



# Franchising Code of Conduct amendments

**NOTE:** These amendments will apply to any franchise agreement entered into, renewed, transferred or extended on or after 1 July 2010

The Franchising Code of Conduct regulates the conduct of franchising participants and aims to ensure that prospective franchisees are sufficiently informed about a franchise before entering into it. The code provides a cost-effective dispute resolution scheme for disputes between franchisees and franchisors.

The Australian Competition and Consumer Commission promotes compliance with the Franchising Code of Conduct and the *Trade Practices Act 1974* by informing franchisors and franchisees of their rights and obligations under the code and enforcing it where necessary.

Following a parliamentary joint committee inquiry into the Franchising Code of Conduct, and advice from an expert panel, the Australian Government made a number of amendments to the code, which apply to franchise agreements entered into on or after 1 July 2010. This also includes franchise agreements transferred, renewed or extended on or after 1 July 2010. This fact sheet outlines the amendments.

## Disclosure

### Franchise failure

A disclosure document must now provide that, like any business, the franchise (or franchisor) could fail, and that this could have consequences for the franchisee.

### Payments to third parties

The franchisor must now disclose details of any payments that are within the franchisor's knowledge or control, or are reasonably foreseeable by the franchisor, that are payable by the franchisee to a person other than the franchisor (or an associate of the franchisor).

Previously, the franchisor was only required to disclose payments 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.

### Significant capital expenditure

A franchisor must now disclose whether it will require the franchisee—through the franchise agreement, the operations manual (or equivalent) or any other means—to undertake unforeseen significant capital expenditure that the franchisor did not disclose before the franchisee entered into the franchise agreement.

### Attribution of legal costs

A disclosure document must now state whether the franchisor will attribute the franchisor's costs incurred in dispute resolution (including legal costs) to the franchisee.

### Unilateral variation

For franchise agreements entered into in the financial year starting on 1 July 2011, 1 July 2012 or 1 July 2013, franchisors are now required to disclose the circumstances in which they have unilaterally varied a franchise agreement since 1 July 2010.

For franchise agreements entered into after the financial year starting on 1 July 2013, franchisors must now disclose the circumstances in which they have unilaterally varied a franchise agreement in the last three years.

Franchisors are also now required to disclose the circumstances in which they may unilaterally vary the franchise agreement in the future.

## Confidentiality

Franchisors must now disclose whether they will impose a confidentiality obligation on a franchisee and, if so, details of the matters the obligation may cover. These include:

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

## Arrangements to apply at the end of the franchise agreement

Franchisors are now required to disclose details of the arrangements that will apply at the end of the franchise agreement, including:

- whether the franchisee will have any options to renew, extend or vary the scope of the franchise agreement or enter into a new franchise agreement and, if so, the processes the franchisors will use to determine whether to renew, extend or vary the scope of the agreement or enter into a new agreement
- whether the franchisee will be entitled to an exit payment at the end of the franchise agreement and, if so, how the exit payment will be determined or earned
- details of the arrangements that will apply to unsold stock, marketing material, equipment and other assets purchased when the franchise agreement was entered into—including whether the franchisor will purchase these assets and, if so, how prices will be determined

- whether the franchisee will have the right to sell the business at the end of the franchise agreement and, if so, whether the franchisor will have first right of refusal, and how market value will be determined
- whether the franchisor will consider any significant capital expenditure by the franchisee during the franchise agreement in determining the arrangements to apply at the end of the franchise agreement.

If a franchise agreement is entered into in the financial year starting on 1 July 2011, 1 July 2012 or 1 July 2013, the franchisor now needs to disclose details of whether it has, since 1 July 2010, considered any significant capital expenditure by franchisees in determining the arrangements to apply at the end of franchise agreements.

If a franchise agreement is entered into after the financial year starting on 1 July 2013, the franchisor must disclose details of whether it has, in the last three financial years, considered any significant capital expenditure by franchisees in determining the arrangements to apply at the end of franchise agreements.

### Transfer or novation

A franchisor must disclose whether it will amend or require the amendment of the franchise agreement on or before the transfer or novation of the franchise.

### Terms

The concept of novation has been introduced into the code. Novation is defined as the termination of a franchise and entry into a new franchise with a proposed transferee on the same terms as the terminated franchise. The rules that apply to transfer now also apply to novation.

References to the independent contractors provisions of the *Workplace Relations Act 1996* (which have been repealed) have been replaced with the relevant references to the *Independent Contractors Act 2006*.

### Notice of renewal

A franchisor is now required to notify a franchisee at least six months before the end of the term of the franchise agreement of the franchisor's decision:

- to renew or not to renew the agreement, or
- to enter into a new agreement.

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

### Good faith

The Franchising Code of Conduct now provides that nothing in the code limits any common law obligation of good faith that applies to the parties to a franchise agreement.

### Dispute resolution

#### Reconciliatory manner

The code states that if either party refers a dispute to a mediator, both parties must attend the mediation and try to resolve the dispute.

The code now provides that a party will be taken to be trying to resolve a dispute if they approach the resolution of the dispute in a reconciliatory manner, including by:

- attending and participating in meetings at reasonable times
- at the beginning of the mediation process, making their intentions clear as to what they are trying to achieve
- observing any applicable confidentiality obligations
- not damaging the reputation of the franchise system (e.g. by providing inferior goods or services).

#### Costs of mediation

The parties to a dispute are equally liable for the costs of mediation unless they agree otherwise.

The code now provides that costs of mediation include:

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

### ACCC contacts

ACCC Infocentre  
1300 302 502

Small business helpline  
1300 302 021

ACCC website  
[www.accc.gov.au](http://www.accc.gov.au)

ACCC franchising website  
[www.accc.gov.au/franchisingcode](http://www.accc.gov.au/franchisingcode)

For all other business information go to [www.business.gov.au](http://www.business.gov.au).

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service, [www.relayservice.com.au](http://www.relayservice.com.au).

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

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

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