

Deed of variation to bring pre-existing franchise agreements under the new Franchising Code which takes effect on 1 January 2015

The purpose of the deed of variation below is to enable a franchisor and its existing franchisees to agree to be bound by certain provisions of the Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (new Franchising Code), which will not otherwise apply to their agreement.

Franchisors and franchisees should be aware that executing the deed on or after 1 January 2015 will constitute a variation to their franchise agreement for the purposes of subclause 3(5) of the Franchising Code. This will mean that the new Franchising Code will apply to them in its entirety.

It is recommended that parties obtain legal advice about the flow on implications for them if they enter into this deed of variation.

DEED OF VARIATION

PARTIES

Between [franchisor]
and [franchisee]

We agree to vary the franchise agreement executed on [date] (**the Agreement**) by agreeing to be bound by the following provisions of the Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (the new Franchising Code) in our dealings with each other:

[For franchise agreements entered into between 1 October 1998 and 31 December 2014:]

- Subclause 21(2) of the new Franchising Code – the requirement that a franchise agreement must not contain a clause that requires mediation to be conducted, or action or proceedings to be conducted, in any State or Territory outside that in which the franchised business is based, or in any jurisdiction outside Australia. We agree that any such clause in the Agreement has no effect, and that all mediations, actions or proceedings will be conducted in [state/territory where franchisee is located].
- Clause 22 of the new Franchising Code – the requirement that a franchise agreement must not contain a clause that requires the franchisee to pay the franchisor’s costs in relation to settling a dispute. We agree that any such clause in the Agreement has no effect.
- Clause 23 of the new Franchising Code – the effect of a restraint of trade clause in certain circumstances if a franchise agreement is not extended. We agree that the enforceability of any such clause in the Agreement will be subject to clause 23 of the new Franchising Code.

[For franchise agreements entered into between 1 October 1998 and 29 February 2008 (in addition to the above provisions):]

- Paragraph 20(1)(b) of the new Franchising Code – the requirement that a franchise agreement must not contain a clause requiring a franchisee to sign a waiver of any verbal or written representation made by the franchisor. We agree that any such clause in the Agreement has no effect, and any waiver given under any such clause before 1 January 2015 has no effect.

In the event of any conflict or inconsistency with the terms of the Agreement, we agree that the provisions of this deed shall prevail.

DEED OF VARIATION

Execution and date

Executed as a deed on [date].

Signed by

.....
Director/Secretary Signature
(Franchisor)

.....
Director/Secretary Signature
(Franchisee)

.....
Full Name (Print)

.....
Full Name (Print)

In the presence of:

.....
Witness Signature

.....
Witness Signature

.....
Name of Witness (Print)

.....
Name of Witness (Print)