



# **Competition and Consumer (Industry Codes— Franchising) Regulation 2014**

**Select Legislative Instrument No. 168, 2014**

made under section 51AE of the

*Competition and Consumer Act 2010*

## **Compilation No. 9**

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## About this compilation

### This compilation

This is a compilation of the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* that shows the text of the law as amended and in force on 11 November 2022 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **1 Name**

This is the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*.

## **3 Authority**

This instrument is made under section 51AE of the *Competition and Consumer Act 2010*.

## **4 Code of conduct**

For section 51AE of the *Competition and Consumer Act 2010*, the code set out in Schedule 1:

- (a) is prescribed; and
- (b) is a mandatory industry code.

## **4A Functions of Australian Small Business and Family Enterprise Ombudsman relating to Franchising Code of Conduct**

The Australian Small Business and Family Enterprise Ombudsman has the following functions in relation to the code set out in Schedule 1:

- (a) keeping lists of persons who can provide services of arbitration, conciliation or mediation for the purposes of that code or of a franchise agreement as defined in that code;
- (b) in accordance with that code, appointing persons who can provide services of arbitration, conciliation or mediation of disputes for the purposes of that code or a complaint handling procedure of a franchise agreement (as defined in that code), on request by one or more of the parties;
- (c) receiving information about disputes that are being, or have been, dealt with under that code or a complaint handling procedure of a franchise agreement as defined in that code;
- (d) regularly providing to the Minister statistical information relating to disputes that have been or are being dealt with under that code or a complaint handling procedure of a franchise agreement as defined in that code.

## **5 Transitional—clause 8**

- (1) Subclause 8(1) of the new code does not apply if a franchisor has an existing disclosure document.
- (2) If a franchisor has an existing disclosure document:
  - (a) the existing disclosure document may be given under the new code before 1 November 2015; and

## Section 5

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- (b) the franchisor must update the existing disclosure document so that it complies with subclauses 8(3), (4) and (5) of the new code by 31 October 2015; and
- (c) the requirements of subclause 8(6) of the new code apply to a financial year that begins on or after 1 January 2015.

(3) In this section:

**existing disclosure document** means a franchisor's disclosure document (within the meaning of the old code) that exists on 1 January 2015.

**new code** means the Franchising Code of Conduct set out in Schedule 1 to this instrument.

**old code** means the Franchising Code of Conduct set out in the Schedule to the *Trade Practices (Industry Codes—Franchising) Regulations 1998* as in force immediately before 1 January 2015.

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# Schedule 1—Franchising Code of Conduct

Note: See section 4.

## Part 1—Introduction

### Division 1—Preliminary

#### 1 Name of code

This code is the *Franchising Code of Conduct*.

#### 2 Purpose of code

The purpose of this code is to regulate the conduct of participants in franchising towards other participants in franchising.

#### 3 Application

- (1) Subject to subclause (4), this code applies to conduct occurring on or after 1 January 2015 (other than to discharge an outstanding obligation that arose under the old code) in relation to a franchise agreement entered into on or after 1 October 1998.
- (2) However, this code does not apply to a franchise agreement:
  - (a) to which another mandatory industry code, prescribed under section 51AE of the *Competition and Consumer Act 2010*, applies; or
  - (b) if:
    - (i) 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
    - (ii) the franchisee has supplied those goods or services for at least 2 years immediately before entering into the franchise agreement; and
    - (iii) 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.
- (3) Paragraph (2)(b) 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 tells the franchisor that paragraph (a) of this subclause applies.
- (4) The provisions of this code mentioned in column 2 of the following table in relation to an item do not apply to a franchise agreement mentioned in column 1 of the item:

Schedule 1 Franchising Code of Conduct

Part 1 Introduction

Division 1 Preliminary

Clause 3A

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**Provisions of this code that do not apply to certain franchise agreements**

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|             | <b>Column 1</b>                                     | <b>Column 2</b>  |
|-------------|---|--|
| <b>Item</b> | <b>If a franchise agreement is entered into ...</b> | <b>these provisions do not apply to the agreement ...</b>                        |
| 1           | on or after 1 March 2008 but before 1 January 2015  | (a) subclause 21(2); and<br>(b) clauses 22 and 23                                |
| 2           | on or after 1 October 1998 but before 1 March 2008  | (a) paragraph 20(1)(b); and<br>(b) subclause 21(2); and<br>(c) clauses 22 and 23 |

(5) However, subclause (4) ceases to apply in relation to a franchise agreement mentioned in column 1 of the table in that subclause if the agreement is varied or transferred on or after 1 January 2015.

(6) In this clause:

*old code* means the Franchising Code of Conduct set out in the Schedule to the *Trade Practices (Industry Codes—Franchising) Regulations 1998* as in force immediately before 1 January 2015.

**3A Code does not apply in relation to franchise agreement that forms part of arrangements relating to certain co-operatives or mutual entities**

This 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 the day this clause commences; or
- (b) a member with voting rights of a mutual entity.

Note: For *Co-operatives National Law*, see subclause 4(1). For *mutual entity*, see subclause 4(2) of this code and section 51M of the *Corporations Act 2001*.

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## Division 2—Definitions

### 4 Definitions

(1) In this code:

**ABN** has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*.

**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, published by the Australian Bureau of Statistics, as existing on the day Schedule 1 to the *Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2022* commences.

**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—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.

**complainant** has the meaning given by clause 35.

**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 July 2021, 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).

**disclosure document** has the meaning given by clause 8.

**electronic signature** of a person means the unique identification of the person in an electronic form.

**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.

**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** has the meaning given by clause 5.

**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.

**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, 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.

**key facts sheet** means a document that meets the requirements of subclause 9A(1).

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

**motor vehicle dealership:**

- (a) means a business of 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
- (b) includes a business of selling motor vehicles that is conducted by a person (for the purposes of this code, the franchisee) who sells the motor vehicles as an agent for a principal (for the purposes of this code, the franchisor).

**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 5(2)(c)).

**obligation to act in good faith**: see clause 6.

**Ombudsman** means the Australian Small Business and Family Enterprise Ombudsman.

**prospective franchisee** means a person who deals with a franchisor for the right to be granted a franchise.

**Register** means the Franchise Disclosure Register established and maintained under clause 53.

**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** has the meaning given by clause 35.

**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 2001*.

Note: Jervis Bay Territory is mentioned because it is a jurisdiction in which the Commonwealth has control over the criminal law.

**significant capital expenditure** has a meaning affected by subclause 30(2).

**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 section 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 prospective transferee; or
- (b) the franchisee's rights and obligations under the agreement are assigned to a prospective transferee; 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.

- (2) In this code, the following terms have the meanings given by the *Corporations Act 2001*:

ACN  
ARBN  
body corporate  
Chapter 5 body corporate  
consolidated entity  
director  
insolvent under administration  
listed corporation  
misconduct  
mutual entity  
officer  
proprietary company  
registered company auditor  
registered office  
related body corporate  
restructuring practitioner  
small proprietary company

## **5 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

**Schedule 1** Franchising Code of Conduct

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- (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
    - (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 subclause (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.

## **Division 2A—Amount of civil penalty for certain contraventions by bodies corporate**

### **5A Amount of civil penalty for certain contraventions by bodies corporate**

- (1) This clause has effect for the purposes of the following civil penalty provisions of this code:
  - (a) subclauses 17(1) and (2);
  - (b) clause 33;
  - (c) subclauses 46A(1), (2) and (3);
  - (d) clause 46B.
- (2) The amount of the civil penalty for a contravention of a civil penalty provision referred to in subclause (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 annual turnover of the body corporate during the period of 12 months ending at the end of the month in which the contravention occurred.

## Division 3—Obligation to act in good faith

### 6 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 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 subclause (1), the court may have regard to:
  - (a) whether the party acted honestly and not arbitrarily; and
  - (b) whether the party cooperated to achieve the purposes of the agreement.

#### *New vehicle dealership agreements*

- (3A) Without limiting the matters to which a court may have regard for the purpose of determining whether a party to a new vehicle dealership agreement has contravened subclause (1) and without limiting subclause (3), 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 his, her or its legitimate commercial interests.
- (7) 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.

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**Part 2** Disclosure requirements before entry into a franchise agreement

**Division 1** Application

Clause 7

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## **Part 2—Disclosure requirements before entry into a franchise agreement**

### **Division 1—Application**

#### **7 Application of Part—master franchisors**

A master franchisor need not comply with the requirements of this Part in relation to a subfranchisee.

## **Division 2—Disclosure document**

### **8 Franchisor must maintain a disclosure document**

#### *Disclosure document to inform franchisee or prospective franchisee*

- (1) A franchisor must create a document (a **disclosure document**) relating to a franchise that complies with subclauses (3), (4) and (5).

Civil penalty: 600 penalty units.

- (2) The purpose of a disclosure document is to:
- (a) give a prospective franchisee, or a franchisee proposing to:
    - (i) enter into a franchise agreement; or
    - (ii) renew a franchise agreement; or
    - (iii) 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 franchise; and
  - (b) give a franchisee current information from the franchisor that is material to the running of the franchised business.

#### *Content and form of disclosure document*

- (3) Information in a disclosure document must:
- (a) comply with the following:
    - (i) be set out in the form and order of Annexure 1;
    - (ii) use the headings and numbering of Annexure 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 Annexure 1 for those items;
    - (ii) if particular items are not applicable—include an attachment that sets out the headings and numbering of Annexure 1 for those items.
- (4) A disclosure document must be signed by the franchisor, or a director, officer or authorised agent of the franchisor.
- (5) A disclosure document must also have a table of contents based on the items in Annexure 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.

#### *Maintaining a disclosure document*

- (6) After entering into a franchise agreement, the franchisor must update the disclosure document within 4 months after the end of each financial year.

Clause 9

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Civil penalty: 600 penalty units.

- (7) However, the franchisor need not update the disclosure document after the end of a financial year if:
- (a) the franchisor did not enter into a franchise agreement, or only entered into 1 franchise agreement, during the year; and
  - (b) the franchisor does not intend, or if the franchisor is a company, its directors do not intend, to enter into another franchise agreement in the following financial year.
- (8) Despite subclause (7), if a request is made under subclause 16(1), the franchisor must 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.

Civil penalty: 600 penalty units.

**9 Franchisor to give documents to a franchisee or prospective franchisee**

- (1) A franchisor must give a prospective franchisee the documents mentioned in subclause (1A) at least 14 days before whichever of the following occurs first:
- (a) the franchisor and the prospective franchisee enter into a franchise agreement;
  - (b) the prospective franchisee makes a non-refundable payment (whether of money or of other valuable consideration) to the franchisor or an associate of the franchisor in connection with the proposed franchise agreement.

Civil penalty: 600 penalty units.

- (1A) For the purposes of subclause (1), the documents are as follows:
- (a) a copy of the franchise agreement, in the form in which it is to be executed;
  - (b) a copy of the disclosure document relating to the franchise:
    - (i) as updated under subclause 8(6); or
    - (ii) if subclause 8(7) applies—updated to reflect the position of the franchise as at the end of the financial year before the financial year in which the copy of the disclosure document is given; or
    - (iii) if the disclosure document is created in the financial year in which the copy of the disclosure document is given—as created under subclause 8(1);
  - (c) a copy of the key facts sheet relating to the franchise:
    - (i) as updated under subclause 9A(2); or
    - (ii) if subclause 9A(3) applies—updated to reflect the position of the franchise as at the end of the financial year before the financial year in which the copy of the key facts sheet is given; or
    - (iii) if the key facts sheet is created in the financial year in which the copy of the key facts sheet is given—as created under subclause 9A(1);
  - (d) a copy of this code;
  - (e) 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.

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, clause 26 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.

(2) If a franchisor or franchisee proposes to:

- (a) renew a franchise agreement; or
- (b) extend the term or scope of a franchise agreement;

the franchisor must give to a franchisee (within the meaning of paragraph (a) of the definition of that expression) the documents mentioned in subclause (1A) at least 14 days before renewal or extension of the franchise agreement.

Civil penalty: 600 penalty units.

(2A) If a request is made under clause 24 that a franchisor consent to the transfer of a franchise agreement (the **existing franchise agreement**) to a person (the **prospective transferee**), the franchisor must, at least 14 days before giving the consent, give the prospective transferee:

- (a) if the transfer does not involve executing another franchise agreement:
  - (i) a copy of the existing franchise agreement; and
  - (ii) each other document (if any) the franchisor requires the prospective transferee to sign to give effect to the transfer; and
- (b) a copy of the documents mentioned in paragraphs (1A)(b), (c) and (d) and, if applicable, paragraph (1A)(e).

Civil penalty: 600 penalty units.

(2B) However, subclause (2A) does not apply to a transfer that involves entry into a new franchise agreement.

Note: Subclause (1) applies to such a transfer.

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**Part 2** Disclosure requirements before entry into a franchise agreement

**Division 2** Disclosure document

Clause 9A

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- (2C) If the person to whom documents must be given under subclause (1), (2) or (2A) requests the documents in printed form, electronic form or both, the franchisor must comply with the request. However, if the documents have been given in one of those forms (whether requested by the person or not) by the time required by that subclause, a later request for the documents in the other form (or both forms) does not require the franchisor to comply with the subclause again.
- (3) A franchisor is taken to have complied with the requirements of this clause even if, during the relevant 14-day or longer period, changes are made to a franchise agreement:
- (a) to give effect to a franchisee's request; or
  - (b) to fill in required particulars; or
  - (c) to reflect changes of address or other circumstances; or
  - (d) for clarification of a minor nature; or
  - (e) to correct errors or references.
- (4) If:
- (a) the franchisor gives a person documents under subclause (1), (2) or (2A) in relation to a franchise agreement; and
  - (b) after giving those documents and before the franchise agreement is entered into, renewed, extended or transferred, the franchisor gives the person earnings information in relation to the franchise;
- the franchisor is taken not to have given the person the documents required by subclause (1), (2) or (2A) (as applicable) in relation to the franchise agreement.

## 9A Key facts sheet

### *Requirements for key facts sheet*

- (1) The key facts sheet relating to a franchise:
- (a) must be in the form published on the Commission's website; and
  - (b) must include the information required by the form; and
  - (c) must include only information about matters relating to the franchise:
    - (i) that is included in the disclosure document relating to the franchise; or
    - (ii) that is required to be given to the franchisee under this code.

### *Maintaining a key facts sheet*

- (2) After entering into a franchise agreement, the franchisor must update the key facts sheet relating to the franchise within 4 months after the end of each financial year.

Civil penalty: 600 penalty units.

- (3) However, the franchisor need not update the key facts sheet after the end of a financial year if:
- (a) the franchisor did not enter into a franchise agreement, or only entered into one franchise agreement, during the year; and

- (b) the franchisor does not intend, or if the franchisor is a company, its directors do not intend, to enter into another franchise agreement in the following financial year.
- (4) Despite subclause (3), if a request is made under subclause 16(1), the franchisor must update the key facts sheet 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.

Civil penalty: 600 penalty units.

### **10 Franchisee or prospective franchisee to give advice to franchisor before entering into franchise agreement**

- (1) The 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; or
  - (e) receive a non-refundable payment (whether of money or of other valuable consideration) under a franchise agreement or an agreement to enter into a franchise agreement;unless the franchisor has received from the franchisee or prospective franchisee 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.
- (2) Before a franchise agreement is entered into, the franchisor must have received from the prospective franchisee:
  - (a) signed statements, that the prospective franchisee has been given advice about the proposed franchise agreement or franchised business, by:
    - (i) an independent legal adviser; or
    - (ii) an independent business adviser; or
    - (iii) an independent accountant; or
  - (b) for each kind of statement not received under paragraph (a), a signed statement by the prospective franchisee that the prospective franchisee:
    - (i) has been given that kind of advice about the proposed franchise agreement or franchised business; or
    - (ii) has been told that that kind of advice should be sought but has decided not to seek it.
- (3) Subclause (2):
  - (a) does not apply to:
    - (i) the renewal of a franchise agreement; or

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**Part 2** Disclosure requirements before entry into a franchise agreement

**Division 2** Disclosure document

Clause 10

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- (ii) the extension of the term or scope of a franchise agreement; and
  - (b) does not prevent the franchisor from requiring any or all of the statements mentioned in paragraph (2)(a).
- (4) In this clause, a reference to a prospective franchisee includes a reference to a prospective transferee.

## **Division 3—Information statement**

### **11 Franchisor to give information statement to prospective franchisee**

- (1) A franchisor must give a copy of the information statement relating to franchising that is published on the Commission’s website to a prospective franchisee. The copy of the information statement must be given:
  - (a) as soon as practicable, and not later than 7 days, after the prospective franchisee formally applies or expresses an interest in acquiring a franchised business; and
  - (b) before the franchisor gives the prospective franchisee any of the documents described in clause 9.

Civil penalty: 600 penalty units.

- (4) To avoid doubt, the requirements of this clause do not apply in relation to:
  - (a) the renewal of a franchise agreement; or
  - (b) the extension of the term or scope of a franchise agreement.

## **Part 3—Franchise agreements**

### **Division 1—Application**

#### **12 Application of Part—master franchisors**

- (1) A master franchisor need not comply with the requirements of this Part in relation to a subfranchisee.
- (2) This clause does not limit the effect of clauses 15 and 31.

## **Division 2—Franchisor's obligations**

### **Subdivision A—Disclosure obligations**

#### **13 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 to 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.

(2A) 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 subclauses 9(1) and (1A)).

Civil penalty: 600 penalty units.

- (2B) The copy requested under subclause (2A) must be given as soon as reasonably practicable, and not later than 7 days, after the request is made.

Civil penalty: 600 penalty units.

- (3) 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;

Clause 14

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- (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;
- (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.

- (4) The copy and details must be given within 1 month after:
  - (a) the occupation commences; or
  - (b) for the documents mentioned in subparagraph (3)(b)(i)—the documents are signed by the parties.

Civil penalty: 600 penalty units.

(4A) 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 to 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 subclauses 9(1) and (1A)).

Civil penalty: 600 penalty units.

- (4B) The copy requested under subclause (4A) 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*

- (5) In this clause, the details of any incentive or financial benefit must include the name of the business providing the incentive or financial benefit.

## 14 Copy 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 subclause (2), the franchisor must give to the franchisee a copy of the agreement.

Civil penalty: 600 penalty units.

- (2) The franchisor must give to the franchisee a copy of the following kinds of agreements:
- (a) a lease (other than a lease of premises which is covered by clause 13) 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) 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.

## **15 Financial statements for marketing funds and other cooperative funds administered by or for franchisor or master franchisor**

- (1) This clause applies if a franchise agreement requires the franchisee to pay money to 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).

### *Preparing and auditing financial statements for fund*

- (2) The fund administrator must:
- (a) within 4 months after the end of the last financial year, prepare an annual financial statement detailing all of the fund's receipts and expenses for the last financial year; and
  - (b) ensure that the statement includes sufficient detail of the fund's receipts and expenses so as to give meaningful information about:
    - (i) sources of income; and
    - (ii) items of expenditure, particularly with respect to marketing (however described); and
  - (c) have the statement audited by a registered company auditor within 4 months after the end of the financial year to which it relates.

Civil penalty: 600 penalty units.

- (3) The fund administrator does not have to comply with paragraph (2)(c) in respect of a financial year if, within 3 months after the end of the year, 75% of the
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Clause 16

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franchisees (whether franchisees or subfranchisees of the franchisor or master franchisor) in Australia who contribute to the fund have voted to agree that the fund administrator does not have to comply with the paragraph in respect of the year.

*Giving copies of statements and audit reports to contributors to fund*

- (4) The fund administrator must:
- (a) give the franchisee a copy of the statement within 30 days of preparing it; and
  - (b) if an audit of the statement is required—give the franchisee a copy of the auditor's report within 30 days of receiving it.

Civil penalty: 600 penalty units.

*Costs of administering and auditing fund*

- (5) The reasonable costs of administering and auditing the fund must be paid from the fund.

*Meaning of fund administrator*

- (6) In this clause:

*fund administrator* 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—the authorised associate.

## 16 Franchisee may request copy of disclosure document

- (1) If a franchisee requests, in writing, a franchisor to give the franchisee a copy of the disclosure document relating to the franchise, the franchisor must give the franchisee a copy of the disclosure document and the key facts sheet relating to the franchise:
- (a) if subclause 8(8) applies—within 2 months of the date of the request; and
  - (b) in any other case—within 14 days of the date of the request.

Civil penalty: 600 penalty units.

- (2) However, a request under subclause (1) can be made only once every 12 months.
- (3) If the request is for the disclosure document in printed form, electronic form or both, the franchisor must give the copy of the disclosure document and the key facts sheet in the form or forms requested.

## 17 Disclosure of materially relevant facts

*Financial details*

- (1) If:
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- (a) either:
  - (i) a statement or declaration referred to in item 21 of Annexure 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 subclause 8(6);

the franchisor must give to a prospective franchisee a copy of the statement, declaration or document, as soon as reasonably practicable, but in any event, 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 clause 5A; 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 subclause (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 clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (3) For subclause (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 trade practices law; or
    - (iii) contravention of the *Corporations Act 2001*; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or
    - (vi) an offence of dishonesty;
  - (c) a judgment against the franchisor or an associate of the franchisor, other than for unfair dismissal of an employee, under:
    - (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;

Clause 17A

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- (d) 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);
  - (e) 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—\$100 000; or
    - (ii) for any other company—\$1 000 000;
  - (f) any judgment that is entered against the franchisor or an associate of the franchisor in a matter mentioned in item 4 of Annexure 1;
  - (g) the franchisor or an associate of the franchisor becoming a Chapter 5 body corporate;
  - (h) a change in the intellectual property, or ownership or control of the intellectual property, that is material to the franchise system;
  - (i) the existence and content of:
    - (i) any undertaking given by the franchisor or an associate of the franchisor under section 87B of the *Competition and Consumer Act 2010*; and
    - (ii) any order made by the Federal Court of Australia under that section in relation to such an undertaking.
- (4) For paragraphs (3)(b), (c), (d), (e) and (f), the franchisor must tell the franchisee:
- (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 paragraph (3)(g), the franchisor must tell the franchisee the name and address of the administrator, controller, liquidator or restructuring practitioner.

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)**

### **17A 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 5.

### **18 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 agreement.

- (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) Unless the franchisor does not intend to extend the franchise agreement, the franchisor's notice must include a statement to the effect that, subject to subclause 16(2), the franchisee may request a disclosure document under clause 16.

Civil penalty: 600 penalty units.

## **Subdivision C—Record keeping obligations**

### **19 Keeping certain information and documents**

- (1) If this code requires a franchisee or prospective franchisee, or allows a franchisee or prospective franchisee, to give something to a franchisor in writing, the franchisor must keep the written thing or a copy of it.
- (2) If a franchisor:
  - (a) makes a statement or claim in the franchisor's disclosure document; and
  - (b) relies on a document to support the statement or claim;the franchisor must keep the document.
- (3) A franchisor must keep the written thing or document for at least 6 years after it is created.

## **Division 3—Terms of franchise agreement**

### **19A 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.

Civil penalty: 600 penalty units.

- (2) Subclause (1) does not prevent the franchisor from entering into a franchise agreement that requires 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) 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.

### **20 Prohibition on release from liability etc.**

- (1) A franchise agreement must not require 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.

Note: See subclauses 3(4) and (5).

- (2) However, subclause (1) does not prevent a franchisee from settling a claim against the franchisor after entering into a franchise agreement.

### **21 Jurisdiction for settling disputes**

- (1) A franchise agreement may contain a clause 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 franchise agreement must not contain a clause 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.

Note: See subclauses 3(4) and (5).

## **22 Costs of settling disputes**

A franchisor must not enter into a franchise agreement that includes a provision that requires the franchisee to pay to the franchisor costs incurred by the franchisor in relation to settling a dispute under the agreement.

Note: See subclauses 3(4) and (5).

Civil penalty: 600 penalty units.

## **23 Effect of restraint of trade clause if franchise agreement not extended**

- (1) A restraint of trade clause in a franchise agreement has no effect after the agreement expires if:
  - (a) the franchisee had given written notice to the franchisor seeking to 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
  - (b) immediately before the expiry, the franchisee was not in serious breach of the agreement or any related agreement; and
  - (c) the franchisee had not infringed the intellectual property of, or a confidentiality agreement with, the franchisor during the term of the agreement; and
  - (d) the franchisor does not extend the agreement; and
  - (e) either:
    - (i) the franchisee claimed compensation for goodwill because the agreement was not 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 extended.
- (2) Subclause (1) also applies in respect of a restraint of trade clause that is incorporated into a franchise agreement:
  - (a) by reference to another document; or

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(b) by another document physically attached to the agreement.

Note: See subclauses 3(4) and (5).



## **Division 4—Transfer of franchise agreement**

### **24 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.

### **25 Franchisor’s consent to transfer**

#### *Giving consent*

- (1) A franchisor must advise, in writing, a person who has made a request under clause 24 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 subclause (6A).

Civil penalty: 600 penalty units.

#### *Consent taken to be given*

- (4) 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 subclause (5).

#### *Revoking consent*

- (5) 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.

Clause 25

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- (6) 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 subclause (6A).

Civil penalty: 600 penalty units.

*Circumstances in which franchisor's consent may reasonably be withheld or revoked*

- (6A) A franchisor may reasonably withhold consent, or reasonably revoke consent, to the transfer of a franchise agreement in the following circumstances:
- (a) the proposed transferee is unlikely to be able to meet the financial obligations that the proposed transferee would have under the franchise agreement;
  - (b) the proposed transferee does not meet a reasonable requirement of the franchise agreement for the transfer of the franchise agreement;
  - (c) the proposed transferee does not meet the selection criteria of the franchisor;
  - (d) the proposed transferee 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;
  - (g) the franchisor has not received from the proposed transferee a written statement that the transferee has received, read and had a reasonable opportunity to understand the disclosure document and this code.

Paragraphs (a) to (g) do not limit the circumstances in which a franchisor's consent may be reasonably withheld or revoked.

*Definition*

- (7) In this clause:

***transferee*** means a franchisee who seeks to acquire a franchise business through the transfer of the franchise agreement.

## **Division 5—Termination of franchise agreement**

### **26 Termination—cooling off after entering into new franchise agreement**

- (1) A franchisee may terminate a franchise agreement within 14 days after entering into the agreement.
- (1A) Subclauses (1B) and (1C) 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.
- (1B) The franchisee may terminate the franchise agreement within 14 days after receiving from the franchisor or associate:
  - (a) the first document setting out the terms of the proposed lease or occupancy right; or
  - (b) any later document setting out the terms of the proposed lease or occupancy if the terms are not substantially identical to the terms set out in the first document (excluding changes to the terms that were requested by the franchisee).
- (1C) The franchisee may terminate the franchise agreement within 14 days after entering into the lease or being granted the occupancy right if, 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).
- (1D) Subclauses (1), (1B) and (1C) do not limit one another.

Note: Those subclauses 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.

- (2) Subclauses (1), (1B) and (1C) 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 transferee and the franchisor.

Note: Clause 26A deals with cooling off after such a transfer.

- (3) If the franchisee terminates an agreement under subclause (1), (1B) or (1C), 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.

Clause 26A

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Civil penalty: 600 penalty units.

- (4) However, the franchisor may deduct from the amount repaid under subclause (3) the franchisor's reasonable expenses if the expenses or their method of calculation have been set out in the agreement.

**26A Termination—cooling off after transferring franchise agreement**

- (1) This clause applies if 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 without a new franchise agreement being entered into by the new franchisee and the franchisor.

Note: Clause 26 deals with 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.

- (2) The new franchisee may, by written notice given to the old franchisee and the franchisor in accordance with subclause (3), do all of the following:
- (a) cease to be the franchisee for those purposes;
  - (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) A notice under subclause (2) must be given within whichever of the following periods ends earlier:
- (a) 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 period ending on the day the new franchisee takes possession and control of the franchised business.

*Refunds from franchisor to new franchisee*

- (4) If, by notice given under subclause (2), the new franchisee ceases to be the franchisee for the purposes of the franchise agreement, 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.

Civil penalty: 600 penalty units.

- (5) However, the franchisor may deduct from the amount repaid under subclause (4) the franchisor's reasonable expenses if the expenses or their method of calculation have been set out in the franchise agreement.

*Refunds from old franchisee to new franchisee*

- (6) If, by notice given under subclause (2), the new franchisee terminates the transfer agreement, 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.

Civil penalty: 600 penalty units.

- (7) However, the old franchisee may deduct from the amount repaid under subclause (6) the old franchisee's reasonable expenses if the expenses or their method of calculation have been set out in the transfer agreement.

## **26B 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 subclause (1), the franchisor must give the franchisee a substantive written response to the proposal within 28 days.

Note: 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 clause 35, the dispute can be dealt with under Division 3 of Part 4.

- (3) If the franchisor has given the franchisee a substantive written response to a proposal (the *earlier proposal*) under subclause (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 subclause (2) in relation to the later proposal.

- (5) 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: Each party to a franchise agreement is under an obligation to act in good faith in relation to the agreement (see clause 6).

- (6) This clause 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.

## **27 Termination—breach by franchisee**

- (1) This clause applies if:
- (a) a franchisee breaches a franchise agreement; and
  - (b) the franchisor proposes to terminate the franchise agreement.

Clause 28

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- (2) The franchisor must:
- (a) give to the franchisee reasonable notice, in writing, that the franchisor proposes to terminate the franchise agreement because of the breach; and
  - (b) tell the franchisee what the franchisor requires to be done to remedy the breach; and
  - (c) allow the franchisee a reasonable time to remedy the breach.

Civil penalty: 600 penalty units.

- (3) For paragraph (2)(c), the franchisor does not have to allow more than 30 days.
- (4) If the breach has been remedied in accordance with paragraphs (2)(b) and (c), the franchisor must not terminate the franchise agreement because of the breach.

Civil penalty: 600 penalty units.

- (4A) Subclauses (2) and (4) do not prevent the franchisor from exercising a power under the agreement to terminate the agreement if, at the time of the termination, the franchisor and franchisee agree to the termination.
- (5) Part 4 (resolving disputes) applies in relation to a dispute arising from termination under this clause.

## **28 Termination—no breach by franchisee**

- (1) This clause applies if:
- (a) a franchisor terminates a franchise agreement:
    - (i) in accordance with the agreement; and
    - (ii) before it expires; and
    - (iii) without the consent of the franchisee; and
  - (b) the franchisee has not breached the agreement.
- (2) For subparagraph (1)(a)(iii), 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) Before terminating the franchise agreement, the franchisor must give reasonable written notice of the proposed termination, and reasons for it, to the franchisee.

Civil penalty: 600 penalty units.

- (4) Part 4 (resolving disputes) applies in relation to a dispute arising from termination under this clause.

## **29 Notice of termination by franchisor on particular grounds**

- (1) This clause 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, an 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;
- (d) the franchisee voluntarily abandons the franchised business or the franchise relationship;
- (e) the franchisee is convicted of a serious offence;
- (f) the franchisee operates the franchised business in a way that endangers public health or safety;
- (g) the franchisee acts fraudulently in connection with the operation of the franchised business.

*Franchisor must give 7 days' notice of proposed termination*

- (2) The franchisor must not terminate the agreement because of a ground mentioned in subclause (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.

- (3) However, clauses 27 and 28 do not prevent the franchisor from exercising the power under the agreement to terminate the agreement if the franchisor has not met the requirements of subclause 27(2) or subclause 28(3).

Note: Those requirements include giving reasonable written notice of the termination to the franchisee.

*Rapid appointment of ADR practitioner or arbitrator for dispute over proposed termination*

- (4) If the franchisor gives the franchisee written notice of the proposed termination and the franchisee tells the franchisor, in writing under subclause 40A(1) or a corresponding provision of the franchise agreement, about a dispute relating to the proposed termination then:
  - (a) despite subclause (2), the franchisor must not terminate the agreement until after the end of 28 days after the notice was given; and
  - (b) despite subclauses 40A(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

Clause 29

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- (c) despite paragraph 43B(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.

*Requiring franchisee to cease operating franchised business because of ground in subclause (1)*

- (5) If the 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 because of a ground mentioned in subclause (1), 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.
- (6) Subclause (5) has effect despite paragraph (4)(a) if the action provided for by the franchise agreement to cause the franchisee not to operate all or part of the franchised business because of a ground mentioned in subclause (1) would involve termination of the franchise agreement by the franchisor.

Note: In this case, while paragraph (4)(a) prevents the franchisor from terminating the agreement within 28 days after notice of the proposed termination was given, the franchisor may, under subclause (5), require the franchisee not to operate all or part of the franchised business because of a ground mentioned in subclause (1).



## **Division 6—Miscellaneous**

### **30 Significant capital expenditure not to be required**

- (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.

Civil penalty: 600 penalty units.

- (2) For the purposes of subclause (1), *significant capital expenditure* excludes the following:
- (a) expenditure that is disclosed to the franchisee in the disclosure document that is given to the franchisee before:
    - (i) entering into or renewing the agreement; or
    - (ii) extending the term or scope of the agreement;
  - (b) if expenditure is to be incurred by all or a majority of franchisees—expenditure approved by a majority of those franchisees;
  - (c) expenditure incurred by the franchisee to comply with legislative obligations;
  - (d) expenditure agreed by the franchisee.

### **30A Information and discussion about capital expenditure**

- (1) This clause applies if a disclosure document for a franchise agreement discloses expenditure of the kind mentioned in paragraph 30(2)(a).
- (2) The franchisor must include in the disclosure document as much information as practicable about the 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.
- 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.
- (3) Before entering into, renewing or extending the term or scope of the agreement, the franchisor and the franchisee or prospective franchisee must discuss the expenditure.
- (4) The discussion must include a discussion of the circumstances under which the franchisee or prospective franchisee 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.

### 31 Payments to and from marketing funds

(1) This clause applies if a franchise agreement requires the franchisee to pay money to a marketing fund that is 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).

(2) The fund administrator must maintain a separate account with a financial institution for payments to the marketing fund by franchisees.

Civil penalty: 600 penalty units.

(3) 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 marketing 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.

(4) Despite any terms of a franchise agreement, the fund administrator must use payments to the fund only to:

(a) meet expenses that:

(i) have been disclosed to franchisees in the disclosure document in accordance with paragraph 15.1(f) of Annexure 1; or

(ii) are legitimate expenses for marketing (however described); or

(iii) 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.

#### *Meaning of fund administrator*

(5) In this clause:

*fund administrator* 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—the authorised associate.

### 31A Franchisor not to vary franchise agreement retrospectively and unilaterally

A franchisor must not vary a franchise agreement with retrospective effect unless the franchisee has given written consent to the variation.

### 32 Disclosure of former franchisee details

(1) A former franchisee may give a franchisor a written request that the former franchisee's details not be disclosed to a prospective franchisee.

- (2) If such a request is made, the franchisor must not disclose the former franchisee's details 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.

### **33 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 clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

## Part 4—Resolving disputes

### Division 1—General

#### 34 Internal complaint handling procedure

A franchise agreement must provide for a complaint handling procedure that has the same effect as subclauses 40A(1) to (4) and clause 41A except for providing for imposition of a civil penalty.

#### 35 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 3 of this Part.

Note: See also Division 4 of Part 5 in relation to new vehicle dealership agreements.

#### 36 When a party is taken to be trying to resolve a dispute

- (1) 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) not taking action during the dispute, including by providing inferior goods, services, or support, which has the effect of damaging the reputation of the franchise system;
  - (c) not refusing to take action during the dispute, including not providing goods, services or support, if the refusal to act would have the effect of damaging the reputation of the franchise system;
  - (d) 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.
- (2) To avoid doubt, if an ADR process is being used to try to resolve the dispute, subclause (1) applies whether the ADR process is conducted under this code or otherwise.

#### 37 Right to bring proceedings unaffected

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.

## **Division 3—Code complaint handling procedure**

### **Subdivision A—Notification of dispute**

#### **40A Notification of dispute**

- (1) The complainant must tell the respondent in writing:
  - (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 subclause (4).

#### **40B Similar disputes between 2 or more franchisees and one franchisor**

- (1) This clause applies if 2 or more franchisees have similar disputes under their franchise agreements with the same franchisor.
- (2) To avoid doubt, 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) To avoid doubt, 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 subclause 40A(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) To avoid doubt, 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 subclause 40A(4) to

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appoint a single ADR practitioner for a single ADR process for all of their disputes.

- (6) If:
- (a) under subclause (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 subclause (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 subclauses 41A(3) and (5)). Clause 36 (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**

### **41A ADR process**

- (1) An ADR practitioner appointed for a dispute may decide the time and place for the ADR process for the dispute (subject to subclause (2)).
- (2) The ADR process must be conducted in Australia and may be conducted by means of virtual attendance technology.
- (3) Each party to the dispute must attend the ADR process.

Civil penalty: 600 penalty units.

- (4) For the purposes of subclause (3), a party is taken to attend an ADR process 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.
- (5) The parties must try to resolve the dispute.

Note: For when a party is taken to be trying to resolve a dispute, see clause 36.

- (6) After the ADR process has started, the ADR practitioner must advise the Ombudsman, within 28 days, of that fact.

### **41B Termination of ADR process**

- (1) This clause 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.
- (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 clause, 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.

#### **41C 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 clause 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.

### **Subdivision C—Arbitration**

#### **43A 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.

#### **43B Arbitration procedure**

- (1) This clause 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.

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- (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 4A(a) of this instrument).
- (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 subclause (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.

Civil penalty: 600 penalty units.
- (9) For the purposes of subclause (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:
  - (a) set out, in writing, the terms of the resolution; and
  - (b) give a copy of the terms to each party to the dispute; and
  - (c) notify the Ombudsman that the dispute has been resolved.



### **43C Termination of arbitration**

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

### **43D Costs of arbitration**

- (1) 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.
- (2) 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**

### **44A 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 5—New vehicle dealership agreements**

### **Division 1—Preliminary**

#### **46 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.

## **Division 1A—Terms of agreement**

### **46A Franchise agreement must provide for compensation for early termination**

- (1) A franchisor must not enter into a franchise agreement unless the agreement:
- (a) provides for the franchisee to be compensated if the franchise 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 clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (2) A franchisor must not enter into a franchise agreement unless the agreement contains provision for the franchisor to buy back or compensate the franchisee for new road vehicles, spare parts and special tools if:
- (a) the franchise agreement is not renewed and a new agreement is not entered into; or
  - (b) the franchise 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 clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

- (3) 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:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

**46B Franchise agreement must provide reasonable opportunity for return on franchisee's investment**

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 clause 30A).

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

## **Division 2—End of term obligations**

Note: Subdivision B of Division 2 of Part 3 does not apply to new vehicle dealership agreements (see clause 17A).

### **47 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 agreement; or
  - (c) neither extend the agreement nor enter into a new agreement.
- (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 agreement, the franchisor's notice must include a statement to the effect that, subject to subclause 16(2), the franchisee may request a disclosure document under clause 16.

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 agreement, the notice must include the reasons for the franchisor's intention.

Civil penalty: 600 penalty units.

### **48 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 agreement; or
  - (c) neither renew the agreement nor enter into a new agreement.

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- (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 agreement, the notice must include the reasons for the franchisee's intention.

**49 Obligation to manage winding down of agreement**

- (1) This clause applies if:
  - (a) under clause 47, the franchisor gives the franchisee a notice that the franchisor intends to neither extend the agreement nor enter into a new agreement; or
  - (b) under clause 48, the franchisee gives the franchisor a notice that the franchisee intends to neither renew the agreement nor enter into a new agreement.
- (2) The parties must, as soon as practicable, agree to 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.
- (3) The parties must cooperate to reduce the franchisee's stock of new road vehicles and spare parts over the remaining term of the agreement.

## **Division 4—Resolving disputes**

### **52 Franchisees may request multi-franchisee dispute resolution**

- (1) This clause 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 4 (resolving disputes).

## Part 5A—Franchise Disclosure Register

### Division 1—Establishment and content

#### 53 Establishment of Register

- (1) The Secretary must establish and keep a register for the purposes of this Part.
- (2) The register is to be known as the Franchise Disclosure Register.
- (3) The Register must be kept by electronic means.
- (4) The Register must be made available for public inspection, without charge, on the internet.

#### 53A Contents of Register

- (1) The Register must contain the information that is required to be provided by a franchisor under Division 2.
- (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:
    - (i) personal information that relates to an individual other than the franchisor; or
    - (ii) information that relates to a particular franchisee of the franchisor; or
    - (iii) information that relates to a particular site being occupied by a franchisee of the franchisor.
- (3) The Register may only contain the following documents that are provided by a franchisor:
  - (a) the disclosure document created and maintained by the franchisor under clause 8;
  - (b) the key facts sheet created and maintained by the franchisor under clause 9A;
  - (c) the standard form of the franchise agreement used by the franchisor;
  - (d) 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).

#### 53B 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.



- (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) personal information that relates to an individual other than the franchisor; or
  - (b) information that relates to a particular franchisee of the franchisor; or
  - (c) information that relates to a particular site being occupied by a franchisee of the franchisor; or
  - (d) information of a kind determined under subclause (5).
- (5) The Secretary may, by legislative instrument, determine kinds of information that may be removed from the Register, or enable a document to be removed from the Register, under subclause (4).

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

### **53C Initial obligation to provide information for inclusion in Register—franchisors that give a disclosure document on or before 31 October 2022**

*Franchisors to which this clause applies*

- (1) This clause applies to a franchisor if:
  - (a) the franchisor has created a disclosure document under clause 8; and
  - (b) on or before 31 October 2022 the franchisor gives a copy of the disclosure document under clause 9; and
  - (c) if the franchisor is the master franchisor in a master franchise system—the master franchise system has 2 or more subfranchisors.

*Franchisor must provide information for inclusion in Register*

- (2) The franchisor must, in accordance with subclause (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 subclause (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:
  - (a) be provided in a form and manner approved by the Secretary in writing; and
  - (b) be provided on or before 14 November 2022.

*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 if the information is not:

- (a) personal information that relates to an individual other than the franchisor;  
or
- (b) information that relates to a particular franchisee of the franchisor; or
- (c) information that relates to a particular site being occupied by a franchisee of the franchisor.

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

Note 2: Clause 8 requires certain information to be included in a disclosure document.

### **53D Initial obligation to provide information for inclusion in Register—other franchisors**

#### *Franchisors to which this clause applies*

- (1) This clause applies to a franchisor if:
  - (a) the franchisor is proposing to enter into a franchise agreement with a prospective franchisee; and
  - (b) a copy of the disclosure document relating to the franchise is required to be given to the prospective franchisee under clause 9; and
  - (c) the franchisor has not previously provided information relating to the franchise for inclusion in the Register under this clause or clause 53C; 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 subclause (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 subclause (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

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- (b) at least 14 days before the franchisor enters into the franchise agreement with the prospective franchisee.

*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 if the information is not:
  - (a) personal information that relates to an individual other than the franchisor; or
  - (b) information that relates to a particular franchisee of the franchisor; or
  - (c) information that relates to a particular site being occupied by a franchisee of the franchisor.

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

Note 2: Clause 8 requires certain information to be included in a disclosure document.

### **53E Obligation to annually update or confirm information included in Register**

*Franchisors to which this clause applies*

- (1) This clause applies to a franchisor if:
  - (a) information is included, or was required to be included, in the Register under clause 53C or 53D; 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 subclause (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 following information:
    - (i) the name of the franchisor;
    - (ii) the name under which the franchisor carries on business in Australia relevant to the franchise;
    - (iii) if the franchisor has an ABN—the franchisor’s ABN;
    - (iv) the address, or addresses, of the franchisor’s registered office and principal place of business in Australia;
    - (v) the business telephone number and email address of the franchisor;
    - (vi) the ANZSIC division and subdivision codes for the industry in which the business operated under the franchise operates;
    - (vii) any information that was required to be provided to the Secretary under a determination under subclause 53C(4) or 53D(4);

- (c) provide any information required to be provided to the Secretary under a determination under subclause (4) of this clause.

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 once for each financial year that:
    - (i) if the franchisor was required by clause 53C to provide information for inclusion in the Register—ends after 31 October 2022; or
    - (ii) if the franchisor was required by clause 53D to provide information for inclusion in the Register for a franchise agreement the franchisor is proposing to enter into—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 if the information is not:
- (a) personal information that relates to an individual other than the franchisor; or
  - (b) information that relates to a particular franchisee of the franchisor; or
  - (c) information that relates to a particular site being occupied by a franchisee of the franchisor.

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

Note 2: Clause 8 requires certain information to be included in a disclosure document.

## **Division 3—Redacting certain information from documents**

### **53F Redacting certain information from documents**

- (1) This clause applies to a franchisor if the franchisor is providing for inclusion in the Register:
  - (a) a document referred to in subclause 53A(3); 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:
  - (a) must redact from the document the following kinds of information:
    - (i) personal information that relates to an individual other than the franchisor;
    - (ii) information that relates to a particular franchisee of the franchisor;
    - (iii) information that relates to a particular site being occupied by a franchisee of the franchisor; and
  - (b) may redact from the document information that is of a commercial nature and is commercially sensitive.

## **Division 4—Giving of information by agents**

### **53G Agents may provide or give information**

A franchisor required under a clause 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 clause on the franchisor's behalf.

## **Division 5—Other matters**

### **53H 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.

### **53J Review of this Part**

- (1) The Minister must cause a review of the operation of this Part to be undertaken.
- (2) The review must commence on or after 15 November 2023.
- (3) The person or persons undertaking the review must, on or before 30 June 2024, give the Minister a written report of the review.
- (4) The review must include an opportunity for franchise industry stakeholders to make written submissions on the operation of this Part.



## **Part 6—Application, saving and transitional provisions**

### **Division 1—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020**

#### **54 Definitions**

In this Division:

*amending regulations* means the *Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020*.

*commencement date* means 1 June 2020.

#### **55 End of term obligations**

*Agreements entered into on or after commencement date*

- (1) Division 2 of Part 5, as inserted by the amending regulations, applies to:
  - (a) a new vehicle dealership agreement that is entered into on or after the commencement date; and
  - (b) such an agreement as later renewed or extended.

*Agreements in force immediately before commencement date*

- (2) Subclauses (3) and (4) apply to a new vehicle dealership agreement that was in force immediately before the commencement date.
- (3) Despite the amendments made by the amending regulations, Subdivision B of Division 2 of Part 3, as in force immediately before the commencement date, continues to apply to the agreement (subject to subclause (4)).
- (4) If the agreement is later renewed or extended, then, on and after the renewal or extension:
  - (a) Subdivision B of Division 2 of Part 3, as in force immediately before the commencement date, does not apply to the agreement (as renewed or extended); and
  - (b) Division 2 of Part 5, as inserted by the amending regulations, applies to the agreement (as renewed or extended).

## 56 Capital expenditure

### *Application of clause 50*

- (1) Clause 50, as inserted by the amending regulations, applies to a new vehicle dealership agreement if:
  - (a) the disclosure document for the agreement is created or updated on or after the commencement date; and
  - (b) the agreement is entered into, renewed or extended after the creation or updating of the disclosure document.

### *Application of clause 30*

- (2) Despite the amendments made by the amending regulations, clause 30, as in force immediately before the commencement date, continues to apply to a new vehicle dealership agreement that was entered into, renewed or extended before the commencement date.
- (3) Despite the amendments made by the amending regulations, clause 30, as in force immediately before the commencement date, also continues to apply to a new vehicle dealership agreement if:
  - (a) the disclosure document for the agreement was created, or most recently updated, before the commencement date; and
  - (b) the agreement is entered into, renewed or extended on or after the commencement date.

### *Application of clause 51*

- (4) Clause 51, as inserted by the amending regulations, applies in relation to a disclosure document:
  - (a) that is created or updated on or after the commencement date; and
  - (b) that is for a new vehicle dealership agreement that is to be entered into, renewed or extended after the creation or updating of the disclosure document.

## 57 Resolving disputes

Clause 52, as inserted by the amending regulations, applies to a new vehicle dealership agreement that is entered into, renewed or extended before, on or after the commencement date.

## 58 Review of amendments

- (1) The Minister must cause a review of the operation of the amendments made by the amending regulations to be conducted before 1 April 2024.
- (2) The Minister must cause a written report of the review to be prepared.

- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

## **Division 2—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021**

### **59 Definitions**

In this Division:

*amending regulations* means the *Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021*.

### **60 Application of amendments relating to dispute resolution**

- (1) The amendments made by Schedule 1 (about dispute resolution) to the amending regulations apply in relation to disputes notified on or after the day this clause commences (whether the franchise agreements to which the disputes related were entered into, extended or renewed before, on or after that day).
- (2) However, the amendment of clause 34 and the repeal of Division 2 of Part 4, and subclause 40B(3) as inserted by Schedule 1, apply in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.
- (3) So far as Divisions 2 and 3 of Part 4 and clause 45, as in force immediately before the commencement of Schedule 1 to the amending regulations, have effect after that commencement, they have effect as if:
  - (a) the Ombudsman were the mediation adviser; and
  - (b) anything done before that commencement by or in relation to the mediation adviser had been done by or in relation to the Ombudsman.

### **61 Application of provisions about leasing or other occupation of premises**

- (1) Subclauses 13(2A), (2B), (4A) and (4B), as inserted by Schedule 8 to the amending regulations, apply in relation to information that was disclosed to the franchisor or associate before, on or after 1 July 2021.
- (2) Subclause 13(3), as amended by Schedule 8 to the amending regulations, applies in relation to occupation of premises starting on or after 1 July 2021.

### **62 Application of provisions about marketing funds and other cooperative funds**

Clause 15, as inserted by Schedule 5 to the amending regulations, applies in relation to financial statements prepared on or after 1 July 2021 for financial years ending on or after 30 June 2021.

### **63 Application of provisions about franchisor’s legal costs**

Clause 19A, as inserted by Schedule 6 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

### **64 Application of amendment relating to restraint of trade**

The amendment of clause 23 by Schedule 9 to the amending regulations applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

### **65 Application of provisions about termination**

- (1) Subclauses 26(1), (1A), (1B), (1C) and (1D), as inserted by Schedule 3 to the amending regulations, apply in relation to franchise agreements entered into on or after 1 July 2021.
- (2) Clause 26A, as inserted by Schedule 3 to the amending regulations, applies in relation to transfers of franchise agreements that occur on or after 1 July 2021.
- (3) Clause 29, as substituted by Schedule 3 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.
- (4) Despite the repeal of clause 29 by Schedule 3 to the amending regulations, that clause, as in force immediately before 1 July 2021, continues to apply on and after that date in relation to franchise agreements to which that clause applied that were entered into before that date.
- (5) However, subclause (4) does not apply in relation to a franchise agreement that was entered into before 1 July 2021 and is extended or renewed on or after that date.

### **66 Application of provisions about capital expenditure**

- (1) Clause 30, as substituted by Schedule 4 to the amending regulations, applies in relation to:
  - (a) franchise agreements entered into, extended or renewed on or after 1 July 2021; and
  - (b) new vehicle dealership agreements to which clause 50 applied immediately before 1 July 2021.

Note: For the application of clause 50 immediately before 1 July 2021, see clause 56.

- (2) Despite the repeal of clause 30 by Schedule 4 to the amending regulations, that clause, as in force immediately before 1 July 2021, continues to apply on and after that date in relation to franchise agreements (except new vehicle dealership agreements) to which that clause applied immediately before that date.

**Schedule 1** Franchising Code of Conduct

**Part 6** Application, saving and transitional provisions

**Division 2** Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021

Clause 67

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- (3) Despite the repeal of subclauses 30(1) and (2) by Schedule 4 to the amending regulations, those subclauses, as in force immediately before 1 June 2020, continue to apply on and after 1 July 2021 in relation to new vehicle dealership agreements to which clause 30, as in force immediately before 1 June 2020, applied immediately before 1 July 2021 because of subclause 56(2) or (3).
- (4) Clause 30A, as inserted by Schedule 4 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

**67 Application of provisions about retrospective variation of franchise agreements by franchisors**

Clause 31A, as inserted by Schedule 7 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

**68 Application of amendments about new vehicle dealership agreements**

The amendments made by Schedule 11 to the amending regulations apply in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

**69 Application of amendments of Annexure 1 of Schedule 1 (about disclosure documents)**

The amendments of Annexure 1 of Schedule 1 made by Schedule 2 to the amending regulations apply in relation to disclosure documents that are given, or copies of which are given, on or after 1 November 2021.

**Division 3—Amendments made by the Treasury Laws Amendment  
(Corporate Insolvency Reforms Consequential  
Amendments) Regulations 2021**

**70 Application of amendment to clause 17 (disclosure of materially relevant  
facts)**

The amendment of clause 17 made by Schedule 1 to the *Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021* applies in relation to a franchisor, or an associate of a franchisor, that becomes a Chapter 5 body corporate on or after the commencement of that Schedule.

**Schedule 1** Franchising Code of Conduct

**Part 6** Application, saving and transitional provisions

**Division 4** Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (Penalties and Other Matters) Regulations 2022

Clause 71

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**Division 4—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (Penalties and Other Matters) Regulations 2022**

**71 Application of amendments relating to penalties**

The amendments made by Part 1 of Schedule 1 to the *Competition and Consumer (Industry Codes—Franchising) Amendment (Penalties and Other Matters) Regulations 2022* apply in relation to contraventions occurring on or after the commencement of that Part.



## **Division 5—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (Additional Information) Regulations 2022**

### **72 Application of amendments**

- (1) The amendments of clause 53B made by the amending regulations apply in relation to information or documents included in the Register before, on or after the commencement day.
- (2) The amendments of clause 53D made by the amending regulations apply in relation to franchise agreements entered into on or after the commencement day.
- (3) If paragraph 53D(3)(b) would, apart from this clause, require a franchisor to provide information at least 14 days before a day in November 2022 that is on or after the commencement day, that paragraph applies to the franchisor as if it required the information to be provided on or before 30 November 2022.
- (4) In this clause:

***amending regulations*** means the *Competition and Consumer (Industry Codes—Franchising) Amendment (Additional Information) Regulations 2022*.

***commencement day*** means the day the amending regulations commence.

Note: The information required by subclause 53C(3) to be provided on or before 14 November 2022 will include any information required to be provided under a determination under subclause 53C(4), as substituted by the amending regulations, if:

- (a) the commencement day is 14 November 2022 or an earlier day; and
- (b) that determination is made on or before 14 November 2022.

## Annexure 1—Disclosure document for franchisee or prospective franchisee

Note: See subclause 8(3).

### 1 First page

#### 1.1 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
- (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 key facts sheet and 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 key facts sheet, 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**

- 2.1 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).
- 2.2 The name under which the franchisor carries on business in Australia relevant to the franchise.
- 2.3 A description of the kind of business operated under the franchise.
- 2.4 The number of years that the franchise or franchise system has operated in Australia.
- 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).
- 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.
- 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 of the relevance of the relationship to the franchise system and the franchise.
- 2.8 For each officer of the franchisor—name, position held and qualifications (if any).

## **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

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(b) working for the franchisor.

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
- (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

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
- (ii) contravention of trade practices law; or
- (iii) contravention of the *Corporations Act 2001*; or
- (iv) unconscionable conduct; or
- (v) misconduct; or
- (vi) an offence of dishonesty; and

(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
- (ii) a law of a State or Territory that regulates workplace relations or independent contractors.

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; or
- (b) in the last 5 years—subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1(a); or
- (c) in the last 10 years—bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere.

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.

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).

## 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.

## 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.
- 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.
- 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.
- 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:
- (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;

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- (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.

- 6.5 Subject to subclause 32(1), 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.

## 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; 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).
- 7.4 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.

- 7.5 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.

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## 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
  - (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.
- 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
  - (b) limited to a particular site.
- 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
  - (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.

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## 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
  - (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
  - (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).

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
- (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**

12.1 Details of whether the franchisee may make available online:

- (a) goods of the same type or brand; or
- (b) services of the same type.

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;

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- (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.

12.3 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.

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;
- (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.

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.

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

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.

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.

13.4 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 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.
- 14.2 The conditions under which a payment will be refunded.

### *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.
- 14.4 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.
- 14.5 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*

- 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 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.
- 14.7 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

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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.

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.

## 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 (for example, franchisee, franchisor, outside supplier);
- (b) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
- (c) who controls or administers the fund;
- (d) whether the fund is audited and, if so, by whom and when;
- (e) how the fund's financial statements can be inspected by franchisees;
- (f) the kinds of expense for which the fund may be used;
- (g) the fund's expenses for the last financial year, including the percentage spent on production, marketing, administration and other stated expenses;
- (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 marketing or promoting the franchisee's business.

## 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.

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;

- (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**

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

## **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.

## **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.
- 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.

## **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
  - (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

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- (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.

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.

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:

**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.**

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:

**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**

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**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**

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

## **20 Earnings information**

- 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.
- 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:
- 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).
- 20.3 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.
- 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;
  - (b) the extent of enquiries and research undertaken by the franchisor and any other compiler of the projection or forecast;

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- (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

21.1 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.

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.

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.

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.

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.

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.

## **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.

## **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.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

**Endnote 2—Abbreviation key**

|  |  |
|--|--|
| ad = added or inserted   | o = order(s)   |
| am = amended   | Ord = Ordinance  |
| amdt = amendment   | orig = original  |
| c = clause(s)  | par = paragraph(s)/subparagraph(s)<br>/sub-subparagraph(s)             |
| C[x] = Compilation No. x   | pres = present   |
| Ch = Chapter(s)  | prev = previous  |
| def = definition(s)  | (prev...) = previously   |
| Dict = Dictionary  | Pt = Part(s)   |
| disallowed = disallowed by Parliament                              | r = regulation(s)/rule(s)  |
| Div = Division(s)  | reloc = relocated  |
| ed = editorial change  | renum = renumbered   |
| exp = expires/expired or ceases/ceased to have<br>effect           | rep = repealed   |
| F = Federal Register of Legislation                                | rs = repealed and substituted  |
| gaz = gazette  | s = section(s)/subsection(s)   |
| LA = <i>Legislation Act 2003</i>                                   | Sch = Schedule(s)  |
| LIA = <i>Legislative Instruments Act 2003</i>                      | Sdiv = Subdivision(s)  |
| (md) = misdescribed amendment can be given<br>effect               | SLI = Select Legislative Instrument                                    |
| (md not incorp) = misdescribed amendment<br>cannot be given effect | SR = Statutory Rules   |
| mod = modified/modification  | Sub-Ch = Sub-Chapter(s)  |
| No. = Number(s)  | SubPt = Subpart(s)   |
|  | <u>underlining</u> = whole or part not<br>commenced or to be commenced |

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

| Name   | Registration              | Commencement   | Application, saving and transitional provisions |
|--|---------------------------|--|---|
| Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (SLI No. 168, 2014)                            | 3 Nov 2014 (F2014L01472)  | 1 Jan 2015 (s 2)   |   |
| Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016                                 | 13 Dec 2016 (F2016L01926) | Sch 1 (items 19–23): 1 Mar 2017 (s 2(1) item 2)  | —   |
| Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020 | 29 May 2020 (F2020L00636) | Sch 1: 1 June 2020 (s 2(1) item 2)<br>Sch 2: 1 July 2021 (s 2(1) item 3)                                       | —   |
| Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2020                                    | 14 Dec 2020 (F2020L01610) | Sch 1 (items 5, 6): 15 Dec 2020 (s 2(1) item 2)  | —   |
| Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021           | 1 June 2021 (F2021L00670) | Sch 2–11 and Sch 12 (item 2): 1 July 2021 (s 2(1) items 3, 5)<br>Remainder: 2 June 2021 (s 2(1) items 1, 2, 4) | —   |
| Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021                     | 20 Dec 2021 (F2021L01847) | Sch 1 (items 1–3): 21 Dec 2021 (s 2(1) item 1)   | —   |
| Competition and Consumer (Industry Codes—Franchising) Amendment (Penalties and Other Matters) Regulations 2022       | 18 Mar 2022 (F2022L00336) | 15 Apr 2022 (s 2(1) item 1)  | —   |
| Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2022     | 31 Mar 2022 (F2022L00471) | 1 Apr 2022 (s 2(1) item 1)   | —   |
| Competition and Consumer (Industry Codes—Franchising) Amendment (Additional Information) Regulations 2022            | 10 Nov 2022 (F2022L01445) | 11 Nov 2022 (s 2(1) item 1)  | —   |

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**Endnote 4—Amendment history**

| <b>Provision affected</b> | <b>How affected</b>  |
|---------------------------|--|
| s 2 .....                 | rep LA s 48D   |
| s 4A .....                | ad F2021L00670   |
| s 6 .....                 | rep F2022L00336  |
| <b>Schedule 1</b>         |  |
| <b>Part 1</b>             |  |
| <b>Division 1</b>         |  |
| c 3A .....                | ad F2021L00670<br>rs F2022L00336   |
| <b>Division 2</b>         |  |
| c 4 .....                 | am F2016L01926; F2020L00636; F2021L00670; F2021L01847; F2022L00336;<br>F2022L00471 |
| c 5 .....                 | am F2021L00670   |
| <b>Division 2A</b>        |  |
| Division 2A .....         | ad F2022L00336   |
| c 5A .....                | ad F2022L00336   |
| <b>Division 3</b>         |  |
| c 6 .....                 | am F2021L00670; F2022L00336  |
| <b>Part 2</b>             |  |
| <b>Division 2</b>         |  |
| c 8 .....                 | am F2022L00336   |
| c 9 .....                 | am F2021L00670<br>ed C5<br>am F2022L00336; F2022L00471                             |
| c 9A .....                | ad F2021L00670<br>am F2022L00336   |
| <b>Division 3</b>         |  |
| c 11 .....                | am F2021L00670; F2022L00336  |
| <b>Part 3</b>             |  |
| <b>Division 1</b>         |  |
| c 12 .....                | am F2021L00670   |
| <b>Division 2</b>         |  |
| <b>Subdivision A</b>      |  |
| c 13 .....                | am F2021L00670; F2022L00336  |
| c 14 .....                | am F2022L00336   |
| c 15 .....                | rs F2021L00670<br>am F2022L00336   |
| c 16 .....                | am F2021L00670; F2022L00336  |
| c 17 .....                | am F2016L01926; F2021L01847; F2022L00336   |

## Endnotes

### Endnote 4—Amendment history

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| <b>Provision affected</b>  | <b>How affected</b>                                |
|----------------------------|--|
| <b>Subdivision B</b>       |  |
| Subdivision B heading..... | rs F2020L00636                                     |
| c 17A.....                 | ad F2020L00636                                     |
| c 18.....                  | am F2022L00336                                     |
| <b>Division 3</b>          |  |
| c 19A.....                 | ad F2021L00670<br>am F2022L00336                   |
| c 20.....                  | am F2021L00670                                     |
| c 21.....                  | am F2021L00670                                     |
| c 22.....                  | am F2021L00670<br>rs F2022L00336                   |
| c 23.....                  | am F2021L00670                                     |
| <b>Division 4</b>          |  |
| c 25.....                  | am F2022L00336                                     |
| <b>Division 5</b>          |  |
| c 26.....                  | am F2021L00670; F2022L00336                        |
| c 26A.....                 | ad F2021L00670<br>am F2022L00336                   |
| c 26B.....                 | ad F2021L00670                                     |
| c 27.....                  | am F2021L00670; F2022L00336                        |
| c 28.....                  | am F2022L00336                                     |
| c 29.....                  | am F2016L01926<br>rs F2021L00670<br>am F2022L00336 |
| <b>Division 6</b>          |  |
| c 30.....                  | am F2020L00636<br>rs F2021L00670<br>am F2022L00336 |
| c 30A.....                 | ad F2021L00670                                     |
| c 31.....                  | rs F2021L00670<br>am F2022L00336                   |
| c 31A.....                 | ad F2021L00670                                     |
| c 32.....                  | am F2022L00336                                     |
| c 33.....                  | am F2022L00336                                     |
| <b>Part 4</b>              |  |
| <b>Division 1</b>          |  |
| c 34.....                  | am F2021L00670                                     |
| c 35.....                  | am F2020L00636; F2021L00670                        |
| c 36.....                  | am F2021L00670                                     |
| Division 2.....            | rep F2021L00670                                    |

## Endnote 4—Amendment history

| <b>Provision affected</b>                        | <b>How affected</b>              |
|--|----------------------------------|
| c 38.....  | rep F2021L00670                  |
| c 39.....  | rep F2021L00670                  |
| <b>Division 3</b>                                |                                  |
| Division 3.....                                  | rs F2021L00670                   |
| <b>Subdivision A</b>                             |                                  |
| Subdivision A.....                               | rs F2021L00670                   |
| c 40.....  | rep F2021L00670                  |
| c 40A.....                                       | ad F2021L00670                   |
| c 40B.....                                       | ad F2021L00670                   |
| <b>Subdivision B</b>                             |                                  |
| Subdivision B.....                               | rs F2021L00670                   |
| c 41.....  | rep F2021L00670                  |
| c 41A.....                                       | ad F2021L00670<br>am F2022L00336 |
| c 41B.....                                       | ad F2021L00670                   |
| c 41C.....                                       | ad F2021L00670                   |
| c 42.....  | rep F2021L00670                  |
| c 43.....  | rep F2021L00670                  |
| <b>Subdivision C</b>                             |                                  |
| Subdivision C.....                               | ad F2021L00670                   |
| c 43A.....                                       | ad F2021L00670                   |
| c 43B.....                                       | ad F2021L00670<br>am F2022L00336 |
| c 43C.....                                       | ad F2021L00670                   |
| c 43D.....                                       | ad F2021L00670                   |
| <b>Subdivision D</b>                             |                                  |
| Subdivision D.....                               | ad F2021L00670                   |
| c 44A.....                                       | ad F2021L00670                   |
| Division 4.....                                  | rep F2021L00670                  |
| c 44.....  | rep F2021L00670                  |
| c 45.....  | rep F2021L00670                  |
| <b>Part 5</b>                                    |                                  |
| Part 5.....                                      | ad F2020L00636                   |
| <b>Division 1</b>                                |                                  |
| c 46.....  | ad F2020L00636<br>am F2021L00670 |
| <b>Division 1A</b>                               |                                  |
| Division 1A<br>(prev Division 2 first occurring) |                                  |
| Division 2 (first occurring).....                | ad F2021L00670                   |

## Endnotes

### Endnote 4—Amendment history

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| <b>Provision affected</b> | <b>How affected</b>               |
|---------------------------|-----------------------------------|
|                           | renum<br>ed C6                    |
| c 46A .....               | ad F2021L00670<br>am F2022L00336  |
| c 46B .....               | ad F2021L00670<br>am F2022L00336  |
| <b>Division 2</b>         |                                   |
| c 47 .....                | ad F2020L00636<br>am F2022L00336  |
| c 48 .....                | ad F2020L00636                    |
| c 49 .....                | ad F2020L00636<br>am F2021L00670  |
| Division 3 .....          | rep F2021L00670                   |
| c 50 .....                | ad F2020L00636<br>rep F2021L00670 |
| c 51 .....                | ad F2020L00636<br>rep F2021L00670 |
| <b>Division 4</b>         |                                   |
| c 52 .....                | ad F2020L00636                    |
| <b>Part 5A</b>            |                                   |
| Part 5A .....             | ad F2022L00471                    |
| <b>Division 1</b>         |                                   |
| c 53 .....                | ad F2022L00471                    |
| c 53A .....               | ad F2022L00471<br>am F2022L01445  |
| c 53B .....               | ad F2022L00471<br>am F2022L01445  |
| <b>Division 2</b>         |                                   |
| c 53C .....               | ad F2022L00471<br>am F2022L01445  |
| c 53D .....               | ad F2022L00471<br>am F2022L01445  |
| c 53E .....               | ad F2022L00471<br>am F2022L01445  |
| <b>Division 3</b>         |                                   |
| c 53F .....               | ad F2022L00471<br>am F2022L01445  |
| <b>Division 4</b>         |                                   |
| c 53G .....               | ad F2022L00471                    |

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## Endnote 4—Amendment history

| <b>Provision affected</b> | <b>How affected</b>         |
|---------------------------|-----------------------------|
| <b>Division 5</b>         |                             |
| c 53H.....                | ad F2022L00471              |
| c 53J.....                | ad F2022L00471              |
| <b>Part 6</b>             |                             |
| Part 6.....               | ad F2020L00636              |
| <b>Division 1</b>         |                             |
| c 54.....                 | ad F2020L00636              |
| c 55.....                 | ad F2020L00636              |
| c 56.....                 | ad F2020L00636              |
| c 57.....                 | ad F2020L00636              |
| c 58.....                 | ad F2020L00636              |
| <b>Division 2</b>         |                             |
| Division 2.....           | ad F2021L00670              |
| c 59.....                 | ad F2021L00670              |
| c 60.....                 | ad F2021L00670              |
| c 61.....                 | ad F2021L00670              |
| c 62.....                 | ad F2021L00670              |
| c 63.....                 | ad F2021L00670              |
| c 64.....                 | ad F2021L00670              |
| c 65.....                 | ad F2021L00670              |
| c 66.....                 | ad F2021L00670              |
| c 67.....                 | ad F2021L00670              |
| c 68.....                 | ad F2021L00670              |
| c 69.....                 | ad F2021L00670              |
| <b>Division 3</b>         |                             |
| Division 3.....           | ad F2021L01847              |
| c 70.....                 | ad F2021L01847              |
| <b>Division 4</b>         |                             |
| Division 4.....           | ad F2022L00336              |
| c 71.....                 | ad F2022L00336              |
| <b>Division 5</b>         |                             |
| Division 5.....           | ad F2022L01445              |
| c 72.....                 | ad F2022L01445              |
| <b>Annexure 1</b>         |                             |
| item 1.....               | am F2021L00670              |
| item 4.....               | am F2016L01926; F2021L00670 |
| item 10.....              | am F2021L00670              |
| item 13.....              | am F2021L00670              |
| item 15.....              | am F2021L00670              |
| item 17A.....             | ad F2021L00670              |

## Endnotes

### Endnote 4—Amendment history

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| <b>Provision affected</b> | <b>How affected</b> |
|---------------------------|---------------------|
| item 17B.....             | ad F2021L00670      |
| item 18.....              | am F2021L00670      |
| item 20.....              | am F2021L00670      |
| Annexure 2.....           | am F2020L01610      |
|                           | rep F2021L00670     |

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