



**SUCCESS
TUTORING**

**FRANCHISOR'S
DISCLOSURE
DOCUMENT**

TEMPORARY

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TEMPLATE

1 First page

- 1.1
- (a) DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE
- (b) the franchisor's:
- (i) name; and Success Tutoring Australia Pty Ltd
- (ii) business address; and '100 Barangaroo Ave', Level 35, Tower One,
International Towers, Barangaroo NSW 2000
phone number; and 0424 474 449
- (iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor). ACN 642 779 735
- (c) Franchisor / director / officer / authorised agent of the franchisor *Michael Black*
Michael Black – Director
- (d) Date of preparation 31 October 2024
- (e)

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.

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 electronic form, electronic form or both, the franchisor must comply with your request.

NOTE: This document sets out the information required in response to each of the items set out in Annexure 1 to the Franchising Code of Conduct prescribed under section 51AE of the Competition and Consumer Act 2010 (Code). In this Disclosure Document unless defined in this document, capitalised expressions set out in this Disclosure Document bear the same meaning given to those expressions in the Franchise Agreement.

2 Franchisor details

2.1 The franchisor's:

(a) name; and

Success Tutoring Australia Pty Ltd

(b) address, or addresses, of franchisor's registered office and principal place of business in Australia; and

Registered Office:

'100 Barangaroo Ave' Level 35 Tower One International Towers, Barangaroo NSW 2000

Principal Place of Business:

'100 Barangaroo Ave' Level 35 Tower One International Towers, Barangaroo NSW 2000

(c) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).

ACN 642 779 735

2.2 The name under which the franchisor carries on business in Australia relevant to the franchise:

Success Tutoring

2.3 A description of the kind of business operated under the franchise:

Success Tutoring provides personalised English and Math tutoring services using the Success tutoring brand and business system.

2.4 The number of years that the franchise or franchise system has operated in Australia:

The director of the Franchisor has been operating a business substantially the same as the franchise since 2017.

The Franchisor began operating the franchise system in 2020.

2.5 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):

Name	ABN, ACN or ARBN	Registered Office	Principal Place of Business	Relationship to Franchisor and its relevance to the franchise system and the franchise
Success Tutoring Wetherill Park Pty Ltd	ACN 671 561 274	5 Glen Logan Road, Bossley Park NSW 2176	5 Glen Logan Road, Bossley Park NSW 2176	Operates Wetherill Park corporate centre
Mind Gym Liverpool Pty Ltd	ACN 663 264 462	Unit 6C 387-393 Hume Highway Liverpool NSW 2170	Unit 6C 387-393 Hume Highway Liverpool NSW 2170	Operates Liverpool corporate centre
Success Tutoring Pty Ltd	ACN 653 005 951	'L35 T1' 100 Barangaroo Ave Baranagroo Sydney NSW 2000	'L35 T1' 100 Barangaroo Ave Baranagroo Sydney NSW 2000	Operates Green Valley corporate centre

2.6 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:

Name	ABN or ARBN	Address	Relationship to Franchisor and its relevance to the franchise system and the franchise
Michael Fayez Bassili Black	N/A	5 Glen Logan Road, Bossley Park NSW 2176	Sole director, secretary and shareholder of the Franchisor

2.7 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 the relevance of the relationship to the franchise system and the franchise:

Please see tables at Items 2.5 and 2.6 above.

2.8 For each officer of the franchisor – name, position held and qualifications (if any):

Name	Position held with the Franchisor	Qualifications
Michael Fayez Bassili Black	Director of the Franchisor	Bachelor of Commerce from Sydney University (Graduated 2021)

3 Business experience

3.1 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.

Name	Relevant business experience for the past 10 years
Michael Fayez Bassili Black	Michael Black is the founder and managing director of Success Tutoring Australia. Michael is a graduate from the University of Sydney Business School, he has experience in management and commercial law. Michael founded Success Tutoring and developed the Success Tutoring franchise system and method of learning. Currently, Michael is responsible for the design, development & continuous improvement of the company franchise system. He is also responsible for leading franchise development across Australia. Since, Success Tutoring has been launched successfully in locations within NSW, VIC and WA.

3.2 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

Success Tutoring and its predecessors have been operating in the field of tutoring services since 2017. Success Tutoring worked with its associates to share its industry experience with the Franchisor.

The incorporated company, Success Tutoring Australia Pty Ltd, which incorporated on 20 July 2020, took over the operation of the franchise from Mr Michael Black who operated the business from 2017 to about 20 July 2020 as a sole trader.

- (ii) offering other franchises that are substantially the same as the franchise; and

The Franchisor has not offered other franchises that are substantially the same as the Franchise.

- (b) whether the franchisor has offered Yes No franchises for other businesses.

If yes to (b):

(i) a description of each such business; and

Not applicable.

(ii) for how long the franchisor offered franchises for each such business.

Not applicable.

4 Litigation

4.1 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 Yes No

(ii) contravention of trade practices law; or Yes No

(iii) contravention of the *Corporations Act 2001*; or Yes No

(iv) unconscionable conduct; or Yes No

(v) misconduct; or Yes No

(vi) an offence of dishonesty; and Yes No

(b) 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:

(i) section 12 of the *Independent Contractors Act 2006*; or Yes No

(ii) a law of a State or Territory that regulates workplace relations or independent contractors. Yes No

4.2 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; Yes No
- (b) in the last 5 years – subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1(a); or Yes No
- (c) in the last 10 years – bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere. Yes No

4.3 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;
- (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.

Names of the parties to the proceedings	Name of the court, tribunal or arbitrator	Case number	General nature of the proceedings	Current status of proceedings
Not applicable.	Not applicable.	Not applicable.	Not applicable.	Not applicable.

4.4 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).

Nil.

5 Payments to agents

5.1 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:

The Franchisor may engage franchise brokers or other referral sources from time to time and pay them a fee for a successful referral. As at the date of this disclosure document, the Franchisor does not engage any franchise recruiters.

6 Existing franchises

6.1 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:

State / Territory / Region	(a)	(b)	(c)
NSW	29	29	3
Vic	4	4	0
Qld	2	2	0
SA	0	0	0
WA	6	6	0
Tas	0	0	0
ACT	0	0	0
NT	0	0	0
TOTAL:	41	41	3

- 6.2 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.

Please refer to Schedule 1 of this Disclosure Document which sets out the prescribed information relating to existing Franchisees as at the date of this Disclosure Document.

- 6.3 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:
- (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.

Please refer to Schedule 1 of this Disclosure Document which sets out the prescribed information relating to existing Franchisees as at the date of this Disclosure Document

- 6.4 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:

Details of events of each of the last three years	Year 1, Period: 01/07/2023 to 30/06/2024	Year 2, Period: 01/07/2022 to 30/06/2023	Year 3, Period: 01/07/2021 to 30/06/2022
(a) the franchise was transferred;	3	0	0
(b) the franchised business ceased to operate;	0	0	0
(c) the franchise agreement was terminated by the franchisor;	0	0	0
(d) the franchise agreement was terminated by the franchisee;	0	0	0
(e) the franchise agreement was not extended;	0	0	0
(f) the franchised business was bought back by the franchisor;	0	0	0

(g) the franchise agreement was terminated and the franchised business was acquired by the franchisor.

0

0

0

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

6.5 Subject to subclause 32(1) of the Code, the franchisor must supply, for each event mentioned in Item 6.4 the name, location and contact details of each franchisee if the information is available:

Please refer to Schedule 2 of this Disclosure Document which sets out the prescribed information relating to each event mentioned in Item 6.4 (subject to subclause 32(1) of the Code).

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7 Master franchises

7.1 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 in Australia; and
- (c) ABN, ACN or ARBN (or foreign equivalent if applicable).

7.2 The name under which the master franchisor carries on business relevant to the franchise:

7.3 For each officer of the master franchisor – name, position held and qualifications (if any):

- Name
- Position held
- Qualifications

7.4 For each of the last 3 financial years and each of the following events – the number of:

Details of events of each of the last three years	Year 1, Period: 01/07/2023 to 30/06/2024	Year 2, Period: 01/07/2022 to 30/06/2023	Year 3, Period: 01/07/2021 to 30/06/2022
(a) franchise agreements terminated by the master franchisor;	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>
(b) franchise agreements terminated by the franchisor;	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>
(c) franchise agreements that were not extended by the master franchisor.	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>	<input style="width: 100px; height: 25px;" type="text" value="Not applicable."/>

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

7.5 The following details about the master franchise:

- (a) the term of the franchise agreement, including the date that it began; Not applicable.
- (b) the territory of the franchise; Not applicable.
- (c) whether the franchise agreement may be renewed; Not applicable.
- (d) whether the term of the franchise agreement may be extended and if so, any preconditions applying to an extension; Not applicable.
- (e) whether the scope of the franchise agreement may be extended; Not applicable.
- (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; Not applicable.
- (g) the grounds on which the franchise agreement may be terminated; Not applicable.
- (h) if the franchise agreement is terminated, how a subfranchisor's franchise agreement with a franchisee is affected. Not applicable.

8 Intellectual property

8.1 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:

Trademarks	See Item 8.1(c) below.
Patents	Nil
Designs	Nil
Copyright	<ul style="list-style-type: none"> • registered and unregistered rights in relation to any copyright, trade marks, designs and any other intellectual property subsisting in the Success Tutoring franchise name and logo and trade marks; • Manuals and any other related manuals or materials; • training materials; • the colour scheme and corporate identity of the Franchisor; • any telephone numbers associated with the Franchisor; • any emails or other contact details associated with the Franchisor; • confidential memos and updates or other communications distributed by the Franchisor to Success Tutoring Franchisees; • any educational materials or policies prepared for use in the franchise; • the website located at the domain name https://successtutoring.com.au/ or such other domains and websites owned or controlled by the Franchisor from time to time which are used principally to promote the Franchise; and • the franchise Social Media pages, including but not limited to Facebook, Twitter and Instagram, owned or controlled by the Franchisor from time to time which are used principally to promote the Franchise.

NOTE: Images of logos and symbols may assist in describing the intellectual property.

- (b) details of the franchisee’s rights and obligations in connection with the use of the intellectual property; and:

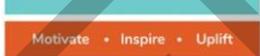
The Franchisee has a licence (derived from the Franchise Agreement) to use the Intellectual Property.

The Franchisee does not have any ownership rights in the Intellectual Property and all use must strictly be in accordance with the Franchise Agreement or otherwise approved by the Franchisor.

The Franchisor at its discretion may modify or discontinue the use of any component of the Intellectual Property.

The Franchisee is required to cease using the Franchisor’s Intellectual Property at the end of the term of the Franchise Agreement.

- (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and

Trademark	Registered	Registration date	Registration number	Place of registration
	Registered	21 April 2018	1920024	Australia
Success Tutoring	Registered	16 October 2020	2129326	Australia
	Accepted: In opposition period)	N/A	2445419	Australia
	Published: Under examination	N/A	2445418	Australia

- (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property: Yes No

If yes to (d), please provide the following details:

- | | |
|--|-----------------|
| (i) name of court or tribunal; and | Not applicable. |
| (ii) matter number; and | Not applicable. |
| (iii) summary of the claim or judgement; and | Not applicable. |

(e) if the intellectual property is not owned by the franchisor – who owns it; and:

Not applicable.

(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; and

Not applicable.

Not applicable.

Not applicable.

Not applicable.

8.2 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

9.1 Whether the franchise is:

(a) for an exclusive or non-exclusive territory; or

The Franchisee is granted an exclusive territory for the purposes of establishing a Success Tutoring business within the territory.

(b) limited to a particular site.

The Franchisee must not operate the Franchised Business outside the Premises unless approved by the Franchisor.

9.2 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

The Franchisor will not permit other franchisees to establish any Success Tutoring business within the territory.

(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

The Franchisor or an associate of the Franchisor will not own or operate any other similar businesses within the territory.

(c) whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise; and

The Franchise Agreement does not restrict the Franchisor or its associates from establishing other franchises that are substantially the same as the franchise.

(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

No, the Franchise Agreement includes restrictions on franchisees operating similar businesses.

(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.

The Franchisor will not change the territory, however, where the site no longer meets the requirements of the Franchisor, the Franchisor may require the Franchisee to relocate to an alternative site within the territory.

10 Supply of goods or services to a franchisee

10.1 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 Yes No

If yes, details:

The Franchisee is required to ensure that they maintain a sufficient level of inventory to ensure that the Franchisee is able to properly provide the Approved Products to Customers.

- (b) restrictions on acquisition of goods or services by the franchisee from other sources; and Yes No

If yes, details:

The Franchisee may only use and purchase products or services from the Franchisor and/or Approved Suppliers. Details of any Approved Suppliers are provided in the Manuals.

- (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 Yes No

If yes, details:

The Franchisor is an Approved Supplier for some of the Approved Products and Approved Services.

- (d) the obligation of the franchisee to accept goods or services from the franchisor, or from an associate of the franchisor; and Yes No

If yes, details:

The Franchisee is only required to accept products or services from the Franchisor and/or Approved Supplier to the extent that it is set out in the Franchise Agreement and/or the Manuals.

This includes Core Products and Core Services which are supplied by the Franchisor directly or by Core Suppliers.

- (e) the franchisor's obligation to supply goods or services to the franchisee; and Yes No

If yes, details:

The Franchisor is obliged to supply to the Franchisee those products or services which are set out in the Franchise Agreement and/or the Manuals.

This includes any Core Products and Core Services which are supplied by the Franchisor directly.

- (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 Yes No

If yes, details:

The Franchisee will be offered the right to be supplied with the whole range of products or services.

- (g) conditions under which the franchisee can return goods, and to whom; and Yes No

If yes, details:

The Franchisee may return goods in accordance with the applicable return policies of the suppliers. The Franchisee is not otherwise entitled to return goods except as provided by law.

- (h) conditions under which the franchisee can obtain a refund for services provided by the franchisor, and from whom; and Yes No

If yes, details:

If the Franchisee terminates the Franchise Agreement during the Cooling Off Period the franchisor will refund to the franchisee the fees paid by the franchisee under the Franchise Agreement less the reasonable expenses incurred by the Franchisor in connection with the negotiation, preparation and execution of the Franchise Agreement and related documents.

In all other cases, subject to law, the Franchisee cannot obtain a refund for any services provided by the Franchisor.

- (i) whether the franchisor may change the range of goods or services, and if so, to what extent; and Yes No

If yes, details:

The Franchisor may change the range of products or services which form part of the Approved Products and Approved Services. These changes will be implemented by amending the Manuals. The Franchisee must adhere, at their own cost, to any change which are implemented.

- (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 franchisees; and Yes No

If yes, details:

The Franchisor may receive rebates or other financial incentives from suppliers and other third parties and the Franchisee agrees that the Franchisor may retain for its own benefit all rebates or financial incentives received, whether or not they are received as a result of purchases or other actions by the Franchisee.

- (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: Yes No

- (i) the nature of the rebate or other financial benefit received from each supplier; and

See Schedule 3.

- (ii) the name of each business providing the rebate or other financial benefit; and

See Schedule 3.

(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

See Schedule 3.

(l) whether a rebate or other financial benefit described in paragraph (j) is shared, directly or indirectly, with the franchisee; and

The rebates or financial benefits are not shared directly with Franchisees, although Franchisees may benefit from the lower cost of products as a result of the superior buying power and scale. Indirect benefits from rebates and financial benefits may be used to fund the Franchisors operational expenditure.

(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

See Schedule 3.

(ii) a description of each direct and indirect benefit received by the franchisee.

See Schedule 3.

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)

- 10.2 For the purposes of paragraphs 10.1(j) to (m), a rebate or other financial benefit does not include:
- (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.
- 10.3 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 cooperative fund controlled or administered by or for the franchisor.

11 Supply of goods or services by a franchisee

11.1 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

The Franchisee must not sell, offer, or provide any products or services that are not Approved Products or Approved Services.

(b) restrictions on the persons to whom the franchisee may supply goods or services; and

There may be restrictions to whom the Franchisee may supply the Approved Products or Approved Services, including customers or staff members banned from the Franchise network premises. Generally, all supply must be in or from the Franchisee's premises.

(c) whether the franchisee must supply the whole range of the goods or services of the franchise.

The Franchisee must offer the entire range of Approved Products and Approved Services, unless otherwise agreed with the Franchisor.

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

12.1 Details of whether the franchisee may make available online:

- (a) goods of the same type or brand; or Yes No

If yes, details:

The Franchisee is not permitted to sell goods online.

- (b) services of the same type. Yes No

If yes, details:

The Franchisee is permitted to advertise, sell and deliver tutoring lessons online however they may not otherwise sell any other services online.

12.2 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;

The Franchisee must comply with the requirements in the Manuals in respect of the advertising and delivery of tutoring lessons online. The Franchisee must not otherwise make goods or services available online without the Franchisor's written approval.

- (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;

The Franchisee is prohibited from using a third party website.

- (c) the extent to which those goods or services may be supplied outside the territory of the franchise.

The supply of tutoring lessons online can only be made in respect of customers who have a home address within the territory of the franchise. No out of territory supply is permitted.

12.3 Details of whether:

- (a) the franchisor or an associate of the franchisor makes, or expects to make, goods or services available online; or

The Franchisor may sell the Approved Products and Approved Services online either through the Website or third party websites.

- (b) other franchisees make, or expect to make, goods or services available online.

Other franchisees are also permitted to advertise, sell and deliver tutoring lessons online within their specific territory.

12.4 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;

Online sales of the Approved Products and Approved Services by the Franchisor may be to customers in the territory of the Franchisee.

The Franchisor may from time to time provide the Franchisee with enquiries via the Website from customers who request Approved Services within the territory of the Franchisee, but the Franchisor is under no obligation to do so.

(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.

Not applicable.

12.5 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.

Is there a profit sharing arrangement?

Yes No

If yes, details:

Not applicable.

13 Sites or territories

13.1 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;

The Franchisee will locate the site and the Franchisor will approve or not approve the proposed site in accordance with the Premises Criteria set out in the Manuals or as otherwise notified to the Franchisee in writing.

From time to time the Franchisor may assist the Franchisee in locating a suitable site however it does not do so as an expert in site selection or assessment and the Franchisee should make their own enquiries.

The current Premises Criteria includes a premises of 75 - 100 m².

- (b) the territory in which the franchised business is to operate.

The Franchisor has determined the territory taking into consideration among other factors:

- local population size; and
- local demographics (generally age and ethnicity); and
- number of schools.

The above criteria do not set out a formal policy for selecting the territory. The Franchisor makes no warranties as to the suitability of any territory so selected, and the Franchisee should make their own enquiries.

13.2 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.

See Schedule 4.

13.3 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 clause 13 of this code.

Not applicable.

13.4 The details mentioned in items 13.2 and 13.3 must be provided:

- (a) a separate document; and
(b) with the disclosure document.

14 Other payments

Prepayments

14.1 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.

Payment	Why the money is required	How the money is to be applied	Who will hold the money
Deposit - \$3,000 plus GST	Deposit to secure rights to negotiate and receive documentation in relation to a specific Territory – the Territory will then be held exclusively for the Franchisee for a period of time until either a franchise agreement is entered into or the Franchisor or Franchisee do not wish to proceed with the franchise grant.	Applied to the Documentation Fee	The Franchisor

14.2 The conditions under which a payment will be refunded:

Payment	Conditions under which payment refunded
Deposit	The Deposit shall be refundable until 14 days after the Franchisee has received the Disclosure Document, Franchise Agreement in the form it is to be executed and any other document required by section 9 of the Franchising Code of Conduct. Otherwise, the Deposit shall be non-refundable.

Establishment costs

- 14.3 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.

Please see table at Item 14.5

- 14.4 For Item 14.3, the details for each payment must include:
- (a) description of the payment; and
 - (b) 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.

14.5 For item 14.3, if the amount of the payment cannot easily be worked out – the upper and lower limits of the amount.

14.3 Expenditures	14.4 (a) description of the payment	14.4 (b) the amount of the payment or the formula used to work out the payment (Note all fees are quoted ex GST)	14.4 (c) to whom the payment is made	14.4 (d) when the payment is due	14.4 (e) whether the payment is refundable and, if so, under what conditions
(a) real property, including property type, location and building size	Bank guarantee or security deposit required under the lease	\$5,000 - \$25,000 (depending on lease requirements) One off cost, based on 2 – 4 months' rent	A bank	Prior to entering the Lease	Per the terms of the Lease and bank guarantee
	Rent in advance	\$2,500 - \$6,000 for first month's rent	The landlord	As specified by the landlord	Per the terms of the Lease
(b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements	Internal Fit Out Includes flooring, painting, internal signage and external signage.	\$5,000 - \$35,000	The Approved Supplier	Prior to the commencement of the Fit Out	Generally not refundable
	Council Fees	\$200 - \$500 generally but up to \$10,000 if comprehensive	Local Council	Prior to commencement of the Fit Out	Not refundable

and decorating costs		Development required.	Application		Payable also if the Franchisee relocates the Franchised Business in accordance with the Franchise Agreement	
	Equipment including: <ul style="list-style-type: none"> • Computers (optional) • Front desk (optional) • Furniture Other centre accessories	\$10,000		The Franchisor or Approved Supplier as relevant	Concurrent with signing the Franchise Agreement	Generally not refundable
(c) inventory required to begin operation	Not applicable	Not applicable		Not applicable	Not applicable	Not applicable
(d) security deposits, utility deposits, business licences, insurance and other prepaid expenses	Insurance - public liability and contents	\$70-\$150 per Month		Insurance company	Prior to opening the Franchised Business	Dependent upon the insurance provider
	Workers compensation insurance	The cost of workers compensation insurance is often based on the amount of gross wage or salary of the worker and varies between the States and Territories of Australia. The Franchisor recommends that the Franchisee conduct enquiries with the government department in its State or Territory responsible for industrial relations to ascertain the applicable cost.		State approved Insurer	Prior to opening the Franchised Business	Dependent upon the insurance provider



	Utility deposits	\$0 - \$3,000	The relevant utility company or the Landlord	Prior to opening the Franchised Business	Dependent upon the relevant utility company
(e) additional funds, including working capital, required by the Franchisee before operations begin	<p>For new sites the Franchisor recommends that the Franchisee have additional funds of \$10,000 - \$20,000 available to meet the cash flow demands of the business, including for operating costs such as rent, software licences, marketing and employee's wages. New businesses often generate negative cash flow. The Franchisor estimates that the amount given will be sufficient to cover on-going expenses for the start-up phase of the business, which is estimated to be 3 months.</p> <p>The amount depends on the Franchisee's personal circumstances and should be determined in consultation with your accountant or financial adviser.</p> <p>Franchisees credit history could impact the amount (and cost) of funds needed during the start-up phase. If Franchisees have no credit history or a weak credit history, suppliers may give Franchisees less favourable lending and payment terms, which might increase the amount of funds Franchisees will need during this period. Franchisees will need to have staff on-hand before opening to prepare the Franchised Business for opening, training, orientation and related purposes.</p>				
(f) other payments by a Franchisee to begin operations	Initial Franchise Fee	\$50,000	The Franchisor	On or prior to signing the Franchise Agreement	The payment is not refundable, except if the Franchisee exercises their cooling off rights. In which case, the payment will be refunded less the Franchisor's retainable reasonable expenses
	Success Pack Fee	\$15,000	The Franchisor	On or prior to signing the Franchise Agreement	The payment is not refundable, except if the Franchisee exercises their cooling off rights. In which case, the payment will be refunded less the Franchisor's retainable reasonable expenses



Documentation Fee	\$3,000	The Franchisor or their nominated legal provider	On or prior to signing the Franchise Agreement	No
Training Fee	\$3,500 (included within the Success Pack Fee for a new franchise)	The Franchisor	On signing the Franchise Agreement	No
Opening Promotion Spend	\$15,000	The Franchisor	Before the Commencement Date	Non-refundable if paid to the Franchisor otherwise dependent upon the Approved Supplier
Initial software fees (for software required to be procured by the Franchisee for operation of the franchised business including i.e. Hapana (CRM), Xero (Accounting software) and Zoom (Online tutoring only)	\$485 - \$665 per month	Approved Suppliers	Dependent upon the Approved Supplier, but generally at the time of purchase	Dependent upon the Approved Supplier
Miscellaneous administration costs	\$0 - \$2,000	Approved Suppliers	Dependent upon the Approved Supplier, but generally at the time of purchase	Dependent upon the Approved Supplier
Fitout Design and Documentation Fee (optional)	\$2,000	Franchisor	On or before the commencement of Fitout	No



	Franchisee's own legal, accounting and business advice	\$0 - \$10,000 depending on whether the Franchisee chooses to obtain, legal, accounting and/or business advice.	Franchisee's own lawyer, accountant/auditor and business advisor	Dependent upon the franchisee's own lawyer, accountant/auditor and business advisor	Dependent upon the franchisee's own lawyer, accountant/auditor and business advisor
	Leasing advisory	\$0 - \$7,000 depending on if a Franchisee chooses to engage a leasing agent to secure a lease	Franchisees own leasing agent or adviser	Dependent upon the leasing agent/adviser	Dependent upon the leasing agent/adviser

TEMP

Other payments

- 14.6 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 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.

(a) description of the payment	(b) amount of the payment or formula used to work out the payment (if the amount of the payment cannot easily be worked out-the upper and lower limits of the amount) (Note all fees are quoted ex GST)	(c) to whom the payment is made	(d) when the payment is due	(e) whether the payment is refundable and, if so, under what conditions
Royalty	The greater of 8% of Gross Revenue or \$2,200 plus GST per Month (subject to annual CPI increases)	The Franchisor	On the 7 th day of each Month	Non-refundable, unless the Franchisee has overpaid
Renewal Fee	\$3,000	The Franchisor	No later than seven Months before the end of the Initial Term	Yes, if the renewal is not granted
Transfer Fee	\$5,000	The Franchisor	On or before the settlement date of the sale of the Franchised Business	Non-refundable

Transfer Retention Amount	\$10,000	The Franchisor	The settlement date of the sale of the Franchised Business	Refundable after 45 days after settlement, less any deductions for costs or liabilities which the Franchisee is liable for
Additional training	\$500 per day if provided by Franchisor or in accordance with third parties rates where training provided by a third party	The Franchisor or third party provider	Prior to when the additional training takes place	Non-refundable
Fee if the Franchisor takes over management of the Franchised Business	\$1,500 per Week or any other reasonable cost agreed by both parties	The Franchisor	Payable if the Franchisor takes over management of the Franchised Business	Non-refundable
Interest on late payments	A rate of interest 5% above the Reserve Bank of Australia cash rate at the time of the relevant breach	The Franchisor	As and when invoiced	Non-refundable
Late payment administration fee	\$30	The Franchisor	On each occasion the Franchisor is unable to direct debit the Franchisee's nominated bank account for payment of the unpaid amount.	Non-refundable
Deed of Variation	\$500 - \$1000 per Deed.	Franchisor	When a Deed of Variation is issued to vary the franchise agreement.	No.

14.7 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) description of the payment; and

- (b) 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.

14.8 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.

14.9 If 2 or more of items 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.

14.10 To avoid doubt, this item covers a payment of significant capital expenditure.

The tables in items 14.6 and 14.10 may outline payments of significant capital expenditure required to be incurred by the franchisee during the term or at the end of the term of the franchise agreement on a renewal, extension or upon entry into a new franchise agreement. It may not be possible to predict exactly the amount of that expenditure and a high low range may be provided where possible.

There may also be additional obligations in the franchise agreement, that require the franchisee to expend significant capital expenditure (in addition to these amounts disclosed) in certain circumstances including those outlined in clause 30 of the Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth) ('Franchising Code of Conduct').

Other Recurring or Isolated Payments

Description of payment	Estimated amount or estimated low-high range of formula	To whom the payment is made	When the payment is due	Whether refundable; if so, under what conditions
Rent and outgoings	As charged by the lessor \$35,000 - \$80,000 per annum (but generally payable Monthly)	Lessor	Per terms of the Lease (generally paid either fortnightly or monthly)	Per terms of the Lease
Premises repairs and maintenance	\$500 - \$2,000 per annum	Individual contractors (must be approved by the Franchisor)	Dependent upon the individual contractor As required during the term	Dependent upon the individual contractors



Local Marketing Spend	2% of Monthly Gross Revenue	To the company assisting the Franchisee with the advertising, marketing or promotions	In accordance with the suppliers payment terms	Dependent upon the company assisting the Franchisee with the advertising, marketing or promotions
Software fees (CRM, Accounting, Canva)	\$525 - \$605 per month	Approved Suppliers	Monthly	Dependent upon the Approved Supplier
Replacing Fit Out	A full renovation and Fit Out will cost around \$2,000 - \$10,000	Individual contractors (must be approved by the Franchisor)	Dependent upon the individual contractor Generally required every 5 – 10 years.	Non-refundable or as per the terms of the individual contractors
Replacing Equipment	Replacing all of the Equipment will cost \$5,000 - \$10,000 Replacing individual items can vary in cost from \$70 - \$400	Approved Suppliers for replacements	Dependent upon the supplier of the Equipment	Dependent upon the supplier of the Equipment
Equipment maintenance and repair costs	\$2,000 - \$5,000 per year	Individual contractors (must be approved by the Franchisor)	Dependent upon the individual contractor	Dependent upon the individual contractors
Electrical tagging and testing	\$150 per annum	Franchisor (who will facilitate a third party to undertake the services)	Dependent upon the individual contractor As required during the term	Dependent upon the individual contractors
Insurance – business and public liability	\$800 - \$1,500 (+ GST) per Quarter	Insurance company	Dependent upon the insurance provider	Dependent upon the insurance provider
Workers compensation insurance	The cost of workers compensation insurance is often based on the amount of gross wage or salary of the worker and varies between the States and Territories of Australia. The	State approved Insurer	Annually	Dependent upon the insurance provider



	Franchisor recommends that the Franchisee conduct enquiries with the government department in its State or Territory responsible for industrial relations to ascertain the applicable cost.			
Working With Children Check	\$80 - \$100 per employee per four years (employee to pay for their own check)	The relevant regulatory body.	Dependent upon the regulatory body	Dependent upon the regulatory body
Transportation, accommodation and other living costs for attending franchise meetings	\$0 - \$2,500 per person This amount will depend upon where the franchise meeting will take place and number of franchise meetings and expectations must be reasonable	To the travel agent	Dependent upon the travel agent	Dependent upon the travel agent
Auditor and Accounting Fees (which are optional)	\$100 - \$500 per hour	The accountant or auditor	Annually for financial reports and as directed by the Franchisor	Dependent upon the auditor or accountant.
Telephone and internet connections (franchisees should use mobile number/no landline is necessary)	\$100 – \$250 per month	The telephone line or internet service provider	Dependent upon the telephone line or internet service provider	Dependent upon the telephone line or internet service provider
Approved Supplies	\$1,000 - \$1,500 per week	Approved Suppliers	Dependent upon the Approved Supplier	Dependent upon the Approved Supplier
Uniforms (additional)	\$30 - \$100 per uniform	Approved Suppliers	Dependent upon the Approved Supplier	Dependent upon the Approved Supplier
Bank charges, including EFTPOS and credit card fees	\$100 - \$150 per Month	Bank or credit supplier	Dependent upon the bank or credit supplier	Dependent upon the bank or credit supplier



Waste disposal (may form part of Premises outgoings)	\$80 - \$100 per Month	Landlord	Dependent upon the landlord and terms of the Lease	Dependent upon the Landlord and terms of the Lease
Pest control	\$180 - \$250 per Quarter	Pest control service provide.	Dependent upon the pest control service provider	Dependent upon the pest control service provider
Utilities (e.g. electricity, gas)	\$3,000 - \$3,500 per Quarter	Utilities provider	Dependent upon the relevant utility provider	Dependent upon the relevant utility provider
Wages and salaries (including superannuation)	\$1,000 - \$4,000 per Week	Franchisee's Personnel	As agreed with Personnel, or as required under Employer Legislation	Non-refundable
Job Advertisement Fees	\$0 to \$400 per placement	Approved Supplier	Dependent upon the Approved Supplier	Dependent upon the Approved Supplier
Business supplies, printing and stationery	\$100 - \$200 per Month	Approved Suppliers	Dependent upon the Approved Supplier	Dependent upon the Approved Supplier
Commercial Cleaning	\$0 to \$5,000 per annum	Approved Suppliers	Dependent upon the Approved Supplier	Dependent upon the Approved Supplier
Sanitary Items	\$0 - \$100 per month	Franchisor (who will facilitate a third party to provide the services)	Dependent upon the Approved Supplier	Dependent upon the Approved Supplier
Sundries	\$100 - \$200 per Month	Approved Suppliers	Dependent upon the Approved Supplier	Dependent upon the Approved Supplier
Tax Payments	As per legislative requirements	ATO	As required by law	Not refundable

The franchisee may elect to enter into certain agreements with a third party pursuant to which the Franchisee must pay that third party a fee. If the franchisee gives notice of the relevant agreement to the franchisor then the franchisor may deduct the amount of that fee from any monies payable to the franchisee under the franchise agreement and pay the amount of that fee to the third party for and on behalf of the franchisee, unless the franchisee notifies the franchisor in writing that it does not wish the franchisor to pay the fee on its behalf.

The above amounts relating to 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, are estimates only and may differ from franchised store to franchised store based on the following factors:

- *studio performance and turnover;*
- *location and size of studio;*
- *number of employees; and*
- *any other individual factors.*

Important note:

The Franchisor makes no representation that the information contained in Item 14 covers the full range of expenses or outgoings experienced by franchisees. Whilst the information is indicative of the types of reasonably foreseeable expenses that a franchisee operating a franchise might incur, it is not intended to provide an exhaustive list of expenses that a franchisee may incur, as each franchise and franchisee is unique.

The Franchisor cannot estimate the expenses or outgoings of any franchisee or franchised business as these may vary widely between franchises and franchisees and are subject to a number of factors that are beyond the control of the Franchisor including (but not limited to) the following, many of which may change over time and differ from location to location:

- *the efforts and personal commitment of the Franchisee and its directors and staff and how hard they are prepared to work;*
- *the skills and ability of the Franchisee, its directors and staff;*
- *the Franchisee's compliance with the system;*
- *the length of time the Franchisee has operated the business;*
- *the management and other relevant experience of the Franchisee and/or its directors and staff;*
- *competitor activity;*
- *the sales ability of the Franchisee and its staff;*
- *the Franchisee's pricing policy;*
- *the standard of customer service provided to customers of the Franchisee;*

- *the Franchisee's training and management of staff;*
- *the demographics (including without limitation, the level of disposable income and age) and socio-economic conditions of the area where the studio is located and in nearby areas;*
- *rent and occupancy costs;*
- *wage costs;*
- *the Franchisee's marketing ability and willingness to utilise appropriate marketing devices;*
- *the Franchisee's ability to manage its financial position;*
- *the Franchisee's debt to equity ratio and its finance arrangements;*
- *the prevailing economic climate and general business conditions as well as those in the area where the franchise is located and nearby areas; and*
- *regulatory requirements.*

By providing this information, neither the Franchisor nor any other person gives any guarantee or makes any representation about the likely success or failure of the franchisee.

Neither the Franchisor nor any other person gives any guarantees, warranties, or assurances in relation to the potential of expenses or outgoings, if any, or targets for any particular store that a prospective franchisee is considering purchasing. Each prospective franchisee must make their own detailed inquiries and investigations to potential sales, income, expenses and profitability, if any, for any particular franchise that they are considering purchasing, and set their own financial targets.

15 Marketing fund or other cooperative funds

15.1 For each marketing fund or other cooperative fund, controlled or administered by or for the franchisor or a master franchisor, to which the franchisee may be required to contribute, the following details:

(a) the kinds of persons who contribute to the fund (e.g. franchisee, franchisor, outside supplier);

The Franchisor does not currently operate a Marketing Fund. The Franchisor however reserves the right to do so in the future pursuant to the Franchise Agreement. Details of any such fund will be distributed to Success Tutoring Franchisees when (and if) the Franchisor elects to introduce such a fund.

(b) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;

Not applicable.

(c) who controls or administers the fund;

Not applicable.

(d) whether the fund is audited and, if so, by whom and when;

Yes No

Not applicable.

(e) how the fund's financial statements can be inspected by franchisees;

Not applicable.

(f) the kinds of expense for which the fund may be used;

Not applicable.

(g) the fund's expenses for the last financial year, including the percentage spent on production, marketing, administration and other stated expenses;

Not applicable.

(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;

Not applicable.

- (i) whether the franchisor or master franchisor must spend part of the fund on marketing or promoting the franchisee's business.

Not applicable.

TEMPPLATE

16 Financing

16.1 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.

Neither the Franchisor nor any associate or agent of the Franchisor offers or provides to Success Tutoring Franchisees any financing arrangement for the establishment or operation of the Franchised Business.

16.2 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;

Not applicable.

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

Not applicable.

17 Unilateral variation of franchise agreement

17.1 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:

Date of variation(s)

Details of unilateral variation

Not applicable.

Not applicable.

17.2 The circumstances in which the franchise agreement may be varied, unilaterally, by the franchisor in the future:

The Franchisor may need to unilaterally vary the franchise for the following reasons:

- Legislative changes
- Legal precedents affecting the Franchise Agreement
- Significant changes in market conditions

The franchisor would use a consultative process when proposing any unilateral change to the Franchise Agreement.

The Franchisor may vary the Manual as is reasonably required for the overall continuity and success of the network (clause 9.2 of the Franchise Agreement).

17A Arbitration of disputes

17A.1 Whether the franchise agreement provides for arbitration of disputes in a manner consistent with Subdivision C of Division 3 of Part 4.

The franchise agreement does not provide for arbitration of disputes unless both parties agree in writing for a dispute to be resolved by arbitration.

17B Ways of ending the franchise agreement early

17B.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.

The Franchisor may terminate the Franchise Agreement following an unremedied breach in accordance with clause 30 of the Franchise Agreement. The notice period will range from 7 to 30 days and the Franchisee may avoid termination by remedying the breach before the expiry of the notice period.

17B.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.

The franchisee may request early termination of the franchise agreement at any time by giving written notice to the franchisor of:

- i. the reasons the franchisee is requesting early termination;
- ii. the terms of the proposed termination of the franchise agreement; and
- iii. any evidence in support of the request.

The franchisor will in good faith consider any request however is under no obligation to accept a request.

TEMPPLATE

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

18.1 Details of arrangements to apply at the end of the franchise agreement, including:

(aa) the term of the franchise agreement; and

5 years.

(a) whether the prospective franchisee will have an option to:

(i) renew the franchise agreement; or

The Franchise Agreement will contain one renewal term of 5 years however if the Franchise Agreement is a renewal or a result of a transfer of a franchise agreement in its renewal term then the Franchise Agreement may contain no renewal terms.

The rights to a renewal term are conditional on the Franchisee complying with the conditions of renewal as set out in clause 6.4 of the Franchise Agreement (which includes payment of the Documentation Fee and Renewal Fee).

The Franchisee must notify the Franchisor of their intention to renew or not renew the Franchise Agreement at least 6 Months before the expiration of the Initial Term.

(ii) enter into a new franchise agreement; and

Where the Franchisee exercises their right to a renewal term the Franchisor will generally require the Franchisee to enter into a new franchise agreement.

The Franchisor will in some circumstances offer a Franchisee a right to exercise an option for an additional territory and a new franchise agreement.

(b) whether the prospective franchisee will be able to extend the term of the franchise agreement, and if so, the process the franchisor will use to determine whether to extend the term of the franchise agreement; and

No, other than a validly exercised renewal of the Franchise Agreement the Franchisee will not be able to extend the term as of right.

Where the Franchisor permits the Franchisee to continue trading after the expiry of the term, the Holding Over provisions in clause 6.5 of the Franchise Agreement will apply which includes a right of the Franchisor to terminate the Franchise Agreement on 30 days written notice.

(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

The Franchisee will not be entitled to compensation on the expiry of their Franchise Agreement.

(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:

The Franchisee is obliged to return to the Franchisor any marketing material.
The Franchisor has an option but not the obligation to purchase all or part of the Franchisees remaining assets in the business as set out in clause 32.7 of the Franchise Agreement.

(i) whether the franchisor will purchase the stock, marketing material, equipment and other assets; and

The Franchisor will not purchase the marketing material, it must be returned at the Franchisee's cost.
Where the Franchisor exercises its option to purchase the stock, equipment or other assets, the Franchisor will purchase those items from the Franchisee.

(ii) if the franchisor is to purchase the stock, marketing material, equipment and other assets – how prices will be determined; and

Where the Franchisor exercises its option to purchase the stock, equipment or other assets, the price will be:

- in relation to Approved Equipment, the lower of cost and written down value;
- in relation to Approved Products, the lower of cost and net realisable value; and
- in relation to all other items, \$1.00.

(e) whether the prospective franchisee will have the right to sell the business at the end of the franchise agreement; and

The Franchisee does not have the right to sell the business at the end of the Franchise Agreement.
The Franchisee may sell the business during the term of the Franchise Agreement in accordance with clause 29 of the Franchise Agreement.

- (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

The Franchisee does not have the right to sell the business at the end of the Franchise Agreement.
The Franchisor will have a first right of refusal in respect of any sale of the business during the term of the Franchise Agreement as set out in clause 29.3 of the Franchise Agreement.
- (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

The Franchisee does not have a right to any goodwill in the franchised business.
- (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

No.
- (h) whether the franchise agreement includes a restraint of trade or similar clause.

Yes, a restraint of trade is included at clause 28 of the Franchise Agreement.

18.2 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:

Not applicable.

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

Not applicable.

18.4 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.

18.5 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:

Not applicable.

19 Amendment of franchise agreement on transfer of franchise

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

Upon transfer of the franchise, the Franchisor requires the incoming Franchisee to enter into the then current Franchise Agreement.

20 Earnings information

20.1 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.

The Franchisor does not provide earnings information.

20.1A If the franchisor gives earnings information to a prospective transferee 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.

20.2 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.

20.2A If earnings information is given by the franchisor in the disclosure document or an attachment to it—the following statement:

Not applicable.

20.3 If earnings information is not given – the following statement:

The franchisor does not give earnings information about a Success Tutoring franchise.
Earnings may vary between franchises.
The franchisor cannot estimate earnings for a particular franchise.

20.4 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;

Not applicable.

(b) the extent of enquiries and research undertaken by the franchisor and any other compiler of the projection or forecast;

Not applicable.

- (c) the period to which the projection or forecast relates; Not applicable.
- (d) an explanation of the choice of the period covered by the projection or forecast; Not applicable.
- (e) whether the projection or forecast includes depreciation, salary for the franchisee and the cost of servicing loans; Not applicable.
- (f) assumptions about interest and tax. Not applicable.

21 Financial details

21.1 statement of the franchisor’s solvency that:

- (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.

I, Michael Black, being a director of the Franchisor certify that as at the 30 June 2024, it is the opinion of the directors of the Franchisor that there are reasonable grounds to believe that the Franchisor will be able to pay its debts as and when they fall due.

Michael Black

Michael Black - Director of the Franchisor

21.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the franchisor, prepared by the franchisor.

NOTE: See also items 21.4 to 21.6.

Not applicable.

21.3 If:

- (a) the franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001*, 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.

Not applicable.

21.4 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.

See Item 21.5.

21.5 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.

The statutory declaration of solvency and an independent audit report in respect of the entity's solvency is attached at Annexure A.

21.6 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.

Not applicable.

22 Updates

22.1 Any information given under clause 17 that has changed between the date of the disclosure document and the date the disclosure document is given under the code:

The additional information (if any) to be given under clause 8(3)(a)(iii) of the Franchising Code of Conduct is attached at Schedule 5 and disclosure of materially relevant facts is attached at Schedule 6

23 Receipt

23.1 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.

The acknowledgement receipt and statement is attached at Annexure E.

Schedule 1 Existing Franchisee Details

School Name	(a) business address, if this is not the Franchisee's residential address	(b) business phone number	(c) year when the Franchisee started
Success Tutoring Wentworthville	5/344 Great Western Hwy, Wentworthville NSW 2145	0486 021 262	2020
Success Tutoring Ellenbrook	4B/91 Maffina Parade, Ellenbrook WA 6069	0427 058 704	2023
Success Tutoring Chermside	4/793 Gympie Rd, Chermside QLD 4032	0430 002 143	2023
Success Tutoring Baulkham Hills	11/9 Seven Hills Rd, Baulkham Hills NSW 2153	0432 923 502	2023
Success Tutoring The Ponds	Shop T26, The Ponds Shopping Centre, Cnr The Ponds Blvd &, Riverbank Dr, The Ponds NSW 2769	0447 633 903	2023
Success Tutoring Blacktown	Suite D, Level 1/111 Main St, Blacktown NSW 2148	0488 715 854	2024
Success Tutoring Penrith	Suite 12, Level 1/472-476 High St, Penrith NSW 2750	0450 570 575	2024
Success Tutoring Gordon	Suite 2, Level 1/793-795 Pacific Hwy, Gordon NSW 2072	0411 242 924	2024
Success Tutoring Hurstville	Level 2/213 Forest Rd, Hurstville NSW 2220	0473 569 235	2024
Success Tutoring Bankstown	Suite 6/443 Chapel Rd, Bankstown NSW 2200	0433 989 505	2024
Success Tutoring Panania	64 Anderson Ave, Panania NSW 2213	0439 340 769	2024
Success Tutoring Hornsby	Unit 1/1 Ashley St, Hornsby NSW 2077	0487 536 642	2024
Success Tutoring Bull Creek	Unit 3/79 Wheatley Drive, Bull Creek WA 6149	0480 738 359	2024
Success Tutoring Canning Vale	12/288 Amherst Rd, Canning Vale WA 6155	0427 058 704	2024
Success Tutoring Parramatta	Suite 101, Level 1/7K Parkes St, Harris Park NSW 2150	0401 051 838	2024
Success Tutoring Seven Hills	115/121 Best Rd, Seven Hills NSW 2147	0480 799 370	2024



Success Tutoring Artarmon	Unit 4, 401 Pacific Highway, Artarmon NSW 2064	0432 127 923	2024
Success Tutoring Epping	Suite 110/2 Pembroke St, Epping NSW 2121	0493 998 104	2024
Success Tutoring North Lakes	Shop 5/9 Discovery Dr, North Lakes QLD 4509	0473 661 182	2024
Success Tutoring Victoria Park	439 Albany Hwy, Victoria Park WA 6100	0411 933 221	2024
Success Tutoring Carlingford	TBC	TBC	2024
Success Tutoring Liverpool	6C/389-393 Hume Hwy, Liverpool NSW 2170	0450 251 061	2024
Success Tutoring Riverwood	Shop 2/5 Vermont Cres, Riverwood NSW 2210	0439 340 769	2024
Success Tutoring Cannington	TBC	TBC	2024
Success Tutoring Penant Hills	TBC	TBC	2024
Success Tutoring Bayside	132 Martin St, Brighton VIC 3186	0493 143 378	2024
Success Tutoring Marsden Park	TBC	TBC	2024
Success Tutoring Point Cook	TBC	TBC	2024
Success Tutoring Lalor Park	TBC	TBC	2024
Success Tutoring Carnes Hill	TBC	TBC	2024
Success Tutoring Kingswood	TBC	TBC	2024
Success Tutoring Claremont	319 Stirling Hwy, Claremont WA 6010	0475 676 507	2024
Success Tutoring Strathfield	TBC	TBC	2024
Success Tutoring Minto	TBC	TBC	2024
Success Tutoring Craigieburn	TBC	TBC	2024



Success Tutoring Lane Cove	Unit 4, 401 Pacific Highway, Artarmon NSW 2064	0408 171 418	2024
Success Tutoring Clayton	TBC	TBC	2024
Success Tutoring Mount Drutt	TBC	TBC	2024
Success Tutoring Ryde	TBC	TBC	2024
Success Tutoring Leppintgon	TBC	TBC	2024
Success Tutoring Rouse Hill	TBC	TBC	2024

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Schedule 2 Item 6.5 – Franchisee details for each key event

(a) the franchise was transferred:

Name	Location	Contact Details
Leo Liu	132 Martin St, Brighton VIC 3186	0412 337 539
Michelle Webber Pty Ltd (ACN 655 372 375) Michelle Ann Webber	319 Stirling Hwy, Claremont WA 6010	0412 271 120
Bruce Carr	5/344 Great Western Hwy, Wentworthville NSW 2145	0425 265 293

(b) the franchised business ceased to operate:

Name	Location	Contact Details
Not applicable	Not applicable	Not applicable

(c) the franchise agreement was terminated by the Franchisor:

Name	Location	Contact Details
Not applicable	Not applicable	Not applicable

(d) the franchise agreement was terminated by the Franchisee

Name	Location	Contact Details
Not applicable	Not applicable	Not applicable

(e) the franchise agreement was not extended:

Name	Location	Contact Details
Not applicable	Not applicable	Not applicable

(f) the franchised business was bought back by the Franchisor:

Name	Location	Contact Details
Not applicable	Not applicable	Not applicable

(g) the franchise agreement was terminated, and the franchised business was acquired by the Franchisor:

Name	Location	Contact Details
------	----------	-----------------



Not applicable	Not applicable	Not applicable
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Schedule 3 Supplier and rebate details

Name of Business providing rebate or financial benefit	Nature of rebate or financial benefit	Total amount of rebate or financial benefit received in the previous financial year expressed as a percentage of group purchases from the supplier	Financial benefit/rebate shared directly or indirectly with Franchisees?	If shared directly or indirectly with franchisees details of how the rebate or financial benefit is shared
Hapana	Cash	4.75%	Indirectly with Franchisees	National Marketing Initiatives

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Schedule 4 Items 13.2 and 13.3 – Details of Territory or Site previously franchised

Has the territory or site to be franchised in the previous 10 years, been subject to a previous franchise granted by the franchisor?

If yes, the details of the franchised business and the circumstances in which the previous franchisee ceased to operate are:

Territory	Site	Details including circumstances in which the previous franchisee ceased to operate

Note: If the above is left blank then the territory or site has not been subject to a previous franchise granted by the franchisor in the previous 10 years.



Schedule 5 Additional Information

Not applicable

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Schedule 6 Disclosure of Materially Relevant Facts

As at 3 June 2025, Item 14.6 in the disclosure document is amended as follows:

- The Renewal Fee is amended to "\$5,000 plus GST".

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Annexure A Franchisor Audit Certificate

TEMPLATE

13 November 2024

Michael Black
Director
Level 35
Tower 1 Barangaroo International Towers
Sydney, NSW 2000

Dear Michael,

DOCUMENTS FOR YOUR ATTENTION

We advise that we have recently completed the solvency audit of Success Tutoring Australia Pty Ltd.

Please find enclosed the following documents for your attention:

1. Signed audit report on the statement of the franchisor's solvency; and

Our fee for the audit will be emailed separately.

Please do not hesitate to call us on 1300 284 330 if you have any queries regarding this matter.

Yours Sincerely
AMW AUDIT
Chartered Accountants



BILLY-JOE THOMAS
Director

Enc.



Success Tutoring Australia Pty Ltd
Statement of the Franchisor's Solvency

As at the date of this document, it is the opinion of the Directors that there are reasonable grounds to believe that the Franchisor, Success Tutoring Australia Pty Ltd will be able to pay its debts as and when they fall due.

Yours Faithfully,

Michael Black
Michael Black
Director

Dated this 13 day of November 2024

**INDEPENDENT AUDITOR'S REPORT
TO THE DIRECTORS OF SUCCESS TUTORING AUSTRALIA PTY LTD**

Opinion

We have audited the statement by directors ("the statement") of Success Tutoring Australia Pty Ltd dated 13 November 2024 which reflects Success Tutoring Australia Pty Ltd position at 30 June 2024 and the directors' declaration of the entity's solvency made for the purposes of fulfilling the requirements of Item 21 of Annexure 1 to the *Franchising Code of Conduct*.

In our opinion, the statement dated 13 November 2024, presents fairly, in all material respects, the directors' opinion pursuant to Item 21 of Annexure 1 to the *Franchising Code of Conduct*, that there are reasonable grounds to believe that Success Tutoring Australia Pty Ltd will be able to pay its debts as and when they fall due over the 12-month period from 30 June 2024.

Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Statement* section of our report. We are independent of the franchisor in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's *APES 110 Code of Ethics for Professional Accountants* ("the Code") that are relevant to our audit of the statement in Australia.

We have also fulfilled our other ethical responsibilities in accordance with the Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide basis for our opinion.

Basis of Preparation and Distribution

The statement has been prepared pursuant to Item 21 of Annexure 1 to the *Franchising Code of Conduct* for distribution to the franchisees and prospective franchisees of Success Tutoring Australia Pty Ltd. We disclaim any assumption of responsibility for any reliance on this audit report or on the statement to which it relates to any other party, or for any purpose other than that for which it was prepared.

Directors' Responsibilities for the Statement

The Success Tutoring Australia Pty Ltd directors are responsible for the preparation and fair presentation of the statement as at 30 June 2024 to reflect the position of the franchisor at that date, and the ability of Success Tutoring Australia Pty Ltd to meet their debts as and when they fall due over the 12 month period from that date. This responsibility includes such controls as the directors determine are necessary to enable the preparation of a statement that is free from material misstatement, whether due to fraud or error.

In preparing the statement, directors are responsible for assessing the franchisor's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the franchisor or to cease operations, or have no realistic alternative but to do so.

The directors are responsible for overseeing the franchisor's financial reporting process.

Auditor's Responsibilities for the Audit of the Statement

Our objectives are to obtain reasonable assurance about whether the statement as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the statement.

Inherent Limitation

Because of the subjective nature of prospective information required to fulfil the requirements of Item 21 of Annexure 1 of the *Franchising Code of Conduct*, the persuasiveness of the evidence available is limited. Prospective information is information about events and/or actions that have not yet occurred and may not occur. It reflects assumptions about future events and is subject to future changes in the business and economic conditions. Whilst evidence is available to support the assumptions on which the directors' opinion is based, such evidence is future orientated and speculative in nature. As a consequence, actual results are likely to be different from the information on which the audit opinion is based, since anticipated events frequently do not occur as expected or assumed and the variations between the prospective opinion and the actual outcome may be significant.

AMW Audit

AMW AUDIT

Chartered Accountants

Address: Unit 8, 210 Winton Road, Joondalup, Western Australia



BILLY-JOE THOMAS

Director & Registered Company Auditor

Dated this 13th day of November 2024

The Following Information is Provided in an Appendix to the Auditor's Report

As part of an audit in accordance with the Australian Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the statement, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.*
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the franchisor's internal control.*
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the directors.*
- Conclude on the appropriateness of the directors' use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the franchisor's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the statement or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the franchisor to cease to continue as a going concern.*

We communicate with the directors regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.



Annexure B Franchise Agreement

Provided as a separate annexure.

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Annexure C Franchising Code of Conduct

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Competition and Consumer (Industry Codes— 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 5 December 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Julie Collins
Minister for Small Business

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TEMPPLATE

TEMPLATE

Chapter 1—Preliminary

Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Industry Codes—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

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- (b) particular requirements for new vehicle dealership franchise agreements; and
- (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 and confers functions on the Secretary for the administration of the Franchise Disclosure Register.

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

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 (Revision 2.0)*, published by the Australian Bureau of Statistics on 26 June 2013.

Note: The *Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006 (Revision 2.0)* could in 2024 be viewed on the Australian Bureau of Statistics website (<https://www.abs.gov.au>).

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 (within the meaning of the Corporations Act)—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 70.

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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:

- (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 20.

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 (within the meaning of the Corporations Act), 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;

Section 6

- (e) motorised construction machinery;
- (f) aircraft;
- (g) motor boat.

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 18.

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.

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 70.

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.

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) misconduct;
 - (i) officer;
 - (j) registered company auditor;
 - (k) registered office;
 - (l) related body corporate.

7 Meaning of *franchise agreement*

- (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

Section 7

- (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.

Section 8

Part 3—Mandatory industry code

8 Mandatory industry code

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 Acquisition of property

A provision of this instrument has no effect to the extent (if any) to which the provision's operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

10 Franchise agreements to which the Code does not apply

Franchise agreements to which another mandatory industry code applies

- (1) Subject to subsection (2), the Code does not apply to a franchise agreement to which another mandatory industry code, prescribed under section 51AE of the Act, applies.
- (2) However, the Code applies to a franchise agreement to which either of the following industry codes apply:
 - (a) the industry code set out in Part 2 of the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024*;
 - (b) the industry code set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Unit Pricing) Regulations 2021*.

Certain franchise agreements relating to pre-existing business relationships

- (3) 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.
- (4) Subsection (3) 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 notifies the franchisor in writing that paragraph (a) of this subsection applies.

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

- (5) 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 (within the meaning of the Corporations Act).

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

11 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.

12 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.

13 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*.

Chapter 2—Franchising Code of Conduct

Part 1—Preliminary

14 Purpose of Chapter

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

15 Purpose of Code

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.

16 Functions of Australian Small Business and Family Enterprise Ombudsman

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.

17 Amount of civil penalty for certain contraventions by bodies corporate

- (1) This section has effect for the purposes of the following civil penalty provisions of this Code:
 - (a) subsections 34(1) and (2);
 - (b) subsections 45(2), (3) and (5);

- (c) subsection 46(2);
 - (d) section 64.
- (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.

Section 18

Part 2—Obligation to act in good faith

18 Obligation to act in good faith

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.

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.

TEMP PLATE

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

Division 1—Application

19 Application of Part—master franchisors

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

Division 2—Disclosure document

20 Franchisor must create disclosure document

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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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.

21 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 33 (giving updated disclosure document on request by franchisee).

Civil penalty: 600 penalty units.

Division 3—Information statement

22 Information statement to be given by franchisors

- (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 23(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*.

Division 4—Considering documents

23 Entering into, renewing and extending franchise agreements

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 50 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.

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 20(1); or
 - (ii) as most recently updated under section 21 or 33; 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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- (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.

24 Transferring franchise agreements

Application

- (1) This section applies to a franchisor if:
 - (a) a request is made under section 48 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 23 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 23(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 23(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 23(5) if:

- (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.

25 Form of documents to be given under this Division

- (1) A person to whom a franchisor must give documents under section 23 or 24 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.

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Division 5—Statements to be received by franchisors

26 Statements with respect to disclosure document and this Code

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 23(4) or 24(4) (as the case requires).

Civil penalty: 600 penalty units.

27 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.

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.

TEMPPLATE

Part 4—Franchise agreements

Division 1—Application

28 Application of Part—master franchisors

- (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 31 and 61 (which relate to specific purpose funds).

Division 2—Franchisor's obligations

Subdivision A—Disclosure obligations

29 Copy of lease etc.

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 23(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;

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- (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 23(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.

30 Copies of other agreements

- (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.

- (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 29) 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.

31 Financial statements for specific purpose funds

- (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 61(4)(a);
 - (ii) the costs mentioned in paragraph 61(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

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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.

32 Franchisee may request updated disclosure document

- (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.

33 Giving updated disclosure document on request by franchisee

If a franchisor receives a request from a franchisee in accordance with section 32, 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.

34 Disclosure of materially relevant facts

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 21 or 33;

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 17; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

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 17; 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 (within the meaning of the Corporations Act)—\$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:

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- (a) the names of the parties to the proceedings; and
 - (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 (within the meaning of the Corporations Act).

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)

35 Application of Subdivision

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

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

36 End of term arrangements

- (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 32(2), the franchisee may request a disclosure document under section 32.

Civil penalty: 600 penalty units.

Subdivision C—Record keeping obligations

37 Keeping certain information and documents

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.

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.

Division 3—Terms of franchise agreements

38 Franchisor's legal costs relating to franchise agreement

- (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.

39 Prohibition on release from liability etc.

- (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.

40 Jurisdiction for settling disputes

- (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.

- (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.

41 Costs of settling disputes

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.

42 Restraint of trade clause if franchise agreement not renewed or extended

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) the franchise agreement contained an option for the franchisee to renew or extend the agreement; and
- (c) 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
- (d) before the expiry, the franchisee met any conditions contained in the franchise agreement that were required to be met by the franchisee to renew or extend the agreement; and
- (e) immediately before the expiry, the franchisee was not in serious breach of the agreement or any related agreement; and
- (f) the franchisee had not infringed the intellectual property of, or a confidentiality agreement with, the franchisor during the term of the agreement; and
- (g) the franchisor did not renew or extend the agreement; and
- (h) either:

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- (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.

Civil penalty: 600 penalty units.

43 Franchise agreement must provide for compensation for early termination—general

- (1) This section applies to a franchise agreement that is not a new vehicle dealership agreement.
- (2) 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: 600 penalty units.

- (3) A franchisor must not enter into a franchise agreement unless the agreement contains provision for the franchisee to return, and the franchisor to accept and buy back or compensate the franchisee for, the things mentioned in subsection (4) if the agreement is terminated before it expires because the franchisor:
 - (a) withdraws from the Australian market; or
 - (b) rationalises its networks in Australia; or
 - (c) changes its distribution models in Australia.

Civil penalty: 600 penalty units.

- (4) For the purposes of subsection (3), 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 by the franchisee that:
 - (i) 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); and

(ii) cannot be repurposed for a similar business.

- (5) 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: 600 penalty units.

44 Franchise agreement must provide reasonable opportunity for return on franchisee's investment—general

- (1) This section applies to a franchise agreement that is not a new vehicle dealership agreement.
- (2) 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 47).

Civil penalty: 600 penalty units.

45 Franchise agreement must provide for compensation for early termination—new vehicle dealership agreements

- (1) This section applies to a new vehicle dealership agreement.
- (2) A franchisor must not enter into a new vehicle dealership 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 17; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (3) A franchisor must not enter into a new vehicle dealership agreement unless the agreement contains provision for the franchisor to buy back or compensate the franchisee for the things mentioned in subsection (4) if:

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- (a) the agreement is not renewed and the franchisor does not enter into a new new vehicle dealership 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 17; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (4) For the purposes of subsection (3), the things are new road vehicles, spare parts and special tools.
- (5) A franchisor must not enter into a new vehicle dealership 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 17; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

46 Franchise agreement must provide reasonable opportunity for return on franchisee's investment—new vehicle dealership agreements

- (1) This section applies to a new vehicle dealership agreement.
- (2) A franchisor must not enter into a new vehicle dealership 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 47).

Civil penalty:

- (a) for a contravention by a body corporate—the amount under section 17; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

47 Discussion about significant capital expenditure disclosed in disclosure document

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 20(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.

TEMPPLATE

Section 48

Division 4—Transfer of franchise agreements

48 Request for franchisor’s consent to transfer

- (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.

49 Franchisor’s consent to transfer

Giving consent

- (1) A franchisor must advise, in writing, a person who has made a request under section 48 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.

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.

Section 50

Division 5—Termination of franchise agreements in cooling off periods

50 Termination by franchisee—cooling off periods for new franchise agreements

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 52 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.

51 Repayments by franchisor after termination by franchisee

- (1) If a franchisee terminates a franchise agreement under subsection 50(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.

52 Termination by franchisee—cooling off period for transferred franchise agreements

- (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 50.

Section 53

- (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.

53 Repayments following termination by new franchisee

Application

- (1) This section applies if, by notice given under subsection 52(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

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.

TEMP PLATE

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

54 Franchisee may propose termination at any time

- (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 70, 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 18).

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.

55 Termination by franchisor—breach by franchisee

- (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 57(1) or 58(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:

- (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.

56 Termination by franchisor—no breach by franchisee

- (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 57(1) or 58(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.

57 Termination by franchisor with 7 days' notice on grounds for which franchisee may not 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 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 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.

58 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 72(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:
 - (a) despite subsections 72(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 80(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.

59 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 57(1) or 58(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 57(2) and 58(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.

Section 60

Division 7—Miscellaneous

60 Franchisor may require only certain significant capital expenditure

- (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 20(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.

61 Payments to and from specific purpose funds

- (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:

- (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.

62 Franchisor not to vary franchise agreement retrospectively without franchisee's consent

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.

63 Disclosure of personal information of former franchisees

- (1) A franchisor must not disclose a former franchisee's personal information to a prospective franchisee unless:
- (a) at least 14 days before doing so, the franchisor informed the former franchisee, in writing, that the former franchisee may give a written request under subsection (2); and
 - (b) the former franchisee has not given such a written request to the franchisor.

Civil penalty: 600 penalty units.

- (2) A former franchisee may give a franchisor a written request that the former franchisee's personal information not be disclosed to a prospective franchisee.
- (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.

64 Association of franchisees or prospective franchisees

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 17; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

65 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,

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negotiating or executing a franchise agreement or documents relating to the agreement, other than as permitted under subsection (2).

Civil penalty: 600 penalty units.

- (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.

66 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.

67 Franchisor not to rely on restraint of trade clause if franchise agreement not renewed or 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 42.

Civil penalty: 600 penalty units.

Part 5—Resolving disputes

Division 1—General

68 Right to bring proceedings unaffected by this Part

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.

69 Internal complaint handling procedure

A franchise agreement must provide for a complaint handling procedure that has the same effect as subsections 72(1) to (4) and section 74 except for providing for imposition of a civil penalty.

70 Resolving disputes

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.

71 When a party is taken to be trying to resolve a dispute

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.

Section 72

Division 2—Code complaint handling procedure

Subdivision A—Notification of dispute

72 Notification of dispute

- (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).

73 Similar disputes between 2 or more franchisees and one franchisor

- (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 72(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 72(4) to appoint a single ADR practitioner for a single ADR process for all of their disputes.
- (6) If:

- (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 74(3) and (4)). Section 71 (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

74 ADR process

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 75.

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 71.

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.

75 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.

76 Termination of ADR process by ADR practitioner

- (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.

Section 77

- (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.

77 Costs of ADR process

- (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.

78 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

79 Arbitration by agreement for dispute resolution

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.

80 Arbitration procedure

- (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 16(a)).
- (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.

Section 81

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:
- set out, in writing, the terms of the resolution; and
 - give a copy of the terms to each party to the dispute; and
 - notify the Ombudsman that the dispute has been resolved.

81 Termination of arbitration by arbitrator

- 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.
- If the arbitrator terminates an arbitration under subsection (1), the arbitrator must issue a certificate stating:
 - the names of the parties to the arbitration; and
 - the nature of the dispute that was the subject of the arbitration; and
 - that the arbitration has been terminated; and
 - that the dispute has not been resolved.
- The arbitrator must give a copy of the certificate to:
 - the Ombudsman; and
 - each party to the dispute.

82 Costs of arbitration

- 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.
- 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

83 Confidentiality requirements

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.

Part 6—New vehicle dealership agreements

Division 1—Preliminary

84 Application of Part

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.

TEMPPLATE

Section 85

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 35).

85 Notification obligation—franchisor

- (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 32(2), the franchisee may request a disclosure document under section 32.

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.

86 Notification obligation—franchisee

- (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.

- (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.

87 Obligation to manage winding down of agreement

- (1) This section applies if:
 - (a) under section 85, 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 86, 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 18).

Civil penalty: 600 penalty units.

Section 88

Division 3—Resolving disputes

88 Franchisees may request multi-franchisee dispute resolution

- (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).

Part 7—Franchise Disclosure Register

Division 1—Keeping and content of Register

89 Secretary to keep Register

- (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.

90 Contents of Register

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 standard form of the franchise agreement used by the franchisor;
 - (b) 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).

91 Secretary may correct clerical errors and remove, update and replace certain information and documents

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

Section 91

- (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 90(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).

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

92 Initial obligation to provide information for inclusion in Register

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 23; 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

Section 93

included in a disclosure document created by the franchisor that is not information mentioned in subsection 90(3).

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

Note 2: Section 20 of this instrument requires certain information to be included in a disclosure document.

93 Obligation to annually update or confirm information included in Register

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 92; 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 92(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 92 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.

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 90(3).

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

Note 2: Section 20 of this instrument requires certain information to be included in a disclosure document.

TEMP PLATE

Section 94

Division 3—Redacting certain information from documents

94 Redacting certain information from documents

- (1) This section applies to a franchisor if the franchisor is providing for inclusion in the Register:
 - (a) a document referred to in subsection 90(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 90(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.

Division 4—Giving of information by agents

95 Agents may provide or give information

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.

TEMP PLATE

Section 96

Division 5—Other matters

96 Delegations by Secretary

- (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.

Chapter 3—Application, saving and transitional provisions

Part 1—Provisions relating to this instrument as made

97 Application of this instrument—agreements entered into etc. on or after 1 April 2025

General

- (1) Subject to this section and subsection 99(4), this instrument applies to:
 - (a) a franchise agreement entered into, transferred, renewed or extended on or after 1 April 2025, on and after the day the agreement is entered into, transferred, renewed or extended; and
 - (b) conduct engaged in on or after 1 April 2025, in relation to such an agreement.

Ombudsman’s power to publish franchisor’s refusal to engage in ADR process

- (2) Section 78 applies in relation to conduct of a franchisor occurring on or after 1 April 2025, in relation to a franchise agreement entered into, transferred, renewed or extended on or after 1 January 2015.

Delayed application—compensation for early termination, and reasonable opportunity for return on investment, for certain agreements

- (3) Sections 43 and 44 do not apply to an agreement entered into, transferred, renewed or extended before 1 November 2025.

Delayed application—provisions relating to specific purpose funds that are not marketing or other cooperative funds

- (4) Subsections (5) and (6) apply in relation to a specific purpose fund that is not a marketing fund or other cooperative fund controlled or administered by or for a franchisor or a master franchisor (whether the franchisee is a franchisee or subfranchisee of the franchisor or master franchisor).
- (5) Section 31 (financial statements) and section 61 (payments to and from funds) do not apply in relation to the fund before 1 November 2025.
- (6) Despite subsections 20(1) and (3), a disclosure document created before 1 November 2025 is not required to include the information mentioned in item 15 of Schedule 1 for the fund.

Delayed application—information on significant capital expenditure

- (7) Despite subsections 20(1), (3) and (4), a disclosure document created before 1 November 2025 is not required to include the information mentioned in item 14(1A) or 14(1B) of Schedule 1.

Section 98

98 Saving and application of old regulations—agreements existing on 1 April 2025

- (1) Despite the repeal of the old regulations on 1 April 2025, the old regulations, as in force immediately before that day, continue to apply in relation to:
 - (a) a franchise agreement existing immediately before that day that continues to exist on that day, until the agreement is terminated or otherwise ceases to exist, or is transferred, renewed or extended;
 - (b) conduct relating to such an agreement, engaged in on or after 1 April 2025.
- (2) To avoid doubt, paragraph (1)(b) does not apply to conduct relating to the transfer, renewal or extension of such an agreement.

Note: For conduct engaged in on or after 1 April 2025 relating to the transfer, renewal or extension of such an agreement, see subsection 97(1).

99 Transitional arrangements relating to certain disclosure documents given before 1 April 2025

- (1) This section applies to a disclosure document given to a prospective franchisee before 1 April 2025 for the purposes of clause 9 of Schedule 1 to the old regulations, for a franchise agreement proposed to be entered into, transferred, renewed or extended on or after 1 April 2025.
- (2) The disclosure document:
 - (a) is taken to be a disclosure document for the purposes of subsection 20(1) of this instrument; and
 - (b) is taken to have been given to the prospective franchisee for the purposes of subsection 23(2) or 23(3) of this instrument (as the case requires).
- (3) Despite the repeal of the old regulations on 1 April 2025, subclauses 8(6) and (7) of Schedule 1 to the old regulations, as in force immediately before that day, continue to apply in relation to the disclosure document until the end of 31 October 2025.
- (4) Section 21 of this instrument does not apply to the disclosure document before 1 November 2025.

Example 1: If a financial year in relation to a franchisor and a franchise ends before 1 November 2025, the franchisor must update the disclosure document in accordance with subclause 8(6) of Schedule 1 to the old regulations. Section 21 of this instrument applies to the disclosure document for every financial year that follows.

Example 2: If a financial year in relation to a franchisor and a franchise ends on or after 1 November 2025, the franchisor must update the disclosure document at the end of that financial year, and any financial years that follow, in accordance with section 21 of this instrument.

100 Transitional arrangements relating to specific purpose funds that are marketing or other cooperative funds—deemed compliance

- (1) This section applies during the period beginning on 1 April 2025 and ending at the end of 31 October 2025 in relation to a specific purpose fund that is a marketing fund or other cooperative fund controlled or administered by or for the

franchisor or a master franchisor (whether the franchisee is a franchisee or subfranchisee of the franchisor or master franchisor).

Financial statements

- (2) The fund administrator is taken to have complied with subsection 31(2) of this instrument in relation to the fund if the fund administrator complies with subclauses 15(2) and (4) of Schedule 1 to the old regulations in relation to the fund.

Payments to and from funds

- (3) A franchisor or master franchisor is taken to have complied with subsection 61(2) of this instrument in relation to the fund if the franchisor or master franchisor complies with subclause 31(3) of Schedule 1 to the old regulations in relation to the fund.
- (4) The fund administrator is taken to have complied with subsection 61(3) of this instrument in relation to the fund if the fund administrator complies with subclause 31(2) of Schedule 1 to the old regulations in relation to the fund.
- (5) The fund administrator is taken to have complied with subsection 61(4) of this instrument in relation to the fund if the fund administrator complies with subclause 31(4) of Schedule 1 to the old regulations in relation to the fund.

Disclosure documents

- (6) For the purposes of subsections 20(1) and (3) of this instrument, a disclosure document is taken to comply with item 15 of Schedule 1 to this instrument in relation to the fund if the disclosure document complies with item 15 of Annexure 1 to Schedule 1 to the old regulations in relation to the fund.

101 Saving of *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 92 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 92(4) and section 92; and
- (c) the references in section 7 of that determination to items of Annexure 1 to the Franchising Code of Conduct were references to items of Schedule 1 to this instrument.

Item 1

Schedule 1—Disclosure document for franchisee or prospective franchisee

Note: See subsection 20(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.

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.
- (2) A summary of relevant business experience of the franchisor for the past 10 years, including:

Item 4

- (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;
 - (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;

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- (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.

- (5) Subject to section 63, the franchisor must supply, for each event mentioned in item 6(4) that relates to a former franchisee, the name, location, telephone number and email address of the former franchisee, if the information is available.

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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
 - (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
 - (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

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- (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:
 - (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.
- (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.

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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 franchisee 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 29.
- (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.

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
 - (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:
- (a) the specified common purpose for the fund;

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- (b) the kinds of persons who contribute to the fund (for example, franchisee, franchisor, outside supplier);
- (c) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
- (d) who controls or administers the fund;
- (e) the kinds of expenses that the fund may be used to meet for the specified common purpose for the fund;
- (f) that subsection 31(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 31(4) 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;
 - (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 2 of Part 5 of Chapter 2.

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
 - (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.

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- (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.

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:
 - (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;
-

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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.

22 Updates

- (1) Any information given under section 34 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.

Schedule 2—Repeals

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

1 The whole of the instrument

Repeal the instrument.

Competition and Consumer (Industry Codes—Franchising) Repeal Regulation 2014

2 The whole of the instrument

Repeal the instrument.

TEMPPLATE



Annexure D Franchise Information Statement

Information statement for prospective Franchisees

The following pages provide a template information statement to prospective Franchisees in accordance with Annexure 2 of the Franchising Code of Conduct.

TEMPLATE



Information statement for prospective franchisees

April 2025

Acknowledgment of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission
Land of the Ngunnawal people
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601
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Parties who wish to re-publish or otherwise use the information in this publication must check this information for currency and accuracy prior to publication. This should be done prior to each publication edition, as ACCC guidance and relevant transitional legislation frequently change. Any queries parties have should be addressed to the General Manager, Strategic Communications, ACCC, GPO Box 3131, Canberra ACT 2601.

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www.accc.gov.au

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Before you sign the franchise agreement

Entering a franchise is a big decision. Check these important things off your list before signing up.

Learn about franchising

Franchisees who participate in pre-entry training tend to have better relationships with their franchisor and be more successful in business. Free online courses for prospective franchisees can be found at www.accc.gov.au/franchising-education-program.

Information about franchising (including translations) can be found at www.accc.gov.au/buyingafanchise.

Conduct due diligence

Thoroughly research the franchise system. Study the disclosure document, the franchise agreement and any other documents provided by the franchisor. Talk to current and former franchisees about what they find rewarding and challenging about the business.

Get professional advice

It's important to get legal, accounting and business advice from independent professionals with expertise in franchising. They will identify risks and help you make decisions.

Consider other options

Look at more than one franchise business. It's a good way to test if a franchise is the right fit for you.

The Franchise Disclosure Register is a free directory of franchisors available in Australia.

Use it to compare important information about different franchises, such as costs and contract terms. This can help you make informed decisions.

Check the Franchise Disclosure Register accessible via <https://franchisedisclosure.gov.au/>

Understand franchising

It is important that you understand what franchising is before you enter a franchise

Franchising is a way of doing business based on a brand name and business system. Usually the franchisor controls the system closely. The franchisor grants you the right to operate a business in line with its system, normally for a set time. As a result, you may be limited in the changes you can make in the business without the franchisor's agreement.

In some ways your franchise is your business and in some ways it's not

You could be bound by confidentiality obligations. This may include limits on your rights to discuss the franchise business with third parties or to use the franchisor's intellectual property or business system outside the franchise.

The franchisor might make changes to the franchise system to adjust to market conditions. A franchisor may make these changes, even if you don't agree with them.

When the agreement ends franchisors are not generally required to provide compensation for goodwill. Goodwill refers to the market value added to the franchise business by the franchisee for example, by building a client-base.

Benefits

Some franchise systems offer benefits other types of businesses cannot

- an existing product or service
- an existing reputation and image
- a pool of resources to fund advertising
- economies of scale when purchasing supplies.

Not all franchise systems offer the benefits listed.

Risks

Even with a well-established brand, franchising is not risk free

Watch out for site turnover

Look for warning signs about a franchise system like high site turnover. If one site has had many owners (known as churning) it could mean it's not in a suitable location. A high turnover across a system might indicate the system has expanded too quickly or without a plan to make existing businesses successful (known as burning).

Think about potential unexpected expenses

Franchisors can impose significant capital expenditure on you if certain conditions are met. For example, if some conditions are met a franchisor can make you pay for new equipment or refurbish your store - even if it costs you a lot of money.

If something is important, make sure it's in the franchise agreement

Some franchise agreements contain 'no agent' and 'entire agreement' clauses. Franchisors include these clauses so the terms of the franchise agreement can override any previous information provided to you. This could include all verbal or written information from an agent, the franchisor, or an associate of the franchisor. If there is something important that you've been promised verbally or in writing that is not in the franchise agreement, consider the risk you are taking.

You can choose not to sign the agreement, and you should seek independent advice from a lawyer, accountant and business adviser before you do.

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Questions to ask

Take your time to do your research and seek professional advice. If the franchisor tries to rush you, remember you can walk away. There will be other opportunities.

Some of the following questions are answered in the Franchise Disclosure Register.

You will also have lots of questions to ask your franchisor, professional advisers, and current and former franchisees. Here are questions to consider:

Franchisor experience and reputation

- How long has the franchise system been operating? What success has it had and where?
- Has the franchise system had any reputational issues?
- What were they and when did they occur?
- What experience does the franchisor and its key staff have in managing a business?
- What is the franchisor doing to encourage, support or train franchisees regarding complying with workplace laws?

Start-up costs

- How much working capital or extra funds will you need to get the business established?
- How long will it take you to break even after paying the costs of setting up the business?

Ongoing costs

- Can you only get products from an approved supplier?
- Does the franchisor receive rebates from suppliers and how is that rebate used?
- Will you pay franchise fees even if you are not making a profit?
- What monthly fees do you have to pay your franchisor? Franchise agreements may include royalties, levies or interest payments, and they can be based on a percentage of your turnover, not your profit.
- Does your franchise system have a specific purpose fund? What is the fund used for and how much are you required to pay?
- What other ongoing costs will be required? Read your franchise agreement carefully and ask your franchisor.
- Will you make enough money to pay yourself as well as any staff? Labour costs can be hard to estimate. It's up to you to know what employment laws apply and to comply with them. The Fair Work Ombudsman can help you understand workplace rights and obligations: www.fairwork.gov.au/franchises
- What happens when there is product 'wastage' and 'shrinkage'? Some franchise agreements include clauses on wastage and shrinkage. Wastage refers to products that are no longer fit for sale. Shrinkage can include theft, another loss or accounting error.

Earnings

- Have any profit or earning promises been made to you? Ask current and former franchisees if profit or earning promises were kept. Their contact details will be in the disclosure document.
- Will you have an exclusive territory in which to operate your business?
- Does your franchisor have the ability to compete with you online?
- What other businesses will you be competing with in the area?

Changes

- What changes can be made without your approval and how will this impact your business?

Franchisor-franchisee relationships

- What are the dispute resolution procedures? Will the franchise agreement include a commitment by the franchisor to binding arbitration? Arbitration can be a quicker and less expensive way to resolve disputes than going to court. It might be hard to imagine needing arbitration, but it could become important if things go wrong.

What happens at the end of a franchise agreement?

- Will you be able to renew the agreement if you want to? Are there conditions on this?
- What rules apply if you want to sell the business before the end of the term?
- When the franchise term ends, what are you entitled to (such as paid market value for your equipment or for goodwill), and what happens if you are in debt? Goodwill refers to the market value added to the franchise business by the franchisee for example, by building a client-base. However, in franchising, franchisees often have limited rights once the franchise agreement ends. You may not get any value for goodwill at the end.
- Are there any restrictions on you starting a similar business if the agreement is not renewed? It's a good idea to obtain legal advice on restraint of trade clauses.
- If the franchise ends unexpectedly, how would this impact you? Are you aware of the types of events that may lead to non-renewal or termination of an agreement? For example, if the franchisor becomes insolvent, you may not be compensated for the loss of your business. You may not get back the money you contributed to a specific purpose fund.

Speak to former franchisees to find out what happened at the end of their agreement.

If you change your mind

Take your time before you sign

The Franchising Code of Conduct gives you at least 14 days to read all the information that a franchisor provides you. This usually includes the franchise agreement, disclosure document and information about any lease arrangement.

You can take longer than 14 days to study this information and get advice. For most people this is a bigger investment decision than buying a house so it's okay to take your time before signing a franchise agreement.

If you make a payment to the franchisor during the 14 days, known as the consideration period, you may give written notice asking the franchisor to repay that amount.

Cooling off period

You are usually entitled to terminate a new franchise agreement within 14 days. If you choose to exercise this right, you are entitled to a refund of the payments you have made (though reasonable expenses may be retained).

If you have, or have recently had, another franchise agreement with the franchisor you may waive your cooling off rights. You should be careful when waiving your cooling off rights because it can be difficult to terminate your franchise agreement once you sign.

Your cooling-off rights are outlined in the Franchising Code of Conduct.

If you have doubts

If you have any doubts, consider not signing the franchising agreement or exercising your right to back out of the agreement during the cooling-off period.

Even if you have already invested time and money, it's worth considering how much more you could lose if the business is not successful.

After you sign the franchise agreement

Know your rights

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

The Franchising Code of Conduct requires franchisors to disclose certain information to both potential and existing franchisees.

It also sets out minimum conditions on the rights of the parties under a franchise agreement. It can be found at www.legislation.gov.au.

Dispute resolution

Franchisors must have an internal procedure for handling complaints. If you can't agree on an outcome within 3 weeks, either party may refer the matter to mediation or conciliation facilitated by an Alternative Dispute Resolution (ADR) practitioner. Arbitration is also an option when both parties agree to this process.

Dispute resolution services are provided by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). Visit the ASBFEO [website](#), or call 1300 650 460.

Enforcing your rights

If something goes wrong after you sign the agreement, you may need to take your own legal action to enforce your rights.

ACCC's role

The Australian Competition and Consumer Commission (ACCC) enforces the Australian Consumer Law and the Franchising Code of Conduct. The ACCC can investigate alleged breaches of these laws and take action in relation to systemic and widespread misconduct. The ACCC is not a complaint handling body. We rarely become involved in resolving individual disputes.

You can make a report to the ACCC via its website at www.accc.gov.au/contact-us.

Sign up to the ACCC's Franchise Information Network

Subscribers receive regular email bulletins about current franchising issues, including changes to the law, information for franchisors about compliance and updates about the ACCC's franchising work. To subscribe, visit www.accc.gov.au/fin.

More information about franchising and running a business

www.business.gov.au offers information about franchising and running a business.

www.accc.gov.au/buyingafanchise includes a franchisee manual and other information, videos and publications for people thinking about buying a franchise, including in languages other than English.

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Annexure E Form to Acknowledge Receipt of Disclosure Document

I acknowledge receipt of this disclosure document dated 31 October 2024 attaching:

1. copy of the franchise agreement in the form in which it is to be executed; and
2. the Franchising Code of Conduct; and
3. the Information Statement.

from the franchisor on the _____ day of _____
(Insert date you received the disclosure document)

Signed on behalf of the prospective franchisee /
franchisee

Print name

Date

The franchisee or prospective franchisee may keep this disclosure document.