act 2006*; or
 - (ii) a law of a State or Territory that regulates workplace relations or independent contractors.
- (2) Whether the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor, has been:
- (a) in the last 10 years—convicted of a serious offence, or an equivalent offence outside Australia; or
 - (b) in the last 5 years—subject to final judgment in civil proceedings for a matter mentioned in item 4(1); or
 - (c) in the last 10 years—bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere.
- (3) For items 4(1) and 4(2)—the following details (where relevant):
- (a) the names of the parties to the proceedings;
 - (b) the name of the court, tribunal or arbitrator;
 - (c) the case number;
 - (d) the general nature of the proceedings;
 - (e) the current status of the proceedings;

EXPOSURE DRAFT

Disclosure document for franchisee or prospective franchisee **Schedule 1**

Section 5

- (f) the date and content of any undertaking or order under section 87B of the *Competition and Consumer Act 2010*;
 - (g) the penalty or damages assessed or imposed;
 - (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
 - (i) the period of the bankruptcy, insolvency under administration or external administration.
- (4) The percentage of franchisees in the franchise system that were a party to a mediation, conciliation or arbitration process that was conducted, or was pending, in the previous financial year (whether the disputes to which the mediation, conciliation or arbitration processes relate were initiated by the franchisor or one or more franchisees).

5 Payments to agents

- (1) For any agreement under which the franchisor must pay an amount, or give other valuable consideration, to a person who is not an officer, director or employee of the franchisor in connection with the introduction or recruitment of a franchisee—the name of the person.

6 Existing franchises

- (1) Number, sorted by State, Territory or region, of:
- (a) existing franchised businesses; and
 - (b) existing franchisees; and
 - (c) businesses owned or operated by the franchisor or an associate of the franchisor in Australia that are substantially the same as the franchised business.
- (2) For each existing franchisee:
- (a) business address, if this is not the franchisee's residential address; and
 - (b) business phone number; and
 - (c) year when the franchisee started operating the franchised business.
- (3) However, if there are more than 50 franchises, the franchisor may instead give details under item 6(2) for all franchisees in the State, Territory, region or metropolitan area in which the franchise is to be operated.
- (4) For each of the last 3 financial years and for each of the following events—the number of franchised businesses for which the event happened:
- (a) the franchise was transferred;
 - (b) the franchised business ceased to operate;
 - (c) the franchise agreement was terminated by the franchisor;
 - (d) the franchise agreement was terminated by the franchisee;
 - (e) the franchise agreement was not extended;
 - (f) the franchised business was bought back by the franchisor;
 - (g) the 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.

EXPOSURE DRAFT

Schedule 1 Disclosure document for franchisee or prospective franchisee

Section 7

- (5) Subject to section 60, the franchisor must supply, for each event mentioned in item 6(4), the name, location, telephone number and email address of each franchisee if the information is available.

7 Master franchises

- (1) If the franchisor is also a subfranchisor—the master franchisor’s:
- (a) name; and
 - (b) address, or addresses, of registered office and principal place of business; and
 - (c) ABN, ACN or ARBN (or foreign equivalent if applicable).
- (2) The name under which the master franchisor carries on business relevant to the franchise.
- (3) For each officer of the master franchisor—name, position held and qualifications (if any).
- (4) For each of the last 3 financial years and each of the following events—the number of:
- (a) franchise agreements terminated by the master franchisor;
 - (b) franchise agreements terminated by the franchisor;
 - (c) franchise agreements that were not extended by the master franchisor.

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

- (5) The following details about the master franchise:
- (a) the term of the franchise agreement, including the date that it began;
 - (b) the territory of the franchise;
 - (c) whether the franchise agreement may be renewed;
 - (d) whether the term of the franchise agreement may be extended and if so, any preconditions applying to an extension;
 - (e) whether the scope of the franchise agreement may be extended;
 - (f) whether the franchise agreement may be transferred, and if so, whether the franchisee is required to become a party to a franchise agreement with the transferee;
 - (g) the grounds on which the franchise agreement may be terminated;
 - (h) if the franchise agreement is terminated, how a subfranchisor’s franchise agreement with a franchisee is affected.

8 Intellectual property

- (1) For any trade mark used to identify, and for any patent, design or copyright that is material to, the franchise system (*intellectual property*):
- (a) description of the intellectual property; and
 - (b) details of the franchisee’s rights and obligations in connection with the use of the intellectual property; and
 - (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and

EXPOSURE DRAFT

Disclosure document for franchisee or prospective franchisee **Schedule 1**

Section 9

- (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
 - (i) name of court or tribunal; and
 - (ii) matter number; and
 - (iii) summary of the claim or judgment; and
 - (e) if the intellectual property is not owned by the franchisor—who owns it; and
 - (f) details of any agreement that significantly affects the franchisor’s rights to use, or to give others the right to use, the intellectual property, including:
 - (i) parties to the agreement; and
 - (ii) nature and extent of any limitation; and
 - (iii) duration of the agreement; and
 - (iv) conditions under which the agreement may be terminated.
- (2) The franchisor is taken to comply with item 8(1) for any information that is confidential if the franchisor gives:
- (a) a general description of the subject matter; and
 - (b) a summary of conditions for use by the franchisee.

9 Franchise site or territory

- (1) Whether the franchise is:
- (a) for an exclusive or non-exclusive territory; or
 - (b) limited to a particular site.
- (2) For the territory of the franchise:
- (a) whether other franchisees may own or operate a business that is substantially the same as the franchised business; and
 - (b) whether the franchisor or an associate of the franchisor may own or operate a business that is substantially the same as the franchised business; and
 - (c) whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise; and
 - (d) whether the franchisee may own or operate a business that is substantially the same as the franchised business outside the territory of the franchise; and
 - (e) whether the franchisor may change the territory or site of the franchise and if so, the circumstances in which such a change may occur; and
 - (f) whether the franchisee could face competition from businesses not associated with the franchisor.

10 Supply of goods or services to a franchisee

- (1) For the franchisor’s requirements for supply of goods or services to a franchisee—details of:
- (a) any requirement for the franchisee to maintain a level of inventory or acquire an amount of goods or services; and
 - (b) restrictions on acquisition of goods or services by the franchisee from other sources; and

EXPOSURE DRAFT

Schedule 1 Disclosure document for franchisee or prospective franchisee

Section 10

- (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; and
- (d) the obligation of the franchisee to accept goods or services from the franchisor, or from an associate of the franchisor; and
- (e) the franchisor's obligation to supply goods or services to the franchisee; and
- (f) whether the franchisee will be offered the right to be supplied with the whole range of the goods or services of the franchise; and
- (g) conditions under which the franchisee can return goods, and to whom; and
- (h) conditions under which the franchisee can obtain a refund for services provided by the franchisor, and from whom; and
- (i) whether the franchisor may change the range of goods or services, and if so, to what extent; and
- (j) whether the franchisor, a master franchisor (if different from the franchisor), or an associate of the franchisor or master franchisor, will receive a rebate or other financial benefit from a supplier of goods or services to the franchisee; and
- (k) if the franchisor, master franchisor or associate will receive a rebate or other financial benefit described in paragraph (j) from one or more suppliers:
 - (i) the nature of the rebate or other financial benefit received from each supplier; and
 - (ii) the name of each business providing the rebate or other financial benefit; and
 - (iii) the total amount of rebates or other financial benefits received in the previous financial year from each supplier, expressed as a single aggregate percentage of total group purchases from that supplier (not including any purchases made by units of the franchised business operated by the franchisor, master franchisor or associate); and
- (l) whether a rebate or other financial benefit described in paragraph (j) is shared, directly or indirectly, with the franchisee; and
- (m) if a rebate or other financial benefit described in paragraph (j) is shared directly or indirectly with the franchisee:
 - (i) the method for working out how much of the rebate or other financial benefit is retained by the franchisor, master franchisor or associate, and how much is shared, directly or indirectly, with the franchisee, described by reference to a percentage of the rebate or other financial benefit, or another method for working out how much is retained, and how much is shared with the franchisee; and
 - (ii) a description of each direct and indirect benefit received by the franchisee.

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

- (2) For the purposes of paragraphs 10.1(j) to (m), a rebate or other financial benefit does not include:

EXPOSURE DRAFT

Disclosure document for franchisee or prospective franchisee **Schedule 1**

Section 11

- (a) the price paid by the franchisee, or a part of that price, for the supply of goods or services by the franchisor, master franchisor or associate; or
 - (b) any incentive or other financial benefit that the franchisor, master franchisor or associate is entitled to receive in connection with a lease of premises or the franchisee's right to occupy premises.
- (3) The franchisor is not required to disclose the details referred to in subparagraph 10.1(k)(iii) in relation to a supplier if:
- (a) the franchisee is permitted to acquire goods or services from sources other than the franchisor without the franchisor's approval; or
 - (b) the whole of the rebate or other financial benefit that will be received by the franchisor, master franchisor or associate from that supplier is to be returned to the franchisee directly as a payment into a specific purpose fund controlled or administered by or for the franchisor.

11 Supply of goods or services by a franchisee

- (1) For the franchisor's requirements for supply of goods or services by a franchisee—details of:
- (a) restrictions on the goods or services that the franchisee may supply; and
 - (b) restrictions on the persons to whom the franchisee may supply goods or services; and
 - (c) whether the franchisee must supply the whole range of the goods or services of the franchise.

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

12 Supply of goods or services—online sales

- (1) Details of whether the franchisee may make available online:
- (a) goods of the same type or brand; or
 - (b) services of the same type.
- (2) If goods or services may be made available online by the franchisee, the following information:
- (a) whether the franchise agreement restricts, or places conditions on, the franchisee's ability to make those goods and services available online;
 - (b) whether goods or services may be made available via a third party website, and if so, specified restrictions or conditions by the franchisor on the franchisee's use of a third party website;
 - (c) the extent to which those goods or services may be supplied outside the territory of the franchise.
- (3) Details of whether:
- (a) the franchisor or an associate of the franchisor; or
 - (b) other franchisees;
- makes, or expects to make, goods or services available online.

EXPOSURE DRAFT

Schedule 1 Disclosure document for franchisee or prospective franchisee

Section 13

- (4) If goods or services are made, or are expected to be made, available online by the franchisor, an associate of the franchisor or other franchisees, the following information:
 - (a) the extent to which those goods or services may be supplied in the territory of the franchise;
 - (b) in the case of goods or services made available via a third party website—the domain name or URL of the third party website.
- (5) Details of any profit sharing arrangements that apply in relation to goods or services made available online and would affect the franchisee, and whether these arrangements may be unilaterally changed by the franchisor.

13 Sites or territories

- (1) The policy of the franchisor, or an associate of the franchisor, for selection of as many of the following as are relevant:
 - (a) the site to be occupied by the franchised business;
 - (b) the territory in which the franchised business is to operate.
- (2) Details of whether the territory or site to be franchised has, in the previous 10 years, been subject to a franchised business operated by a previous franchise granted by the franchisor and, if so, details of the franchised business, including the circumstances in which the previous franchisee ceased to operate.
- (3) Details of whether the franchisor, or an associate of the franchisor, has an interest in a lease that will be used for the operation of the franchised business, including an interest as a landlord or head lessee, or another interest disclosed under section 28 of this Code.
- (4) The details mentioned in items 13(2) and 13(3) must be provided:
 - (a) in a separate document; and
 - (b) with the disclosure document.

14 Significant capital expenditure, and payments other than payments to agents

Significant capital expenditure

- (1A) Whether the franchisor will require the franchisee to undertake significant capital expenditure in relation to the franchised business during the term of the franchise agreement.
- (1B) As much information as practicable about any such 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.

Note: For example, the information could include the type of any upgrades to facilities or premises, any planned changes to the corporate identity of the franchisor's brand and indicative costs for any building materials.

EXPOSURE DRAFT

Disclosure document for franchisee or prospective franchisee **Schedule 1**

Section 14

Prepayments

- (1) If the franchisor requires a payment before the franchise agreement is entered into—why the money is required, how the money is to be applied and who will hold the money.
- (2) The conditions under which a payment will be refunded.

Establishment costs

- (3) Details of the range of costs to start operating the franchised business, based on current practice, for the following matters:
 - (a) real property, including property type, location and building size;
 - (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and 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.
- (4) For item 14(3), the details for each payment must include:
 - (a) a description of the payment; and
 - (b) the amount of the payment or the formula used to work out the payment; and
 - (c) to whom the payment is made; and
 - (d) when the payment is due; and
 - (e) whether the payment is refundable and, if so, under what conditions.
- (5) For item 14(4), if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.

Other payments

- (6) For each recurring or isolated payment payable by the franchisee to the franchisor or an associate of the franchisor or to be collected by the franchisor or an associate of the franchisor for another person:
 - (a) description of the payment; and
 - (b) amount of the payment or formula used to work out the payment; and
 - (c) to whom the payment is made; and
 - (d) when the payment is due; and
 - (e) whether the payment is refundable and, if so, under what conditions.
- (7) For each recurring or isolated payment, that is within the knowledge or control of the franchisor or is reasonably foreseeable by the franchisor, that is payable by the franchisee to a person other than the franchisor or an associate of the franchisor:
 - (a) a description of the payment; and
 - (b) the amount of the payment or formula used to work out the payment; and

EXPOSURE DRAFT

Schedule 1 Disclosure document for franchisee or prospective franchisee

Section 15

- (c) to whom the payment is made; and
 - (d) when the payment is due; and
 - (e) whether the payment is refundable and, if so, under what conditions.
- (8) For item 14(6) or 14(7), if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.
- (9) If 2 or more of items 14(1A), 14(1B), 14(1), 14(3) and 14(6) apply to a payment, the information required by those items in relation to that payment need be set out only once.

15 Specific purpose funds

- (1) For each specific purpose fund to which the franchisee is required to contribute, the following details:
- (aa) the specified common purpose for the fund;
 - (a) the kinds of persons who contribute to the fund (for example, franchisee, franchisor, outside supplier);
 - (b) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
 - (c) who controls or administers the fund;
 - (f) the kinds of expenses that the fund may be used to meet for the specified common purpose for the fund;
 - (d) that subsection 30(2) requires the fund administrator to:
 - (i) prepare annual financial statements for the fund for each financial year, and to give the franchisee a copy of the statement for a year within 30 days of preparing it; and
 - (ii) unless subsection 30(3) applies in respect of the fund for a year, to have the statement for the year audited by a registered company auditor and to give the franchisee a copy of the auditor's report within 30 days of receiving it;
 - (g) a copy of the most recently prepared annual financial statement for the fund;
 - (h) whether the franchisor, master franchisor or an associate of either of them supplies goods or services for which the fund pays and, if so, details of the goods or services;
 - (i) whether the franchisor or master franchisor must spend part of the fund on the specified purpose for the benefit of the franchisee's business in particular.

16 Financing

- (1) The material conditions of each financing arrangement that the franchisor, its agent or an associate of the franchisor offers to the franchisee for establishment or operation of the franchised business.
- (2) For item 16(1), the material conditions of a financing arrangement include the following:
- (a) any requirement that the franchisee must provide a minimum amount of unborrowed working capital for the franchised business;

EXPOSURE DRAFT

Disclosure document for franchisee or prospective franchisee **Schedule 1**

Section 17

-
- (b) any requirement that a franchisee must meet a stated debt to equity ratio in relation to the franchised business.

17 Unilateral variation of franchise agreement

- (1) The circumstances in which the franchisor has unilaterally varied a franchise agreement in the last 3 financial years (including, if applicable, financial years before this Code came into force), other than variations of a minor nature.
- (2) The circumstances in which the franchise agreement may be varied, unilaterally, by the franchisor in the future.

17A Arbitration of disputes

- (1) Whether the franchise agreement provides for arbitration of disputes in a manner consistent with Subdivision C of Division 3 of Part 5.

17B Ways of ending the franchise agreement early

- (1) A summary of the rights the franchisor has under the franchise agreement to terminate the franchise agreement before it expires, and the circumstances in which those rights may be exercised.
- (2) A summary of the rights the franchisee has under the franchise agreement to terminate the franchise agreement before it expires, and the circumstances in which those rights may be exercised.

18 Term of agreement and arrangements to apply at the end of the franchise agreement

- (1) Details of arrangements to apply at the end of the franchise agreement, including:
 - (aa) the term of the franchise agreement; and
 - (a) whether the prospective franchisee will have an option to:
 - (i) renew the franchise agreement; or
 - (ii) enter into a new franchise agreement; and
 - (b) whether the prospective franchisee will be able to extend the term of the franchise agreement, and if so, the processes the franchisor will use to determine whether to extend the term of the franchise agreement; and
 - (c) if the prospective franchisee will have an option to renew the franchise agreement—whether the prospective franchisee will be entitled to compensation at the end of the agreement if it is not renewed and, if so, how that compensation will be determined; and
 - (d) 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) whether the franchisor will purchase the stock, marketing material, equipment and other assets; and
 - (ii) if the franchisor is to purchase the stock, marketing material, equipment and other assets—how prices will be determined; and
 - (e) whether the prospective franchisee will have the right to sell the business at the end of the franchise agreement; and

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Schedule 1 Disclosure document for franchisee or prospective franchisee

Section 19

- (f) if the prospective franchisee will have the right to sell the business at the end of the franchise agreement—whether the franchisor will have first right of refusal, and how market value will be determined; and
- (fa) the prospective franchisee’s rights relating to any goodwill generated by the franchisee (including, if the franchisee does not have a right to any goodwill, a statement to that effect); and
- (g) whether the franchisor 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; and
- (h) whether the franchise agreement includes a restraint of trade or similar clause.

(2) 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.

(3) If the franchisee does not have the option to renew the franchise agreement, the following statement must be included in bold 12 point type:

The franchisee does not have the option to renew the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the franchisor does not extend the term of the agreement, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.

(4) If the franchisee cannot extend the term of the franchise agreement, the following statement must be included in bold 12 point type:

The franchisee cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the franchisor does not do so, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.

(5) If the franchisee:

- (a) does not have the option to renew the franchise agreement; and
- (b) cannot extend the term of the franchise agreement;

the following statement must be included in bold 12 point type:

The franchisee does not have the option to renew the franchise agreement and cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the franchisor does not extend the term of the agreement, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.

19 Amendment of franchise agreement on transfer of franchise

- (1) Whether the franchisor will amend (or require the amendment of) the franchise agreement on or before the transfer of the franchise.

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Section 20

20 Earnings information

- (1) If the franchisor proposes to give earnings information, the franchisor must give it in the disclosure document or in a separate document attached to the disclosure document.
- (1A) If the franchisor gives earnings information to a prospective franchisee or a franchisee before giving the prospective franchisee or franchisee a copy of the disclosure document relating to the franchise, the franchisor must also give the prospective franchisee or franchisee earnings information in the disclosure document or an attachment to it.
- (2) Earnings information includes the following information:
 - (a) historical earnings data for:
 - (i) the franchised business; or
 - (ii) a franchise in the franchise system;
 - (b) if subparagraph (a)(ii) applies—any differences between the franchise in the franchise system and the franchised business;
 - (c) projected earnings for the franchised business and the assumptions on which those projections are based;
 - (d) any other information from which historical or future earnings information of the franchised business can be assessed.
- (2A) If earnings information is given by the franchisor in the disclosure document or an attachment to it—the following statement:

To the best of the franchisor’s knowledge, the earnings information given is accurate (other than particular earnings information specified in the document as earnings information that the franchisor knows is not accurate).
- (3) If earnings information is not given—the following statement:

The franchisor does not give earnings information about a [*insert type of franchise*] franchise.
Earnings may vary between franchises.
The franchisor cannot estimate earnings for a particular franchise.
- (4) Earnings information that is a projection or forecast must include the following details:
 - (a) the facts and assumptions on which the projection or forecast is based;
 - (b) the extent of enquiries and 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 of the 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.

21 Financial details

- (1) A statement of the franchisor’s solvency that:

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Section 21

- (a) reflects the franchisor's position:
 - (i) at the end of the last financial year; or
 - (ii) if the franchisor did not exist at the end of the last financial year—at the date of the statement; and
 - (b) is signed by at least one director of the franchisor; and
 - (c) gives the directors' opinion as to whether there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.
- (2) Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the Corporations Act, or a foreign equivalent of that Act applicable to the franchisor, prepared by the franchisor.
- Note: See also items 21(4) to 21(6).
- (3) If:
- (a) the franchisor is part of a consolidated entity that is required to provide audited financial reports under the Corporations Act, 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.
- Note: See also items 21(4) to 21(6).
- (4) Items 21(2) and 21(3) do not apply if:
- (a) the statement under item 21(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 4 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 21(1).
- (5) If the franchisor or consolidated entity (the *entity*) has not existed for 2 or more financial years, then instead of providing the financial reports mentioned in item 21(2) or 21(3), the following:
- (a) a statutory declaration of the entity's solvency;
 - (b) an independent audit report on the entity's solvency as at the date of the entity's declaration.
- (6) If the franchisor or consolidated entity (the *entity*) was insolvent in either or both of the last 2 completed financial years, the following:
- (a) a statement of the period during which the entity was insolvent;
 - (b) a statutory declaration of the entity's solvency;
 - (c) an independent audit report on the entity's solvency as at the date of the entity's declaration.

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Section 22

22 Updates

- (1) Any information given under section 33 that has changed between the date of the disclosure document and the date the disclosure document is given under this Code.

23 Receipt

- (1) On the last page of the disclosure document:
 - (a) a statement to the effect that the prospective franchisee may keep the disclosure document; and
 - (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

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Schedule 2 Repeals

Schedule 2—Repeals

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

1 The whole of the instrument

Repeal the instrument.