

# Commercial Insights

## New Franchise Disclosure Register

As a result of the *Competition & Consumer (Industry Codes-Franchising) Amendment (Franchise Disclosure Register) Regulations 2022*, which commenced on 1 April 2022, by 14 November 2022 franchisors will be required to publish a franchise profile and publish on the online Franchise Disclosure Register, important information about its franchise. This is a mandatory requirement and failure to comply could result in fines of up to \$133,200.

The Franchise Disclosure Register will be free to use and will be publicly available. Franchise buyers, current franchisees and the public will be able to access the register to find out key information about franchisors, in order to assist them with decision making.

The purpose of the new regulations is to amend the Franchising Code to increase transparency of operation and structure of franchise systems, before prospective franchisees enter into franchise agreements. They are designed to further the objective of the *Competition and Consumer Act 2010* to enhance the welfare of the general population by promoting competition and fair trading in the franchising sector.

Franchisors will be required to publish the following information:

1. trading name and ABN
2. contact details, including addresses, email address and telephone number
3. type of industry.

Franchisors who are required to update their disclosure document must publish the following information on the register:

- how long the franchisor has operated the franchise in Australia
- the number of franchisees (including franchisor run businesses) in Australia
- which states or territories the franchise operates in
- any limits or restrictions that are placed on franchisees in choosing their own suppliers
- fees, payments and costs payable by the franchisee to the franchisor
- whether or not the franchisor is able to vary its standard form franchise agreement without franchisee consent
- the standard terms of the franchise agreement used by the franchisor
- whether or not a franchisee will have an option to renew its franchise
- whether or not a franchisee will have a right to compensation for goodwill created at the end of a franchise term, and
- whether or not there is any restraint of trade or similar clause imposed on a franchisee.

Franchisors will be required to update the register annually or confirm that the information contained in the register is accurate.

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The introduction of the Franchise Disclosure Register will facilitate free and easy access by prospective franchisees to pertinent information about franchised businesses in Australia. This will enhance the ability of prospective franchisees to make informed decisions about franchising systems that they are considering purchasing, by enabling them to easily compare information about different franchise systems.

The need for such a register was identified following the Fairness in Franchising report tabled to parliament in March 2019. The report found that there was a lack of equality in business experience, education and sophistication that existed between franchisees and franchisors, in favour of franchisors which could prevent franchisees conducting satisfactory due diligence.

It is intended that the register will go some way to enabling prospective franchisees to become well informed.

It goes without saying that anyone considering buying into a franchise should obtain legal advice. Becoming a franchisee usually involves making a significant investment and quite often involves the franchisee taking on potential liability. It is critical that prospective franchisees understand their rights and obligations when entering into a franchise.

It is our experience that disputes between franchisors and franchisees often arise because of a failure by one or both of the parties to properly understand their rights and obligations in the franchise.

For franchisors, the regulatory environment has become increasingly onerous over recent years as numerous reforms have been introduced in order to encourage better compliance with existing franchising legislation.

While not the subject of this article, pursuant to the *Competition & Consumer (Industry Codes-Franchising) Amendment (Penalties and Other Matters) Regulations 2022*, from 15 April 2022 the potential penalties payable by franchisors under the Franchising Code of Conduct have been doubled or very significantly increased. In addition, a number of new penalties have been introduced.

It is increasingly important that franchisors ensure that they are compliant.

**This article was written by Principal Douglas Raftesath. For advice about the new franchise disclosure register or purchasing a franchise, including undertaking due diligence, please contact our corporate and commercial Principals Douglas Raftesath, Mark Fitzgerald or Georgina Odell.**



**Douglas Raftesath**  
Principal  
+61 2 9018 9978  
[draftesath@meridianlawyers.com.au](mailto:draftesath@meridianlawyers.com.au)



**Mark Fitzgerald**  
Principal  
+61 3 9810 6767  
[mfitzgerald@meridianlawyers.com.au](mailto:mfitzgerald@meridianlawyers.com.au)



**Georgina Odell**  
Principal  
+61 2 9018 9975  
[godell@meridianlawyers.com.au](mailto:godell@meridianlawyers.com.au)

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