



Australian Government

Review of the Franchising Code of Conduct

Consultation paper

August 2023



© Commonwealth of Australia 2023

This publication is available for your use under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a [Creative Commons Attribution 3.0 Australia](https://creativecommons.org/licenses/by/3.0/au/legalcode) licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used 'as supplied'.

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics — then Treasury prefers the following attribution:

Source: The Australian Government the Treasury

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the Department of the Prime Minister and Cabinet website (see <https://www.pmc.gov.au/honours-and-symbols/commonwealth-coat-arms>).

Other uses

Enquiries regarding this licence and any other use of this document are welcome at:

Manager
Media and Speeches Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

Contents

- Contents ii
- How to have your say 3
- Foreword 4
- Terms of Reference 5
- Why is the Franchising Code of Conduct being reviewed? 6
- What is franchising? 6
 - The franchising sector in Australia 6
 - The Franchising Code of Conduct 7
 - Franchise agreements 7
 - The role of government 8
- Key issues to be examined 8
 - A. The scope of regulation 10**
 - Current provisions under the Franchising Code 10
 - Key issues – general 10
 - Key issues – automotive franchising 11
 - B. Before entering into a franchise agreement 14**
 - Current provisions under the Franchising Code 14
 - Key issues – general 15
 - Key issues – automotive franchising 16
 - C. Enduring obligations in franchise relationships 18**
 - Current provisions under the Franchising Code 18
 - Key issues – general 20
 - Key issues – automotive franchising 21
 - D. Ending a franchise agreement 22**
 - Approach in the Franchising Code 22
 - Key issues – general 24
 - Key issues – automotive franchising 25
 - E. Enforcement and dispute resolution 26**
 - Current provisions under the Franchising Code 26
 - Key issues – general 29
- Appendix A: Further reading 31
- Appendix B: List of questions 32

How to have your say

We want to make it easy for you to take part in the review. You can:

- upload a written submission, video or audio
- talk to our team on the phone
- send your feedback by email or mail.

Your comments can be as short or long as you would like; in general, we prefer short, concise submissions which focus on the key issues you wish to draw to our attention.

Submissions may be lodged electronically or by post, however electronic lodgement is preferred to: franchisingreview@treasury.gov.au. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in written submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence.

Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission. View Treasury's [Submission Guidelines](#) for further information on this topic.

Closing date for submissions: 29 September 2023

Email	franchisingreview@treasury.gov.au
Mail	Franchising Review Secretariat Unit Small and Family Business Division The Treasury Langton Crescent PARKES ACT 2600
Enquiries	Enquiries can be initially directed to franchisingreview@treasury.gov.au
Phone	+61 2 6263 4550 (Business hours: Monday – Friday 9:00 am – 4:30 pm)

Foreword

Since the introduction of the mandatory Franchising Code of Conduct in 1998, the franchising sector has seen substantial growth. The sector encompasses a diverse range of industries from fast-food chains and retail outlets to services-oriented enterprises. It contributes approximately \$170 billion each year to the Australian economy, and employs over half a million Australians. Around 90 per cent of franchisors, and almost all franchisees, are small businesses.

The regulatory framework governing franchising in Australia is primarily guided by the Franchise Code of Conduct. The Code aims to ensure fairness and transparency in the franchisor-franchisee relationship, outlining key rights and obligations for both parties. It addresses crucial aspects such as disclosure, dispute resolution, termination, and the provision of essential information to potential franchisees. The Code supplies the regulatory support to guard against misconduct and fosters a business culture that drives competitiveness, sustainability, and productivity.

Throughout its evolution, the franchising sector in Australia has encountered challenges that necessitate periodic reviews and adaptations of the regulatory landscape. The government's commitment to fostering a competitive and fair business environment is reflected in regular reviews of the Franchising Code of Conduct, aimed at refining and enhancing its effectiveness.

The 2023 review of the Franchising Code of Conduct will assess the impact of recent changes to the Code, such as those relating to New Car Dealerships (Part 5) and the Franchise Disclosure Register. Importantly, the scope of the review also encompasses the general fitness for purpose of the Franchising Code and the role of both the Australian Competition and Consumer Commission and the Australian Small Business and Family Enterprise Ombudsman in supporting the sector.

This consultation paper identifies key themes and issues for the Review. The questions posed are a guide only and not all of them need to be answered in submissions. Your views are important, and I invite submissions on any issues which you might consider relevant to the Review.

I am eager to hear from a wide range of interested stakeholders and I welcome your engagement throughout the Review process.



Dr Michael Schaper
Independent Reviewer
Review of the Franchising Code of Conduct



Terms of Reference

Franchising is an important contributor to the Australian economy. The regulatory framework that underpins the relationship between franchisors and franchisees is critical to ensuring confidence in the sector. It should promote positive commercial relationships, fair trade and not unduly restrict competitive conduct.

Reviews provide an important opportunity to evaluate the effectiveness of regulatory frameworks. To meet the requirements of statutory and other review requirements in relation to franchising, a review process is to begin in the second half of 2023.

The review will have regard to the following:

- Noting that the Franchising Code is due to sunset on 1 April 2025, the general fitness for purpose of the Franchising Code.
- The role of the Australian Competition and Consumer Commission and the Australian Small Business and Family Enterprise Ombudsman in supporting enforcement and dispute resolution under the franchising regulatory framework.
- The role of the Franchising Code in regulating the automotive sector, including:
 - o Whether Franchising Code protections available to automotive franchisees should be extended beyond new car dealerships (for example to truck, motorcycle, and farm machinery dealerships).
 - o The effectiveness of 2020 and 2021 reforms which:
 - provided for multi-party dispute resolution and clarified that agency models are captured by the Franchising Code.
 - created new obligations relating to compensation in the event of early termination, and franchisees' capacity to make a return on investment.
 - provided additional protections to apply at the end of a franchise term including notification requirements and processes for winding down.
 - restricted the franchisors' capacity to require a franchisee to undertake significant capital expenditure.
 - clarified the operation of the Franchising Code obligation to act in good faith in relation to new car dealerships.
- The impact of 2022 reforms which increased certain penalties available under the Franchising Code to: the greater of \$10 million, three times the benefit obtained, or 10 per cent of annual turnover.
- From 15 November 2023, which will mark when the Register has been publicly available for one year, provisions in the Franchising Code related to the Franchise Disclosure Register.

The review process will be informed by consultation which allows all interested parties to make submissions.

A report that includes appropriate findings and recommendations will be prepared. The report will be provided to the Minister for Small Business, the Hon Julie Collins MP, no later than the end of December 2023.

Where required, the report will be assessed against the criteria for a post implementation review, as set out in the Australian Government Guide to Policy Impact Analysis.

Why is the Franchising Code of Conduct being reviewed?

The Terms of Reference bring together four separate reviews of the Franchising Code. The Australian Government has aligned all four reviews into one review process to allow effective consideration of the Franchising Code and reduce duplication of effort for stakeholders involved in consultation, noting the likely overlap in the required reviews.

On 15 August 2023 the Australian Government announced that Dr Michael Schaper had been appointed to conduct the Review. A Secretariat is supporting Dr Schaper.

The four requirements being met through the Review are:

1. A statutory review of Part 5 of the Franchising Code (relating to New Vehicle Dealership Agreements).
2. A sunset review of the Franchising Code. The Franchising Code is due to sunset on 1 April 2025.
3. A post implementation review (PIR) of the 2021 amendments to the New Vehicle Dealership Agreements part of the Code (Part 5).
4. A statutory review of the Franchise Disclosure Register (from 15 November 2023).

What is franchising?

In essence, franchising is an arrangement where two businesses work together to provide goods or services developed by a franchisor. There is typically an agreement between the two parties (which can be written, verbal or implied) as to how this will be done; a grant by the franchisor of the right to conduct business; substantial association with a trademark, advertising or commercial symbol; and payment by the franchisee to the franchisor for the right to use these symbols and business systems.

The relationship between the participants is set out in a franchise agreement. However, it is a different relationship to many other commercial transactions and so has its own regulatory framework in Australia.


The franchising sector in Australia

Franchising makes a significant contribution to the Australian economy. Franchised businesses turnover approximately \$170 billion each year and employ an estimated 574,000 people.¹ Franchise arrangements exist in most sectors of the economy – there is significant diversity among the businesses that make up Australia’s franchising industry.

The size of the sector has remained stable over the previous 10 years. Data suggests that the net number of franchisees has increased from 89,718 to 96,598, with the sector’s revenue fluctuating from around \$170 - \$190 billion during this period. Franchising revenue is forecast to grow modestly in the coming years.²

¹ IBISWorld, Franchising in Australia, Industry Report, 3 May 2023.

² IBISWorld, Franchising in Australia, Industry Report, 3 May 2023.



There are approximately 1,066 franchise systems operating in Australia.³ As a number of these systems use complex structures with sub-franchisor and master-franchisee entities, there are over 1700 franchisor profiles on the Franchise Disclosure Register as of August 2023.⁴

In Australia, around 90 per cent of franchisors and almost all franchisees are small businesses.⁵ Franchise systems involve a franchisor, who owns the relevant intellectual property, has substantial experience in operating the brand, an understanding of the market and access to resources. Franchisees by comparison are likely to be smaller operators, without the same business knowledge or experience, and are often from a culturally and linguistically diverse background. Many franchisees enter franchising directly from wage-dependent employment.⁶

The Franchising Code of Conduct

The Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (Franchising Code) regulates the conduct between participants in franchising. It is an industry code made under Part IVB of the *Competition and Consumer Act 2010* (CCA).

The Franchising Code provides regulatory support for the industry to guard against misconduct and opportunistic behaviour, while fostering long term changes to business culture that can drive competitiveness, sustainability and productivity.

In addition to the Franchising Code, participants in the sector are also subject to the general laws governing business relationships and fair trading in Australia found within the Australian Consumer Law. These include prohibitions on unconscionable conduct, false or misleading representations, and the regulation of unfair contract terms in standard form contracts.

Franchise agreements

A core element in franchising relationships between the franchisor and the franchisee is an agreement as to how the business relationship will operate. For the purposes of the Franchising Code, a “franchise agreement” is based on certain business model characteristics and how the business operates.⁷ Even if a business agreement is not called a ‘franchise agreement’, it might still be considered to be one under the Code.

There are some business arrangements that are exempt from the Franchising Code, including cooperative business models.

Further details about the scope of the Franchising Code and meaning of “franchise agreement” are set out in Section A – The Scope of the Regulation.

³ FRANdata, ‘Did you know’, [FRANdata Australia -...~https://www.frandata.com/about-us/frandata-australia/](https://www.frandata.com/about-us/frandata-australia/).

⁴ Franchise Disclosure Register registrations, Commonwealth Treasury, August 2023.

⁵ Franchise Council of Australia, Submission 29, p. 5., [Sub29_FCA_4_May_2018.pdf](#), Parliamentary Joint Committee on Corporations and Financial Services, Fairness in Franchising, March 2019.

⁶ Franchise Law Review, page 101, 2018 *Law Business Research Ltd*.

⁷ See: clause 5, Competition and Consumer (Industry Codes—Franchising) Regulation 2014

The role of government

There are two key government bodies that support the regulatory framework set out in the Franchising Code. The Australian Competition and Consumer Commission (ACCC) has a role in enforcing the Franchising Code. The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) also supports small businesses and family enterprises to resolve disputes (such as franchising based ones) through mandatory dispute resolution frameworks. In some states, franchise dispute resolution is also provided by Small Business Commissioners.

Further details about the role of the ACCC and ASBFEO is set out in Section E – Enforcement and Dispute Resolution.

Key issues to be examined

The current Review will be examining the current state of regulation and key issues for consideration under five broad themes:

- A. The scope of regulation
- B. Before entering into a franchise agreement
- C. Enduring obligations in franchise relationships
- D. The end of a franchise relationship
- E. Enforcement and dispute resolution

Since 2020 the Franchising Code has contained additional protections for franchisees operating under new vehicle dealership agreements. Where relevant, these additional protections are noted under the above headings.

However, the review's scope is not limited to the themes identified and questions asked in this consultation paper. In addition to the specific questions posed throughout this paper, general feedback is sought on the Franchising Code and whether the Code is fit for purpose. The Franchising Code is due to expire on 1 April 2025 and will cease operating if it is not remade.

When thinking about whether the Franchising Code is fit for purpose going forward, feedback about emerging economic, social and technological trends and their potential impacts on the franchising sector would be valuable. Examples may include the rise of the use of artificial intelligence, the increasing role of sustainability considerations in the business operating environment, or the growth of flexible work trends following the global COVID-19 pandemic.

We have listed below a number of questions to help guide discussion, although submissions do not necessarily need to address them all – it is only a guide. When answering questions please provide examples of issues that you have encountered and possible solutions, where applicable.

General Questions

1. Are there any general observations you want to make about the regulatory framework?
2. Is the Franchising Code fit for purpose? Should it be retained? If so, should it be remade prior to sunseting?
3. Are there any emerging trends, such as technology or cultural innovations, which would affect the operation of the Franchising Code?

A. The scope of regulation

Current provisions under the Franchising Code

The scope of coverage of the Franchising Code is determined by the definition of a *franchise agreement* in clause 5 of the Franchising Code. Even if an agreement is not called a 'franchise agreement', it is considered to be one and the Franchising Code applies if the agreement has certain features. These features include:

- One person (the franchisor) grants another person (the franchisee) the right to carry on a business in Australia supplying goods or services under a specific system or marketing plan.
- The business is substantially determined, controlled, or suggested by the franchisor or its associate.
- The business is associated with a particular trademark, advertising or commercial symbol owned, used, licensed, or specified by the franchisor or its associate.
- The franchisee must make, or agree to make, certain types of payments to the franchisor or its associate, before starting or continuing the business.⁸

Regardless of whether it meets these tests, a *motor vehicle dealership agreement* is taken to be a franchise agreement (see below). *Motor vehicle* is defined in the Franchising Code and includes motorcycles, tractors and farm machinery. Part 5 of the Franchising Code contains additional protections for new vehicle dealership agreements only (i.e., not all motor vehicle dealership agreements).

While there are some exemptions for master franchisors or 'non active' franchisors from certain disclosure obligations in the Franchising Code this definition dictates the scope of coverage of the Franchising Code. The Franchising Code does not apply if another mandatory industry code applies. This is most relevant in relation to the Oil Code of Conduct.⁹

Key issues – general

General scope of coverage

The protections set out in the Franchising Code aim to provide the necessary regulatory support for industry to guard against misconduct and opportunistic behaviour. In some regulatory regimes, there are exemptions where it is recognised that the potential for misconduct or opportunistic behaviour is significantly reduced because of the experience or sophistication of both parties.

⁸See: www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/beginning-a-franchise-agreement/the-franchise-agreement.

⁹ See: Competition and Consumer (Industry Codes – Oil) Regulations 2017 (Oil Code).

The Franchising Code has a limited exemption of this kind; clause 3 sets out that the Code does not apply to a franchisee agreement if:

- the franchise agreement is for goods or services that are substantially the same as those supplied by the franchisee before entering into the franchise agreement, and
- the franchisee has supplied those goods or services for at least 2 years immediately before entering into the franchise agreement, and
- sales under the franchise are likely to provide no more than 20% of the franchisee's gross turnover for goods or services of that kind for the first year of the franchise.

There is significant diversity among the businesses in Australia's franchise sector. Data available from the Franchise Disclosure Register suggests that costs to set up a franchise business can range from under \$10,000 to millions of dollars. Franchisees can range from sole traders to publicly listed companies. There may also be significant differences among franchisees in terms of their resources and ability to conduct due diligence and receive professional advice before entering into a franchise agreement. Under the current Franchising Code, the regulatory approach is largely the same regardless of the sophistication or experience of the franchisees, or the characteristics of the franchise arrangement (with the exception of the limited exemption set out above).

Exclusion of cooperatives and mutual entities

Changes made to the Franchising Code in 2021 and 2022 clarified that cooperative arrangements do not fall within the scope of regulation under the Code. This exclusion reflects the understanding that true cooperatives, which, unlike franchises, are owned and controlled by their members and which have voting rights based on membership rather than shareholding, do not exhibit the same inherent power imbalances and potential conflicts of interest which can exist in traditional franchising models.

Key issues – automotive franchising


In addition to the protections set out in the Franchising Code for all types of franchisees, there are additional protections set out in Part 5 which apply only to new vehicle dealership agreements.

A new vehicle dealership agreement is defined as one that predominantly deals in new passenger vehicles or new light goods vehicles (or both). This excludes other types of motor vehicle dealerships such as trucks, farm machinery and motorcycle franchises.

Part 5 of the Franchising Code has been a part of the regulatory framework since 1 June 2020 with the protections available extended further with effect from 1 July 2021. The review is an opportunity to conduct a post-implementation review of these new automotive provisions and whether the scope of these protections is appropriate.

Truck, farm machinery and motorcycle franchises

The Terms of Reference for the current review explicitly raise for consideration whether the protections available to automotive franchisees should be extended beyond new car dealerships (for example to truck, motorcycle and farm machinery dealerships).



This follows concerns that have been raised by automotive franchisee representatives that the features of new vehicle dealership agreements which led to the need for these additional protections are also prevalent in other types of motor vehicle franchises.

Automotive maintenance and repair businesses

Automotive franchisee representatives have also raised concerns that franchisor manufacturers are structurally separating service and repair business from the dealership business. There is concern that this may result in parts of the dealers' business (that were protected by the Code and its new vehicle dealership provisions) falling outside the scope of those protections.

The Code does not explicitly cover motor vehicle service and repair businesses. However, service and repair dealership agreements will be covered under the general protections of the Franchising Code, provided they meet the definition of a 'franchise agreement' (see above).

Definition of a motor vehicle dealership – agency

In recent years, some automotive franchisors have changed the nature of their business models. Instead of an automotive franchisee purchasing new car stock from the franchisor and on-selling to consumers, some franchisors are moving towards an agency model. Under the agency model, the dealer no longer purchases stock from the manufacturer and may not be able to control pricing. The consumer purchases the vehicle directly from the manufacturer.

Motor vehicle dealership operators were concerned that this revised model might mean that they were no longer protected by the provisions of the Franchising Code. Accordingly, in 2021 the definition of a motor vehicle dealership was expanded to expressly include agency models.

Questions

4. Does the general scope of coverage of the Franchising Code remain appropriate? Is the scope of coverage flexible enough having regard to the diversity of the franchising industry?
5. Have the amendments regarding the exclusion of cooperatives from the provisions of the Franchising Code effectively clarified that they fall outside the scope of the Code?
6. What evidence is available to suggest additional protections in the Franchising Code for new car dealerships should be extended beyond new car dealerships (for example to truck, motorcycle and farm machinery dealerships)?
7. Should agreements between automotive manufacturers and dealerships that relate only to service and repair work (which do not cover matters relating to vehicle sales) be considered as franchise agreements and covered by the Franchising Code protections? Why or why not?
8. Has the amended definition of *motor vehicle dealership* effectively clarified that agency sales models remain within the scope of regulation under the Franchising Code?

B. Before entering into a franchise agreement

Current provisions under the Franchising Code

The Franchising Code places a number of requirements on franchisors, and some requirements on franchisees, before they can enter into a franchise agreement.

Disclosure

Prospective franchisees are expected to take reasonable care of their own interests and conduct due diligence before entering into a franchise agreement. However, not all important information to inform due diligence is available – or easily available – to a franchisee from publicly available sources. As such, the Franchising Code has extensive provisions relating to information that franchisors must make available to prospective franchisees. This includes:

- The requirement to make high level information about the franchise system publicly available via the **Franchise Disclosure Register**.
- The requirement to provide prospective franchisees with an **Information Statement** in the required form at the earliest opportunity (before formal disclosure).
- The requirement to produce and update each year a **Key Fact Sheet** and **Disclosure Document**. The format and required contents of the Disclosure Document is set out in Annexure 1 to the Franchising Code and must be provided to franchisees at least 14 days before they sign a franchise agreement or make a non-refundable payment. Franchisees must acknowledge in writing that they have received, read and had a reasonable opportunity to understand the Disclosure Document and the Franchising Code.

Pre-entry advice and cooling off

In addition to these requirements relating to disclosure, the Franchising Code contains a range of other principles related to ensuring franchisees are fully informed prior to entering into a franchise relationship, including:

- After signing a franchise agreement, franchisees have a 14 day cooling off period during which time they can choose to leave the franchise agreement without penalty. In 2021 the cooling off provisions were extended:
 - o from 7 to 14 days
 - o to ensure that related leasing agreements also needed to be disclosed before the cooling off period expired, and
 - o to ensure that cooling off rights applied to franchisees that joined a franchise through a transfer from another franchisee rather than directly from the franchisor.
- Prior to entering into a franchise agreement, franchisees must acknowledge they have received, or been told to receive but have chosen not to obtain, legal and professional advice.

Required terms

The Franchising Code requires that a franchise agreement contains (or not contain) certain terms. These provisions in the Code seek to address the existence of what might be considered ‘unfair’ terms in franchise agreements. Examples include a prohibition on franchisors’ using the franchise agreement to require franchisees to cover the franchisors costs of settling a dispute, and a prohibition on franchisors including general releases from liability.

Key issues – general

Effectiveness of mandatory disclosure

Given the importance of mandatory disclosure as a regulatory tool in the Franchising sector, evaluating the effectiveness of the various forms of pre-entry disclosure is a critical issue for the review.

In particular, the Key Facts Sheet was first introduced in 2021 with the purpose of drawing prospective franchisees’ attention to the most crucial information contained in the Disclosure Document.¹⁰ The Key Fact Sheet must be provided to franchisees in the format published on the Australian Competition and Consumer Commission’s website.¹¹

As a new requirement, the current review provides the first opportunity to evaluate the effectiveness of the Key Fact Sheet in assisting franchisees to understand obligations and the risks associated with entering a particular franchise agreement.

The Franchise Disclosure Register was made available to prospective franchisees on 15 November 2022. There will be a further opportunity to provide feedback on the operation of the Register in November this year when the Register has been publicly available for one year.

Required terms

Changes to the Australian Consumer Law’s unfair contract terms regime come into force on 10 November 2023. The updated contract terms state that proposing, using or relying on unfair contract terms in standard form contracts will be banned and penalties for breaches of the law will apply. Contract terms are unfair if they:

- cause a significant imbalance in the rights and obligations of the parties under the contract
- are not reasonably necessary to protect the legitimate interests of the party who gets an advantage from the term, and
- would cause financial or other harm to the other party if enforced.

These laws will apply to standard form franchise agreements entered into by franchisees if they have 100 or fewer employees or make less than \$10 million in annual turnover.

¹⁰ See: Explanatory Statement, Competition and Consumer (Industry Codes—Franchising) Amendment (Fairness in Franchising) Regulations 2021.

¹¹ See: www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/beginning-a-franchise-agreement/key-facts-sheet-for-a-franchise.

These laws are likely to have a significant impact on franchise agreements and the ongoing operation of provisions of the Franchising Code which regulate specific types of ‘unfair’ contract terms.¹²

Key issues – automotive franchising

Required terms – compensation

Under changes introduced to Part 5 of the Franchising Code in 2021, a franchisor must not enter into a new vehicle dealership agreement unless the agreement provides for compensation in the event that a franchise agreement is terminated by the franchisor before it expires because the franchisor withdraws from the Australian market, rationalises its networks in Australia, or changes its distribution models in Australia (see clause 46A of the Franchising Code).

The franchise agreement must also make provision for the franchisor to buy back or compensate the franchisee for new road vehicles, spare parts and special tools if the franchise agreement is not renewed and a new agreement is not entered into, or the franchise agreement is terminated before it expires because the franchisor withdraws from the Australian market, rationalises its networks in Australia, or changes its distribution models in Australia.

These requirements were introduced following structural change within the automotive industry, including a decision by some major automotive manufacturers to make substantial changes to their Australian-based operation. Some of those decisions remain the subject of current litigation, noting that the new requirements only apply to new vehicle dealership agreements entered into, extended or renewed on or after 1 July 2021.

Required terms – return on investment

Under changes introduced to Part 5 of the Franchising Code in 2021, a franchisor must not enter into a new vehicle dealership 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 (see clause 46B of the Franchising Code).

These requirements responded to specific concerns raised by franchisees operating new car dealerships that franchise agreements (or renewals) often required a significant capital investment but only operated for a short term. Agreements were understood to be offered on a ‘take it or leave it’ basis with franchisees often accepting the short term based on an understanding or expectation that the franchise agreement would continue to be renewed by the franchisor providing an opportunity to recover capital investment over a longer period.

Short franchise terms became particularly problematic when franchisors sought to terminate agreements early or not renew agreements to facilitate changes to the business model. As above, the new requirements only apply to new vehicle dealership agreements entered into, extended or renewed on or after 1 July 2021.

¹² For more information on unfair contract terms see www.accc.gov.au/consumers/buying-products-and-services/contracts

Questions

9. How effective are the requirements of the Franchising Code that ensure franchisors make information available to franchisees prior to entry into a franchise agreement? If possible, please comment on the effectiveness and content required for inclusion in each of the Franchise Disclosure Register, Information Statement, Key Facts Sheet and Disclosure Document.
10. How have changes to unfair contract terms laws impacted franchise agreements? Is the approach in the Franchising Code to regulating certain types of contract terms still appropriate?
11. Do you have any other comments on how the Franchise Code regulates the relationship between franchisors and franchisees at the point of entry into a franchise agreement?

New vehicle dealership agreements

12. What impact have the 2021 changes relating to compensation and return on investment had on franchisors and franchisees entering into new vehicle dealership agreements? Where possible, please provide detail on the costs and benefits the new car dealership sector has experienced because of these changes.

C. Enduring obligations in franchise relationships

Current provisions under the Franchising Code

After a franchise agreement is entered into, there are a range of continuing obligations placed on the parties to foster mutually beneficial cooperation between the franchisor and the franchisee.

Continuing disclosure and funds management obligations

Marketing and other cooperative funds

If a franchisee is required to pay money into a marketing or other cooperative fund administered by the franchisor, the franchisor must provide audited information about the fund's receipts and expenses to franchisees each year. If 75 per cent of franchisees agree, the requirements in relation to audit of the fund do not apply.¹³

Marketing funds can only be used to meet expenses that have been disclosed to franchisees, agreed to by a majority of franchisees, or are legitimate marketing expenses.

Case study 1 provides an example of recent enforcement litigation in this field.

Case study 1: Retail Food Group Ltd

On 15 December 2020, the ACCC commenced court proceedings in the Federal Court against Retail Food Group Ltd (ASX: RFG) and five of its related entities (Retail Food Group). As a part of the allegations, the ACCC claimed that RFG engaged in unconscionable conduct and made false and misleading representations to its dealings with franchisees, in breach of the Australian Consumer Law. In addition to the allegation that RFG withheld critical profit and loss information about stores to incoming franchisees, the ACCC alleged that RFG had engaged in unconscionable conduct by making payments from its Michel Patisserie's marketing fund for expenses that were not legitimate marketing expenses. The ACCC also claimed that RFG did this without adequately disclosing it to its franchisees or seek agreement from the majority of franchisees.

RFG's franchise agreements required that franchisees contributed a weekly marketing and promotion fund fee which was deposited into a marketing fund and administered by RFG. On 23 December 2022, as a part of a court-enforceable undertaking accepted by the ACCC, RFG paid \$5 million to Michel Patisserie's franchisees who paid levies into that franchise's marketing fund between 1 July 2012 and 30 June 2017.

¹³ See: clause 15, Competition and Consumer (Industry Codes—Franchising) Regulation 2014

Materially relevant facts

Franchisors are required to disclose ‘materially relevant facts’ to franchisees within a reasonable time – but not more than 14 days after the franchisor becomes aware of the matter.¹⁴

Examples of the types of information required to be disclosed include a change in the majority ownership or control of the franchisor or the franchise system, enforcement proceedings by an organisation such as the ACCC against the franchisor, or the entry of a franchisor into administration.

Disclosure Document

Franchisees can request a copy of the franchisor’s updated Disclosure Document each year.¹⁵

Good faith

The Franchising Code requires the parties to a franchise agreement to act in good faith (see clause 6 of the Franchising Code). The obligation to act in good faith exists during the life of the franchise agreement but also extends to the negotiation of the franchise agreement.

For the purposes of the Franchising Code, in deciding whether a party has acted in good faith, a court may consider whether the party acted honestly and not arbitrarily, and whether the party cooperated to achieve the purposes of the agreement.

The obligation to act in good faith does not prevent a party to a franchise agreement, or a person who proposes to become such a party, from acting in his, her or its legitimate commercial interests.

Unilateral contract variation

Franchisors require the ability to maintain and adapt the franchise business model. Sometimes this will require the franchisor to unilaterally vary aspects of the franchise agreement or operating model.

While some instances of unilateral contract variation by franchisors will not be controversial, in other circumstances the franchisor’s capacity to make changes to the business model and obligations of the franchisee may lead to concern.

The Franchising Code prohibits retrospective and unilateral variation of franchise agreements. It also requires franchisors to disclose to franchisees, prior to entry into the franchise agreement, circumstances where the franchisor has or may unilaterally vary the franchise agreement.

Capital expenditure

Sometimes concerns arise in franchise systems when, during the term of a franchise agreement, the franchisor seeks to make a change to the business which requires franchisees to make an outlay of money to pay for a change required by the franchisor. Examples can include the roll out of innovative technology to the franchise network, or refreshed store fit outs to support a branding change to the franchise.

¹⁴ See: clause 17, Competition and Consumer (Industry Codes—Franchising) Regulation 2014

¹⁵ See: clause 16, Competition and Consumer (Industry Codes—Franchising) Regulation 2014

The Franchising Code prohibits a franchisor from requiring a franchisee to undertake significant capital expenditure during the term of the franchise agreement unless:

- The expenditure was disclosed to the franchisee in the disclosure document given to the franchisee before they entered into the franchise agreement
- If all franchisees are required to undertake the expenditure, then all or a majority of franchisees approve the expenditure
- The expenditure is necessary to comply with legislative obligations, or
- The expenditure is agreed by the franchisee.

Historically, a franchisor could also require a franchisee to undertake significant capital expenditure if the franchisor considered the expenditure necessary as capital investment in the franchised business, justified by a written statement given to each affected franchisee. Between 2020 and 2021 this 'business case' exemption was removed.

Since 2021, franchisors have had to include as much information as practical in the Disclosure Document about known significant capital expenditure that will be required during the term of the agreement. Franchisees and franchisors are also required to discuss capital expenditure prior to entering into a franchise agreement.

Dispute resolution

An important part of a healthy franchising relationship is having a clear and effective process for resolving disagreements. The Franchising Code requires that a franchise agreement have dispute resolution procedures which meet certain minimum standards, and if one party seeks mediation of a dispute then the other party must participate.

Dispute resolution is discussed further below, in the context of government support provided to the franchising sector relating to enforcement, administration and dispute resolution of franchising regulation.

Key issues – general

Change management

Unilateral variation of franchise agreements or other changes to the management structure or business model in a franchise can undermine franchisees' due diligence prior to entering into a franchise agreement.

Changes may be structural, such as sale of the franchise or a major acquisition, or operational changes, such as launching a new product, process, or marketing campaign. This often occurs because franchisors need to be able to adapt and innovate their business model. The COVID-19 pandemic provided a stark demonstration of the need for businesses to be able to pivot their operating systems quickly to remain competitive and respond to shocks or other changes in consumer demand or preferences.

However, on the other hand there is ongoing concern about whether the Franchising Code strikes the right balance about franchisees' rights in the context of change. Changing distribution models in the automotive sector provide one such example. There are ongoing questions about whether and how franchisees should be compensated for change, franchisees' abilities to resist change, or even franchisees' capacity to exit a franchise system without penalty if there are significant changes to the operating model or management of a franchisor.

Key issues – automotive franchising

Good faith

From 1 July 2021 the obligation to act in good faith was amended for new vehicle dealership agreements to provide that, in determining whether the obligation to act in good faith has been contravened, a court must have regard to whether the terms of the agreement are fair and reasonable.

Questions

13. How well does the Franchising Code support franchisors and franchisees during the term of the franchise agreement? In particular, does the Franchising Code provide adequate minimum standards relating to structural and/or operational change management?
14. How effective are the 2021 reforms which restricted the franchisors' capacity to require a franchisee to undertake significant capital expenditure?

New vehicle dealership agreements

15. What impact have the 2021 amendments to the obligation to act in good faith in relation to new car dealerships had? Where possible, please provide detail on the costs and benefits the new car dealership sector has experienced because of these changes.

D. Ending a franchise agreement

Approach in the Franchising Code

Early termination

The Franchising Code does not confer a right on the franchisor or the franchisee the right to terminate a franchise agreement early. This is left to be decided by the parties in the franchise agreement itself and according to the general law relating to termination of contractual agreements.

Since 2021 the Franchising Code has expressly allowed a franchisee to request early termination (see clause 26B). If a franchisee makes such a request, it must provide reasons for the request and a franchisor must respond to the proposal within 28 days. If the franchisor does not agree with the franchisee's proposal relating to termination, it must provide reasons for the refusal.

Process requirements – early termination

While the Franchising Code does not attempt to regulate the circumstances in which the parties may terminate a franchise agreement early, it does set out certain procedural requirements which a franchisor must follow if they seek to terminate a franchise agreement early.

These processes are intended to ensure that the franchisee has sufficient notice of the franchisor's proposal to terminate, and reasonable time to remedy any breach which the franchisor proposes to use as a basis for terminating the franchise agreement.

In certain exceptional circumstances, if the franchisor has a right to terminate a franchise agreement, then it does not need to follow these processes. These exceptional circumstances include things such as the franchisee becoming insolvent, operating the business in a way that endangers public health or safety, or acting fraudulently. However, even in these exceptional circumstances, a franchisor still must give the franchisee 7 days' notice of the proposal to terminate. There are provisions allowing for the quick resolution of any dispute if the franchisee raises a dispute in relation to the proposed termination.

Reciprocal notice requirements – end of franchise term

Before the end of the term of an existing franchise agreement, franchisors and franchisees must notify each other as to whether they intend to continue in the franchise relationship.¹⁶ The notice period is generally six months, but extends to 12 months for new vehicle dealerships.¹⁷ For new vehicle dealerships, if either party in a dealership agreement does not intend to continue the relationship, they must provide reasons as to why.

Case study 2 is an example of recent enforcement litigation in this field.

¹⁶ This requirement is reduced to 6 months in circumstances where the term of a franchisee agreement is less than 12 months.

¹⁷ See clause 18 generally, or clauses 47 and 48 in relation to dealerships, Competition and Consumer (Industry Codes—Franchising) Regulation 2014

Case study 2: Bob Jane Corporation Pty Ltd

On 29 April 2020, the ACCC accepted a court enforceable undertaking from Bob Jane Corporation Pty Ltd (Bob Jane) after it failed to comply with its obligations under the Franchising Code relating to end of term and renewal of agreements.

Specifically, the ACCC claimed that Bob Jane breached clause 18 of the Franchising Code by failing to notify some franchisees of whether it intended to renew or extend their franchise agreements at least six months before the expiry of the agreement. The ACCC also claimed that they breached clauses 9 and 10 of the Franchising Code by extending the term of certain franchise agreements without first providing required documentation to the franchisees and obtaining a written statement from the franchisees that they had received, read and understood the documents.

As a part of its obligation to fulfill the undertaking, Bob Jane did not terminate any franchise agreements currently operating under interim arrangements without first providing 6 months' written notice, and provided the prescribed documentation 14 days before renewing or extending a franchise agreement.

Good will and restraint of trade

The Franchising Code does not give a franchisee any entitlement to good will associated with the franchisee's business at the end of the term of a franchise agreement. Franchisees are to be made aware of the franchisor's approach to good will when entering the franchisee agreement; it is one of the matters that must be included in the Disclosure Document.¹⁸

However, in circumstances where a franchisor has not compensated a franchisee for good will at the end of the term of a franchisee agreement and the franchise relationship was not renewed despite the franchisee's desire to keep operating the business, the franchisor is unable to enforce a restraint of trade against the franchisee.¹⁹

Restraints of trade may also be considered unfair terms under the Australian Consumer Law (as exemplified in Case study 3).

¹⁸ See: Annexure 1, Competition and Consumer (Industry Codes—Franchising) Regulation 2014

¹⁹ See: clause 21, Competition and Consumer (Industry Codes—Franchising) Regulation 2014

Case study 3: Back in Motion Physiotherapy

On 18 September 2020, the ACCC accepted an undertaking by Back In Motion Physiotherapy Pty Ltd to remove certain terms from its franchise agreements which it admitted may have been unfair.

Under a restraint of trade clause contained in many of the Back In Motion Physiotherapy franchise agreements, any franchisee who wanted to leave the group could not be involved in a competing practice located within a radius of up to 10 kilometres of a Back In Motion Physiotherapy franchise for up to 12 months. The franchise agreements also included a clause under which Back In Motion Physiotherapy could charge franchisees a 'buy out fee' equal to four times their annual royalty fees, if they opted to be released from the unfair restraint of trade.

The ACCC were concerned that this restraint of trade clause could have harmed franchisees seeking to exit their agreements, arguing that the clause meant that most former franchisees could not operate in many parts of metropolitan areas.

After Back In Motion Physiotherapy admitted that the restraint of trade and buy-out fee terms may have been 'unfair' under Australian Consumer Law, they agreed with the ACCC not to enforce these terms for future franchisees or for those that left the group in the past 12 months. It will also not include these terms in its future franchise agreements.

Key issues – general

Early termination

Following the introduction in 2021 of the ability for a franchisee to request early termination, feedback is sought on the effectiveness of these new provisions. These provisions were introduced having regard to franchisees that may wish to exit a franchisee agreement due to hardship or poor conduct from the franchisor.

Insolvency

The impact of franchisor insolvency on a franchisee varies depending on the nature of the business and the franchise agreement. A franchisee may be unable to receive stock, may lose the right to use the franchisor's brand, or occupy their premises if the franchisor holds the head lease. They may still be required to make payments to suppliers, landlords, banks and employees while unable to operate their franchise. The ACCC has emphasised the importance of considering insolvency issues before entering into a franchise agreement and the franchisee may request an updated Disclosure Document once every 12 months.

The Parliamentary Joint Committee on Corporations and Financial Services recent inquiry into corporate insolvency in Australia recommended consideration of franchising insolvency issues.²⁰

²⁰ Parliamentary Joint Committee on Corporations and Financial Services, Corporate Insolvency in Australia, Final Report, Commonwealth of Australia 2023, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/CorporateInsolvency/Report

Key issues – automotive franchising

Early termination

As discussed above, provisions which require franchisors to pay compensation must now be included in a franchise agreement. Recognising that these reforms only apply to new vehicle dealership agreements entered into from 1 July 2021, it is unlikely that there has been an opportunity to test the effectiveness of these reforms at the point of early termination by a franchisor.

Questions

16. How effective are 2021 reforms to the Franchising Code which created a process for franchisees to formally request early exit from their franchise agreements?

New vehicle dealership agreements

17. Where possible, please comment on the impact, or expected impact, of reforms to the Franchising Code which seek to ensure franchisees are paid compensation if the franchisor terminates a new vehicle dealership agreement early. Where possible, please provide detail on the costs and benefits (or expected costs and benefits) to the new car dealership sector resulting from these changes.

E. Enforcement and dispute resolution

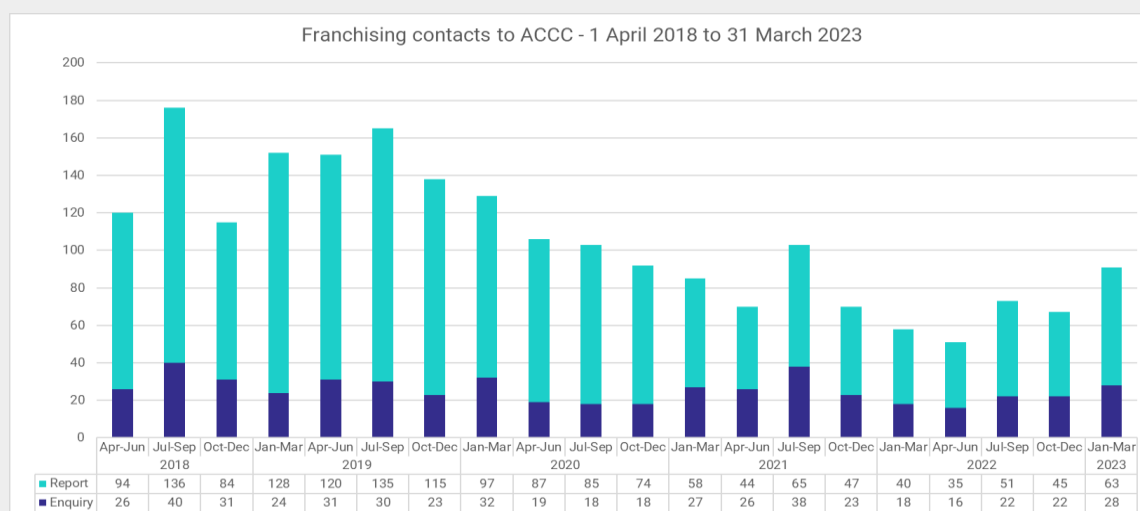
Current provisions under the Franchising Code

Enforcement and the role of the Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission (ACCC) is the regulator responsible for making sure that individuals and businesses comply with Australian competition and consumer protection laws, including the Franchising Code.

Ensuring that small businesses (including franchisees) receive the protections of the competition and consumer laws and small business industry codes of conduct is a compliance and enforcement priority for the ACCC.²¹ An example of recent ACCC court-based enforcement is given in Case study 4.

Chart 1: ACCC contacts relating to franchising




Not all franchise related issues can be dealt with by the ACCC. The ACCC is not a dispute resolution body and pursues enforcement action for breaches of the Franchising Code where it is in the public interest. It will often be unable to provide information to a franchisee-complainant about the outcome or status of any investigation into an allegation that the Franchising Code has been breached.

Penalties and other enforcement tools

There are a range of potential consequences for breaching the Franchising Code and enforcement tools available to the ACCC. These include:

- Accepting an administrative resolution from a franchisor that agrees to do, or stop doing, certain things to address concerning conduct.

²¹ See: www.accc.gov.au/about-us/accc-priorities/compliance-and-enforcement-policy-and-priorities

- 
- Accepting a court-enforceable undertaking from the franchisor, where the franchisor agrees to do, or not do, certain things.
 - Issuing infringement notices to franchisors that the ACCC suspect have breached a penalty provision.
 - Taking court action against franchisors for suspected breaches of the law, including seeking pecuniary penalties where relevant.

In 2022, following the PJC Inquiry and concerns about poor conduct in the automotive franchising industry, there was an increase in the scope and quantum of penalties for breaches of the Franchising Code.

- Existing penalty provisions were all at least doubled from 300 to 600 penalty units (from \$93,900 to \$187,800 according to the current value of a penalty unit as set out in the *Crimes Act 1914*).
- New penalty provisions were created in relation to franchisors' obligations to provide and update disclosure information required by the Franchise Disclosure Register.
- For a limited number of provisions, penalties were increased to the greater of \$10 million, three times the benefit obtained (where the Court can determine this), or 10 per cent of annual turnover.

These changes were enabled by changes to Part IVB of the *Competition and Consumer Act 2010* and were designed to ensure that large franchisors did not see penalties as 'a cost of doing business'.²²

²² See [Explanatory Memorandum](#), Treasury Laws Amendment (2021 Measures No. 6) Bill 2021.

Case study 4 - Jump Swim

On 17 June 2019, the ACCC commenced court proceedings against franchisor Jump Loops Pty Ltd and its parent company Swim Loops Holdings Pty Ltd (collectively Jump Swim) in the Federal Court. The ACCC alleged that Jump Swim made false, misleading or deceptive statements about Jump Swim School franchises, breaching the Australian Consumer Law.

The ACCC alleged Jump Swim made representations in its promotional material that a prospective Jump Swim School franchisee would have an operational swim school within 12 months of signing a franchise agreement, when it did not have reasonable grounds for making that statement. There were over 90 Jump Swim franchisees who did not receive an operational swim school within 12 months or at all.

Additionally, the ACCC alleged that the franchisor Jump Loops Pty Ltd wrongfully accepted payment from franchisees where it failed to supply an operational franchise within the 12-month period specified, or alternatively, within a reasonable time.

On 20 May 2021, the Federal Court declared by consent that Jump Swim falsely represented these promotional materials to 174 franchisees. It also declared that Jump Swim accepted payments from 127 franchisees when Jump Swim knew, or ought to have known, that there was no reasonable basis for believing that they could supply the franchisee within 12 months, or within a reasonable period of time.

Dispute resolution and the role of the Australian Small Business and Family Enterprise Ombudsman

Part 4 of the Franchising Code contains provisions relating to how disputes between franchisors and franchisees are to be resolved according to a complaint handling procedure.

If one party to a dispute wishes to engage in mediation, then the other party is compelled to attend mediation and try to resolve the dispute.

With effect from 1 June 2021, functions were conferred on the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) to assist parties under the provisions of the Franchising Code with disputes. This role includes appointing alternative dispute resolution practitioners to support the parties where needed.

Other changes to dispute resolution that took effect in 2021 include:

- The concept of conciliation was introduced into the dispute resolution provisions
- the Franchising Code was amended to provide that where appropriate a franchisor must participate in multiparty mediation, and
- The Franchising Code now provides a procedure under which the parties can agree to arbitrate a matter supported by ASBFEO.

Demand for ASBFEO assistance with franchising disputes has reduced since its peak in 2019.

Chart 2: ASBFEO actively managed cases relating to franchising – 2019 – 23²³

	2019	2020	2021	2022	2023
Q1	100	69	53	31	32
Q2	191	86	58	39	34
Q3	78	48	77	31	N/A
Q4	74	53	99	57	N/A
Total	443	256	287	158	N/A

Where dispute resolution under the Franchising Code is not effective, aggrieved parties can take private action seeking compensation for breaches of the Franchising Code through forums such as the Federal Court.

Industry associations can also seek to influence the update of mechanisms which promote dispute resolution, and to raise industry awareness of dispute settlement processes (see Case study 5).

Case study 5: Automotive franchising tri-partite memorandum of understanding

A memorandum of understanding between the Federal Chamber of Automotive Industries, Australian Automotive Dealer Association, and the Motor Trades Association of Australia exists to promote resolution procedures for dealers and overseas manufacturers (OEMs) in disputes related to the Franchising Code.

To do this, these peak industry bodies encourage members to adopt standards that support a productive working relationship between dealers and OEMs. The memorandum outlines that OEMs and dealers should have agreements with terms that provide dealers with a reasonable opportunity for a return on their investment; OEMs and dealers should give each other ample notice and transparency on their future Australian representation plans; and OEMs should recognise and not discourage dealers joining representative bodies.

Additionally, these peak body industries commit to a voluntary binding arbitration process to help resolve disputes when agreements between OEMs and dealers are prematurely terminated and compensation may be due.

Key issues – general

Role of the ACCC

As the regulator responsible for the Franchising Code, the role of the ACCC is an important issue for any review evaluating the effectiveness of the franchising regulatory framework.

²³ For the Q2 2019, ASBFEO did not report the number of actively managed cases but rather reported the number of contacts they received for the period.

Education and engagement

Contemporary best practice regulatory behaviour encourages regulators to actively engage with and educate the industries they regulate. While the Franchising Code emphasises disclosure of information by franchisors to prospective franchisees, there is an important role for regulators to provide resources that can help prospective franchisees and franchisors to understand the industry, best practice behaviour and the regulations that will apply to them. Both the ACCC and ASBFEO also undertake a range of engagement activities with the franchising sector on an ongoing basis.

Penalties

Following the introduction in 2022 of significantly increased penalty ceilings, feedback is sought on the impact of these penalty increases including their effectiveness in deterring breach of the Franchising Code.

Dispute resolution and the role of ASBFEO

Following changes in 2021 to the role of ASBFEO and the expansion of dispute resolution frameworks and tools under the Franchising Code, feedback is sought on the effectiveness of these changes.

Questions

ACCC and enforcement

18. Is the current role of the ACCC in relation to enforcement of the Franchising Code appropriate?
19. How useful and effective are the educational resources provided by regulators (such as from the ACCC)? Do they ensure prospective entrants to the franchising sector are sufficiently aware of their rights and responsibilities? Is the level of industry engagement appropriate?
20. What has been the impact of 2022 reforms which increased certain penalties available under the Franchising Code? Particular comment is sought on penalties which were increased to the greater of \$10 million, three times the benefit obtained, or 10 per cent of annual turnover?

Dispute resolution

21. Is the role and activity of the ASBFEO in relation to supporting dispute resolution under the Franchising Code appropriate?
22. Do the dispute resolution provisions in the Code provide an effective framework for the resolution of disputes? In particular, are you aware of whether 2021 reforms relating to multi-party dispute resolution and voluntary arbitration have been utilised by participants in the franchising sector? If not, why not?

Appendix A: Further reading

Legislative references

[Competition and Consumer Act 2010 \(Cth\) sch 2 \(Australian Consumer Law\)](#)

[Competition and Consumer \(Industry Codes – Franchising\) Regulations 2014 \(“Franchising Code”\)](#)

[Competition and Consumer \(Industry Codes—Franchising\) \(Additional Information Required by the Secretary\) Determination 2022](#)

[Explanatory Memorandum, Treasury Laws Amendment \(2021 Measures No. 6\) Bill 2021](#)

[Explanatory Statement, Competition and Consumer Act \(Industry Codes – Franchising\) Amendment \(Fairness in Franchising\) Regulations 2021](#)

[Explanatory Statement, Competition and Consumer \(Industry Codes—Franchising\) Amendment \(Franchise Disclosure Register\) Regulations 2022](#)

[Explanatory Statement, Competition and Consumer \(Industry Codes—Franchising\) Amendment \(Franchise Disclosure Register\) Regulations 2022](#)

Previous reviews

Policy history and consultation materials relating to previous reviews is available on the Commonwealth Treasury’s website, see <https://treasury.gov.au/franchising-code-of-conduct/policy-history-reviews-franchising-code-conduct> and <https://treasury.gov.au/franchising-code-of-conduct>.

Key reviews include:

- Senate Standing Committee on Education and Employment (March 2021), [Driving a fairer deal: Regulation of the relationship between car manufacturers and car dealers in Australia](#), Australian Government
- Parliamentary Joint Committee on Corporations and Financial Services (March 2019), [Fairness in Franchising Report](#), Australian Government
- Mr Alan Wein, [Review of the Franchising Code of Conduct](#) (April 2013)

Franchising information

ACCC (Australian Competition and Consumer Commission) (2023) [Franchising](#) [website], accessed 10 August 2023.

ASBFEO (Australian Small Business and Family Enterprise Ombudsman) [Franchising](#) [website], accessed 10 August 2023.

Australian Government (2023) [Franchise Disclosure Register](#) [website], accessed 10 August 2023.

Business.gov.au (2023) HYPERLINK "https://austreasury.sharepoint.com/sites/sbpp-function/fcr/Planning/Franchising | busine...~https://business.gov.au/planning/business-structures-and-types/franchising"[Franchising](#) [website], accessed 10 August 2023.

Australian Government (2023) [Franchising](#) [website], accessed 10 August 2023.

Appendix B: List of questions

General Questions

1. Are there any general observations you want to make about the regulatory framework?
2. Is the Franchising Code fit for purpose? Should it be retained? If so, should it be remade prior to sunseting?
3. Are there any emerging trends, such as technology or cultural innovations, which would affect the operation of the Franchising Code?

Questions – The scope of regulation

4. Does the general scope of coverage of the Franchising Code remain appropriate? Is the scope of coverage flexible enough having regard to the diversity of the franchising industry?
5. Have the amendments regarding the exclusion of cooperatives from the provisions of the Franchising Code effectively clarified that they fall outside the scope of the Code?
6. What evidence is available to suggest additional protections in the Franchising Code for new car dealerships should be extended beyond new car dealerships (for example to truck, motorcycle and farm machinery dealerships)?
7. Should agreements between automotive manufacturers and dealerships that relate only to service and repair work (which do not cover matters relating to vehicle sales) be considered as franchise agreements and covered by the Franchising Code protections? Why or why not?
8. Has the amended definition of *motor vehicle dealership* effectively clarified that agency sales models remain within the scope of regulation under the Franchising Code?

Questions – Before entering into a franchise agreement

9. How effective are the requirements of the Franchising Code that ensure franchisors make information available to franchisees prior to entry into a franchise agreement? If possible, please comment on the effectiveness and content required for inclusion in each of the Franchise Disclosure Register, Information Statement, Key Facts Sheet and Disclosure Document.
10. How have changes to unfair contract terms laws impacted franchise agreements? Is the approach in the Franchising Code to regulating certain types of contract terms still appropriate?
11. Do you have any other comments on how the Franchise Code regulates the relationship between franchisors and franchisees at the point of entry into a franchise agreement?

New vehicle dealership agreements

12. What impact have the 2021 changes relating to compensation and return on investment had on franchisors and franchisees entering into new vehicle dealership agreements? Where

possible, please provide detail on the costs and benefits the new car dealership sector has experienced because of these changes.

Questions – Enduring obligations in franchise relationships

13. How well does the Franchising Code support franchisors and franchisees during the term of the franchise agreement? In particular, does the Franchising Code provide adequate minimum standards relating to structural and/or operational change management?
14. How effective are the 2021 reforms which restricted the franchisors' capacity to require a franchisee to undertake significant capital expenditure?

New vehicle dealership agreements

15. What impact have the 2021 amendments to the obligation to act in good faith in relation to new car dealerships had? Where possible, please provide detail on the costs and benefits the new car dealership sector has experienced because of these changes.

Questions – Ending a franchise agreement

16. How effective are 2021 reforms to the Franchising Code which created a process for franchisees to formally request early exit from their franchise agreements?

New vehicle dealership agreements

17. Where possible, please comment on the impact, or expected impact, of reforms to the Franchising Code which seek to ensure franchisees are paid compensation if the franchisor terminates a new vehicle dealership agreement early. Where possible, please provide detail on the costs and benefits (or expected costs and benefits) to the new car dealership sector resulting from these changes.


Questions – Enforcement and dispute resolution

ACCC and enforcement

18. Is the current role of the ACCC in relation to enforcement of the Franchising Code appropriate?
19. How useful and effective are the educational resources provided by regulators (such as from the Australian Competition and Consumer Commission)? Do they ensure prospective entrants to the franchising sector are sufficiently aware of their rights and responsibilities? Is the level of industry engagement appropriate?
20. What has been the impact of 2022 reforms which increased certain penalties available under the Franchising Code? Particular comment is sought on penalties which were increased to the greater of \$10 million, three times the benefit obtained, or 10 per cent of annual turnover?

Dispute resolution

21. Is the role and activity of the ASBFEO in relation to supporting dispute resolution under the Franchising Code appropriate?

- 
22. Do the dispute resolution provisions in the Code provide an effective framework for the resolution of disputes? In particular, are you aware of whether 2021 reforms relating to multi-party dispute resolution and voluntary arbitration have been utilised by participants in the franchising sector? If not, why not?