

The franchisee's guide to the Franchising Code of Conduct

A Small Business overview

If you are thinking about buying, extending or renewing a franchise, you are going to have to make some significant commercial decisions. To make the right ones you will need information about the franchisor and its operations.

The Franchising Code of Conduct can help you to make better decisions because it requires franchisors to disclose specific information and to follow some rules in their dealings with you. The code is backed by the law.

Does the code apply to you?

The code applies to a franchise agreement entered into, renewed or extended on or after 1 October 1998. For an agreement to be classified as a franchise agreement it must contain **all four** of the following elements.

- ◆ An agreement — which may be written, oral or implied.
- ◆ An existing system or suggested marketing plan — that is controlled by the franchisor or an associate.
- ◆ The business must be operating and be associated with a symbol or trade mark.
- ◆ A fee paid, or agreed to be paid, to the franchisor.

There are three exceptions where the code does not apply to a franchise agreement.

- ◆ When an overseas franchisor uses only **one** franchise or master franchise in Australia.
- ◆ When the agreement is covered by another mandatory code.

- ◆ When sales under your franchise are likely to provide no more than 20 per cent of your gross turnover for the first year of the franchise, and you have been supplying the same goods and services for two years immediately before entering the agreement.

Information you are entitled to

A franchisor must give you a disclosure document at least 14 days before you enter into, renew, or extend the franchise agreement or pay a non-refundable deposit. The information should include details of the franchise territory including:

- ◆ whether the franchise is for an exclusive or non-exclusive territory or limited to a particular site;
- ◆ whether the franchisor or its associates may establish other franchises or operate a business in the franchise territory that are substantially the same as the franchise;
- ◆ whether you may operate a business that is substantially the same as your franchise outside the franchised territory; and
- ◆ whether the franchisor may change the territory.

Other issues that should be included:

- ◆ details of the franchisor, including the business experience of the people running the franchise;
- ◆ details of criminal, trade practices and other litigation;
- ◆ payments made to agents who recruit you;
- ◆ details of existing franchises and those terminated — not renewed, transferred or bought back — by the franchisor, in the last three years;
- ◆ details of any trade mark, patent, design or copyright significant to the franchise system;
- ◆ details of goods and services you acquire or provide, including restrictions and obligations on where you buy;
- ◆ the franchisor's policy on site selection and details on the history of the site;
- ◆ details on marketing and cooperative funds;
- ◆ details of money you are required to pay before you sign the franchise and when you are entitled to a refund;

What to do when things go wrong

The code's dispute settling provisions require that:

- ◆ details of establishment costs and other payments;
- ◆ details of the financing arrangements;
- ◆ summary of conditions of the agreement that deal with both your obligations and those of the franchisor;
- ◆ summary of conditions of the agreement including the term of the agreement, variations, renewal and extension, termination, goodwill (if any), transfer, mediation, franchisor's right to inspect records and any restriction on your operations during and after the agreement;
- ◆ obligation to sign related agreements including leases, hire purchase, security, confidentiality, restrictions on business;
- ◆ information about the earnings of the franchisor;
- ◆ a statement about the franchisor's liquidity situation; and
- ◆ provision for acknowledging your receipt of the disclosure document.

- ◆ you give your franchisor details in writing of your problem, what you want done and the best way to fix the problem;
- ◆ you and your franchisor agree how to resolve the problem; and
- ◆ if you cannot agree how to fix the problem within three weeks, either of you may refer the matter to mediation or ask the Franchising Code Mediation Adviser to appoint a mediator. You must pay your own costs.

The Mediation Adviser can be contacted on 1800 150 667.

The ACCC's role

Talk to the Australian Competition and Consumer Commission (ACCC) to see if it can take action on your behalf. If it believes the matter is a private dispute it will suggest you try mediation.

However, if it is obvious that the franchisor has not complied with the Franchising Code or is using its superior bargaining power to take advantage of you, then the ACCC may take action on your behalf.

More information

ACCC publications for franchisees and franchisors include:

Small Business and the Trade Practices Act (free)

Fair game or fair go: A small business operator's guide to the unconscionable conduct provision of the Trade Practices Act (free)

The franchisee's guide (free)

The Franchising Code of Conduct (website only)

Scams: protect your business from them (free)

Franchising Code of Conduct Compliance Manual (\$50)

Franchising Code of Conduct Training Manual (\$30)

Contact the ACCC for copies or check its website; most free publications are available there.

Contact details

If you have any queries or concerns about your business operations and the Trade Practices Act contact the ACCC.

Tel: (02) 6243 1111

Fax: (02) 6243 1199

E-mail: <http://www.accc.gov.au>

Small business officers can be contacted at the ACCC office in your State — or e-mail us at small.business@accc.gov.au

For inquiries relating to Commonwealth small business policy contact the Office of Small Business, GPO Box 9879, Canberra, ACT 2601