

The franchising industry is an extremely successful component of Australia's small business sector. It is now worth \$80 billion, and employs over 480, 000 people. In fact, Australia has the most franchising systems per capita in the world.

Australians are running franchise systems in diverse sectors of the economy such as fast food, lawn mowing, carpet cleaning, petrol retailing, real estate and beyond.

For persons looking to run a business, franchising is often viewed as a less risky option than starting their own business. Under a franchise many business matters such as advertising, signage, equipment, product and customer service standards are usually taken care of by the franchisor. However, franchising carries its own risks. Having effective communication and good relationship between franchisee and franchisor is essential.

With the rapid success and expansion of franchising it is not surprising that the industry has attracted a few unscrupulous traders. In 1998 a mandatory Code of Conduct was enshrined in the Trades Practices Act, the first of its kind. Contraventions of the code now amount to a breach of the Act and can result in legal action by the ACCC or by franchisees and franchisors.

## The Franchising Code of Conduct

The code establishes various rights and obligations for franchisors and franchisees.

### Disclosure Documents

Under the code the franchisor is obliged to give franchisees a disclosure document at least 14 days before the signing of a franchise contract or the payment of any non-refundable money. The document must cover such factors as whether the franchise is for an exclusive territory, the franchisor's current liquidity position, background to the franchisor's business experience, its policy on site selection, a history of the site, details of other franchises, including those terminated, details of any establishment costs and details of any future compulsory marketing or co-operative fund payments.

### Cooling off periods

When franchisees sign a contract to enter into a franchise agreement they may terminate the agreement within seven days of signing the contract or paying the money, whichever is earlier. Franchisees are entitled to a refund, less the franchisor's reasonable expenses, within 14 days.

### Transferral & Termination

The code sets out the circumstances in which a franchise agreement may be transferred or terminated.

### Dispute Resolution

As well as providing for internal dispute resolution

mechanisms, it also sets out requirements for mediation. Under the Code of Conduct if one party to a dispute wants to try mediation, then it is mandatory that the other party firstly attends mediation and secondly attempts to resolve the matter in mediation.

### The role of the ACCC

The ACCC has the responsibility of administering the code and investigating potential breaches. It has also had success in facilitating discussion between franchisees and franchisors to resolve problems, avoiding the potential for matters being escalated to a point where breaches of the Act arise.

There does remain a significant imbalance between the two sectors of the industry: franchisees and franchisors. While many franchisors could be described as small businesses, they retain a superior bargaining position over franchisees and this can raise problems if the superior party tries to ignore the code. Problems may also arise if the franchisor engages in misleading or deceptive conduct or other TPA breaches in its dealings with franchisees.

### Enforcing the Code

Some companies apparently seek to avoid breaching the Code by characterising their operations as licensing agreements.

The ACCC recently took action against Synergy In Business Pty Ltd for code contraventions including a failure to provide adequate disclosure information or a cooling off period to prospective franchisees. The Court rejected Synergy's claim that it ran a licensing scheme, declaring by consent that it was a franchisor and therefore had contravened the code.

### How do I find out more?

The ACCC publishes a *Franchisees Guide* to the code of conduct. Copies can be ordered from [www.accc.gov.au](http://www.accc.gov.au) or by calling the ACCC Infocentre on 1300 302 502.

The ACCC has recently filmed a *Competing Fairly Forum* entitled *Franchising: Is it right for you?* which consists of a panel discussion between leading franchising industry representatives.

It provides up to date information and advice about becoming involved in the sector, key issues raised with the ACCC, dispute resolution mechanisms and the role of the ACCC in administering the code.

The forum is being screened at a number of locations in regional Australia from September. For information on your nearest venue contact the ACCC Infocentre on 1300 302 502. The forum will also be available via video streaming at [www.accc.gov.au](http://www.accc.gov.au).