

In response to the Fairness in Franchising report, the Australian Competition & Consumer Commission (ACCC) implemented significant [amendments](#) to the Franchising Code (Code). Most changes will apply to franchise agreements entered, renewed, or extended on or after 1 July 2021, although some amendments apply through a transition period to 1 November 2021. These changes can be broadly categorised into the following:

- A. Additional disclosure obligations;**
- B. Expansion of rights for franchisees on cooling off, variation, termination, dispute resolution;**
- C. Restrictions on franchisors in respect of costs and funding.**

Franchisors need to be aware of the changes, especially in relation to a franchisee and franchisor's rights and obligations, as failure to comply with the amendments may attract civil penalties. H & H Lawyers recommends franchisors to amend and update their franchise agreement templates to reflect the Code's amendments for future use.

A. Key Changes to Disclosure Obligations

DD: Disclosure Document FA: Franchise Agreement

Area(s)	Previous Version(s)	Amendment(s) Summary	Application
Disclosure Requirements	<ul style="list-style-type: none"> • Narrower scope of matters for disclosure. 	<p><u>Information Statement must be provided before other Disclosure Documents</u></p> <ul style="list-style-type: none"> • A standardised 'Information Statement' must be provided to prospective franchisees prior to formal disclosure, which can be found here. <p><u>Increased scope of information required to be included in the Disclosure Document</u></p> <ul style="list-style-type: none"> • Disclosure Document must now include: <ul style="list-style-type: none"> • Percentage of franchisees involved in dispute process in previous financial year; <ul style="list-style-type: none"> • Capital expenditure; • Clear reports of the expenditure; • Amount, timing and nature of the expenditure; • Expected results and benefits of the expenditure; and • Estimated risks of the expenditure. • Marketing funds, rebates and other financial benefits and earnings; • (*If the franchisor intends to lease/sublease premises for the purposes of the business, it must) Provide a copy of the lease or summary of commercial terms of the lease if the franchisor intends to lease/sublease; • Whether FA provides for the Code's arbitration provisions; • Early termination of the agreement; • Entitlement of compensation for goodwill by the franchisee; • Restraint of trade obligations. <p><u>Disclosure Document must be updated</u></p> <ul style="list-style-type: none"> • Franchisor must update the DD within 4 months after end of each financial year 	<p>Applies to DDs provided to franchisees on or after 1 November 2021.</p>
Key Facts Sheet	<ul style="list-style-type: none"> • Not required. 	<p><u>Introduction of "Key Facts Sheet"</u></p> <ul style="list-style-type: none"> • Franchisors must provide franchisees with a Key Facts Sheet, which is a summary of critical information contained in a franchisor's preliminary DD to the franchisee, which can be found here. <p><u>Key Facts Sheet must be updated</u></p> <ul style="list-style-type: none"> • Franchisor must update Key Facts Sheet in the same way as the DD, except where: <ul style="list-style-type: none"> • Franchisor did not enter into a FA or only entered into one FA. • Franchisor does not intend to enter into another FA in subsequent financial year. 	<p>Applies from 1 July 2021.</p>

B. Expanded Franchisee Rights – Cooling Off; Variation; Termination; Dispute Resolution

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Cooling Off Period	<ul style="list-style-type: none"> Cooling off period was 7 days. 	<p><u>Cooling off period will apply to new agreements and sale of business between franchisees</u></p> <ul style="list-style-type: none"> Cooling off period is now extended to 14 calendar days. Cooling off period begins once franchisee receives all necessary documentations. <p><u>Cooling off after transferring Franchise Agreement</u></p> <ul style="list-style-type: none"> Cooling off period expires at the earlier of: <ul style="list-style-type: none"> New franchisee taking possession and control of franchised business; or 14 days from the day after becoming the franchisee under the FA. 	Applies from 1 July 2021
Varying a Franchise Agreement	<ul style="list-style-type: none"> Retrospective variation of FA could occur, applying to actions occurred before the change 	<p><u>Franchisee's written consent must be obtained</u></p> <ul style="list-style-type: none"> Franchisors cannot amend the terms of FA without the franchisee's written consent. 	Applies to FAs entered into, extended or renewed after 1 July 2021.
Dispute Resolution	<ul style="list-style-type: none"> Lack of access provided to cost-effective and determinative dispute resolution process – mediation was the only available avenue for the parties. 	<p><u>Expansion on available dispute resolution processes</u></p> <ul style="list-style-type: none"> Code now provides for an expanded Alternative Dispute Resolution (ADR) process, which involves: <ul style="list-style-type: none"> Conciliation, available in addition to mediation; Arbitration can be used if all parties agree; and A procedure where multiple franchisees can run a dispute together. Either party can request the Ombudsman to appoint an ADR practitioner or appointer for the dispute. 	<p>Applies to</p> <ul style="list-style-type: none"> existing FAs entered into before 2 June 2021; and disputes notified on or after 2 June 2021
Restraint of Trade	<ul style="list-style-type: none"> Restraint clause could be enforced after the FA ended, even if ex-franchisees committed a minor, technical or procedural breach of FA. 	<p><u>Franchisor to consider whether the franchisee is in "serious breach"</u></p> <ul style="list-style-type: none"> Franchisor's ability to enforce restraint clause will now depend on whether the franchisee is in "serious breach" (as defined in each FA) immediately before expiry of FA. 	Applies to FAs entered into, extended or renewed after 1 July 2021.
End of Franchise Relationship	<ul style="list-style-type: none"> Franchisor could immediately terminate FA in special grounds 	<p><u>Franchisee can now request early termination of the Franchise Agreement at any time</u></p> <ul style="list-style-type: none"> Franchisor must provide a written answer within 28 days of receipt of request. If request is refused, the Franchisor must also provide reason for refusal. <p><u>Franchisor's Notice to Terminate Franchise Agreement (subject to dispute resolution below)</u></p> <ul style="list-style-type: none"> Franchisor must give 7 days prior written notice to terminate FA on the following special grounds: <ul style="list-style-type: none"> no longer holds a licence to operate the franchised business; becomes bankrupt or insolvent, and (if a company) becomes deregistered; abandons the franchised business or franchise relationship; convicted of a serious offence; or operates the franchise business which endangers public health or safety, or in a fraudulent manner. <p><u>Franchisee may now dispute proposed termination</u></p> <ul style="list-style-type: none"> Franchisor must not terminate the agreement until 28 days after the initial termination notice date. If matter is referred to an ADR process, each party must pay their own costs of attending the ADR process and equally pay the costs of an ADR process, unless otherwise agreed. 	Applies from 1 July 2021

C. Restrictions on Costs and Funding

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Legal Costs	<ul style="list-style-type: none"> Franchisor could pass on future legal costs associated with, for example, execution of breach or renewal notices, even if the franchisee was unaware of such liability. 	<p><u>Legal costs must be fixed</u></p> <ul style="list-style-type: none"> FA must specify, in fixed amount of dollars, an amount which will be incurred by the franchisee in preparing, negotiating and executing the FA. Above legal costs must be payable before commencement of the franchised business. <p><u>Franchisor cannot claim future legal costs</u></p> <ul style="list-style-type: none"> Franchisor cannot claim future legal costs where the costs are indeterminate at the time of signing, or if they relate to preparation and execution of documents other than the franchise agreement (i.e., breach notices; renewal notices). 	Applies to FAs entered into, extended or renewed after 1 July 2021.
Capital Expenditure	<ul style="list-style-type: none"> Expenditure considered necessary and justified with a written statement was excluded from general prohibition on requiring significant capital expenditure. 	<p><u>Tightened prohibition on significant capital expenditure being required of franchisees</u></p> <ul style="list-style-type: none"> Franchisor cannot require a franchisee to undertake significant capital expenditure during the FA term, unless exemptions apply. Previously disclosed in DD; approved by majority of franchisees; incurred to comply with legislative obligations or agreed to by the franchisee(s). 	
Marketing Funds	<ul style="list-style-type: none"> Inconsistency within the Code between references to marketing funds and advertising fees. 	<p><u>References to marketing (and advertising) funds now apply to all forms of cooperative funds where payments are collected to cover marketing activities for the franchise system.</u></p> <ul style="list-style-type: none"> Master Franchisors may collect and manage marketing and cooperative funds, where marketing funds must be kept in a separated account with a financial institution. <p><u>Marketing fund reporting requirements</u></p> <ul style="list-style-type: none"> If a franchisee is required to pay money to marketing or other cooperative fund, marketing fund reporting must be made compliant before 31 October 2021. Breach of or failure to comply with such obligations will attract civil penalties. Fund Administrators must prepare an audited annual financial report for the last financial year (within 4 months at the end of financial year), which must be provided to the franchisee within 30 days of preparation. 	

For any further information, please refer to: the ACCC's [website](#), the [Amending Regulations](#) and the [Explanatory statement](#)

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