



A guide for business

The franchisee manual

December 2014



This manual will help franchisees and prospective franchisees to understand their rights and responsibilities under the Franchising Code of Conduct.

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1. Introduction

The Franchising Code of Conduct is a mandatory industry code that applies to the parties to a franchise agreement. It applies to conduct occurring on or after 1 January 2015 (with some exceptions). The Code has the force of law and is binding on franchising participants.

The Code requires franchisors to disclose specific information about a franchise to both potential and existing franchisees. It also sets out a number of conditions relating to the rights of both parties under a franchise agreement. The Code also provides a mechanism for franchisees and franchisors to try to resolve disputes.

This manual will help you to understand:

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

Key terms

Franchisee—a person to whom a franchise is granted or otherwise participates in a franchise as a franchisee.

Franchisor—a person who grants a franchise or otherwise participates in a franchise as a franchisor.

Prospective franchisee—a person who deals with a franchisor for the right to be granted a franchise.

2. Start-up checklist

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

1. Assess your skills, strengths and weaknesses.	<input checked="" type="checkbox"/>
2. Complete the Griffith University online pre-entry franchise education program.	<input checked="" type="checkbox"/>
3. Get professional advice from an accountant, lawyer and business expert.	<input checked="" type="checkbox"/>
4. Make sure you receive an information statement, disclosure document, franchise agreement and a copy of the Code. Read these documents carefully.	<input checked="" type="checkbox"/>
5. Take comprehensive notes of your meetings with the franchisor. Insist on the franchisor confirming any claims it makes in writing.	<input checked="" type="checkbox"/>
6. Speak to current and previous franchisees.	<input checked="" type="checkbox"/>
7. Research the franchise and try to verify the information provided to you.	<input checked="" type="checkbox"/>
8. If you will occupy premises as part of your franchise, make sure you understand your rights and obligations under the lease or occupancy agreement.	<input checked="" type="checkbox"/>
9. Check clauses on termination, renewal, end of term and transfer of the franchise, and make sure you are willing to accept them.	<input checked="" type="checkbox"/>
10. If the deal is not acceptable, try to negotiate a better offer or look for a better deal.	<input checked="" type="checkbox"/>



3. Before choosing a franchise

Franchising can be an excellent way for you to operate a business while benefiting from the experience and security of a franchise system. However, purchasing a franchise is not a guarantee of success.

Before choosing a franchise you should:

- educate yourself
- check whether the Code applies
- be aware of your rights and responsibilities under the Code.

Educate yourself

It is a good idea before buying a franchised business to undertake some franchising education so you know how to assess franchise opportunities.

The ACCC funds a free online pre-entry franchising education program to give small business operators and prospective franchisees a realistic understanding of franchise and an introduction to the Code.

The program was developed by Griffith University and is available at www.franchise.edu.au/home/education/for-franchisees/pre-entry-franchise-education

Check whether the Code applies

The Code applies to franchise agreements entered into, transferred, renewed or extended on or after 1 October 1998.

A 'franchise agreement' is an agreement that satisfies the following four conditions:

1. there is an agreement between the parties, which may be written, oral or implied
2. one party (the franchisor) grants to another party (the franchisee) the right to carry on a business under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor
3. the business is substantially or materially associated with a specified trademark, advertising or commercial symbol
4. before starting the business the franchisee must pay, or agree to pay, an amount to the franchisor or its associate.

If an agreement meets this definition, it will be covered by the Code. This is regardless of whether the agreement or business opportunity is referred to as a 'franchise' or not.

There are some important exceptions to this rule. The Code:

- automatically applies to motor vehicle dealership agreements even if the above definition has not been met
- will not apply to franchise agreements:
 - entered into before 1 October 1998 unless the agreement was subsequently transferred, renewed or extended
 - that are covered by another mandatory code
 - where the sales under the franchise are likely to provide no more than 20 per cent of the gross turnover for the first year of the franchise, and the same goods and services have been supplied for two years immediately before entering into the agreement.

If you entered into a franchise agreement before 1 January 2015, you should be aware that certain parts of the Code will not apply to your agreement (see table below).

If a franchise agreement is entered into	The following clauses will not apply
Between 1 July 1998 and 29 February 2008	<ul style="list-style-type: none">• waiver of verbal or written representations by the franchisor—see page 12• prohibition on requiring actions or proceedings including mediation, to be brought in a State or Territory outside that in which the franchisee operates—see page 14• costs of settling disputes—see page 14• effect of restraint of trade clauses—see page 15.
Between 1 March 2008 and 31 December 2014	<ul style="list-style-type: none">• prohibition on requiring actions or proceedings, including mediation, to be brought in a State or Territory outside that in which the franchisee operates—see page 14• costs of settling disputes—see page 14• effect of restraint of trade clauses—see page 15.

Importantly, if an agreement is renewed, varied or transferred on or after 1 January 2015, all parts of the Code will apply.

Key terms

Extend—when the period of a franchise agreement is extended (other than because of renewal) or when there has been a material change to:

- the terms and conditions of the agreement
- the rights or liabilities under, or in relation to, the agreement.

Renew—when a franchisee exercises an option during the term of their agreement to renew the agreement.

Transfer—includes:

- a franchisor entering into a new agreement with a prospective transferee and terminating the existing agreement
- a franchisee's rights and obligations under an agreement being assigned to a prospective transferee
- any other transfer circumstances contemplated by an agreement.

Vary—any change to a franchise agreement.

Be aware of your rights and responsibilities under the Code

Disclosure

Under the Code, a franchisor must provide specific documents to you upfront to help you make an informed decision about whether to proceed with the franchise.

Prospective franchisees are entitled to receive four key documents when they are considering buying a franchise:

- an information statement
- a disclosure document
- a copy of the franchise agreement
- a copy of the Code.

If you contact a franchisor to formally apply, or express an interest in, acquiring a franchised business (not about renewing or extending an existing agreement), the franchisor must provide you with an **information statement**. The information statement is a 2-page document that highlights some of the risks and rewards of franchising.

If you decide to become a franchisee, the franchisor must also provide you with a **disclosure document**, **franchise agreement** and a copy of **the Code** at least 14 days before you enter into an agreement or make a non-refundable payment.

The franchisor must also follow this process if you are an existing franchisee who is planning to renew or extend your agreement, or enter into a new agreement.

If you will be required to enter into other agreements as a condition of a franchise agreement—such as a hire purchase, security or confidentiality agreement, or a restraint of trade agreement—these agreements must be provided to you at least 14 days before you sign the franchise agreement. If the documents are not available at that time, they must be provided as soon as they become available.

Good faith

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

Good faith requires that parties exercise their power **reasonably** and **not arbitrarily** or **for some irrelevant purpose**. Conduct may lack good faith if a party acts dishonestly, for an ulterior motive or in a way that undermines or denies the other party the benefits of the franchise agreement.

The obligation to act in good faith applies to any matter arising in relation to a franchise agreement or the Code. This means that the obligation extends to all aspects of the franchising relationship, including:

- pre-contractual negotiations
- performance of the contract
- dispute resolution
- the end (including termination) of an agreement.

You should be aware that the obligation to act in good faith may not end when the agreement comes to an end. For example, if you have obligations under the agreement that will continue after the agreement comes to an end, you may be required to perform these obligations in good faith.

While good faith requires a party to consider the rights of the other party, it does not require them to act in the other party's interests. It also does not prevent a party from acting in its own legitimate commercial interests. For example, while good faith will require parties to act honestly and cooperatively during the negotiation of a franchise agreement, it is unlikely to compel a franchisor to make any requested changes to your agreement. Similarly, a decision by a franchisor not to offer you an option to renew or extend your agreement does not mean that the franchisor has not acted in good faith in negotiating the agreement.

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

- a franchisor treating a franchisee differently because the franchisee has raised concerns about the system
- a franchisor raising numerous minor and immaterial breaches with a franchisee in an aggressive and intimidatory manner designed to extract concessions or cessation of complaints
- franchisees using confidential information provided by the franchisor to compete with the franchisor
- franchisees using social media to post negative comments about their franchisor or their dispute with their franchisor.

Practical tips

Indicators of good faith conduct include:

- being honest with the other party
- considering the other party's interests
- consulting with the other party regarding proposed changes
- trying to resolve disputes as they arise (either directly, or through mediation)
- not exercising rights, powers or discretions for an ulterior purpose.



4. Research and verification

Researching and investigating the franchise system you are considering buying into will help you to make an informed decision about the franchise's likely success, including its short-term and long-term viability.

When you are considering buying a franchise, it is important that you review the documents provided to you. These documents not only set out your rights and obligations but will also give you key information that you should follow up on.

Your research should involve verifying any information provided to you by the franchisor in the disclosure document and in any other documents. It is important that you seek professional legal, accounting and business advice to help you do this.

Review the disclosure document¹

When reviewing your disclosure document, you may wish to pay particular attention to:

Franchise territory (item 9)

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

Purchasing ability of franchisees (item 10)

- Is there a limit on the suppliers that you can buy goods or services from?
- Will you be required to buy goods or services from a particular supplier or a list of nominated suppliers (including the franchisor)?
- Will the franchisor (or one of its associates) receive a rebate or other financial benefit when you buy goods or services from a supplier?

Online sales (item 12)

- Will you be able to sell your goods or services online? If so, will the franchisor impose any conditions?

¹ If you receive a disclosure document prior to 1 November 2015, it may not contain all of the information, or follow the numbering, referred to in this publication. Franchisors have until 31 October 2015 to update their disclosure document to comply with the new Code.

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

Site selection (item 13)

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

Payments (item 14)

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

Unilateral variation (item 17)

- In what circumstances can the franchisor vary the franchise agreement?

End of term arrangements (item 18)

- What happens when the agreement comes to an end?
- Will you have an option to renew or extend the agreement, or enter into a new agreement? If so, what process will the franchisor use to determine whether to renew, extend or grant a new franchise?

Verify earnings information

The franchisor may choose to provide you with earnings information. This may take the form of historical figures or a projection or forecast.

If the franchisor has provided you with projected earnings, it must also provide you with certain information about the assumptions on which the projection is based. An accountant or business adviser will be able to assist you to compare and verify any figures or projections given to you.

You should ask the franchisor to confirm in writing any verbal claims made to you about earnings.

Speak to franchisees

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

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

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

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

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

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

Check the franchisor's financial position

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

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

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

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

Do a background check

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

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

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

Practical tip

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

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

Legal action

A franchisor is required to disclose the details of certain court proceedings against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor (see item 4 of the disclosure document). If legal action has been taken, you should obtain further information about the matter and its outcome.

You should also check whether any government agency or private party has taken legal action against the franchisor or any other persons responsible for the management of the franchise (including directors and majority shareholders) and/or the franchise itself. You should consider doing searches on the ACCC website and the ASIC website.

Do your own market research

A franchise's position within the market in which it trades should be a vital consideration for a prospective franchisee.

You should research the market for your product or service and the wider industry thoroughly. It is important that you consider the sustainability of the product or service. Also think about who your competitors will be and their proximity to your business or business territory.

Once you understand the market for your product or service, you should then research the proposed franchise territory or site to see whether it is suitable for your franchise. You should look at the demographics, culture and spending habits of consumers within the area.

Look out for scammers

Warning signs of scam franchise opportunity include:

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

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

Practical tip

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





5. Understanding your agreement

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

There are four key stages to your franchise agreement:

1. before you sign
2. the cooling-off period
3. during the agreement
4. the end of the agreement.

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

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

Before you sign

Once you have received the franchise agreement, disclosure document and a copy of the Code, the franchisor must wait at least 14 days before you:

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

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

Read your agreement

You should look closely at the terms of your agreement. Particular things to look out for include whether:

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

Practical tip

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

Documents you must give to the franchisor

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

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

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

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

No release of liability

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

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

Cooling-off period

You are entitled to terminate a new franchise agreement (not a renewal, extension or transfer of an agreement) within seven days of entering into the agreement (or an agreement to enter into a franchise agreement) or making a payment under the agreement (whichever happens first).

If you do terminate the agreement, you are entitled to a refund for payments you have made. Your franchisor has to provide you with a refund within 14 days; however, the franchisor can deduct its reasonable expenses from this amount if the expenses, or the method of calculating such expenses, has been set out in the franchise agreement.

During the agreement—your ongoing rights and obligations

Lease documentation

If you lease premises from your franchisor or one of its associates, the franchisor must provide you with a copy of the lease (or the agreement to lease) within one month after the document is signed. At the same time, the franchisor must inform you about any incentive or financial benefit the franchisor or its associate would be entitled to receive as a result of the lease.

Similarly, if you occupy premises leased by your franchisor or its associate, the franchisor must provide you with certain documents as well as information about any incentive or financial benefit the franchisor or its associate would be entitled to receive as a result of you occupying the premises.

The documents that give you the right to occupy the premises must be provided to you within one month after the documents are signed. The other required documents must be provided within one month of you commencing occupation of the premises.

Practical tips

- Retail leases are primarily regulated by retail tenancy laws and administered by retail tenancy officials in each state and territory. The laws vary between the states and territories, so familiarise yourself with your region's laws.
- Check whether the term of your retail lease corresponds with the term of your franchise agreement. For example, it may not be ideal to have a five-year lease and a three-year franchise agreement.

Freedom of association

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

Requesting a disclosure document

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

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

Disclosure of materially relevant facts

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

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

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

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

Marketing funds

If you contribute money to a marketing or cooperative fund, the franchisor can only spend the marketing fund money on:

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

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

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

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

Jurisdiction for settling disputes

The franchisor cannot require you to conduct mediation, or bring proceedings outside the State or Territory where your franchised business is located.

Costs of settling disputes

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

End of agreements

Transfer

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

The franchisor must advise in writing whether it consents to the transfer and whether any conditions apply. The franchisor may withdraw its consent within 14 days of granting it by advising you in writing of the decision and setting out the reasons.

If your franchisor does not respond within 42 days, consent is taken as given. The franchisor cannot withdraw its consent in these circumstances.

Your franchisor must not unreasonably withhold, or revoke, its consent. The circumstances where a franchisor may withhold consent include where a proposed transferee is unlikely to be able to meet the financial obligations or the franchisor's selection criteria.

Practical tips

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

Termination

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

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

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

The franchisor does not have to comply with these termination procedures if certain events occur and your franchise agreement allows the franchisor to terminate the agreement in the circumstances. The events are:

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

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

End of term

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

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

Restraint of trade clauses

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

For the protection in the Code to apply, you would need to meet a narrow set of conditions as set out in the Code (including that you were not in breach of your franchise agreement and had not breached any confidentiality or intellectual property obligations).

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

Key term

Restraint of trade—a clause that seeks to place a restriction on the ability of a franchisee to operate a similar business to the franchise after their franchise agreement has come to an end.



6. Resolving disputes

The Code requires franchisors to develop an internal complaint-handling procedure that complies with the Code. This procedure must be set out in the franchise agreement. The Code also provides a framework for resolving disputes.

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

If a dispute arises, you and the franchisor are required to try to resolve the dispute. The obligation to act in good faith will apply to you and the franchisor during the dispute resolution process.

Internal complaint-handling procedure

This procedure must comply with the steps outlined in the Code for dealing with a dispute (see steps 1–5 below). This procedure must be set out in your franchise agreement.

Code complaint-handling procedure

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

Dealing with a dispute

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

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

Step three: If you cannot agree within 21 days, you can refer the matter to a mediator.

Step four: If you cannot agree on a mediator, you or the franchisor can ask the Office of the Franchising Mediation Adviser (or, if available, the Small Business Commissioner in your State) to appoint a mediator.

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

A mediator is an independent third party, who will work with you and the franchisor to try and resolve the dispute. Mediators do not give legal advice or make decisions like a judge; they assist parties to come together and negotiate an outcome that is acceptable to both parties. There is no requirement to have legal representation at mediation. However, if you do decide to have your lawyer present, it is recommended that you inform the mediator of this prior to mediation.

Terminating mediation

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

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

Costs of mediation

You and the franchisor must pay your own costs for attending mediation under the Code complaint-handling procedure.

Unless you have agreed otherwise, you and the franchisor are equally liable for the other costs of mediation specified under the Code. These include the cost of the mediator, the cost of room hire and the costs of any additional input (including expert reports) agreed by you and your franchisor to be necessary.

Trying to resolve the dispute

You and your franchisor will be taken to be trying to resolve the dispute if you approach the resolution of the dispute in a reconciliatory manner, including behaving in the following ways:

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

Your legal rights

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

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

Remember: court action can be costly, time consuming and relationship destroying, and there is no guarantee that the court will find in your favour. This is why you should genuinely attempt to resolve the dispute through mediation before considering legal action.



7. Contact the ACCC

If you believe that your franchisor has breached the Code or the *Competition and Consumer Act 2010*, you should contact the ACCC.

The ACCC investigates alleged breaches of the Code or the Act and can take enforcement action where appropriate. Failure to comply with certain provisions of the Code could result in the ACCC taking court action seeking a financial penalty of up to \$54 000, or issuing an infringement notice for the breach (\$9000 for a body corporate and \$1800 for an individual or other entities).

Where the ACCC has received a franchising complaint alleging a breach of the Code and/or the Act, it will often consider whether you have attempted to resolve the dispute yourself and referred the matter to mediation. If the franchisor has not complied with the Code, the ACCC will consider the matter, taking into account a range of factors, including:

- overall detriment caused by the conduct
- whether the conduct demonstrates a blatant disregard for the law
- deterrent effect of taking enforcement action.

If it considers the matter a high priority in relation to these factors, the ACCC can take action. It is up to you to approach the ACCC when you believe your franchisor may have breached the Code and dispute resolution has failed to resolve your concerns.

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

8. Additional sources of information

ACCC

Small business helpline: 1300 302 021

Website: www.accc.gov.au/franchisingcode

Email updates: To receive updates from the ACCC's Franchising Information Network, email your contact details to franchisingcode@acc.gov.au

Publications: Visit www.accc.gov.au/publications to access more ACCC publications including a copy of the ACCC's franchisor manual.

Griffith University online pre-entry franchise education program

Website: www.franchise.edu.au/home/education/for-franchisees/pre-entry-franchise-education

Office of Franchising Mediation Adviser

Telephone: 1800 472 375 (free call from Australia)

Website: www.franchisingcode.com.au

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

Small Business Commissioners

Australian Small Business Commissioner	www.asbc.gov.au
New South Wales Small Business Commissioner	www.smallbusiness.nsw.gov.au
South Australian Small Business Commissioner	www.sasbc.sa.gov.au
Victorian Small Business Commissioner	www.vsbv.vic.gov.au
Western Australian Small Business Commissioner	www.smallbusiness.wa.gov.au
