



## **Competition and Consumer (Industry Codes— Franchising) Amendment (Fairness in Franchising) Regulations 2021**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2021

David Hurley  
Governor-General

By His Excellency's Command

Stuart Robert  
Minister for Employment, Workforce, Skills, Small and Family Business  
for the Treasurer

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## 1 Name

This instrument is the *Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The day after this instrument is registered.	
3. Schedules 2 to 11	1 July 2021.	1 July 2021
4. Schedule 12, item 1	The day after this instrument is registered.	
5. Schedule 12, item 2	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Dispute resolution

### *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*

#### 1 After section 4

Insert:

#### 4A Functions of Australian Small Business and Family Enterprise Ombudsman relating to Franchising Code of Conduct

The Australian Small Business and Family Enterprise Ombudsman has the following functions in relation to the code set out in Schedule 1:

- (a) keeping lists of persons who can provide services of arbitration, conciliation or mediation for the purposes of that code or of a franchise agreement as defined in that code;
- (b) in accordance with that code, appointing persons who can provide services of arbitration, conciliation or mediation of disputes for the purposes of that code or a complaint handling procedure of a franchise agreement (as defined in that code), on request by one or more of the parties;
- (c) receiving information about disputes that are being, or have been, dealt with under that code or a complaint handling procedure of a franchise agreement as defined in that code;
- (d) regularly providing to the Minister statistical information relating to disputes that have been or are being dealt with under that code or a complaint handling procedure of a franchise agreement as defined in that code.

#### 2 Subclause 4(1) of Schedule 1

Insert:

*ADR practitioner* means a conciliator or mediator.

*ADR process* means conciliation or mediation.

*complainant* has the meaning given by clause 35.

*Ombudsman* means the Australian Small Business and Family Enterprise Ombudsman.

*respondent* has the meaning given by clause 35.

*virtual attendance technology* means any technology that allows a person to attend an ADR process or an arbitration without being physically present at the ADR process or arbitration.

#### 3 Paragraph 21(1)(b) of Schedule 1

Omit “mediation, requires the mediation”, substitute “an ADR process, requires the ADR process”.

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**4 Paragraph 21(2)(b) of Schedule 1**

Omit “the mediation of”, substitute “an ADR process for”.

**5 Subclause 21(3) of Schedule 1**

Repeal the subclause.

**6 Clause 22 of Schedule 1**

Omit “, and if it does, the clause is of no effect”.

**7 Clause 34 of Schedule 1**

Omit “complies with Division 2 of this Part”, substitute “has the same effect as subclauses 40A(1) to (4) and clause 41A except for providing for imposition of a civil penalty”.

**8 Clause 35 of Schedule 1**

After “the franchise agreement”, insert “(the *respondent*)”.

**9 Paragraph 36(1)(d) of Schedule 1**

Omit “a mediation”, substitute “an ADR”.

**10 Subclause 36(2) of Schedule 1**

Omit “a mediation”, substitute “an ADR”.

**11 Subclause 36(2) of Schedule 1**

Omit “the mediation”, substitute “the ADR process”.

**12 Divisions 2, 3 and 4 of Part 4 of Schedule 1**

Repeal the Divisions, substitute:

**Division 3—Code complaint handling procedure**

**Subdivision A—Notification of dispute**

**40A Notification of dispute**

- (1) The complainant must tell the respondent in writing:
  - (a) the nature of the dispute; and
  - (b) what outcome the complainant wants; and
  - (c) what action the complainant thinks will resolve the dispute.

- (2) The parties must then try to agree how to resolve the dispute.

Note: Arbitration could be one way the parties agree to resolve the dispute. In that case, Subdivision C will apply.

- (3) If the parties cannot agree how to resolve the dispute within 21 days, any party may refer the matter to an ADR practitioner for an ADR process under:
  - (a) a franchise agreement; or
  - (b) this code.

- (4) If the parties cannot agree on who should be the ADR practitioner, any party may request the Ombudsman to appoint an ADR practitioner.
- (5) The Ombudsman must appoint an ADR practitioner within 14 days of the request, or a corresponding request under a provision of the franchise agreement corresponding to subclause (4).

#### **40B Similar disputes between 2 or more franchisees and one franchisor**

- (1) This clause applies if 2 or more franchisees have similar disputes under their franchise agreements with the same franchisor.
- (2) To avoid doubt, the franchisees and the franchisor may agree to resolve their disputes in the same way.
- (3) For the purpose of deciding whether to agree to resolve their disputes in the same way, the franchisees may discuss their disputes with each other, despite any confidentiality requirements provided in their franchise agreements.
- (4) To avoid doubt, if any of the franchisees and the franchisor cannot agree how to resolve their disputes, all of the franchisees (who cannot agree) or the franchisor may refer the matter to a single ADR practitioner in accordance with subclause 40A(3) for a single ADR process for all of their disputes.

Note: Each of the disputes remains separate, even if there is a single ADR process dealing with all of them.

- (5) To avoid doubt, if any of the franchisees and the franchisor cannot agree on who should be the ADR practitioner, all of the franchisees (who cannot agree) or the franchisor may request the Ombudsman in accordance with subclause 40A(4) to appoint a single ADR practitioner for a single ADR process for all of their disputes.
- (6) If:
  - (a) under subclause (4), all of the franchisees refer the matter to a single ADR practitioner for a single ADR process for all of their disputes; or
  - (b) under subclause (5), all of the franchisees request the appointment of a single ADR practitioner for a single ADR process for all their disputes and the appointment is made;

but the franchisor does not agree that there should be a single ADR process for all the disputes or does not agree to the appointment of the ADR practitioner, the ADR practitioner may conduct the ADR process despite the franchisor's disagreement.

Note: If the ADR practitioner conducts the ADR process despite the franchisor's disagreement, the franchisor is required to attend the ADR process and try to resolve the dispute (see subclauses 41A(3) and (5)). Clause 36 (when a party is taken to be trying to resolve a dispute) applies in relation to all the parties to the disputes.

### **Subdivision B—ADR process**

#### **41A ADR process**

- (1) An ADR practitioner appointed for a dispute may decide the time and place for the ADR process for the dispute (subject to subclause (2)).



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- (2) The ADR process must be conducted in Australia and may be conducted by means of virtual attendance technology.
  - (3) Each party to the dispute must attend the ADR process.  
Civil penalty: 300 penalty units.
  - (4) For the purposes of subclause (3), a party is taken to attend an ADR process if the party is represented in the ADR process by a person who has the authority to enter an agreement to settle the dispute on behalf of the party.
  - (5) The parties must try to resolve the dispute.  
Note: For when a party is taken to be trying to resolve a dispute, see clause 36.
  - (6) After the ADR process has started, the ADR practitioner must advise the Ombudsman, within 28 days, of that fact.

#### **41B Termination of ADR process**

- (1) This clause applies to an ADR process for a dispute if:
  - (a) at least 30 days have elapsed after the day the ADR process began; and
  - (b) the dispute has not been resolved.
- (2) The ADR practitioner for the ADR process may terminate the ADR process at any time unless satisfied that a resolution of the dispute is imminent.
- (3) However, if a party asks the ADR practitioner to terminate the ADR process for the dispute and gives written reasons for the request, the ADR practitioner must terminate the ADR process to the extent that it relates to that party's dispute.
- (4) If the ADR practitioner terminates the ADR process for a dispute under this clause, the ADR practitioner must issue a certificate stating:
  - (a) the names of the parties; and
  - (b) the nature of the dispute; and
  - (c) that the ADR process for the dispute has finished; and
  - (d) that the dispute has not been resolved; and
  - (e) the reason for terminating the ADR process for the dispute.
- (5) The ADR practitioner must give a copy of the certificate to:
  - (a) the Ombudsman; and
  - (b) each of the parties to the dispute.

#### **41C Costs of ADR process**

- (1) The parties to a dispute are equally liable for the costs of an ADR process under this Subdivision for the dispute (including the cost of the ADR practitioner, the cost of room hire and the cost of any additional input (including expert reports) agreed by the parties to be necessary to conduct the ADR process), unless they agree otherwise.

Note: If a single ADR process is conducted under this Subdivision for multiple disputes, this clause applies separately to each of the disputes, and the costs of the ADR process for each dispute will be the part of the overall cost of the ADR process that is attributable to that dispute.

- (2) The parties must pay for their own costs of attending the ADR process.

## **Subdivision C—Arbitration**

### **43A Arbitration by agreement for dispute resolution**

The dispute between the complainant and the respondent may, by written agreement, be resolved in whole or part by arbitration. The agreement may be the franchise agreement or a separate agreement.

### **43B Arbitration procedure**

- (1) This clause applies if the complainant and the respondent agree, in writing, to have a dispute resolved by arbitration conducted in accordance with this Subdivision.

#### *Appointment of arbitrator*

- (2) The parties must request the Ombudsman to appoint an arbitrator for the dispute.
- (3) The parties may request the Ombudsman to appoint a particular arbitrator agreed on by the parties (who may or may not be included in the list kept by the Ombudsman under paragraph 4A(a) of this instrument).
- (4) The Ombudsman must:
- (a) appoint an arbitrator within 14 days after receiving the request unless the Ombudsman is satisfied that the complaint giving rise to the dispute:
    - (i) is frivolous or vexatious; or
    - (ii) has previously been the subject of another arbitration; and
  - (b) if the parties have requested the Ombudsman to appoint a particular arbitrator—appoint that arbitrator; and
  - (c) give the parties to the dispute, in writing, details of the arbitrator appointed.

#### *Conduct of arbitration*

- (5) Subject to subclause (6), the arbitrator must decide:
- (a) how the arbitration is to be conducted (for example, by telephone or in meetings, including by means of virtual attendance technology); and
  - (b) the time and place for the arbitration; and
  - (c) the day the arbitration commences for the purposes of this Subdivision.
- (6) The arbitration must be conducted in Australia.

#### *Arbitrator must notify Ombudsman that arbitration has commenced*

- (7) Within 14 days after the arbitration has commenced, the arbitrator must notify the Ombudsman, in writing, that the arbitration has commenced and of the nature of the dispute.

Note: The arbitrator decides under paragraph (5)(c) when an arbitration commences.

#### *Attendance at arbitration*

- (8) Each party to the dispute must attend the arbitration.

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Civil penalty: 300 penalty units.

- (9) For the purposes of subclause (8), a party is taken to attend an arbitration if the party is represented at the arbitration by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.

*Arbitrator must give notice of successful arbitration*

- (10) If the dispute is resolved, the arbitrator must, within 14 days after the dispute is resolved:
- (a) set out, in writing, the terms of the resolution; and
  - (b) give a copy of the terms to each party to the dispute; and
  - (c) notify the Ombudsman that the dispute has been resolved.

### **43C Termination of arbitration**

- (1) The arbitrator conducting an arbitration of a dispute in accordance with this Subdivision must terminate the arbitration if all parties to the dispute jointly request the arbitrator to do so.
- (2) If the arbitrator terminates an arbitration under subclause (1), the arbitrator must issue a certificate stating:
  - (a) the names of the parties to the arbitration; and
  - (b) the nature of the dispute that was the subject of the arbitration; and
  - (c) that the arbitration has been terminated; and
  - (d) that the dispute has not been resolved.
- (3) The arbitrator must give a copy of the certificate to:
  - (a) the Ombudsman; and
  - (b) each party to the dispute.

### **43D Costs of arbitration**

- (1) Each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay half of all reasonable costs (if any) associated with the conduct of the arbitration, unless the parties to the arbitration agree otherwise.
- (2) However, each party to a dispute that was the subject of an arbitration in accordance with this Subdivision must pay that party's costs of attending the arbitration, unless the parties agree otherwise.

## **Subdivision D—Confidentiality**

### **44A Confidentiality requirements**

The complainant and respondent must observe any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving the dispute by an ADR process or arbitration.

## Schedule 2—Disclosure before entry into franchising agreements

### *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*

#### 1 Subclause 4(1) of Schedule 1

Insert:

*key facts sheet* means a document that meets the requirements of subclause 9A(1).

#### 2 Subclause 9(1) of Schedule 1

Repeal the subclause, substitute:

- (1) A franchisor must give a prospective franchisee the documents mentioned in subclause (1A) at least 14 days before whichever of the following occurs first:
  - (a) the franchisor and the prospective franchisee enter into a franchise agreement;
  - (b) the prospective franchisee makes a non-refundable payment (whether of money or of other valuable consideration) to the franchisor or an associate of the franchisor in connection with the proposed franchise agreement.

Civil penalty: 300 penalty units.

- (1A) For the purposes of subclause (1), the documents are as follows:
  - (a) a copy of the franchise agreement, in the form in which it is to be executed;
  - (b) a copy of the disclosure document relating to the franchise:
    - (i) as updated under subclause 8(6); or
    - (ii) if subclause 8(7) applies—updated to reflect the position of the franchise as at the end of the financial year before the financial year in which the copy of the disclosure document is given;
  - (c) a copy of the key facts sheet relating to the franchise:
    - (i) as updated under subclause 9A(2); or
    - (ii) if subclause 9A(3) applies—updated to reflect the position of the franchise as at the end of the financial year before the financial year in which the copy of the key facts sheet is given;
  - (d) a copy of this code;
  - (e) if:
    - (i) premises are leased to the franchisor or an associate of the franchisor; and
    - (ii) the franchisor or associate proposes to sublease the premises to the prospective franchisee for the purposes of a franchised business, or to permit the prospective franchisee to occupy the premises for those purposes without a lease;a copy of:
    - (iii) the lease of the premises to the franchisor or associate or, if the franchisor or associate is not in possession of the lease, a summary of

- the commercial terms negotiated by the franchisor or associate and the lessor of the premises (including any lease incentives); and
- (iv) if the lessor of the premises to the franchisor or associate complies with a requirement by or under a law of a State or Territory to disclose to the franchisor or associate (as lessee) written information relating to the lease—that information or, if the franchisor or associate is not in possession of that information, any information of that kind of which the franchisor is aware.

Note: If it is proposed that the prospective franchisee lease premises from, or occupy premises under another right granted by, the franchisor or an associate, clause 26 lets the franchisee terminate the franchise agreement up to 14 days after being given a document setting out the terms of the lease or right to occupy the premises.

### **3 Subclause 9(2) of Schedule 1**

Omit “subclause (1)”, substitute “subclause (1A)”.

### **4 After subclause 9(2) of Schedule 1**

Insert:

- (2A) If a request is made under clause 24 that a franchisor consent to the transfer of a franchise agreement (the *existing franchise agreement*) to a person (the *prospective transferee*), the franchisor must, at least 14 days before giving the consent, give the prospective transferee:
- (a) if the transfer does not involve executing another franchise agreement:
- (i) a copy of the existing franchise agreement; and
- (ii) each other document (if any) the franchisor requires the prospective transferee to sign to give effect to the transfer; and
- (b) a copy of the documents mentioned in paragraphs (1A)(b), (c) and (d) and, if applicable, paragraph (1A)(e).

Civil penalty: 300 penalty units.

- (2B) However, subclause (2A) does not apply to a transfer that involves entry into a new franchise agreement.

Note: Subclause (1) applies to such a transfer.

- (2C) If the person to whom documents must be given under subclause (1), (2) or (2A) requests the documents in printed form, electronic form or both, the franchisor must comply with the request. However, if the documents have been given in one of those forms (whether requested by the person or not) by the time required by that subclause, a later request for the documents in the other form (or both forms) does not require the franchisor to comply with the subclause again.

### **5 At the end of clause 9 of Schedule 1**

Add:

- (4) If:
- (a) the franchisor gives a person documents under subclause (1), (2) or (2A) in relation to a franchise agreement; and
- (b) after giving those documents and before the franchise agreement is entered into, renewed, extended or transferred, the franchisor gives the person earnings information in relation to the franchise;

the franchisor is taken not to have given the person the documents required by subclause (1), (2) or (2A) (as applicable) in relation to the franchise agreement.

## **6 After clause 9 of Schedule 1**

Insert:

### **9A Key facts sheet**

#### *Requirements for key facts sheet*

- (1) The key facts sheet relating to a franchise:
  - (a) must be in the form published on the Commission's website; and
  - (b) must include the information required by the form; and
  - (c) must include only information about matters relating to the franchise:
    - (i) that is included in the disclosure document relating to the franchise; or
    - (ii) that is required to be given to the franchisee under this code.

#### *Maintaining a key facts sheet*

- (2) After entering into a franchise agreement, the franchisor must update the key facts sheet relating to the franchise within 4 months after the end of each financial year.

Civil penalty: 300 penalty units.

- (3) However, the franchisor need not update the key facts sheet after the end of a financial year if:
  - (a) the franchisor did not enter into a franchise agreement, or only entered into one franchise agreement, during the year; and
  - (b) the franchisor does not intend, or if the franchisor is a company, its directors do not intend, to enter into another franchise agreement in the following financial year.
- (4) Despite subclause (3), if a request is made under subclause 16(1), the franchisor must update the key facts sheet so that it reflects the position of the franchise as at the end of the financial year before the financial year in which the request is made.

Civil penalty: 300 penalty units.

## **7 Subclauses 11(1) and (2) of Schedule 1**

Repeal the subclauses, substitute:

- (1) A franchisor must give a copy of the information statement relating to franchising that is published on the Commission's website to a prospective franchisee.

## **8 At the end of subclause 11(3) of Schedule 1**

Add "and before the franchisor gives the prospective franchisee any of the documents described in clause 9".

**9 Clause 16 of Schedule 1 (heading)**

Repeal the heading, substitute:

**16 Franchisee may request copy of disclosure document**

**10 Subclause 16(1) of Schedule 1**

Omit all the words before paragraph (a), substitute:

- (1) If a franchisee requests, in writing, a franchisor to give the franchisee a copy of the disclosure document relating to the franchise, the franchisor must give the franchisee a copy of the disclosure document and the key facts sheet relating to the franchise:

**11 At the end of clause 16 of Schedule 1**

Add:

- (3) If the request is for the disclosure document in printed form, electronic form or both, the franchisor must give the copy of the disclosure document and the key facts sheet in the form or forms requested.

**12 Paragraph 1.1(e) of Annexure 1 of Schedule 1**

After “It should be read together with”, insert “the key facts sheet and”.

**13 Paragraph 1.1(e) of Annexure 1 of Schedule 1**

After “You are entitled to a waiting period of 14 days”, insert “(not 14 business days)”.

**14 At the end of paragraph 1.1(e) of Annexure 1 of Schedule 1**

Add:

If you request the franchisor to give you this disclosure document, any attachments to it, the key facts sheet, the proposed franchise agreement and the Franchising Code of Conduct in printed form, electronic form or both, the franchisor must comply with your request.

**15 At the end of item 4 of Annexure 1 of Schedule 1**

Add:

- 4.4 The percentage of franchisees in the franchise system that were a party to a mediation, conciliation or arbitration process that was conducted, or was pending, in the previous financial year (whether the disputes to which the mediation, conciliation or arbitration processes relate were initiated by the franchisor or one or more franchisees).

**16 Paragraphs 10.1(j) and (k) of Annexure 1 of Schedule 1**

Repeal the paragraphs, substitute:

- (j) whether the franchisor, a master franchisor (if different from the franchisor), or an associate of the franchisor or master franchisor, will receive a rebate or other financial benefit from a supplier of goods or services to the franchisee; and

- (k) if the franchisor, master franchisor or associate will receive a rebate or other financial benefit described in paragraph (j) from one or more suppliers:
  - (i) the nature of the rebate or other financial benefit received from each supplier; and
  - (ii) the name of each business providing the rebate or other financial benefit; and
  - (iii) the total amount of rebates or other financial benefits received in the previous financial year from each supplier, expressed as a single aggregate percentage of total group purchases from that supplier (not including any purchases made by units of the franchised business operated by the franchisor, master franchisor or associate); and
- (l) whether a rebate or other financial benefit described in paragraph (j) is shared, directly or indirectly, with the franchisee; and
- (m) if a rebate or other financial benefit described in paragraph (j) is shared directly or indirectly with the franchisee:
  - (i) the method for working out how much of the rebate or other financial benefit is retained by the franchisor, master franchisor or associate, and how much is shared, directly or indirectly, with the franchisee, described by reference to a percentage of the rebate or other financial benefit, or another method for working out how much is retained, and how much is shared with the franchisee; and
  - (ii) a description of each direct and indirect benefit received by the franchisee.

## **17 At the end of item 10 of Annexure 1 of Schedule 1**

Add:

- 10.2 For the purposes of paragraphs 10.1(j) to (m), a rebate or other financial benefit does not include:
- (a) the price paid by the franchisee, or a part of that price, for the supply of goods or services by the franchisor, master franchisor or associate; or
  - (b) any incentive or other financial benefit that the franchisor, master franchisor or associate is entitled to receive in connection with a lease of premises or the franchisee's right to occupy premises.
- 10.3 The franchisor is not required to disclose the details referred to in subparagraph 10.1(k)(iii) in relation to a supplier if:
- (a) the franchisee is permitted to acquire goods or services from sources other than the franchisor without the franchisor's approval; or
  - (b) the whole of the rebate or other financial benefit that will be received by the franchisor, master franchisor or associate from that supplier is to be returned to the franchisee directly as a payment into a cooperative fund controlled or administered by or for the franchisor.

## **18 Item 13.3 of Annexure 1 of Schedule 1**

Repeal the item, substitute:

- 13.3 Details of whether the franchisor, or an associate of the franchisor, has an interest in a lease that will be used for the operation of the franchised business, including



an interest as a landlord or head lessee, or another interest disclosed under clause 13 of this code.

13.4 The details mentioned in items 13.2 and 13.3 must be provided:

- (a) in a separate document; and
- (b) with the disclosure document.

## **19 After item 17 of Annexure 1 of Schedule 1**

Insert:

### **17A Arbitration of disputes**

17A.1 Whether the franchise agreement provides for arbitration of disputes in a manner consistent with Subdivision C of Division 3 of Part 4.

### **17B Ways of ending the franchise agreement early**

17B.1 A summary of the rights the franchisor has under the franchise agreement to terminate the franchise agreement before it expires, and the circumstances in which those rights may be exercised.

17B.2 A summary of the rights the franchisee has under the franchise agreement to terminate the franchise agreement before it expires, and the circumstances in which those rights may be exercised.

## **20 Item 18 of Annexure 1 of Schedule 1 (heading)**

Omit “Arrangements”, substitute “Term of agreement and arrangements”.

## **21 Item 18.1 of Annexure 1 of Schedule 1**

Omit “the process that will apply in determining”.

## **22 Before paragraph 18.1(a) of Annexure 1 of Schedule 1**

Insert:

- (aa) the term of the franchise agreement; and

## **23 After paragraph 18.1(f) of Annexure 1 of Schedule 1**

Insert:

- (fa) the prospective franchisee’s rights relating to any goodwill generated by the franchisee (including, if the franchisee does not have a right to any goodwill, a statement to that effect); and

## **24 At the end of item 18.1 of Annexure 1 of Schedule 1**

Add:

- ; and (h) whether the franchise agreement includes a restraint of trade or similar clause.

## **25 Items 18.3, 18.4 and 18.5 of Annexure 1 of Schedule 1**

Omit “size 12 font and bold”, substitute “bold 12 point type”.

**26 Item 20.1 of Annexure 1 of Schedule 1**

Repeal the item, substitute:

- 20.1 If the franchisor proposes to give earnings information, the franchisor must give it in the disclosure document or in a separate document attached to the disclosure document.
- 20.1A If the franchisor gives earnings information to a prospective transferee or a franchisee before giving the prospective franchisee or franchisee a copy of the disclosure document relating to the franchise, the franchisor must also give the prospective franchisee or franchisee earnings information in the disclosure document or an attachment to it.

**27 After item 20.2 of Annexure 1 of Schedule 1**

Insert:

- 20.2A If earnings information is given by the franchisor in the disclosure document or an attachment to it—the following statement:

To the best of the franchisor’s knowledge, the earnings information given is accurate (other than particular earnings information specified in the document as earnings information that the franchisor knows is not accurate).

**28 Annexure 2 of Schedule 1**

Repeal the Annexure.

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## **Schedule 3—Termination of franchise agreements**

### ***Competition and Consumer (Industry Codes—Franchising) Regulation 2014***

#### **1 Clause 26 of Schedule 1 (heading)**

Omit “period”, substitute “after entering into new franchise agreement”.

#### **2 Subclause 26(1) of Schedule 1**

Repeal the subclause, substitute:

- (1) A franchisee may terminate a franchise agreement within 14 days after entering into the agreement.
- (1A) Subclauses (1B) and (1C) apply if, immediately before the franchise agreement is entered into:
  - (a) there is a proposal that the franchisor, or an associate of the franchisor:
    - (i) lease premises for the franchised business to the franchisee; or
    - (ii) allow the franchisee to occupy premises for the franchised business under a right (an *occupancy right*) other than a lease; and
  - (b) the lease or occupancy right is not in force.
- (1B) The franchisee may terminate the franchise agreement within 14 days after receiving from the franchisor or associate:
  - (a) the first document setting out the terms of the proposed lease or occupancy right; or
  - (b) any later document setting out the terms of the proposed lease or occupancy if the terms are not substantially identical to the terms set out in the first document (excluding changes to the terms that were requested by the franchisee).
- (1C) The franchisee may terminate the franchise agreement within 14 days after entering into the lease or being granted the occupancy right if, before entering into the lease or being granted the occupancy right, the franchisee did not receive from the franchisor or associate a document setting out terms of the proposed lease or occupancy right that are substantially identical to the actual terms of the lease or occupancy right (excluding changes to the actual terms of the lease or occupancy right that were requested by the franchisee).
- (1D) Subclauses (1), (1B) and (1C) do not limit one another.

Note: Those subclauses do not provide for the franchisee to terminate another agreement with the franchisor (such as a lease of premises from the franchisor) or an agreement with anyone else.

#### **3 Subclause 26(2) of Schedule 1**

Omit “Subclause (1) does”, substitute “Subclauses (1), (1B) and (1C) do”.

#### **4 Paragraph 26(2)(a) of Schedule 1**

Omit “transfer or”.

## 5 At the end of subclause 26(2) of Schedule 1

Add:

- ; or (c) the transfer of a franchise agreement that does not involve entry into a new franchise agreement between the transferee and the franchisor.

Note: Clause 26A deals with cooling off after such a transfer.

## 6 Subclause 26(3) of Schedule 1

After “subclause (1)”, insert “, (1B) or (1C)”.

## 7 Subclause 26(3) of Schedule 1

Omit “under the agreement”, substitute “connected with the agreement”.

## 8 After clause 26 of Schedule 1

Insert:

### 26A Termination—cooling off after transferring franchise agreement

- (1) This clause applies if a franchise agreement is transferred between a person (the *old franchisee*) who was the franchisee under the agreement and a person (the *new franchisee*) who becomes the franchisee for the purposes of the agreement without a new franchise agreement being entered into by the new franchisee and the franchisor.

Note: Clause 26 deals with a transfer that involves a new franchise agreement being entered into by the franchisor and the person to whom the transfer was made by the old franchisee.

- (2) The new franchisee may, by written notice given to the old franchisee and the franchisor in accordance with subclause (3), do all of the following:
  - (a) cease to be the franchisee for those purposes;
  - (b) if the old franchisee can become the franchisee for those purposes again—cause the old franchisee to do so;
  - (c) if there was an agreement (the *transfer agreement*) between the new franchisee and the old franchisee for the purposes of the transfer—terminate the transfer agreement.
- (3) A notice under subclause (2) must be given within whichever of the following periods ends earlier:
  - (a) the period of 14 days starting on the day after the new franchisee becomes the franchisee for the purposes of the franchise agreement;
  - (b) the period ending on the day the new franchisee takes possession and control of the franchised business.

#### *Refunds from franchisor to new franchisee*

- (4) If, by notice given under subclause (2), the new franchisee ceases to be the franchisee for the purposes of the franchise agreement, the franchisor must, within the period of 14 days starting on the day after the notice was given, repay all payments (whether of money or of other valuable consideration) made by the new franchisee to the franchisor under the franchise agreement.

Civil penalty: 300 penalty units.

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- (5) However, the franchisor may deduct from the amount repaid under subclause (4) the franchisor's reasonable expenses if the expenses or their method of calculation have been set out in the franchise agreement.

*Refunds from old franchisee to new franchisee*

- (6) If, by notice given under subclause (2), the new franchisee terminates the transfer agreement, the old franchisee must, within the period of 14 days starting on the day after the notice was given, repay all payments (whether of money or of other valuable consideration) made by the new franchisee to the old franchisee under the transfer agreement.

Civil penalty: 300 penalty units.

- (7) However, the old franchisee may deduct from the amount repaid under subclause (6) the old franchisee's reasonable expenses if the expenses or their method of calculation have been set out in the transfer agreement.

## **26B Franchisee may propose termination at any time**

- (1) A franchisee may, at any time, give the franchisor a written proposal for termination of their franchise agreement on the terms specified in the proposal, despite the agreement. The proposal must set out the reasons for the proposed termination.
- (2) If the franchisor is given a proposal under subclause (1), the franchisor must give the franchisee a substantive written response to the proposal within 28 days.

Note: If the response is to refuse to terminate, or to refuse to agree to terminate, the franchise agreement on the terms proposed, a dispute may arise. Under clause 35, the dispute can be dealt with under Division 3 of Part 4.

- (3) If the franchisor has given the franchisee a substantive written response to a proposal (the *earlier proposal*) under subclause (2), the franchisor is not required to give the franchisee another response to that proposal.
- (4) However, if the franchisee gives the franchisor another written proposal (the *later proposal*) for termination of their franchise agreement for a different reason from the reason given for the earlier proposal, the franchisor must comply with subclause (2) in relation to the later proposal.
- (5) If the franchisor's response is to refuse to terminate, or to refuse to agree to terminate, the franchise agreement on the terms proposed, the response must include the reasons for the refusal.

Note: Each party to a franchise agreement is under an obligation to act in good faith in relation to the agreement (see clause 6).

- (6) This clause is not intended to otherwise limit the rights or obligations of the franchisor or franchisee under a law of the Commonwealth or a State or Territory or under the franchise agreement.

## **9 After subclause 27(4) of Schedule 1**

Insert:

- (4A) Subclauses (2) and (4) do not prevent the franchisor from exercising a power under the agreement to terminate the agreement if, at the time of the termination, the franchisor and franchisee agree to the termination.

## 10 Clause 29 of Schedule 1

Repeal the clause, substitute:

### 29 Notice of termination by franchisor on particular grounds

- (1) This clause applies if a franchise agreement gives the franchisor power to terminate the agreement on any of the following grounds:
- (a) the franchisee no longer holds a licence that the franchisee must hold to carry on the franchised business;
  - (b) the franchisee becomes bankrupt, an insolvent under administration or a Chapter 5 body corporate;
  - (c) the franchisee is a company that is deregistered by the Australian Securities and Investments Commission;
  - (d) the franchisee voluntarily abandons the franchised business or the franchise relationship;
  - (e) the franchisee is convicted of a serious offence;
  - (f) the franchisee operates the franchised business in a way that endangers public health or safety;
  - (g) the franchisee acts fraudulently in connection with the operation of the franchised business.

*Franchisor must give 7 days' notice of proposed termination*

- (2) The franchisor must not terminate the agreement because of a ground mentioned in subclause (1) unless the franchisor has given the franchisee 7 days' written notice of the proposed termination and the ground for it.
- (3) However, clauses 27 and 28 do not prevent the franchisor from exercising the power under the agreement to terminate the agreement if the franchisor has not met the requirements of subclause 27(2) or subclause 28(3).

Note: Those requirements include giving reasonable written notice of the termination to the franchisee.

*Rapid appointment of ADR practitioner or arbitrator for dispute over proposed termination*

- (4) If the franchisor gives the franchisee written notice of the proposed termination and the franchisee tells the franchisor, in writing under subclause 40A(1) or a corresponding provision of the franchise agreement, about a dispute relating to the proposed termination then:
- (a) despite subclause (2), the franchisor must not terminate the agreement until after the end of 28 days after the notice was given; and
  - (b) despite subclauses 40A(3), (4) and (5) or corresponding provisions of the franchise agreement:
    - (i) the franchisee may refer the matter to an ADR practitioner for an ADR process if the franchisee and franchisor do not agree promptly how to resolve the dispute; and

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- (ii) either the franchisee or the franchisor may request the Ombudsman to appoint an ADR practitioner for the ADR process relating to the dispute if the franchisee and franchisor do not agree promptly on who should be the ADR practitioner; and
  - (iii) if requested, the Ombudsman must appoint an ADR practitioner as soon as practicable; and
  - (c) despite paragraph 43B(4)(a), the Ombudsman must appoint an arbitrator for the dispute as soon as practicable after receiving a request from the parties to the franchise agreement to do so.

*Requiring franchisee to cease operating franchised business because of ground in subclause (1)*

- (5) If the franchise agreement provides for the franchisor to take action to cause or require the franchisee not to operate all or part of the franchised business because of a ground mentioned in subclause (1), the franchisor may, by written notice given to the franchisee, require the franchisee not to operate the business or the part of the business because of that ground.
- (6) Subclause (5) has effect despite paragraph (4)(a) if the action provided for by the franchise agreement to cause the franchisee not to operate all or part of the franchised business because of a ground mentioned in subclause (1) would involve termination of the franchise agreement by the franchisor.

Note: In this case, while paragraph (4)(a) prevents the franchisor from terminating the agreement within 28 days after notice of the proposed termination was given, the franchisor may, under subclause (5), require the franchisee not to operate all or part of the franchised business because of a ground mentioned in subclause (1).

### **11 Paragraph 1.1(e) of Annexure 1 of Schedule 1**

Omit “transfer or”.

### **12 Paragraph 1.1(e) of Annexure 1 of Schedule 1**

Omit “7 day ‘cooling off’ period”, substitute “‘cooling off’ period of 14 days (not 14 business days)”.

### **13 Paragraph 1.1(e) of Annexure 1 of Schedule 1**

After “during which you may terminate the agreement.”, insert “(In some circumstances a ‘cooling off’ period may end later.)”.

## Schedule 4—Capital expenditure

### *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*

#### **1 Subclause 4(1) of Schedule 1 (definition of *significant capital expenditure*)**

Repeal the definition, substitute:

*significant capital expenditure* has a meaning affected by subclause 30(2).

#### **2 Clause 30 of Schedule 1**

Repeal the clause, substitute:

#### **30 Significant capital expenditure not to be required**

- (1) A franchisor must not require a franchisee to undertake significant capital expenditure in relation to a franchised business during the term of the franchise agreement.
- (2) For the purposes of subclause (1), *significant capital expenditure* excludes the following:
  - (a) expenditure that is disclosed to the franchisee in the disclosure document that is given to the franchisee before:
    - (i) entering into or renewing the agreement; or
    - (ii) extending the term or scope of the agreement;
  - (b) if expenditure is to be incurred by all or a majority of franchisees—expenditure approved by a majority of those franchisees;
  - (c) expenditure incurred by the franchisee to comply with legislative obligations;
  - (d) expenditure agreed by the franchisee.

#### **30A Information and discussion about capital expenditure**

- (1) This clause applies if a disclosure document for a franchise agreement discloses expenditure of the kind mentioned in paragraph 30(2)(a).
- (2) The franchisor must include in the disclosure document as much information as practicable about the expenditure, including the following:
  - (a) the rationale for the expenditure;
  - (b) the amount, timing and nature of the expenditure;
  - (c) the anticipated outcomes and benefits of the expenditure;
  - (d) the expected risks associated with the expenditure.

Example: The information could include the type of any upgrades to facilities or premises, any planned changes to the corporate identity of the franchisor's brand and indicative costs for any building materials.
- (3) Before entering into, renewing or extending the term or scope of the agreement, the franchisor and the franchisee or prospective franchisee must discuss the expenditure.



- (4) The discussion must include a discussion of the circumstances under which the franchisee or prospective franchisee considers that the franchisee or prospective franchisee is likely to recoup the expenditure, having regard to the geographical area of operations of the franchisee or prospective franchisee.

**3 Division 3 of Part 5 of Schedule 1**

Repeal the Division.

## **Schedule 5—Marketing funds and other cooperative funds**

### ***Competition and Consumer (Industry Codes—Franchising) Regulation 2014***

#### **1 Paragraph 5(1)(c) of Schedule 1**

Omit “advertising”, substitute “marketing”.

#### **2 Clause 12 of Schedule 1**

Before “A master”, insert “(1)”.

#### **3 At the end of clause 12 of Schedule 1**

Add:

- (2) This clause does not limit the effect of clauses 15 and 31.

#### **4 Clause 15 of Schedule 1**

Repeal the clause, substitute:

### **15 Financial statements for marketing funds and other cooperative funds administered by or for franchisor or master franchisor**

- (1) This clause applies if a franchise agreement requires the franchisee to pay money to a marketing fund or other cooperative fund controlled or administered by or for the franchisor or a master franchisor (whether the franchisee is a franchisee or subfranchisee of the franchisor or master franchisor).

#### *Preparing and auditing financial statements for fund*

- (2) The fund administrator must:
- (a) within 4 months after the end of the last financial year, prepare an annual financial statement detailing all of the fund’s receipts and expenses for the last financial year; and
  - (b) ensure that the statement includes sufficient detail of the fund’s receipts and expenses so as to give meaningful information about:
    - (i) sources of income; and
    - (ii) items of expenditure, particularly with respect to marketing (however described); and
  - (c) have the statement audited by a registered company auditor within 4 months after the end of the financial year to which it relates.

Civil penalty: 300 penalty units.

- (3) The fund administrator does not have to comply with paragraph (2)(c) in respect of a financial year if, within 3 months after the end of the year, 75% of the franchisees (whether franchisees or subfranchisees of the franchisor or master franchisor) in Australia who contribute to the fund have voted to agree that the fund administrator does not have to comply with the paragraph in respect of the year.

*Giving copies of statements and audit reports to contributors to fund*

- (4) The fund administrator must:
- (a) give the franchisee a copy of the statement within 30 days of preparing it; and
  - (b) if an audit of the statement is required—give the franchisee a copy of the auditor’s report within 30 days of receiving it.

*Costs of administering and auditing fund*

- (5) The reasonable costs of administering and auditing the fund must be paid from the fund.

*Meaning of fund administrator*

- (6) In this clause:

***fund administrator*** means:

- (a) the franchisor or master franchisor who controls or administers the fund; or
- (b) if the franchisor or master franchisor has authorised an associate to control or administer the fund—the authorised associate.

**5 Clause 31 of Schedule 1**

Repeal the clause, substitute:

**31 Payments to and from marketing funds**

- (1) This clause applies if a franchise agreement requires the franchisee to pay money to a marketing fund that is controlled or administered by or for the franchisor or a master franchisor (whether the franchisee is a franchisee or subfranchisee of the franchisor or master franchisor).
- (2) The fund administrator must maintain a separate account with a financial institution for payments to the marketing fund by franchisees.

Civil penalty: 300 penalty units.

- (3) If the franchisor or master franchisor operates one or more units of a franchised business, the franchisor or master franchisor must make payments to the marketing fund on behalf of each of those units on the same basis as franchisees of other units of the franchised business.

Civil penalty: 300 penalty units.

- (4) Despite any terms of a franchise agreement, the fund administrator must use payments to the fund only to:
- (a) meet expenses that:
    - (i) have been disclosed to franchisees in the disclosure document in accordance with paragraph 15.1(f) of Annexure 1; or
    - (ii) are legitimate expenses for marketing (however described); or
    - (iii) have been agreed to by a majority of franchisees that are required to make payments to the fund; or
  - (b) pay the reasonable costs of administering and auditing the fund.

Civil penalty: 300 penalty units.

*Meaning of fund administrator*

(5) In this clause:

*fund administrator* means:

- (a) the franchisor or master franchisor who controls or administers the fund; or
- (b) if the franchisor or master franchisor has authorised an associate to control or administer the fund—the authorised associate.

**6 Item 15 of Annexure 1 of Schedule 1 (heading)**

After “Marketing”, insert “fund”.

**7 Item 15.1 of Annexure 1 of Schedule 1**

After “each marketing”, insert “fund”.

**8 Item 15.1 of Annexure 1 of Schedule 1**

After “by or for the franchisor”, insert “or a master franchisor”.

**9 Paragraph 15.1(g) of Annexure 1 of Schedule 1**

Omit “advertising,”, substitute “marketing,”.

**10 Paragraph 15.1(h) of Annexure 1 of Schedule 1**

Omit “or its associates supply”, substitute “, master franchisor or an associate of either of them supplies”.

**11 Paragraph 15.1(i) of Annexure 1 of Schedule 1**

Omit “must spend part of the fund on marketing, advertising”, substitute “or master franchisor must spend part of the fund on marketing”.

## **Schedule 6—Franchisor's legal costs relating to franchise agreement**

### *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*

#### **1 Before clause 20 of Schedule 1**

Insert:

#### **19A Franchisor's legal costs relating to franchise agreement**

- (1) A franchisor must not enter into a franchise agreement that has the effect of:
- (a) requiring the franchisee to pay all or part of the franchisor's costs of legal services relating to preparing, negotiating or executing the agreement or documents relating to the agreement; or
  - (b) allowing the franchisor or an associate of the franchisor to require the franchisee to pay all or part of those costs.

Civil penalty: 300 penalty units.

- (2) Subclause (1) does not prevent the franchisor from entering into a franchise agreement that requires the franchisee to make a payment, before the franchisee starts the franchised business, of a fixed amount of dollars that:
- (a) is specified in the agreement; and
  - (b) is stated in the agreement as being for the franchisor's costs of legal services relating to preparing, negotiating or executing the agreement; and
  - (c) is stated in the agreement not to include any amount for the franchisor's costs of legal services that will or may be provided, after the agreement is entered into, in relation to preparing, negotiating or executing other documents.

## **Schedule 7—Terms of franchise agreement**

### ***Competition and Consumer (Industry Codes—Franchising) Regulation 2014***

#### **1 Subclause 20(3) of Schedule 1**

Repeal the subclause.

#### **2 Before clause 32 of Schedule 1**

Insert:

#### **31A Franchisor not to vary franchise agreement retrospectively and unilaterally**

A franchisor must not vary a franchise agreement with retrospective effect unless the franchisee has given written consent to the variation.

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## **Schedule 8—Leasing of premises**

### ***Competition and Consumer (Industry Codes—Franchising) Regulation 2014***

#### **1 After subclause 13(2) of Schedule 1**

Insert:

(2A) If:

- (a) premises are leased to the franchisor or an associate of the franchisor; and
- (b) a franchisee subleases, or a prospective franchisee proposes to sublease, the premises for the purposes of a franchised business; and
- (c) the lessor of the premises to the franchisor or associate complies with a requirement by or under a law of a State or Territory to disclose to the franchisor or associate (as lessee) written information relating to the lease; the franchisor or associate must, if requested to do so in writing, give the franchisee or prospective franchisee a copy of that information.

Note: A copy must also be given by the franchisor to a prospective franchisee before entering into a franchise agreement (see subclauses 9(1) and (1A)).

Civil penalty: 300 penalty units.

(2B) The copy requested under subclause (2A) must be given as soon as reasonably practicable, and not later than 7 days, after the request is made.

Civil penalty: 300 penalty units.

#### **2 Subclause 13(3) of Schedule 1**

Repeal the subclause, substitute:

- (3) If the franchisee occupies, without a lease, premises leased by the franchisor or an associate of the franchisor, the franchisor or the associate must give the following to the franchisee:
- (a) a copy of the franchisor's lease or agreement to lease or of the associate's lease or agreement to lease;
  - (b) details of any incentive or financial benefit that the franchisor or associate is entitled to receive as a result of the lease or agreement to lease;
  - (c) a copy of the documents that give the franchisee the right to occupy the premises;
  - (d) written details of the conditions of occupation;
  - (e) details of any incentive or financial benefit that the franchisor or associate is entitled to receive as a result of the franchisee's right to occupy the premises.

Civil penalty: 300 penalty units.

#### **3 After subclause 13(4) of Schedule 1**

Insert:

(4A) If:

- (a) a franchisee occupies, or a prospective franchisee proposes to occupy, without a lease, premises for the purposes of a franchised business under a right given or to be given by the franchisor or an associate of the franchisor; and
  - (b) the premises are leased to the franchisor or associate; and
  - (c) the lessor of the premises to the franchisor or associate complies with a requirement by or under a law of a State or Territory to disclose to the franchisor or associate (as lessee) written information relating to the lease;
- the franchisor or associate must, if requested to do so in writing, give to the franchisee or prospective franchisee a copy of that information.

Note: A copy must also be given by the franchisor to a prospective franchisee before entering into a franchise agreement (see subclauses 9(1) and (1A)).

Civil penalty: 300 penalty units.

- (4B) The copy requested under subclause (4A) must be given as soon as reasonably practicable, and not later than 7 days, after the request is made.

Civil penalty: 300 penalty units.



## **Schedule 9—Restraint of trade**

### ***Competition and Consumer (Industry Codes—Franchising) Regulation 2014***

#### **1 Paragraph 23(1)(b) of Schedule 1**

Omit “the franchisee was not in”, substitute “immediately before the expiry, the franchisee was not in serious”.

## Schedule 10—Cooperatives

### *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*

#### **1 At the end of Division 1 of Part 1 of Schedule 1**

Add:

##### **3A Code does not apply in relation to co-operatives**

This code does not apply in relation to a franchise agreement if the franchisor and franchisee are both members of the same co-operative that is entered on a register maintained under:

- (a) the Co-operatives National Law; or
- (b) the *Co-operatives Act 2009* (WA), as in force on 1 July 2021.

Note: For *Co-operatives National Law*, see subclause 4(1).

#### **2 Subclause 4(1) of Schedule 1**

Insert:

*Co-operatives National Law* means the Law set out in the appendix to the *Co-operatives (Adoption of National Law) Act 2012* (NSW), as in force on 1 July 2021, and applying in a State or Territory under the following:

- (a) the *Co-operatives (Adoption of National Law) Act 2012* (NSW);
- (b) the *Co-operatives National Law Application Act 2013* (Vic.);
- (c) the *Co-operatives National Law Act 2020* (Qld);
- (d) the *Co-operatives National Law (South Australia) Act 2013* (SA);
- (e) the *Co-operatives National Law (Tasmania) Act 2015* (Tas.);
- (f) the *Co-operatives National Law (ACT) Act 2017* (ACT);
- (g) the *Co-operatives (National Uniform Legislation) Act 2015* (NT).

#### **3 Subclause 5(3) of Schedule 1**

Omit “any of the following does not in itself constitute”, substitute “none of the following in itself constitutes”.

#### **4 Paragraph 5(3)(e) of Schedule 1**

Omit “relationship;”, substitute “relationship.”.

#### **5 Paragraph 5(3)(f) of Schedule 1**

Repeal the paragraph.

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## **Schedule 11—New vehicle dealership agreements**

### ***Competition and Consumer (Industry Codes—Franchising) Regulation 2014***

#### **1 Subclause 4(1) of Schedule 1 (definition of *motor vehicle dealership*)**

Repeal the definition, substitute:

***motor vehicle dealership:***

- (a) means a business of buying, selling, exchanging or leasing motor vehicles that is conducted by a person other than a person who is only involved as a credit provider, or provider of other financial services, in the purchase, sale, exchange or lease; and
- (b) includes a business of selling motor vehicles that is conducted by a person (for the purposes of this code, the franchisee) who sells the motor vehicles as an agent for a principal (for the purposes of this code, the franchisor).

#### **2 After subclause 6(3) of Schedule 1**

Insert:

*New vehicle dealership agreements*

- (3A) Without limiting the matters to which a court may have regard for the purpose of determining whether a party to a new vehicle dealership agreement has contravened subclause (1) and without limiting subclause (3), the court must have regard to whether the terms of the agreement are fair and reasonable.

#### **3 Subclause 6(4) of Schedule 1**

Omit “, and if it does, the clause is of no effect”.

#### **4 At the end of clause 46 of Schedule 1**

Add:

Note: In this Part, a reference to a franchise agreement is a reference to a new vehicle dealership agreement.

#### **5 After Division 1 of Part 5 of Schedule 1**

Insert:

### **Division 2—Terms of agreement**

#### **46A Franchise agreement must provide for compensation for early termination**

- (1) A franchisor must not enter into a franchise agreement unless the agreement:
  - (a) provides for the franchisee to be compensated if the franchise agreement is terminated before it expires because the franchisor:
    - (i) withdraws from the Australian market; or
    - (ii) rationalises its networks in Australia; or
    - (iii) changes its distribution models in Australia; and

- (b) specifies how the compensation is to be determined, with specific reference to the following:
  - (i) lost profit from direct and indirect revenue;
  - (ii) unamortised capital expenditure requested by the franchisor;
  - (iii) loss of opportunity in selling established goodwill;
  - (iv) costs of winding up the franchised business.

Civil penalty: 300 penalty units.

- (2) A franchisor must not enter into a franchise agreement unless the agreement contains provision for the franchisor to buy back or compensate the franchisee for new road vehicles, spare parts and special tools if:
  - (a) the franchise agreement is not renewed and a new agreement is not entered into; or
  - (b) the franchise agreement is terminated before it expires because the franchisor:
    - (i) withdraws from the Australian market; or
    - (ii) rationalises its networks in Australia; or
    - (iii) changes its distribution models in Australia.

Civil penalty: 300 penalty units.

- (3) A franchisor must not enter into a franchise agreement that contains a provision that purports to exclude any compensation to which the franchisee may be entitled, other than under the agreement, if the agreement is terminated before it expires other than because the franchisee has breached the agreement.

Civil penalty: 300 penalty units.

#### **46B Franchise agreement must provide reasonable opportunity for return on franchisee's investment**

A franchisor must not enter into a franchise agreement unless the agreement provides the franchisee with a reasonable opportunity to make a return, during the term of the agreement, on any investment required by the franchisor as part of entering into, or under, the agreement.

Note: If expenditure is disclosed in a disclosure document for a franchise agreement, the circumstances in which the expenditure is likely to be recouped must be discussed (see clause 30A).

Civil penalty: 300 penalty units.

#### **6 Subclauses 49(2) and (3) of Schedule 1**

Omit “new vehicles”, substitute “new road vehicles”.

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## Schedule 12—Application, saving and transitional provisions

### *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*

#### **1 In the appropriate position in Part 6 of Schedule 1**

Insert:

#### **Division 2—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021**

##### **59 Definitions**

In this Division:

*amending regulations* means the *Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021*.

##### **60 Application of amendments relating to dispute resolution**

- (1) The amendments made by Schedule 1 (about dispute resolution) to the amending regulations apply in relation to disputes notified on or after the day this clause commences (whether the franchise agreements to which the disputes related were entered into, extended or renewed before, on or after that day).
- (2) However, the amendment of clause 34 and the repeal of Division 2 of Part 4, and subclause 40B(3) as inserted by Schedule 1, apply in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.
- (3) So far as Divisions 2 and 3 of Part 4 and clause 45, as in force immediately before the commencement of Schedule 1 to the amending regulations, have effect after that commencement, they have effect as if:
  - (a) the Ombudsman were the mediation adviser; and
  - (b) anything done before that commencement by or in relation to the mediation adviser had been done by or in relation to the Ombudsman.

##### **2 At the end of Division 2 of Part 6 of Schedule 1**

Add:

##### **61 Application of provisions about leasing or other occupation of premises**

- (1) Subclauses 13(2A), (2B), (4A) and (4B), as inserted by Schedule 8 to the amending regulations, apply in relation to information that was disclosed to the franchisor or associate before, on or after 1 July 2021.
- (2) Subclause 13(3), as amended by Schedule 8 to the amending regulations, applies in relation to occupation of premises starting on or after 1 July 2021.

## **62 Application of provisions about marketing funds and other cooperative funds**

Clause 15, as inserted by Schedule 5 to the amending regulations, applies in relation to financial statements prepared on or after 1 July 2021 for financial years ending on or after 30 June 2021.

## **63 Application of provisions about franchisor's legal costs**

Clause 19A, as inserted by Schedule 6 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

## **64 Application of amendment relating to restraint of trade**

The amendment of clause 23 by Schedule 9 to the amending regulations applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

## **65 Application of provisions about termination**

- (1) Subclauses 26(1), (1A), (1B), (1C) and (1D), as inserted by Schedule 3 to the amending regulations, apply in relation to franchise agreements entered into on or after 1 July 2021.
- (2) Clause 26A, as inserted by Schedule 3 to the amending regulations, applies in relation to transfers of franchise agreements that occur on or after 1 July 2021.
- (3) Clause 29, as substituted by Schedule 3 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.
- (4) Despite the repeal of clause 29 by Schedule 3 to the amending regulations, that clause, as in force immediately before 1 July 2021, continues to apply on and after that date in relation to franchise agreements to which that clause applied that were entered into before that date.
- (5) However, subclause (4) does not apply in relation to a franchise agreement that was entered into before 1 July 2021 and is extended or renewed on or after that date.

## **66 Application of provisions about capital expenditure**

- (1) Clause 30, as substituted by Schedule 4 to the amending regulations, applies in relation to:
  - (a) franchise agreements entered into, extended or renewed on or after 1 July 2021; and
  - (b) new vehicle dealership agreements to which clause 50 applied immediately before 1 July 2021.

Note: For the application of clause 50 immediately before 1 July 2021, see clause 56.

- (2) Despite the repeal of clause 30 by Schedule 4 to the amending regulations, that clause, as in force immediately before 1 July 2021, continues to apply on and after that date in relation to franchise agreements (except new vehicle dealership agreements) to which that clause applied immediately before that date.

- (3) Despite the repeal of subclauses 30(1) and (2) by Schedule 4 to the amending regulations, those subclauses, as in force immediately before 1 June 2020, continue to apply on and after 1 July 2021 in relation to new vehicle dealership agreements to which clause 30, as in force immediately before 1 June 2020, applied immediately before 1 July 2021 because of subclause 56(2) or (3).
- (4) Clause 30A, as inserted by Schedule 4 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

#### **67 Application of provisions about retrospective variation of franchise agreements by franchisors**

Clause 31A, as inserted by Schedule 7 to the amending regulations, applies in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

#### **68 Application of amendments about new vehicle dealership agreements**

The amendments made by Schedule 11 to the amending regulations apply in relation to franchise agreements entered into, extended or renewed on or after 1 July 2021.

#### **69 Application of amendments of Annexure 1 of Schedule 1 (about disclosure documents)**

The amendments of Annexure 1 of Schedule 1 made by Schedule 2 to the amending regulations apply in relation to disclosure documents that are given, or copies of which are given, on or after 1 November 2021.