



New Franchising Code of Conduct

Competition and Consumer (Industry Codes—Franchising) Regulations 2024

Table of Key Changes

| Change | Comment |
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| Format/structure | <p>The Competition and Consumer (Industry Codes—Franchising) Regulations 2024 (new Code) has been reformatted to align with contemporary drafting standards with chapters and sections, and revised numbering. While the numbering has changed the substantive content of most provisions has not.</p> <p>Attachment C to the Explanatory Statement contains a Finding Table to assist in identifying which provisions in the new Code correspond to a provision in the <i>Competition and Consumer (Industry Codes—Franchising) Regulations 2014</i> (old Code).</p> |
| Definitions (section 6) | <p>The definition of a <i>motor vehicle dealership</i> now clarifies that any servicing or repairing of motor vehicles conducted by dealers or associated with a dealership agreement that buys, sells, exchanges or leases motor vehicles is within the scope of the Code.</p> <p>A new definition of a <i>specific purpose fund</i> is used to encompass marketing, cooperative, and other funds for specific purposes, such as conference and IT funds.</p> |
| Civil penalty provisions | <p>All substantive obligations under the new Code are subject to a civil penalty provision. The maximum penalty for contravention of a civil penalty provision is set at 600 penalty units (except for penalties applying to some new vehicle dealership agreement provisions).</p> |

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| Review (section 12) | The new Code has a statutory review provision. The review must commence before 1 April 2030. |
| Purpose of Code (section 15) | <p>There is a revised and expanded purpose provision in the Code, identifying specific objectives about:</p> <ul style="list-style-type: none"> - regulating the conduct of participants in franchising - improving standards of conduct in the industry; and - providing fair and equitable dispute resolution procedures. |
| Functions of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) (section 16) | <p>The new Code enables the ASBFEO to publicise the names of franchisors who refuse to engage in, or who withdraw from, an alternative dispute resolution process for a dispute.</p> <p>The ASBFEO can publish in any way it thinks appropriate to draw attention to the behaviour of the franchisor.</p> |
| Key Facts Sheet | <p>There is no longer a requirement for franchisors to create, maintain or provide a Key Facts Sheet for prospective franchisees.</p> <p>A franchisor will also no longer be able to upload a Key Facts Sheet to the Franchise Disclosure Register.</p> <p>Franchisors who have previously uploaded a Key Facts Sheet do not need to remove it from the Register. The Key Facts Sheet will not be viewable to the public from 1 April 2025.</p> |
| Opt-out provisions (sections 23(4); 24(4); 50(7); 52(4)) | Franchisees seeking to enter into another or new franchise agreement with their franchisor can now opt out of receiving Disclosure Documents and opt out of the mandatory 14-day cooling off period, provided they have or recently had another franchise agreement with the franchisor that is the same or substantially similar to their existing agreement. |
| Specific purpose funds (sections 31; 61) | <p>Marketing and cooperative funds are now covered under a single concept of “specific purpose fund”. This term also encompasses other specific purpose funds, such as conference and IT funds.</p> <p>The requirements for specific purpose funds are very similar to the requirements under the old Code for marketing and cooperative funds. The one change is that a fund administrator must now also provide</p> |

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| | <p>information about the percentage of total income spent on meeting expenses identified under the fund, or to be used to pay reasonable costs of administering or auditing the fund.</p> <p>A grace period is available for this new requirement: see <i>General transitional arrangements</i> for franchise agreements and Disclosure Documents below.</p> |
| Restraint of trade (sections 42; 67) | <p>The new Code contains a restraint of trade provision similar to the provision in the old Code, in that it sets out particular circumstances in which a restraint of trade clause cannot be utilised. However, the clause in the new Code is different in that:</p> <ul style="list-style-type: none"> - Instead of providing that a restraint of trade clause <i>has no effect</i> in the specified circumstances, the new Code prohibits a franchisor <i>entering into an agreement</i> that contains a restraint of trade clause that would apply in the specified circumstances. - It clarifies that the specified circumstances include where a franchisee has sought to renew an agreement (in addition to extending an agreement); and - As the new Code provision is expressed as an obligation, a franchisor is subject to a civil penalty of 600 penalty units for contravention of the provision. |
| Compensation for early termination – general (section 43) | <p>The new Code includes a new provision that prohibits a franchisor entering into a franchise agreement (that is not a new vehicle dealership agreement) unless it provides for the franchisee to be compensated for early termination in certain circumstances.</p> <p>This provision broadly follows the compensation for early termination provision that applied to new vehicle dealership agreements (and continues to apply in the new Code) and expands it to apply to other franchise agreements.</p> <p>A grace period is available for this new requirement: see <i>General transitional arrangements</i> for franchise agreements below.</p> |
| Reasonable opportunity for a return on investment – general (section 44) | <p>The new Code includes a new provision that prohibits a franchisor entering into a franchise agreement unless the agreement provides the franchisee 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.</p> |

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| | <p>This provision broadly replicates the reasonable return on investment provision that applied to new vehicle dealership agreements (and continues to apply in the new Code) and expands it to apply other franchise agreements.</p> <p>A grace period is available for this new requirement: see <i>General transitional arrangements</i> for franchise agreements below.</p> |
| Termination for serious breach (section 57) | <p>The new Code provides that on certain grounds a franchisor may terminate a franchise agreement with 7 days' notice and the franchisee may not progress the matter to alternative dispute resolution.</p> <p>The new arrangements do not prevent a franchisor providing a franchisee with more time to address a ground for termination.</p> <p>A franchisee may take action to enforce their legal rights if they feel the franchisor should not be terminating their franchise agreement.</p> |
| Franchise Disclosure Register | <p>Franchisors will no longer be able to upload a Key Facts Sheet or a Disclosure Document to the Register.</p> <p>Franchisors who have previously uploaded a Key Facts Sheet or Disclosure Document do not need to remove those documents from the Register. Those documents will not be viewable to the public from 1 April 2025.</p> <p>Under the new Code a franchisor will also be expected to include additional information on its Register profile from 1 April 2025 on:</p> <ul style="list-style-type: none"> - whether a franchisor, a director of the franchisor, an associate of the franchisor or a director of an associate of the franchisor has been convicted of a serious offence, been subject to a final judgment in civil proceedings regarding certain matters, or been bankrupt or insolvent, within a certain time period, and - whether a franchise agreement provides for arbitration of disputes. |

Schedule 1 – Disclosure Document requirements

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| Litigation (Clause 4) | The Disclosure Document requirements have been updated to require disclosure of current proceedings for certain matters under the <i>Fair Work Act 2009</i> , <i>Independent Contractors Act 2006</i> or a law of a State or Territory that regulates workplace relations or independent contractors. |
| Existing franchises (Clause 6) | <p>The Disclosure Document requirements have been updated to require the franchisor to also supply a telephone number and email address (in addition to information already required) for a former franchisee if the information is available.</p> <p>The new Code now prohibits a franchisor from disclosing a former franchisee’s personal information to a prospective franchisee unless the franchisor has given notice that the former franchisee can give a written request to prevent this information from being shared.</p> |
| Franchise site or territory (Clause 9) | The Disclosure Document requirements have been updated to require the franchisor to disclose whether the franchisee could face competition from businesses not associated with the franchisor. |
| Significant capital expenditure (Clause 14) | <p>The new Code now requires the franchisor to include a statement in its Disclosure Document on whether it will require the franchisee to undertake significant capital expenditure during the term of the franchise agreement. Where there is a requirement, the Disclosure Document must include information on rationale, amount, timing and nature of expenditure, anticipated outcomes and benefits as well as expected risks.</p> <p>A grace period is available for this new requirement: see <i>General transition arrangements</i> for Disclosure Documents below.</p> |
| Specific purpose funds (Clause 15) | <p>The Disclosure Document requirements have been updated to specify the information that is required in relation to specified purpose funds, which covers funds known as marketing or cooperative funds under the old Code. Marketing and cooperative funds under the old Code are now identified under a single concept of “specific purpose fund” (see above).</p> <p>A grace period is available for this new requirement: see <i>General transitional arrangements</i> for franchise agreements and Disclosure Documents below.</p> |

General transitional arrangements

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| General | <p>The new Code applies to all franchise agreements entered into, renewed, extended or transferred on or after 1 April 2025.</p> |
| For Franchise Agreements | <p>The new Code delays the start date for certain requirements for franchise agreements. In this regard, the new requirements for agreements to provide for compensation for early termination (s43) and reasonable opportunity for return on investment (s44) are not required to be included in franchise agreements entered into until on or after 1 November 2025.</p> <p>There is also a delayed start date for agreements having to comply with specific purpose funds requirements for funds that are not marketing or cooperative funds. This gives franchisors until 1 November 2025 to update their franchise agreements to which the Code applies from 1 April 2025 to appropriately cover funds that fall within the new specific purpose fund definition and that must meet the requirements of s31 (financial statements) and s61 (payments to and from funds). Some franchisors may still choose to include content for the new requirements in their form agreements earlier than 1 November 2025.</p> <p>To ensure there is coverage for any outstanding obligations under the old Code, the new Code provides that existing franchise agreements and the conduct of the parties to that existing agreement are subject to the old Code until those agreements are renewed, extended or transferred (trigger events). When a trigger event occurs, the new Code applies.</p> |
| For Disclosure Documents | <p>A franchisor does not need to include in their Disclosure Document, the new requirements for specific purpose funds and significant capital expenditure until 1 November 2025. However, a franchisor may choose to update its Disclosure Document at any time before 1 November 2025, and there may also be other obligations that necessitate an earlier update of a Disclosure Document.</p> <p>The grace period to transition to new Disclosure Document requirements under the new Code by 1 November 2025 aligns with current disclosure update timeframes in the Code for the majority of franchisors which operate under an Australian End of Financial Year timeline of 30 June.</p> <p>Franchisors should seek professional advice on their obligations, having regard to their individual circumstances, including the financial year under which they are operating.</p> |