

# CHANGES TO THE FRANCHISING CODE NOW APPLY

## AUSTRALIA FRANCHISING ALERT

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On 1 June 2021, the Australian Government released amendments to the Franchising Code of Conduct and a number of these have already begun to apply. A summary of when various key changes take effect is set out below.

**From 2 June 2021:** amendments have taken effect regarding dispute resolution which apply to all disputes notified on or after 2 June 2021 (even if the agreement was entered into before that date). The changes mean there are additional dispute resolution options available (such as voluntary arbitration, conciliation and multi-party alternative dispute resolution) and "rapid" appointment of an alternative dispute resolution (ADR) practitioner/arbitrator is contemplated for certain disputes. The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) will now oversee all dispute resolution advisor functions.

**From 1 July 2021:** the process that applies in granting a franchise will change as follows:

- The form of the Information Statement that must be provided to prospective franchisees will change (it must be given before the other required disclosure documents are provided)
- A new "Key Facts Sheet" must also be given to franchisees (the form of this is yet to be published)
- Additional information regarding leasing and premises must be given where relevant
- A longer cooling-off period of 14 days applies and the cooling-off period will only begin on franchisees receiving necessary documentation including, where relevant, the terms of leases or occupancy rights
- Documents need to be provided in formats requested by the franchisee (electronic and/or hard copy)
- Capital expenditure requirements must be discussed and appropriately disclosed (unless certain exceptions apply).

**From 1 July 2021:** franchise agreements entered into, renewed or extended will need to be amended to reflect Franchising Code changes which include:

- Seven days' notice to be given by franchisors for terminations in special circumstances, with a new prohibition on terminating the agreement for 28 days where there is a dispute
- Franchisors being prohibited from passing on certain legal costs
- New cooling off rights (including for transfers) and the longer cooling off period

- Retrospective unilateral variations being prohibited without a franchisee's consent
- Further narrowing of the circumstances in which a restraint can be enforced.

**From 1 November 2021:** updated disclosure documents must reflect new requirements which include:

- Additional information that must be disclosed regarding mediations/conciliations/arbitrations that have occurred, leases/property, goodwill, the term, early termination arrangements and capital expenditure
- Additional information that is required regarding rebates (including how these are calculated and whether and how these are shared with franchisees)
- Earnings information, if provided, must be given with the disclosure document.

## KEY CONTACTS



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