

On 30 October 2014 the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* (**New Franchising Code**) was enacted. The New Franchising Code will commence on 1 January 2015 and replaces the *Trade Practices (Industry Codes – Franchising) Franchising Code of Conduct 1998* (**Old Code**).

Application

The New Franchising Code:

- applies to franchise agreements (or renewed franchise agreements) entered into after 1 January 1998; and
- will apply alongside the Old Code if parties have outstanding obligations under the Old Code pursuant to an existing franchise agreement.

Franchisors may use existing disclosure documents that comply with the Old Code until 31 October 2015.

Pecuniary Penalties

Penalties have been introduced for breaching key provisions of the New Franchising Code. It is expected that the Australian Competition and Consumer Commission will target breaches by a party who has:

- failed to act in good faith;
- failed to provide a disclosure document;
- refused to attend mediation; or
- unlawfully terminated a franchise agreement.

The fine for a breach of any of these provisions is 300 penalty units (currently AU\$51,000).

Good Faith Obligations

Existing franchise agreements should be reviewed to remove clauses that seek to limit or exclude an obligation to act in good faith. Under the New Franchising Code, such clauses will be void.

The New Franchising Code also introduces an obligation on parties to a franchise agreement (including a proposed agreement) to act in good faith. A breach of this good faith obligation will attract a fine of 300 penalty units.

Changing Disclosure Requirements

The New Franchising Code dispenses with some disclosure requirements under the Old Code. In the New Franchising Code:

- only one form of disclosure document is required for any franchise agreement (contained in Annexure 1 of the New Franchising Code); and
- a master franchisor no longer needs to give disclosure to the subfranchisee (instead, information about the master franchisor must be provided by the master franchisee to subfranchisees).

New disclosure requirements by the franchisor include:

- an obligation to provide an information sheet to the franchisee (Annexure 2 of the New Franchising Code); and
- an obligation to disclose information pertaining to online sales.

Other Important Changes

Other important additions to the New Franchising Code include:

- a franchisor must hold any marketing fees in a separate bank account;
- a franchise agreement cannot require a franchisee to pay the costs incurred in dispute resolution; and
- a restraint of trade cannot be imposed on a former franchisee unless the franchisee is compensated for the goodwill of the business at the end of the term of the franchise agreement.

We would be pleased to assist you with any queries regarding your obligations under this highly anticipated legislation.

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