

ANOTHER REVIEW OF FRANCHISING CODE ANNOUNCED

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Australia Corporate Alert

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The Australian Government has recently announced that another comprehensive review of the Franchising Code of Conduct (Code) is to be undertaken by Dr. Michael Schaper. The report, which is intended to include appropriate findings and recommendations, is expected to be provided to the Minister for Small Business, the Honourable Julie Collins MP by December 2023.

The terms of reference are quite broad and include, among other matters, the following:

- The general fitness for purpose of the Code and whether it should be retained or remade, noting that the Code is due to sunset on 1 April 2025;
- The scope of coverage of the Code and whether it is flexible enough having regard to the diversity of the franchising industry;
- Any emerging trends (such as technology or cultural innovations) which would affect the operation of the Code;
- How the Code regulates the relationship between franchisors and franchisees at point of entry into a franchise agreement;
- The effectiveness of the requirements of the Code to make information available to franchisees prior to entry into a franchise agreement, including the effectiveness of and content required for inclusion in the Franchise Disclosure Register, Information Statement, Key Facts Sheet and Disclosure Document;
- The approach in the Code to regulating certain types of contract terms and how changes to unfair contract terms have impacted franchise agreements;
- Whether the Code provides adequate minimum standards relating to structural and/or operational change management and how well the Code supports franchisors and franchisees during the term of a franchise agreement;
- The effectiveness of reforms:
 - Which created a process for franchisees to formally request early exit from a franchise agreement; and
 - Which restricted a franchisor's capacity to require franchisees to undertake significant capital expenditure.

- Whether the role and activity of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) in relation to supporting dispute resolution under the Code is appropriate;
- Whether the provisions in the Code provide an effective framework for dispute resolution;
- Whether multi-party dispute resolution and voluntary arbitration have been utilised by participants in the sector and, if not, why not;
- Whether the role of the Australian Competition and Consumer Commission (ACCC) in relation to enforcement of the Code is appropriate;
- How useful and effective educational resources provided by regulators (such as the ACCC) are and if the level of industry engagement is appropriate;
- Regulation of the automotive sector including:
 - Whether the additional protections in the Code for new car dealerships should be extended (to truck, motorcycle and farm machinery dealerships, for example);
 - The impact of reforms relating to compensation for early termination and return on investment, as well as the obligation to act in good faith on franchisors and franchisees entering into new car dealership agreements; and
- The impact of the 2022 reforms that increased certain penalties to the greater of AU\$10,000,000, three times the benefit obtained or 10 per cent of annual turnover.

The review is open for public feedback until 29 September 2023 and further information on the submission of responses can be found [here](#) with submission guidelines found [here](#).

Responses can be submitted by:

- Uploading a written submission, video or audio;
- Talking to the Franchising Code Review team at the Treasury via the phone at +61 2 6263 4550;
- Sending your feedback via email to franchisingreview@treasury.gov.au; or
- Sending your feedback via post to Franchising Code Review Secretariat Unit, Small and Family Business Division, Treasury, Langton Cres, Parkes ACT 2600.

Given the significant penalties which apply in relation to breaches of the Code, it is of course important for franchisors to continue to understand and comply with their obligations under the Code. The ACCC provides examples [here](#) of their work on franchising, including one instance where penalties of AU\$23 million were imposed on an entity in 2021, to demonstrate the action that has been taken in enforcing the Code.

We await the release of the report and stay tuned for a further update in due course when the findings are made public.

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