



The franchisee manual

A guide for business

November 2021



acc.gov.au

Australian Competition and Consumer Commission
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1. Introduction

Just like any business, there are risks to running a franchise. If you buy a franchised business and it is not viable, you could lose all your money and any assets – such as your house – that you have borrowed against. Also, as a franchisee, your franchise agreement is likely to limit the decisions that you can make about your business. If you are thinking about buying a franchise, you need to understand the risks before making a final decision or signing a franchise agreement.

The Franchising Code of Conduct applies to the parties to a franchise agreement. The Code is a mandatory industry code and has the force of law, meaning that franchising participants must comply with what it says. It sets out some rights and obligations for parties in franchising, including that franchisors must disclose specific information to potential and existing franchisees, and it sets out some minimum standards of conduct.

It is important to know that the Code will not protect you from making a bad deal. It does not guarantee that your business will be successful or that you will be able to recover losses.

Be aware that franchisors don't necessarily need their franchisees to be successful. They can make a profit from selling a failed franchise to someone else. When you buy a franchise, the financial risk falls largely on you. So, if you are interested in buying a franchise, seek out a franchisor who is genuinely interested in helping their franchisees succeed. They should show you that they run their franchise system in a way that benefits their franchisees, and not just themselves. For example, you would expect their franchise agreement to include rights for franchisees that are well above the minimum standards required by the Code.

This manual will help you to understand:

- what franchising is
- steps you should take before choosing a franchise
- how to research and verify information given to you about a franchise opportunity
- your rights and responsibilities under a franchise agreement
- what to do if you have a dispute with your franchisor.

The information in this manual applies to franchise agreements entered into, renewed or extended from 1 July 2021 and disclosure documents provided from 1 November 2021. If you have an older agreement or disclosure document, the information in this guide may not apply in some instances. This guide does not include any guidance for new vehicle dealerships.

The ACCC encourages franchisors, franchisees and potential franchisees to use this guide. However this guide is not legal advice. Readers should seek their own legal advice where appropriate.

Key terms

Franchisee – a person (or company) who invests in a business that is part of a system or marketing plan largely controlled or decided on by someone else (the franchisor).

Prospective franchisee – a person (or company) who is thinking about buying a franchise. They may have approached a franchisor, and received some key documents to consider, but have not yet signed an agreement or paid a non-refundable payment to the franchisor.

Franchisor – a person (or company) who sells the franchised business and makes the key decisions for all businesses in the franchise system.

Associate (of the franchisor) – someone whose relationship with the franchisor is related to the franchise system. This might be, for example, because they are a supplier to a franchisee, they allow a franchisee to lease or occupy premises, they own intellectual property used in the franchise system or they are involved in marketing activities for the franchise system. An associate can be a director, a company related to the franchisor, a director of a company related to the franchisor, or a partner of the franchisor. If the franchisor is a company, an associate could also be someone who owns, controls or has a certain amount of voting power in the company.

Master franchisee – a person (or company) to whom a master franchisor (the ‘head’ franchisor) grants a master franchise. A master franchisee is normally allowed to grant and participate in a sub-franchise. This means, for example, they may act as the franchisor in a particular state or territory.

Your rights under the Australian Consumer Law

Remember that, in addition to the Franchising Code, you also have rights and obligations under the Australian Consumer Law. For example, businesses are not allowed to engage in conduct that misleads or deceives or is likely to mislead or deceive consumers or other businesses. It is also unlawful for a business to make false or misleading claims about goods or services.

Read more about misleading and deceptive conduct and other [business rights and protections](#) on our website, or in our [Small business & the Competition and Consumer Act](#) guide.

2. Start-up checklist

Here are some of the key steps you should take before committing to a franchise opportunity.

| | | |
|-----|---|-------------------------------------|
| 1. | Consider whether franchising is right for you. You need to be aware of the specific risks and challenges of being a franchisee . | <input checked="" type="checkbox"/> |
| 2. | Complete this short online course about franchising , developed specifically for people who are thinking about buying a franchise. It's in easy to understand language, with case studies, myth busting, and explains some of the realities of franchising. | <input checked="" type="checkbox"/> |
| 3. | Assess your skills, strengths and weaknesses. For example, do you have prior experience in owning and running a small business? If not, you could benefit by working alongside a franchisee to gain experience before you commit to buying a franchise. | <input checked="" type="checkbox"/> |
| 4. | Make sure you receive an information statement . This is the very first document you should receive from a franchisor when you express an interest in their franchise. | <input checked="" type="checkbox"/> |
| 5. | If after you read the information statement you are still interested, make sure you receive a disclosure document, franchise agreement, key facts sheet , and a copy of the Code . You may also be given earnings information and, where relevant, leasing information. | <input checked="" type="checkbox"/> |
| 6. | Read these documents carefully – then ask questions, and make sure that you get the answers and any further clarification in writing. | <input checked="" type="checkbox"/> |
| 7. | If you will occupy premises as part of your franchise, make sure you understand your rights and obligations under the lease or occupancy agreement, and that you have received all of the related documentation that you are entitled to. Our online franchising course has a specific section on leases. | <input checked="" type="checkbox"/> |
| 8. | Check clauses on termination, renewal, end of term and transfer of the franchise, and make sure you are willing to accept them. You can learn more about the end of a franchise agreement in the online course. | <input checked="" type="checkbox"/> |
| 9. | Take detailed notes of your meetings with the franchisor, including during discussions about capital expenditure. Insist on the franchisor confirming any claims they make in writing, especially for any claims about earnings and profits. If it is something that's important to you, include it in the agreement. | <input checked="" type="checkbox"/> |
| 10. | Research the franchise and try to independently verify the information provided to you. This includes speaking to current and previous franchisees – you will find their contact details in your disclosure document. | <input checked="" type="checkbox"/> |
| 11. | Get professional advice from an independent accountant, lawyer and business expert. Ask them to look over all of the documents that you have received from the franchisor, and any other information that you have in writing. They can help you spot red flags and assess the viability of the business. | <input checked="" type="checkbox"/> |
| 12. | If the deal is not acceptable, try to negotiate a better offer, look for a better deal, or reconsider if franchising is right for you. | <input checked="" type="checkbox"/> |



3. Before choosing a franchise

Franchising may seem like a popular way to operate a business. However, purchasing a franchise is not a guarantee of success.

Before choosing a franchise you should:

- carefully research the business you are buying, and the wider franchise system
- understand what it means to be a franchisee, compared to a small business owner
 1. know what rights you have – and don't have – under your agreement
 2. know exactly what you can expect from your franchisor
 3. be aware of your obligations and know the consequences if you can't meet them
 4. understand the risks associated with franchising.

Educate yourself

Franchising is different to other business models in ways that aren't always obvious. Completing some franchising education (before you buy) helps you understand how it is different and whether franchising is right for you.

Our free online course about franchising helps anyone thinking about buying a franchise to understand the realities of franchising. Find it on our website: www.accc.gov.au/franchising-education-program.

Check whether the Code applies

Generally, if an agreement meets the definition of a franchise agreement in the Code, it will be covered by the Code – even if the agreement or business opportunity isn't described to you as a 'franchise'.

A 'franchise agreement' exists if:

1. there is an agreement between the parties, which may or may not be in writing
2. one party (the franchisor) gives another party (the franchisee) the right to carry on a business under a system or marketing plan that the franchisor or an associate of the franchisor substantially decides, suggests or controls
3. the business is substantially or materially associated with a specified trademark, marketing or commercial symbol
4. before starting the business the franchisee must pay, or agree to pay, an amount to the franchisor or its associate.

Be aware of your rights and responsibilities under the Code

Disclosure – the documents provided by the franchisor that you must read before you sign

A franchisor must provide certain documents to you upfront, before you commit to joining the franchise system. These documents can help you make an informed decision about whether that franchise system is right for you, so it is vital that you read and understand them.

| If.. | You must receive from the franchisor.. | It should be given to you... |
|--|--|--|
| <p>...you are interested in buying a new or existing franchised business (excludes if you are considering renewing or extending an existing agreement).</p> | <p>1. an information statement</p> <p>The information statement is a 4-page document that highlights some of the risks and rewards of franchising.</p> | <p>...as soon as you express an interest.</p> <p>This is the first document you should receive.</p> |
| <p><i>NB after you have received and read the information statement, if you are still interested in buying the franchise the franchisor (or, where relevant, their associate) must give you documents 2–5 listed below.</i></p> <p><i>Depending on your situation, you may also receive some or all of the additional documents listed 6–11.</i></p> | | |
| <p>...you are interested in buying new or existing franchised business</p> <p>(includes renewals and extensions of existing franchise agreements, and also transfers if you will be entering into a new agreement rather than taking up the seller's existing agreement).</p> | <p>2. a disclosure document</p> <p>3. a key facts sheet</p> <p>4. a copy of the franchise agreement</p> <p>5. a copy of the Code.</p> | <p>...at least 14 days before you sign a franchise agreement or make a non-refundable payment (whichever happens first).</p> |

| | | |
|---|--|---|
| ...you will be leasing or occupying a premises from the franchisor or its associate. | <p>6. a copy of the lease (or, if they don't have the lease, a summary of the commercial terms of the lease)</p> <p>7. written information given under a State or Territory law or, if the lessor didn't give that information, any information of that kind that the franchisor or associate is aware of.</p> | ...at least 14 days before you sign a franchise agreement or make a non-refundable payment (whichever happens first). |
| ...a franchisee proposes to sell you their franchise by transferring their existing franchise agreement to you, and the seller asks the franchisor to give consent to the transfer. | <p>8. a copy of the existing franchise agreement</p> <p>9. any other document the franchisor requires you to sign to make the transfer</p> <p>10. documents listed in items 2, 3, 5 and if applicable, 6 and 7 above.</p> | ...at least 14 days before the franchisor consents to the transfer of the franchise agreement. |
| ...the franchisor is giving you information about earnings e.g. projected or forecast earnings, or historical information about earnings of the franchised business. | 11. the earnings information. | <p>...earnings information must be given with or before any of the other pre-franchise documents.</p> <p>From 1 November 2021, you must receive any earnings information either in the disclosure document or in a separate document attached to the disclosure document.</p> |
| ...the franchisor requires you to enter into other agreements as a condition of a franchise agreement, for example a hire purchase, security or confidentiality agreement, or a restraint of trade agreement. | 12. all of the other relevant agreements that you have been asked to enter into (not including the agreements referred to above). | ...at least 14 days before you sign the franchise agreement. If the documents are not available at that time, they must be provided as soon as they become available. |

Good faith

A franchisor is required to act in good faith in its business dealings with you. You must also act in good faith when dealing with a franchisor.

A party can show good faith by acting:

- reasonably when exercising their rights under the agreement
- fairly
- honestly
- cooperatively to achieve the purposes of the agreement.

There may be a lack of good faith if a party acts:

- arbitrarily
- for some irrelevant purpose
- dishonestly
- for an ulterior motive
- in a way that undermines the franchise agreement
- in a way that denies the other party the benefits of the franchise agreement.

This obligation means that a party should consider the rights of the other party, but it does not mean that they have to act in the other party's interests or that they can't act in their own legitimate commercial interests. For example, it means that a franchisor must be honest and cooperative when negotiating a franchise agreement with you, but it is unlikely to mean that a franchisor must make any changes that you request to your agreement. Similarly, if a franchisor decides not to offer you an option to renew or extend your agreement, that does not necessarily mean that the franchisor has not acted in good faith in negotiating the agreement.

Conduct that may raise concerns under the obligation of good faith include:

- a franchisor treating a franchisee differently because the franchisee has raised concerns about the system
- a franchisor raising numerous minor and immaterial breaches with a franchisee in an aggressive and intimidating manner designed to pressure franchisees to do or refrain from doing something
- franchisees using confidential information provided by the franchisor to compete with the franchisor
- franchisees using social media to post negative comments about their franchisor or their dispute with their franchisor.

Practical tips

The franchisor is likely to be acting in good faith if they are:

- being honest with you
- considering your interests (but not necessarily acting in your interests)
- consulting with you about proposed changes (even if you don't end up agreeing to the changes)
- trying to resolve disputes as they arise, whether informally or in a formal alternative dispute resolution process
- not exercising rights, powers or discretions for a purpose that undermines your agreement.

The obligation to act in good faith applies to any matter arising in relation to a franchise agreement or the Code. This means that the obligation extends to all aspects of the franchising relationship, including before (during pre-contractual negotiations), during and at the end of the agreement.

The obligation to act in good faith may even continue after the agreement comes to an end. For example, if you have obligations under the agreement that will continue after the agreement comes to an end, you may be required to perform these obligations in good faith.



4. Research and verification

Properly researching and investigating the franchise system is a key step for prospective franchisees. Don't make assumptions or accept claims about the business at face value. Remember, just because a franchise is for sale, doesn't mean it's a profitable business.

You need to assess the short-term and long-term viability of the business that you are investing in, and feel confident about taking on the potential risks. This is often referred to as 'due diligence'.

Do your own research and due diligence

Due diligence is a comprehensive check and evaluation of the business you are thinking about buying. It should be done for any purchase of a business, including a franchise business.

Because the franchisor or franchise system has such a big influence on the success or failure of your individual franchise, you'll have to do due diligence twice - on the franchised business and the franchise system/franchisor as well.

If you are an existing franchisee, and the franchisor wants to sell you an additional franchised business or territory, or offers to renew your agreement for another term, you also need to do due diligence.

Our [online franchising course](#) outlines the key aspects of due diligence.

Look out for scammers

Warning signs of a scam franchise opportunity include:

- claims you can make large amounts of money quickly and with little effort - for example 'get rich quick schemes'
- a reluctance to give you the contact details of the other franchisees or to put claims made to you in writing
- a requirement that payment be made upfront before any information is released
- the provision of inconsistent financial information about the business's profitability
- incomplete or limited disclosure about the franchise system and/or the franchisor.

The ACCC strongly recommends that you seriously reconsider pursuing a particular business opportunity if you see any of these warning signs. If you decide to ignore them, it may later amount to a bad or possibly reckless business decision that cannot be remedied.

Practical tip

For more information on scams, visit the ACCC's [SCAMwatch](#) website, which provides information about how to recognise, avoid and report scams. You can also register to receive free SCAMwatch email alerts, and warnings about scams.

Read your pre-entry franchising documents

When you approach a franchisor about buying a franchise, they will give you documents containing information about the franchise system, the business that you are buying and what it means to be a franchisee (see 'Disclosure – the documents that you must read', above).

Read these documents carefully to:

- understand your rights and obligations as a franchisee
- assess the viability of the business
- verify that the information that you have been given is true and accurate
- identify anything that is unclear or that you'd like to know more about so that you can ask questions, investigate further and get independent advice.

Getting independent advice – from someone outside the franchise system with franchising experience – is important. Legal, accounting and business professionals can help you to identify and understand critical information given in pre-entry documentation.

Review the disclosure document

You should read the disclosure document in conjunction with the key facts sheet, which highlights some of the information that is in the disclosure document. If you want to understand what specific items in your disclosure document mean, our '[Quick guide to a franchise disclosure document](#)' is a good place to start. You should also ask independent professional legal, business and accounting advisors to review your disclosure document.

You may wish to pay particular attention to the following items in your disclosure document:

Litigation (item 4)

- How many franchisees were party to an alternative dispute resolution (ADR) process or arbitration in the previous financial year? This will be shown as a percentage.
- Are there legal proceedings against the franchisor, a franchisor director, associate of the franchisor or a director of an associate?

Franchise territory (item 9)

- Is the franchise for an exclusive or non-exclusive territory?
- Can the franchisor operate or establish a business that is substantially the same as the franchise in your territory?
- Can the franchisor change your territory?

Purchasing ability of franchisees (item 10)

- Is there a limit on the suppliers that you can buy goods or services from?
- Will you be required to buy goods or services from a particular supplier or a list of nominated suppliers (including the franchisor)?
- Will the franchisor, master franchisor (or one of its associates) receive a rebate or other financial benefit when you buy goods or services from a supplier? If so, what are these benefits and which businesses are paying them? Consider the amount of a benefit paid by a supplier as a percentage of total purchases made from that supplier. It's important to understand what financial benefit the franchisor, master franchisor (or associates) receive because of purchases you make from their nominated suppliers.
- Will any of those rebates or other financial benefits be shared with you? If so, how, what and how much will you receive?

Online sales (item 12)

- Will you be able to sell your goods or services online? If so, will the franchisor impose any conditions?
- Can the franchisor, its associate, or other franchisees sell goods or services online? If so, to what extent will those goods or services be supplied in your territory?

Site selection (item 13)

- What is the franchisor's policy for selecting a site and/or territory for your franchise?
- Has the site selected for your franchise previously been operated by another franchisee or the franchisor (or one of its associates)? If so, in what circumstances did they cease to operate?

Payments (item 14)

- Are you required to make a payment before the franchise agreement is entered into, and under what conditions will this payment be refunded?
- Are you required to make an initial capital investment?
- What are the start-up costs of the franchise?
- Will you have an ongoing obligation to pay royalties, advertising or other fees?
- What are your anticipated ongoing expenses (e.g. wages, supplies)?
- Will you be required to upgrade equipment or the franchise premises?

Practical tips

- The franchisor must discuss with you any capital expenditure that they have disclosed in the disclosure document. This includes discussing the circumstances under which the franchisor believes that you are likely to recover these costs. Make sure that you keep detailed notes of any conversations and ensure that those discussions cover all of the capital expenditure disclosed in your disclosure document.
- If a franchisor does not disclose significant capital expenditure you are required to pay as a franchisee, it can still require you to pay significant capital expenditure if you agree to it, a majority of franchisees agree to it or where the expenditure is considered necessary to comply with the law.

Arbitration of disputes (item 17A)

- How does the franchise agreement say disputes will be resolved? Does it say that you can resolve disputes by arbitration?

Early termination (item 17B)

- What rights do you have under the franchise agreement to terminate early? In what circumstances may you exercise those rights?
- What rights does the franchisor have under the franchise agreement to terminate early? In what circumstances may the franchisor exercise those rights?

End of term arrangements (item 18)

- What happens when the agreement comes to an end?
- Will you have an option to renew or extend the agreement, or enter into a new agreement? If so, what process will the franchisor use to determine whether to renew, extend or grant a new franchise?
- What rights do you have in relation to any goodwill that you generate as a franchisee?

Verify earnings information

The franchisor may choose to provide you with earnings information. This could be historical figures or a projection or forecast.

If the franchisor has provided you with projected earnings, it must also provide you with certain information about the assumptions on which the projection is based. An independent accountant or business adviser will be able to assist you to compare and verify any figures or projections given to you. Earnings information must, to the best of the franchisor's knowledge, be accurate (and the franchisor must specify information that they know is not accurate).

Speak to franchisees

Speaking to both existing and former franchisees will give you an insight into how the franchise system works and the relationship that the franchisor has with its franchisees.

Franchisors are required to provide you with the contact details of current franchisees as well as franchisees who have left the system in the last 3 years, unless the former franchisee has requested in writing that their details not be disclosed (see item 6 of the disclosure document provided to you).

You should try to speak to as many franchisees and former franchisees as you are able to. You should consider asking them about:

- whether they are satisfied with the level of support provided by the franchisor
- their experience with training and supply of products or services
- whether they would consider purchasing an additional outlet
- their experience in resolving any disputes with the franchisor
- if they have left the franchise system – why they left.

You should also take this opportunity to test any claims made by the franchisor. For example, if the franchisor has made claims about earnings potential or the profitability of existing stores, you should ask franchisees how these figures compare with their actual earnings.

If possible, it is also a good idea to work with an existing franchisee so that you are able to see how the business operates first hand, including turnover and staffing requirements.

Check the franchisor's financial position

Franchising is a business and, like any business, the franchise (or franchisor) could fail during the franchise term. This could have serious consequences for you.

The franchisor's financial details will be a key source of information that will provide an insight into the immediate status of the franchise system. Certain financial details have to be disclosed to franchisees under item 21 of the disclosure document, including a statement of the franchisor's solvency, which is supported by either financial reports for the last 2 financial years or an independent audit.

This information will assist you to form an opinion about the viability of the franchise and the level of investment risk that it poses. An accountant will be able to assist you with this.

If updated financial details under item 21 become available after the franchisor has provided you with a copy of the disclosure document, those updated details must be provided to you as soon as possible. The updated financial details must be provided to you before you enter into the franchise agreement.

Do a background check

It is a good idea to do some general internet searches on the franchise and the franchisor. This may help you to identify further information that is relevant to your decision whether to purchase a franchise.

The Australian Securities and Investments Commission (ASIC) website www.asic.gov.au has a number of useful resources that will assist you to perform a background check, including:

- checking if the company and/or business name is registered in Australia
- finding information on the company and the people that you are dealing with
- signing up for company alerts in order to monitor the documents a company lodges.

Practical tip

Download ASIC's 'Business Checks' phone app, which will help you to:

- work out the right questions to ask about the company/business and the individuals you are dealing with
- check ASIC's registers and verify the accuracy of the information given to you
- seek ASIC's help if you need more information or the assistance of a professional business adviser
- report suspected misconduct if you believe a company, business or individual is acting unlawfully.

Legal action

A franchisor is required to disclose the details of certain court proceedings against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor (see item 4 of the disclosure document). If legal action has been taken, you should obtain further information about the matter and its outcome. You should also check whether any government agency or private party has taken legal action against the franchisor or any other persons responsible for the management of the franchise (including directors and majority shareholders) and/or the franchise itself. You should consider doing searches on the [ACCC website](#) and the [ASIC website](#).

A franchisor is also required to disclose the percentage of franchisees that were party to an ADR process or arbitration in the previous financial year. This information will be in your disclosure document. If there seems to be a high level of disputes in the system, you should make further inquiries including with other franchisees.



5. Understanding your agreement

Your franchise agreement is the contract between you and your franchisor. Once you have signed the agreement, you will be legally bound by its terms and conditions.

There are 4 key stages to your franchise agreement:

1. before you sign or make a non-refundable payment
2. the cooling-off period
3. during the agreement
4. the end of the agreement.

You should make sure you are aware of your rights under your agreement and the Code within each of these phases.

You should also seek professional advice on the agreement and the business opportunity more broadly. Buying a franchise is a significant financial and personal commitment and you should make sure that you know exactly what you are agreeing to.

Our online course has a specific lesson about what a typical franchise agreement contains.

Before you sign

Once you have received the franchise agreement, disclosure document, key facts sheet and a copy of the Code (and leasing information and earnings information, if relevant), the franchisor must wait at least 14 days before you:

- enter into a franchise agreement (or an agreement to enter a franchise agreement) or
- make a non-refundable payment.

The franchise agreement provided to you must be in its 'final form'. However, the franchisor may make changes to the agreement during the 14 day period to implement changes you requested, fill in required particulars, reflect changes of address, make a minor clarification or correct errors or references.

Read your agreement

You should look closely at the terms of your agreement. Take longer than 14 days if you need to. Particular things to look out for include whether:

- the franchisor can terminate your franchise agreement even if you are not in breach of the agreement
- you will have a right to renew or extend your agreement or enter into a new agreement after the initial term – understand if conditions are attached to this and what they will cost you
- the term of your agreement coincides with any lease agreement
- claims that have been previously made to you have been put in writing and form part of the contract, including any earnings guarantees
- the franchisor will place restrictions on the way you operate the business
- quality and other standards for products and/or services will be imposed on you
- the franchisor will seek to impose a restraint on your ability to operate a similar business to the franchise after your agreement has come to an end.

Practical tip

When reading through your franchise agreement you may find it helpful to highlight your obligations and the franchisor's obligations in different colours.

Documents you must give to the franchisor

You will need to sign a written statement stating that you have received, read and had a reasonable opportunity to understand the Code and the disclosure document. This statement must be provided to the franchisor before you sign or pay any non-refundable money.

The franchisor also cannot enter into a franchise agreement with you until it has received:

- written statements from an independent legal adviser, business adviser or accountant that they have provided advice to you (or statements from you confirming that you have received this advice) or
- a signed statement from you indicating that you were told that this advice should be sought but decided not to do so.

The statement regarding professional advice is not required by the Code if you are proposing to renew or extend a franchise agreement.

No release of liability

The franchisor must not require you to sign a document releasing the franchisor from liability towards you.

In addition, a franchise agreement must not contain or require you to sign a waiver of any verbal or written claims made by the franchisor.

Cooling-off period

| If you... | You may terminate your franchise agreement... | If you terminate your agreement within the 14-day cooling-off period... |
|--|--|---|
| ...are entering into a new franchise agreement. | ...within 14 days after entering into the agreement. | ...you are entitled to a refund for payments you've made within 14 days. However, the franchisor can deduct reasonable expenses if set out in the franchise agreement. |
| ...are buying a franchise and the seller is transferring their existing agreement to you. | ...within 14 days after becoming the franchisee OR once you take possession and control of the franchised business (whichever happens first). | ...the previous franchisee is reinstated as the franchisee, if possible, and must refund you any payments made under the transfer agreement, less any reasonable expenses. The franchisor also has similar obligations to refund payments it received from you. |
| ...are to lease or occupy the business premises from the franchisor or its associate, and that lease or occupancy right is not yet in force. | ...within 14 days after receiving the terms of the proposed lease or right. There is a further 14 day cooling-off period that applies if the final terms of the lease or occupancy right are not substantially identical to the proposed terms. | ...you are entitled to a refund for payments you've made within 14 days. However, the franchisor can deduct its reasonable expenses if set out in the franchise agreement. |
| ...are to lease or occupy the business premises from the franchisor or its associate and that lease or occupancy right is not yet in force. | ...within 14 days after entering into the lease or the occupancy right if beforehand the franchisor hadn't given you a document setting out terms substantially identical to the terms of your actual lease or occupancy right. | ...you are entitled to a refund for payments you've made within 14 days. However, the franchisor can deduct its reasonable expenses if set out in the franchise agreement. |

Please note: the Code does not provide cooling-off rights when renewing or extending an existing franchise agreement.

During the agreement – your ongoing rights and obligations

Lease documentation

| If you... | The franchisor must give you... |
|--|--|
| ...lease premises from your franchisor or one of its associates. | <ol style="list-style-type: none">1. a copy of the lease (or the agreement to lease)2. information about any incentive or financial benefit the franchisor or its associate would be entitled to receive as a result of the lease. <p>The franchisor must give you the above information and documents within one month after the lease (or agreement to lease) is signed.</p> |
| ...occupy premises leased by your franchisor or its associate. | <ol style="list-style-type: none">1. a copy of the lease (or the agreement to lease)2. information about incentives that the franchisor or its associate receives because you occupy the premises3. information about any incentive the franchisor or its associate receives because they lease the premises4. the documents that give you the right to occupy the premises5. the conditions of occupation. <p>The franchisor must give you the documents that give you the right to occupy the premises within one month after the documents are signed. The other required documents must be provided within one month of you commencing occupation of the premises.</p> |

State and territory retail tenancy laws regulate retail leases. If you lease or occupy premises from your franchisor or an associate, they must give you any written information that the lessor gave to them in line with the law of the relevant state or territory (for example, if the premises is located in NSW, the relevant NSW laws apply) or any information of that kind of which they are aware. You can request a copy of this information at any time. The laws vary between the states and territories, so familiarise yourself with your region's laws.

Franchisors must also disclose in the disclosure document whether they or an associate have an interest in a lease that will be used for the operation of the franchised business.

Practical tips

Check whether the term of your retail lease corresponds with the term of your franchise agreement. For example, it may not be ideal to have a 5-year lease and a 3-year franchise agreement.

Freedom of association

The franchisor must not do anything that restricts your ability to associate with other franchisees or prospective franchisees for a lawful purpose, or your freedom to form an association with them.

Requesting a disclosure document

You can request (in writing) a disclosure document once every 12 months.

Your franchisor will generally be required to provide you with the disclosure document within 14 days. However, if the franchisor does not have an updated disclosure document as it was not required by the Code to make the annual update at the end of the last financial year, it then has up to 2 months to provide you with an updated disclosure document. They will also have to give you an updated key facts sheet.

Disclosure of materially relevant facts

Your franchisor's disclosure obligations do not end when you become a franchisee. The franchisor must also disclose to you if a materially relevant fact occurs.

A 'materially relevant fact' is a key piece of information about the franchisor or the franchise system that could have an effect on your franchised business. Materially relevant facts include:

- changes in majority ownership or control of the franchisor, franchise system or an associate of the franchisor
- certain court proceedings or judgements against the franchisor or one of its directors
- a change in the intellectual property, or ownership or control of the intellectual property, that is material to the franchise system.

If any of these matters occur, the franchisor is required to tell you about it within 14 days.

Marketing funds

If you contribute money to a marketing or cooperative fund, the fund administrator (this could be a franchisor or a master franchisor, or a third party authorised to administer the fund for the franchisor or master franchisor) can only spend the marketing fund money on:

- expenses that were set out in the disclosure document
- legitimate marketing expenses or
- expenses that have been agreed to by a majority of franchisees.

The fund administrator must prepare an annual financial statement of all the fund's receipts and expenses for the last financial year within 4 months of the end of its financial year. The statement must provide meaningful information about who contributes to the fund and what the money is spent on.

The statement must be audited, unless 75% of franchisees who contribute to the fund vote that an audit is not required. This decision must be revisited every year.

The fund administrator must provide you with the financial statement and auditor's report (if required) within 30 days after their preparation.

Jurisdiction for settling disputes

The franchisor cannot require you to conduct an Alternate Dispute Resolution (ADR) process, arbitration, or bring proceedings outside the State or Territory where your franchised business is located.

Costs of settling disputes

The franchisor cannot require you to pay its costs to settle a dispute under the agreement.

Franchisor's legal costs

Franchisors can only seek to pass on legal costs in the franchise agreement (including a renewed agreement) that arise from the preparation, negotiation and execution of the franchise agreement. To do so, certain conditions must be met.

A franchisor can require the franchisee to pay a fixed amount for particular legal costs if they are specified in the franchise agreement, and the agreement states that the amount:

- is for the franchisor's legal costs of preparing, negotiating or executing the agreement
- does not include any amount for the franchisor's cost of legal services that will or may be provided, after the agreement is entered into, in relation to preparing, negotiating or executing other documents.

This is to prevent franchisors from passing on legal costs to franchisees that can't be determined or quantified at the time franchisees enter into the agreement.

Retrospective changes

Retrospective variation of an agreement can happen when, after entering into the agreement, the franchisor changes a term of the franchise agreement or includes a new term in the agreement which applies to actions that occurred before the change was made.

The Code says that after a franchise agreement is made, a franchisor can only alter or add terms to the agreement that apply retrospectively if the franchisee gives their consent in writing.

End of agreements

Sale of franchise

If you propose to sell your franchised business to another party you must request the franchisor's consent in writing. When making the request, you must provide the franchisor with all of the information that they would reasonably require and expect to be given to make an informed decision. The franchisor may ask for further information to assist it to make its decision.

The franchisor has to tell you in writing whether it consents to the transfer and whether any conditions apply. After doing so, the franchisor can withdraw its consent within 14 days by advising you in writing and setting out the reasons.

Your franchisor must not unreasonably withhold or revoke its consent. They could reasonably withhold consent, for example, if the proposed transferee is unlikely to be able to meet their financial obligations as a franchisee or the franchisor's selection criteria.

If your franchisor does not respond within 42 days, consent is taken as given and there is no opportunity for the franchisor to withdraw consent.

A franchisee to whom an existing agreement is transferred has cooling-off rights. If the buyer exercises their cooling-off rights within the 14 day cooling-off period, the franchisee who sold the business to them will be reinstated if possible and must refund payments that they received under the contract (less any reasonable expenses). Different cooling-off rights exist for prospective franchisees that enter into a new agreement (see table at page 15).

Practical tips

- You should check whether any other conditions are attached to your transfer—e.g. a fee.
- When selling your franchised business, you should ensure that the proposed buyer evaluates the purchase independently and is aware of their rights and obligations under the Code.

Termination

The Code sets out procedures that must be followed if the franchisor proposes to terminate your franchise agreement.

If your franchisor proposes to terminate your agreement because you are in breach of the agreement, it must give you reasonable notice of the breach in writing, tell you what needs to be done to fix it and allow you reasonable time (but not more than 30 days) to do this. If you fix the breach within this time, the franchisor cannot terminate the franchise on this ground.

If your franchise agreement allows your franchisor to terminate your franchise agreement even if you have not breached your agreement, the franchisor must give you reasonable written notice of the termination and reasons for it.

For termination for particular grounds set out in your agreement, the franchisor must give you 7 days' written notice that they are proposing to terminate your agreement. The particular grounds are:

- you no longer hold a licence needed to carry on your business
- you or your company become bankrupt, insolvent under administration or externally-administered
- your company is de-registered
- you abandon the franchise or franchise relationship
- you are convicted of a serious offence
- you operate the business in a way that endangers public health or safety
- you are fraudulent in operating the business.

If, after receiving this notice, you give written notice of a related dispute, the franchisor cannot terminate your franchise agreement for 28 days from when they gave you the written notice of termination. You should seek to have an ADR practitioner or arbitrator appointed as soon as possible for your dispute so that you can try to resolve it within this 28 day period. During this time, the franchisor can prevent you from operating the business by giving written notice if that right exists in your franchise agreement.

The franchisor does not have to comply with the termination procedures if you agree to terminate the franchise agreement.

Termination can be requested by franchisees

The Code sets out how you can ask to terminate your agreement early. If you propose early termination, the franchisor must reply to you (in writing) within 28 days. If they refuse to terminate, they must tell you the reasons why.

End of term

If the term of your agreement is coming to an end, the franchisor must notify you, in writing, whether it intends to extend your agreement or enter into a new agreement with you.

This notice must be provided at least 6 months before the end of your franchise agreement. However, if the term of your agreement is less than 6 months, the franchisor must notify you of its decision at least one month before the end of the term of the agreement.

Restraint of trade clauses

If you seek to extend your agreement at the end of your franchise term but the franchisor chooses not to grant the extension, the Code may provide you some protection if the franchisor then attempts to enforce a restraint of trade against you.

For the protection in the Code to apply, you would need to meet a narrow set of conditions as set out in the Code. These include that you were not in serious breach of your franchise agreement or any related agreement immediately before it ended, and that you had not breached any confidentiality or intellectual property obligations.

You should seek legal advice about the effect of any restraint of trade in your agreement.

Key term

- Restraint of trade – a clause that seeks to restrict a franchisee's ability to operate a similar business to the franchise after their franchise agreement has come to an end.



6. Resolving disputes

Your franchise agreement must set out a procedure for resolving disputes. Franchisors must have an internal complaint-handling procedure that complies with the Code or, alternatively, they can use the framework in the Code to resolve disputes.

If a dispute arises in relation to the Code or your franchise agreement, either you or the franchisor may choose to try to resolve the dispute using the procedure set out in the Code or your franchise agreement.

You and the franchisor are required to try to resolve the dispute. The obligation to act in good faith applies (see page 6) during the dispute resolution process.

Internal complaint-handling procedure

This procedure must comply with the steps outlined in the Code for dealing with a dispute (read 'Dealing with a dispute', below). This procedure must be set out in your franchise agreement.

Code complaint-handling procedure

The internal complaint-handling procedure represents the minimum standard for complaint handling. As an alternative to using the franchisor's internal complaint-handling procedure, you may try to resolve a dispute using the procedure set out in the Code.

Under the Code's procedures you can seek to resolve your dispute through an alternative dispute resolution (ADR) process - meaning mediation or conciliation - and also through voluntary arbitration, if you and your franchisor have agreed to this in writing. If you and at least one other franchisee have similar disputes with the same franchisor, multi-party dispute resolution is an option that is available for resolving these disputes together.

Confidentiality requirements apply to information disclosed or obtained during an ADR or arbitration process.

Key terms

ADR practitioner – an ADR practitioner is a conciliator or mediator. They are an independent third party who will work with you and the franchisor to try and resolve the dispute. ADR practitioners do not give legal advice or make decisions like a judge; they assist parties to come together and negotiate an outcome that is acceptable to both parties.

Mediation – a process where an independent third party (a mediator) assists parties to negotiate and settle their dispute.

Conciliation – a process where the people in dispute try to reach an agreement with the assistance and advice of an impartial person (a conciliator). The conciliator usually has some experience of the matter in dispute and can advise the parties of their rights and obligations. A conciliator can make recommendations to the parties jointly for their consideration.

Arbitration – a formal dispute resolution process in which parties refer their dispute to an independent third party for a binding decision.

Dealing with a dispute

Alternative dispute resolution

Step 1: Provide your franchisor with written details of the problem, the outcome you are seeking and how you think the outcome can be met.

Step 2: Try to agree with your franchisor about how to resolve the dispute.

Step 3: If you cannot agree within 21 days, you can refer the matter to an ADR practitioner.

Step 4: If you cannot agree on an ADR practitioner, you or the franchisor can ask the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) to appoint an ADR practitioner.

Step five: If an ADR process is initiated, you and your franchisor must attend and try to resolve the dispute. The ADR practitioner appointed for a dispute may decide the time and place for mediation (although it must be conducted in Australia).

There is no requirement to have legal representation at an ADR process. However, if you do decide to have your lawyer present, it is recommended that you inform the ADR practitioner of this prior to attending.

Voluntary arbitration

You and the franchisor can agree, in writing (including in your franchise agreement), to resolve disputes by arbitration. If so, you or the franchisor can seek to resolve a dispute by initiating an arbitration. You can do this by asking the ASBFEO to appoint an arbitrator.

The arbitrator will decide how, when and where the arbitration will be conducted. You and the franchisor must attend the arbitration (which must be conducted in Australia).

Multi-party disputes

If you and at least one other franchisee have similar disputes with the same franchisor, you can agree to resolve your disputes together.

When deciding whether to resolve disputes together, franchisees involved in the dispute are allowed to discuss their disputes with each other even if there are confidentiality obligations in their agreements. If franchisees are concerned that their discussions may breach competition laws, franchisees can notify the ACCC of their intention to rely on the class exemption for franchisees to collectively bargain with the franchisor. Please see our [guidelines](#).

The franchisor and franchisees with similar disputes can agree to resolve their disputes in the same way. If they cannot agree on how to resolve the disputes, the franchisees may refer their disputes to a single ADR practitioner for a single ADR process. If the parties cannot agree on who the ADR practitioner should be, any party can request the ASBFEO to appoint one.

The ADR practitioner may conduct the ADR process even if the franchisor does not agree that all the disputes should be heard in a single ADR process, or does not agree to the appointment of the ADR practitioner.

If the ADR practitioner decides to conduct an ADR process, the franchisor must attend and try to resolve the dispute.

Ending the dispute resolution process

If a dispute is unresolved after 30 days from when you started the ADR process under the Code complaint-handling procedure, either you or the franchisor may ask the ADR practitioner to terminate the ADR process.

The ADR practitioner may also choose to terminate the ADR process without a request from either you or the franchisor at any time unless it is satisfied that the dispute will shortly be resolved.

An arbitrator will terminate an arbitration if you and the franchisor agree to do so.

Costs of dispute resolution

You and the franchisor must pay your own costs for attending an ADR process or arbitration under the Code complaint-handling procedure.

Unless you have agreed otherwise, you and the franchisor are equally liable for the other costs of an ADR process. These include the cost of the ADR practitioner, the cost of room hire and the costs of any additional input (including expert reports) agreed by you and your franchisor to be necessary.

For an arbitration process, you and the franchisor are each responsible for half of all reasonable costs associated with the arbitration.

Trying to resolve the dispute

You and your franchisor are expected to try to resolve the dispute. This means approaching the resolution of the dispute in a reconciliatory manner, including by:

- attending and participating in meetings at reasonable times
- at the beginning of the ADR process or arbitration, making your intention clear as to what you are trying to achieve through the ADR process or arbitration
- observing any obligations relating to confidentiality that apply during or after the ADR process or arbitration
- not acting – including providing inferior goods, services or support – during the dispute in a way which has the effect of damaging the reputation of the franchise system
- not refusing to act – including not providing goods, services or support – during the dispute if the refusal to act has the effect of damaging the reputation of the franchise system.

Your legal rights

Your right to take legal action under the franchise agreement is not affected by the dispute resolution procedures under the Code.

Where the franchisor has been in serious breach of the Code (or your agreement) you may be entitled to damages, court orders to stop breaches of the Code and other orders (e.g. changes to the agreement). You should seek legal advice from your solicitor prior to taking legal action against your franchisor.

Remember: court action can be costly, time consuming and destroy relationships, and there is no guarantee that the court will find in your favour. This is why you should genuinely attempt to resolve the dispute through one of the alternative processes available to you before considering legal action.



7. Contact the ACCC

The ACCC enforces the Australian Consumer Law and the Franchising Code, both of which fall under the *Competition and Consumer Act 2010* (the Act). This does not mean that the ACCC takes action on your behalf if something goes wrong for your franchise. The ACCC takes action for breaches of these laws where it serves the public interest, and is rarely involved in individual consumer or small business disputes.

If you believe that your franchisor has breached the Act or the Code, you should report it to the ACCC. We use reports from the public and other sources of intelligence to help us identify trends and where we can direct our resources to have the most impact. The ACCC can investigate alleged breaches of the Code or the Act and can take enforcement action where appropriate. While all reports are carefully considered by the ACCC, due to the volume of reports we receive, we may not be able to respond to you if you have not asked a question, or if we do not have information to assist you.

The ACCC cannot pursue all matters that come to our attention. Our role is to focus on those circumstances that will, or have the potential to, impact vulnerable consumers, harm the competitive process or result in widespread consumer or small business detriment. We exercise discretion to direct resources to matters that provide the greatest overall benefit.

Where the ACCC has received a franchising complaint alleging a breach of the Code and/or the Act, it will often consider whether you have attempted to resolve the dispute yourself and referred the matter to an ADR process. When deciding whether to pursue a matter, we will prioritise those which fall within our [current priority areas](#) and give particular consideration to those matters which also have certain priority [factors](#).

Taking private action

Your franchise agreement is a contract that contains many of your legal rights and obligations. Therefore, you have rights in contract law if the franchisor does not honour the agreement. A franchisee may have private right of action under the Code, the Australian Consumer Law and the law of contract.

Please note: the ACCC is responsible for administering the Code and the Act. It cannot take action against a party for breaching a franchise agreement because this is a private contractual issue between the parties to the contract. For such breaches, you may wish to contact ASBFEO or your local Small Business Commissioner.

8. Additional sources of information

ACCC

Small business helpline: 1300 302 021 Website: www.accc.gov.au/franchisingcode

Email updates: To receive updates from the ACCC's Franchising Information Network, sign up at <https://www.accc.gov.au/media/subscriptions/franchising-information-network>.

Online [franchise education program](#)

Website: www.accc.gov.au/franchising-education-program

Australian Small Business and Family Enterprise Ombudsman

Telephone: 1300 650 460

Website: www.asbfeo.gov.au/industrycodes/franchisingcode

For other business information go to www.business.gov.au

Small Business Commissioners

| | |
|---|---|
| Australian Small Business and Family Enterprise Ombudsman | www.asbfeo.gov.au |
| New South Wales Small Business Commissioner | www.smallbusiness.nsw.gov.au |
| Queensland Small Business Commissioner | https://www.business.qld.gov.au/running-business/support-assistance/qsbc |
| South Australian Small Business Commissioner | www.sasbc.sa.gov.au |
| Victorian Small Business Commissioner | www.vsbic.vic.gov.au |
| Western Australian Small Business Development Corporation | www.smallbusiness.wa.gov.au |



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

