



# Franchising Code of Conduct Review

**ACCC submission**

September 2023

# Executive summary

The Franchising Code of Conduct (Code) was first introduced in 1998 in recognition of the imbalance of power and information asymmetry between franchisors and current or prospective franchisees.

Despite regular review and amendment, as well as education, compliance and enforcement activities by the ACCC over the last 25 years, persistent issues in the franchising sector remain.

Many prospective franchisees approach franchising with the expectation that they are purchasing a business in which, through their effort, they can generate goodwill and profitability. They expect that the opportunity is one of collaborative partnership with the franchisor, where the needs of both parties are appropriately considered. The ACCC has observed through its investigations that this is often not the reality once the agreement is signed.

As a business model, franchising allows the franchisor to effectively solicit investment funds to expand their operations, without the regulatory oversight that usually comes with such arrangements. Franchising agreements (and operations manuals) can impose strong business controls on a franchisee's day-to-day operations in circumstances where there is limited transparency of the franchisor's operations. Lastly, while franchisees may view a franchised business as a long-term investment, contractual powers often enable franchisors to bring the agreement to an end through a variety of mechanisms. Each of these factors can leave franchisees vulnerable to misconduct by franchisors.

While the ACCC has undertaken an active franchise-related enforcement agenda, the outcomes in matters such as Retail Food Group (2022), Megasave (2021), Jump Loops (2021) and Ultra Tune (2019) illustrate that ex-post enforcement alone cannot rapidly prevent or limit harm to prospective or current franchisees when there is a problem. The ACCC can only take action after the harm has occurred. Where franchisors continually fail to comply with their Code or Australian Consumer Law (ACL) obligations, the ACCC has no ability to prevent or limit the franchisor from continuing to promote their system to unsuspecting prospective franchisees.

When problems occur or disputes arise, franchisees typically want a quick resolution of their complaint so that they can move forward and focus on their business interests. Slow expensive litigation will rarely address the specific issues faced by individual franchisees. Instead, consideration should be given to implementing accessible binding alternative dispute resolution.

As the sole regulator of the Code, the ACCC must necessarily direct its attention and resources to the most serious harms in the sector. After over 25 years of a mandatory industry code of conduct, the ACCC considers that even an amended Code cannot address or prevent the persistent harms that arise in franchising.

Adopting a licencing or similar regime would address many of these persistent issues. Such a regime could:

- impose a range of prudential requirements on a franchisor both at the start of, and during the life of a franchise business and place certain conditions on the franchisor in seeking to, and continuing to, attract franchisees. These obligations would better address the persistent power imbalance and information asymmetry issues than the Code does.

- provide the ACCC or another appropriate regulator with a greater suite of tools to quickly address and prevent localised harms and future harm to prospective franchisees.
- provide for dispute resolution, binding both parties to the extent possible by law, as a condition of holding a licence.

## Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the 2023 review of the Franchising Code of Conduct (review). This review is an important opportunity to ensure that franchising regulation in Australia is fit for purpose.

The ACCC is an independent Commonwealth statutory agency that promotes competition, consumer protection, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to promote compliance with the *Competition and Consumer Act 2010* (CCA), regulate national infrastructure and undertake market studies.

The *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* (Code) is a prescribed mandatory industry code under Part IVB of the CCA. The ACCC is responsible for administering the Code.

The ACCC has a dual enforcement and education function. While the ACCC utilises its enforcement powers to provide specific and general deterrence for breaches of the CCA, ACL and Code, it also publishes general guidance to assist businesses to comply with the law.

## Persistent issues in franchising

### **Many franchisees do not fully understand their limited rights or the significant risks**

Franchising is intended to allow a franchisor to expand their business using funding and labour provided by franchisees. The theoretical benefit for franchisees is to leverage the franchisor's know-how and existing brand to set up business and attract customers. However, franchising a system allows the franchisor to shift significant risks and costs to franchisees. Franchising a system allows a franchisor to:

- solicit significant investment from prospective franchisees without the regulatory oversight that usually comes with such arrangements, and
- maintain prescriptive control over how their franchisees operate, when the franchisees' operations will cease as well as whether and to whom their franchisees can transfer their franchise.

While franchising opportunities are regularly marketed to potential franchisees as a chance to "run your own business" or "be your own boss", a franchisee's decision-making power is significantly constrained once they have entered into the agreement. Other than the protections provided by the Code and the ACL, franchisees' rights are dictated by, and limited by, the franchise agreement that the franchisor has offered.

In our experience, many franchisees and prospective franchisees think that they are purchasing a business that they can generate goodwill in and that will operate in a

collaborative partnership, where the needs of both the franchisee and franchisor are appropriately considered.

Further, the protections provided by the Code and the ACL do not meet the expectations of many franchisees and prospective franchisees. For example, the obligations to act in good faith and to refrain from unconscionable conduct do not require a franchisor to meaningfully negotiate the terms of an agreement, avoid situational disadvantage or refrain from exercising rights under an agreement that are to the detriment of the franchisee.

In practice, what prospective franchisees are purchasing when they enter a franchise agreement is merely a time-limited right to operate under a franchise brand in the manner dictated by the franchisor.

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### **Case study:**

[AHG WA \(2015\) Pty Ltd v Mercedes-Benz Australia/Pacific Pty Ltd \[2023\] FCA 1022](#)<sup>1</sup> which was handed down on 30 August 2023 is an example of some of limitations of the protections provided by the current legal framework.

In late 2020 Mercedes-Benz Australia/Pacific Pty Ltd (MBAuP) notified its then 49 franchisees of its intention not to renew their franchise agreements in accordance with the clause 8 of those agreements.

In mid 2021 MBAuP offered its franchisees standard form agency agreements without considering each dealer's individual circumstances and knowing that the dealers would be worse off under the agency agreements than under the franchise agreements.

In October 2021 38 Mercedes Benz franchisees commenced a class action alleging that, among other things:

- the issuing of non-renewal notices and implementation of the agency model was not conducted in good faith
- the dealers' goodwill had been appropriated by MBAuP without compensation and
- failure to consider the dealers' individual circumstances, offering standard form agency agreements and appropriating the dealers' goodwill was unconscionable conduct.

Justice Beach rejected the former franchisees' case.

In relation to good faith, His Honour found that MBAuP had acted in good faith when issuing the non-renewal notices because:

First, the very purpose of such a power [being the power to not renew the franchise agreement] is to bring the existing contractual relationship and implicit bargain to an end.

Second, such a power can serve only the interests of the party upon whom it is conferred. The ostensible purpose of the exercise of such a power will almost invariably be its true purpose.

So, the exercising party's obligation pursuant to the good faith duty to act honestly and with fidelity to the bargain between the parties is informed by these distinguishing features and must recognise that the nature of the power is to bring that bargain to an end. That approach also gives effect to the principle that the standard of fair dealing or reasonableness that is to be expected in any given case must recognise the nature of the contract or relationship, the different interests of the parties and the lack of necessity for parties to subordinate their own interests to those of the counterparty.

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<sup>1</sup> <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca1022>

In summary, the good faith duty applied to such a power of non-renewal without cause does not convert an agreement into a contract of indefinite duration. But it does require that the exercising party act honestly in matters that are directly and intimately connected to its performance of the contract and its exercise of the non-renewal power...<sup>2</sup>

and

[C]ould the power to give an NRN [non-renewal notice] without cause to a particular dealer under an individual dealer agreement be validly exercised in good faith without regard to that dealer's individual circumstances? In my view and given the nature of the power, which was for the sole benefit of MBAuP, it could be so validly exercised.<sup>3</sup>

In relation to goodwill His Honour referred favourably to *Ranoa Pty Ltd v BP Oil Distribution Ltd* (1989) 91 ALR 251 reiterating that on the expiry or termination of a franchise agreement a:

...franchisee has no right to continue operating the business and no right (in the absence of specific provision in the agreement to the contrary) to any goodwill that may have accrued to the business while it was operated by the franchisee.<sup>4</sup>

In relation to unconscionable conduct His Honour stated:

...[T]he dealers ultimately had a lack of choice concerning the terms of the agency agreements. Ultimately they were presented on a take it or leave it basis. I also accept that they were given little time to negotiate the final form of the agency agreements and the associated agreements.

...[T]here is no doubt that MBAuP played hard-ball in its negotiations with the dealers. There was no meaningful negotiation that the new model to be imposed would be an agency model. There was, however, some negotiation over the detail of some aspects. But on the financial aspects, MBAuP only made concessions on rats and mice issues. And on the main commission aspects, in my view MBAuP and MBAG ratcheted this down as low as they thought that they could get away with.

...[T]here is no doubt that the introduction of the agency model has significantly diminished the upside that dealers had under the dealership model in terms of potentially earning profits in the good times. But then of course one must consider that some of the commercial and financial risks that the dealers had under the dealership model have now been shifted to MBAuP under the agency model.

...I must assume that the dealers entered into the dealer agreements after taking such commercial and legal advice as they thought fit and well knowing of the risks, but taking the calculated risk that if they performed then they were unlikely to be given an NRN. In other words they perceived that if they performed then it was to the mutual benefit of both MBAuP and the dealer(s) to continue the relationship. That was no doubt a sensible commercial risk to take. But nevertheless a risk as they must have appreciated. The seeds of their ultimate lack of choice were sown a long time ago in the form of the dealer agreements and the form of the non-renewal provisions. Now in the form of these provisions there was some symmetry as between the parties. But in terms of contractual risk allocation, the dealers always had more to lose if MBAuP decided not to renew than if a particular dealer decided not to renew; a dealer was always more likely to be vulnerable to the sunk costs problem.

...I accept that the dealers were ultimately placed in a position of situational disadvantage and possibly constitutional disadvantage in terms of the agency model. But in a sense this was in part self-induced by the dealers' entry into the dealer agreements and a willingness, it must be inferred, to accept the risks and the risk allocation enshrined in those agreements including the risks inherent in the contractual power of MBAuP to issue the NRNs without cause. They made the

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<sup>2</sup> *AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd* [2023] FCA 1022, 214 – 217.

<sup>3</sup> *AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd* [2023] FCA 1022, at 234.

<sup>4</sup> *AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd* [2023] FCA 1022 at 145.

relevant capital investments knowing of or when they ought to have known of such risks. And on a broader front, the dealers were well-heeled individuals and corporations that hardly had any socio-economic vulnerability.<sup>5</sup>

and

...I accept that in some respect MBAuP encouraged the dealers to make long term investments in some of the facilities. But where this occurred this was usually reflected in a longer term being negotiated under the dealer agreement. Further, with such terms and the various renewals, there is no evidence that dealers have not earned a reasonable rate of return on their assets and also in many instances also recouped their capital investment over time. And where they have not, they still have the assets. Now perhaps there would have been a drop in value if they had to be repurposed, which perception may have led some of the dealers to think that they had no choice but to enter into the agency agreements. But again, this all stems from the giving of the NRNs that I have found to be valid.

...I accept that MBAuP did not consider the individual circumstances of dealers. Moreover, it had little regard for the top 30% of dealers who were likely to suffer under the agency model. It noted that effect but had no sympathy for it.<sup>6</sup>

and

But none of this conduct together with the other conduct and circumstances makes out the applicants' statutory unconscionable conduct case.<sup>7</sup>

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## The ACCC has limited ability to rapidly prevent harm to franchisees

The Code operates under an ex-post compliance and enforcement framework. The ACCC is generally only able to take enforcement action against franchisors after harm has occurred and the ACCC has limited capacity to restrain franchisors from continuing to promote problematic franchises to prospective franchisees. As seen in our enforcement action against Geowash (2019), Jump Loops and Megasave, the ACCC's ability to obtain redress for impacted franchisees through the courts can be frustrated by parties declaring bankruptcy.

### Case study:

In May 2017, the ACCC instituted court proceedings against Geowash Pty Ltd, a car wash and detailing franchisor. Between 2013 and 2016, Geowash entered into 31 franchise agreements.

The ACCC's investigation had begun in late 2015 following a report raising concerns regarding the Code and ACL.

In the court proceedings, the ACCC alleged that the franchisor had breached:

- the ACL by making false or misleading representations about the revenue and profit franchisees could earn, and that Geowash had commercial affiliations with certain major brands when it did not.

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<sup>5</sup> *AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd* [2023] FCA 1022, 244 – 248.

<sup>6</sup> *AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd* [2023] FCA 1022, 251 – 252.

<sup>7</sup> *AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd* [2023] FCA 1022 at 259.

- the Code's obligation to act in good faith and the ACL prohibition against unconscionable conduct by directing a substantial portion of franchisee funds for purposes not permitted under the franchise agreement and not disclosed to franchisees, including the payment of substantial commissions to the director and franchising manager.

The ACCC was successful in its case. Justice Colvin stated "the amounts were invoiced and received by Geowash on a dishonest basis. They were presented as being invoices for the costs of set up and fit out when they were actually invoices for amounts to be used to pay sales commissions and to be applied to meet general fees and expenses of Geowash. They were charges that were not made in accordance with the franchise agreement but were invoiced on the basis that they were due under the franchise agreement."<sup>8</sup>

In February 2019, the Federal Court ordered \$4.2 million in penalties against the franchisor, its director and its franchising manager. This included penalties of \$1.045 million against the director and \$656,000 against the Franchising Manager. An order was also made for the director and franchising manager to pay \$500,000 each in redress to franchisees.

Geowash went into voluntary administration in October 2016. The director and franchising manager each subsequently declared bankruptcy, resulting in the franchisees not receiving any financial redress.

## **There is no binding alternative dispute resolution**

The ACCC often receives requests from franchisees to intervene in what are substantially private disputes. Franchisees typically want a quick resolution of their complaint so that they can move forward and focus on their business interests. Litigation, whether taken by the ACCC or an individual litigant, will not typically fulfil these needs. Litigation is generally a slow, time consuming and disproportionately expensive means of resolving franchising disputes.

There may be limitations and complexity in providing for binding dispute resolution in an industry code under Part IVB of the CCA. However, there are examples of determinative schemes in Australia, such as the Telecommunications Industry Ombudsman and the Australian Financial Complaints Authority.

A regime that provided for accessible timely and binding dispute resolution would minimise harms to franchisees. The ACCC recommends that the review consider all mechanisms through which binding dispute resolution can be provided to franchisees.

## **A single national Code regulator necessarily means harm goes unaddressed**

As an economy-wide regulator, the ACCC must prioritise when deciding which matters it investigates. While all contacts are carefully considered, the ACCC is unable to investigate all reports and cannot take action in every circumstance where a potential breach is identified. The ACCC is not a complaints resolution agency and rarely becomes involved in individual disputes.

The ACCC prioritises its activities across all sectors through our [compliance and enforcement policy](#)<sup>9</sup>. This policy sets out our principles to achieve compliance with the law, and outlines our enforcement powers, functions, priorities and strategies.

<sup>8</sup> *ACCC v Geowash Pty Ltd (Subject to a Deed of Company Arrangement) (No 4)* [2020] FCA 23, at 765.

<sup>9</sup> <https://www.accc.gov.au/about-us/accc-priorities/compliance-and-enforcement-policy-and-priorities>

When deciding whether to pursue a matter, the ACCC will prioritise those which fall within our priority areas. The ACCC will also prioritise matters which have the following factors (known as “priority factors”):

- conduct that is of significant public interest or concern
- conduct that results in substantial consumer or small business detriment
- national conduct by large traders, recognising the potential for greater consumer detriment and the likelihood that conduct of large traders can influence other market participants
- conduct involving a significant new or emerging market issue or where our action is likely to have an educative or deterrent effect
- where our action will help to clarify aspects of the law, especially newer provisions of the CCA.

We are unlikely to pursue matters that:

- are more appropriately resolved directly between the parties
- involve issues more effectively dealt with at the local level by state and territory agencies (for example, activity that occurs within a single state or territory, or complaints that could be resolved by individual dispute resolution)
- are primarily contractual or private right disputes.

The majority of franchise matters received by the ACCC each year do not meet the ACCC’s priority factors. This includes a range of matters where the franchise system and/or alleged conduct is “localised” to one or two states only and the number of affected franchisees is small. A review of the data on the Franchise Disclosure Register suggests that 1 in 4 franchisors operate in only one state and half have 20 or fewer franchisees. Despite devoting significant resources to the franchising sector as a priority area, the need to prioritise means a significant volume of potential poor conduct in the sector goes unaddressed.

**Case study:**

In 2022, the ACCC received a number of reports of misconduct by a franchisor that operated in only one state. These reports raised concerns about potential breaches of the ACL as well as the Code. The ACCC engaged with the relevant state consumer protection agency due to the localised nature of the conduct, however, the agency did not have the jurisdiction to assist in the matter. The ACCC’s investigation of this matter is ongoing.

In instances such as these, the availability of enforcement powers at the state and territory level could enable a local regulator to take action to address and minimise harm within their jurisdiction by putting the public on notice about the franchisor’s likely misconduct.

The ACCC commits a significant level of resources to enforcement and compliance initiatives in relation to franchising matters compared to other sectors. However, the ACCC’s compliance and enforcement model has limitations in addressing franchising disputes and allegations.

Enforcement of the Code or ACL contraventions can be difficult and often raise challenges that are unique to franchising. As a result of the ongoing commercial relationship between franchisor and franchisee and the reliance on the franchisor for the continued success of the franchisee’s business, franchisees are often unwilling to give evidence against their franchisor. This may be due to concerns about retribution or damage to the franchise brand or system. Sometimes the franchisor will offer a commercial incentive to resolve individual franchisees’ complaints which can impact on broader enforcement efforts by the ACCC.



The ACCC's goals as a regulatory agency can at times also conflict with franchisees whose engagement with us may be driven by a desire for a swift resolution of their individual issues, rather than to be witnesses in ACCC-led court proceedings.

## **A Code will never adequately address these persistent issues**

The Code was first introduced in 1998 in recognition of the imbalance of power and information asymmetry between franchisors and current or prospective franchisees.

Reviews over the last 25 years have led to amendments and additions to expand how the Code regulates the relationship between franchisor, franchisee and prospective franchisee. In its current form, the Code seeks to provide basic safeguards for franchisees, primarily through:

- imposing minimum standards of disclosure
- providing mechanisms for non-binding dispute resolution
- imposing an obligation to act in good faith
- stipulating conditions relating to the rights of a franchisor and a franchisee under a franchise agreement.

Despite these protections, the power imbalance between franchisees and franchisors continues to lead to significant disputes and financial harm to franchisees.

The ACCC has taken a range of enforcement actions where the franchisor's conduct has resulted in harm to franchisees. A discussion of the ACCC's education, compliance and enforcement activities is at **Attachment A**.

## **A licencing regime should be considered**

A well-designed licence regime would address many of the problems identified above. It could operate in concert with the CCA, including the amended unfair contract terms regime, to provide a more robust compliance framework and reduce the harms that persist in franchising. A licencing regime could:

- impose a range of prudential requirements on a franchisor both at the start of, and during the life of a franchised business and place certain conditions on the franchisor when seeking to attract franchisees. These obligations would better address the persistent power imbalance and information asymmetry issues than the Code does.
- provide the ACCC or another appropriate regulator with a greater suite of tools to quickly address and prevent "localised" harms and future harm to prospective franchisees.
- provide for accessible binding dispute resolution.

The scope of any licence regime should be informed by consultation and tailored to ensure it is no more interventionist than necessary. However, at a minimum, the ACCC considers that a licence regime could:

- allow an appropriate regulator to make an administrative decision to suspend or cancel a franchisor's licence when appropriate with the effect that the franchisor could not solicit for new franchisees until the licence is reinstated

- allow an appropriate regulator to impose conditions on the licence and other conditions as part of addressing concerns or lifting a suspension or cancellation when appropriate
- provide a mechanism for accessible binding dispute resolution between the franchisor and franchisee(s)
- impose obligations on franchisors to have adequate arrangements in place to manage conflicts of interest and provide for risk management
- impose obligations on franchisors to ensure that franchisees and prospective franchisees have the skills, knowledge and experience to successfully operate a franchise before selling them a franchise or renewing a franchise agreement.

Alternatively, a strengthened Franchise Disclosure Register framework could provide some of the benefits of a licencing regime proper. If the Franchise Disclosure Register regime were amended to require franchisors to be listed on the register to operate a franchise system and:

- to be listed, a franchisor had to comply with certain requirements and agree to abide by accessible binding dispute resolution decisions and
- the appropriate regulator could suspend, cancel or impose conditions on a franchisor to remain listed in the manner discussed above,

then the ACCC considers that some of the benefits of a licencing regime could be realised.

The ACCC encourages the review to seriously consider the benefits of replacing the Code with a licence regime or strengthening the existing Franchise Disclosure Register framework.

## Recommendations if the Code is retained

After over 25 years of a prescribed Code, the ACCC considers that even an amended Code cannot address or prevent the persistent harms in the franchising sector. The ACCC's primary position is that the Government should implement a regulatory framework that allows an appropriate regulator to suspend, cancel and impose conditions on a franchisor's ability to promote and sell franchises when appropriate, and provides for the efficient and binding resolution of disputes.

However, the ACCC acknowledges that there may be insufficient support for a change from the Code to a licencing regime. Therefore, the ACCC has also identified a range of recommendations the review should consider if the Code is to be retained.

While these amendments will not prevent the persistent harms in the franchising sector, these reforms would among other things:

- provide for improved express warning statements prior to purchase
- improve our ability to enforce the Code
- increase transparency of marketing spending.

## **Express warnings to franchisees and prospective franchisees should be required**

The Code requires franchisors to disclose certain information to prospective franchisees. This includes providing prospective franchisees with:

- an information statement as soon as practicable but not later than 7 days after interest is expressed.
- a copy of the franchise agreement, a disclosure document, a key facts sheet and a copy of the Code at least 14 days before entering into a franchise agreement or making a non-refundable payment.

Additional disclosure obligations exist in relation to “bricks and mortar” franchises where a lease or other agreements are involved.

Disclosure alone does not ensure good decision making and can place an onerous burden on franchisees and prospective franchisees when the regime is intended to be protecting them. To be effective, disclosure must provide the right information in the right way at the right time.

In our experience, despite disclosure, prospective franchisees and franchisees often assume and expect that they have a degree of security, ownership and right to goodwill that does not reflect their legal rights under the franchise agreement. We have observed that many franchisees are from a culturally and linguistically diverse background, which may impact their ability to understand their obligations and risks or take self-protective action before entering the franchise agreement.

Introducing an obligation on franchisors to include clear, direct and simple warning statements in plain English as part of their contracts would enable certain information to be drawn to the prospective franchisee’s attention prior to purchase. This may go some small way to making it clearer to prospective franchisees that franchising is a “buyer beware” proposition where franchisors dictate the terms of the ongoing relationship and franchisees are exposed to significant financial risk.

The ACCC notes that warning statements / mandatory text requirements are used during the purchase of land. The decision to buy property and the decision to enter a franchise can be similar in terms of the financial and personal commitment and risks.

The warning statements should cover topics such as:

- lack of legal rights to goodwill, unless provided for in the franchise agreement
- the time-limited nature of the right to operate under a franchise brand
- the obligation to conduct business in the manner directed by the franchisor and franchise agreement
- the need for franchisees to pay fees regardless of whether they are turning a profit, or in dispute with the franchisor
- cooling-off rights
- ability of the franchisor to not renew the franchise agreement or exercise termination rights.

## Penalties for not retaining documents and for not providing documents should be introduced

Clause 19 of the Code require franchisors to keep:

- copies of written documents that a franchisee or prospective franchisee is required or permitted to give to the franchisor under the Code
- any document that the franchisor uses to support a statement or claim made in the disclosure document.

These documents must be kept for at least six years. However, there are no penalties in the Code for failure to keep these documents. The ACCC notes that there are penalties available for failure to retain document in other Part IVB industry codes.<sup>10</sup>

Clause 19 is intended to enable the ACCC to access necessary documents to conduct its audit and enforcement functions in relation to the Code, under section 51ADD of the CCA.<sup>11</sup>

Under section 51ADD, the ACCC can issue a notice requiring a franchisor to provide information or documents that they are required to keep, generate or publish under the Code. Currently, if a franchisor refuses or fails to comply with a section 51ADD notice, the ACCC is unable to seek pecuniary penalties for that non-compliance.

### Case study:

In early 2023, the ACCC issued a section 51ADD notice on a franchisor who failed to respond and provide documents within the required time period. The ACCC subsequently engaged with the franchisor to advise that it was non-compliant and to urge them to remedy the situation as soon as possible.

Following the ACCC's prompting, the franchisor provided some documents in partial compliance with the notice two weeks after the due date set in the notice.

The ACCC is aware that there were missing documents that were not provided by the franchisor in its response. The ACCC's options in these circumstances were limited, particularly as the franchisor could claim that certain documents provided to prospective franchisees were not producible as the record-keeping obligation under the Code did not require records of these documents to be "kept".

The availability of civil pecuniary penalties and infringement notices for failing to keep, generate or publish information and documents required under Clause 19 of the Code and the availability of sanctions for failing to comply with a section 51ADD notice would provide a significantly stronger incentive for franchisors to comply with their obligations and significantly improve the ACCC's ability to effectively monitor compliance with the Code.

Section 51ADD applies to any prescribed industry code under Part IVB of the CCA that require parties to that industry code to keep, generate or publish records. Therefore, in addition to improving our ability to monitor compliance with the Code, this change would assist the ACCC in enforcing other current and future prescribed industry codes.

<sup>10</sup> For example, Clause 53 of the mandatory Horticulture Code of Conduct.

<sup>11</sup> <https://www.legislation.gov.au/Details/F2014L01472/Explanatory%20Statement/Text>

The ACCC previously advocated for the introduction of civil pecuniary penalties for a breach of section 51ADD during the 2019 'Fairness in franchising' Parliamentary Joint Committee inquiry. The committee supported this recommendation.<sup>12</sup>

## **The quantum of infringement notice penalties for alleged code breaches should be increased**

Infringement notices are available for a range of contraventions of the CCA and ACL, including for breach of a civil pecuniary penalty provision of an industry code.

The prescribed penalty amount in each infringement notice varies depending on the alleged contravention.

For example, the penalty amounts for an infringement notice issued in relation to alleged false or misleading representations or unconscionable conduct are:

- \$18 780 (60 penalty units) for corporations
- \$187 800 (600 penalty units) for listed corporations
- \$3 756 (12 penalty units) for individuals.

Section 51ACF of the CCA provides:

- (1) The penalty to be specified in an infringement notice that is to be issued to a person, in relation to an alleged contravention of a civil penalty provision of an industry code, must be a penalty equal to the following amount:
  - (a) If the person is a body corporate – 50 penalty units; [currently \$15,650]
  - (b) Otherwise – 10 penalty units. [currently \$3,130]

Infringement notices can provide a timely and cost-effective way of resolving concerns that achieves general and specific deterrence without costly and protracted legal proceedings. However, this efficiency must be balanced against the need to ensure that the consequences of breaching the Code are sufficiently serious to ensure compliance.

We consider that the infringement notice penalties available for an alleged breach of an industry code are too low to motivate compliance and should be brought into line with those available for alleged false or misleading representations and alleged unconscionable conduct.

## **Penalties should be available for more Code breaches**

Currently the ACCC can only seek civil pecuniary penalties or issue infringement notices for breaches of certain Code provisions. The ability to seek civil pecuniary penalties and issue infringement notices is a fundamental part of the ACCC's enforcement toolkit. The lack of any sanction for breaching certain parts of the Code undermines our ability to ensure compliance with the Code.

For the Code to be effective, the consequences of breaching it must be sufficiently serious to drive compliance. The ACCC holds the general view that all substantive clauses of a prescribed code should carry the potential for civil pecuniary penalties. However, the ACCC

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<sup>12</sup> Recommendation 6.15 of the final report.

notes that although successive amendments to the Code have increased the number of clauses that carry penalties, some important clauses still do not carry a penalty.

Therefore, the ACCC recommends that civil pecuniary penalties (and thereby infringement notices) be made available for the following additional clauses of the Code:

Clause	Summary
10(1)	An obligation on a franchisor not to enter, renew or extend a franchise agreement or accept a non-refundable payment in relation to a franchise agreement until the franchisor has a written statement from the franchisee that the franchisee has received, read and had a reasonable opportunity to understand the disclosure document and the Code.
10(2)	An obligation on a franchisor not to enter a franchise agreement until the franchisor has received from the franchisee a signed statement that the franchisee has received independent legal, business and accounting advice or acknowledges that they have been told that they should seek such advice but have decided not to.
14(3)	Where the franchise agreement requires franchisees to enter a lease or an intellectual property use agreement or a security agreement or a confidentiality agreement or a restraint of trade agreement the franchisor must provide a copy of these agreements at least 14 days before the day on which the franchise agreement is signed if it is available. If it is not available at that time, when it becomes available.
19	An obligation on a franchisor to keep any information or documents that the Code requires or allows a franchisee or prospective franchisee to give to the franchisor and an obligation on a franchisor to keep a copy of a document that underpins a claim in their disclosure document.
20(1)	A franchise agreement must not require a franchisee to sign a general release of the franchisor from liability toward the franchisee or a waiver of any verbal or written representations made by the franchisor.
21(2)	A franchise agreement must not contain a clause that requires a disputes or alternative dispute resolution to be dealt with in a jurisdiction other than the one in which the franchised business is based

## **The purpose of the Code should be amended to recognise the superior bargaining position enjoyed by franchisors**

The current purpose of the Code is to “regulate the conduct of participants in franchising towards other participants in franchising”.<sup>13</sup>

The ACCC considers that the current purpose fails to recognise that the Code exists because franchisors enjoy a persistent superior bargaining position in relation to their franchisees and prospective franchisees. The substantive content of the Code makes it clear that the purpose of the Code is to attempt to protect franchisees and prospective franchisees.

Amending the purpose of the Code to make it clear that it is intended to protect franchisees and prospective franchisees in their dealings with franchisors would assist future judicial consideration of the Code.

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<sup>13</sup> *Competition and Consumer (Industry Codes – Franchising) Regulation 2014*, clause 2.

## Franchisors should account to franchisees for all marketing spending

Joining a franchise system necessarily requires the franchisee to agree to carry on a business:

- under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor
- that will be substantially or materially associated with a trade mark, marketing or a commercial symbol.

The success or otherwise of franchisees is closely linked to the franchisor's marketing investment and spending. Therefore, franchisees and prospective franchisees have an interest in understanding how franchisors are developing, maintaining and marketing their brand.

It is common for franchisees to have to pay fees into a marketing fund operated by the franchisor. Marketing funds are intended to be used to pay for expenses related to the marketing and advertising of a franchise brand. The Code has increasingly sought to regulate how marketing fund money is collected, where it is kept, how it is spent, and how the franchisor reports on expenditure.

Marketing funds remain a significant area of contention and dispute between franchisees and franchisors. Approximately 15% of franchising contacts to the ACCC in the last 4 years raise concerns in relation to marketing and advertising. Further, approximately 40% of marketing fund contacts to the ACCC raise multiple issues regarding how money is collected, kept, spent or reported.

### Case study:

In 2020, the ACCC commenced proceedings against Retail Food Group (RFG) for alleged unconscionable conduct and false or misleading representations to its franchisees. The proceedings consisted of two broad allegations:

- that RFG acted unconscionably and engaged in false, misleading or deceptive conduct in relation to the sale or licensing of 42 loss-making corporate stores to incoming franchisees between 2015 and 2019. The ACCC's concern was that prospective franchisees had no avenues to access information regarding the stores' financial performance.
- that RFG made certain payments between 2012 and 2017 from Michel Patisserie's marketing fund for expenses that were not legitimate marketing expenses, in contravention of the Code. This was alleged to include the payment of substantial operational expenses. In some cases, this allegedly included personnel costs for executives and employees not in marketing roles.

In December 2022, the ACCC agreed to settle the case with RFG. This settlement included a court-enforceable undertaking whereby RFG agreed to pay \$5 million to franchisees of Michel Patisserie stores who paid levies into the marketing fund between 1 July 2012 and 30 June 2017. RFG also agreed to make payments to and waive historical debts of a number of affected current and former franchisees.

The ACCC recommends that the exemption in clause 31(a)(4)(i) of the Code be removed to help to ensure that “marketing fund” funds are actually spent on marketing and advertising. Clause 31(a)(4)(i) currently allows marketing funds to be spent on anything expressly disclosed in the disclosure document, irrespective of whether it is marketing related or not.

The ACCC is aware that increased restrictions on how marketing funds are collected, kept, used and reported has led to some franchisors ceasing to operate marketing funds and instead increasing franchise fees to cover marketing activities. This allows the franchisor to circumvent the Code’s marketing fund obligations. There are no obligations in the Code regarding how franchise fees are dealt with.

The ACCC considers that further limitations on how franchisors utilise marketing funds will only encourage more franchisors to abandon marketing funds. Therefore, the ACCC recommends that franchisors be obligated to report on all marketing expenditure, irrespective of whether it is drawn from a marketing fund, franchise fees or elsewhere.

## **Capital expenditure**

Clause 30(2) of the Code allows a franchisor to require a franchisee to incur significant expenses during the term of the franchise agreement provided, among other things, the expenditure is disclosed in the disclosure document or agreed to.

However, the Code does not address circumstances where the cost of a disclosed or agreed to future capital expenditure has significantly increased since disclosure or agreement.

The ACCC recommends that the Code be amended to require franchisors to seek or re-seek express agreement from franchisees for significant capital expenditure where the costs have substantially increased since disclosure or prior agreement. To promote clarity and transparency about the operation of such a provision, it may be appropriate for the government to specify a threshold that if met, would trigger the need to seek express agreement (for example, a 10% + increase).

## **The Oil Code**

The Oil Code applies to a range of entities that would, but for the Oil Code, be protected by the Franchising Code. While the Franchising Code has an extensive history of review and amendment, the Oil Code has not been reviewed or amended as often and has therefore fallen behind the Franchising Code.

It is important that the Oil Code is also reviewed as a priority to ensure adequate protections are extended to fuel franchisees.



## Other clause-specific amendments

Reference	Issue	Suggestions
<p><b>Meaning of “disclosure document”</b></p> <p><b>Various clauses most relevantly, clause 8 of the Code</b></p>	<p>Clause 8(1) of the Code requires a franchisor to “create a document (a <i>disclosure document</i>) relating to a franchise that complies with subclauses (3), (4) and (5).”</p> <p>It is not clear whether, by virtue of the definition of “disclosure document” in clause 8(1), subsequent references to “disclosure document” throughout the Code should be read as:</p> <ul style="list-style-type: none"> <li>• a reference to a disclosure document that is entirely compliant with the requirements of clause 8 (i.e. compliant with subclauses (3), (4) and (5) of clause 8, as contemplated by clause 8(1)); or</li> <li>• a reference to any document that is created by a franchisor under clause 8 and intended to be a “disclosure document”, regardless of whether the document entirely complies with the requirements in subclauses (3), (4) and (5) of clause 8.</li> </ul> <p>The correct interpretation of “disclosure document” has implications for numerous clauses in the Code.</p>	<p>The Code be amended to provide further clarity about what is and what is not a “disclosure document” for all relevant clauses in the Code.</p>

<p><b>Requirement to “update” a disclosure document</b></p> <p><b>Clause 8(6) of the Code</b></p>	<p>Clause 8(6) requires franchisors to “update” its disclosure document within four months after the end of each financial year.</p> <p>The Code does not presently specify the parameters of the updates that should be made to a disclosure document under this clause.</p>	<p>The ACCC considers that it should be made clear that, when updating a “disclosure document” under clause 8(6), franchisors must ensure that, for example:</p> <ul style="list-style-type: none"> <li>any information in the disclosure document reflects the updated position of the franchise (and/or franchisor) as at the date of the update; and</li> <li>any relevant amendments made to the Code since the disclosure document was created or last updated are reflected in the updated disclosure document.</li> </ul>
<p><b>Marketing and cooperative funds</b></p> <p><b>Clause 15 of the Code</b></p>	<p>Clause 15 of the Code applies “if a franchise agreement requires the franchisee to pay money to a marketing fund <b>or other cooperative fund</b> controlled or administered by or for the franchisor or a master franchisor.”</p> <p>Separate to marketing and advertising, franchisors may require franchisees to contribute to various cooperative funds. For example, some franchisors impose a “technology fee”/require franchisees to contribute to a technology fund that is drawn upon to pay for certain upgrades to systems.</p> <p>The ACCC is aware that there is uncertainty as to whether and how the obligations set out in clauses 15(2) and 15(4) of the Code apply in relation to cooperative funds that do not relate to marketing or advertising.</p>	<p>The Code be amended to include a clear definition of “cooperative fund” and clarify the operation of clause 15 of the Code.</p>
<p><b>Obligation on franchisor to retain documents</b></p> <p><b>Clause 19 of the Code</b></p>	<p>Clause 19 of the Code require franchisors to keep copies of written documents that a <b>franchisee</b> or <b>prospective franchisee</b> is required or permitted to give to the franchisor under the Code.</p> <p>However, Clause 19 does not require franchisors to keep copies of written documents that the <b>franchisor</b> is required or permitted to give to a franchisee or prospective franchisee.</p>	<p>The Code be amended to require the franchisor to retain copies of documents that the franchisor is required or permitted to give to a franchisee or prospective franchisee.</p> <p>This would improve the ACCC’s ability to check compliance with Code disclosure requirements.</p>

<p><b>Prohibition on certain clauses in franchise agreements</b></p> <p><b>Clauses 19A and 22 of the Code</b></p>	<p>Several clauses of the Code prohibit franchisors from entering into franchise agreements which contain certain clauses, but the Code does not similarly prohibit franchisors from engaging in the conduct that is the subject of the prohibited clause.</p>	<p>The Code be amended to expressly prohibit franchisors from engaging in conduct that is the subject of a prohibited clause. A breach of such a provision should appropriately carry a pecuniary penalty.</p> <p>A person will soon be prohibited from applying or relying on, or purporting to apply or rely on, an unfair term in a standard form small business contract.<sup>14</sup> This may assist where a franchise agreement is a standard form small business contract and where a person expressly relies on a term that is unfair (in addition to being prohibited by the Code). It will not assist where, for example, a person engages in conduct without reference to a right under the contract.</p>
<p><b>Franchisors' legal costs</b></p> <p><b>Clause 19A of the Code</b></p>	<p>The Code currently prohibits franchisors from entering into agreements with clauses that have the effect of requiring, or allowing the franchisor (or their associate) to require, a franchisee to pay all or part of the franchisor's legal costs relating to the preparation, negotiation or execution of the agreement or documents relating to the agreement.</p> <p>However, the Code provides an exception to this prohibition whereby franchisors may require a franchisee to make a payment, before the franchisee starts the franchised business, of a fixed sum that is:</p> <ul style="list-style-type: none"> <li>• specified in the franchise agreement</li> <li>• stated as being for the franchisor's costs of legal services relating to preparing, negotiating or executing the agreement and</li> <li>• is stated in the franchise agreement not to include any amount for the franchisor's costs of legal services that</li> </ul>	<p>The Code be amended to ensure that the fixed sum does not exceed the franchisor's reasonable costs associated with preparing, negotiating or executing the agreement.</p>

<sup>14</sup> Treasury Laws Amendment (More Competition, Better Prices) Act 2022

	<p>will or may be provided after the agreement is entered into in relation to preparing, negotiating or executing other documents.</p> <p>The Code does not require that this fixed sum reflect the franchisor's genuine legal costs.</p>	
<p><b>Costs to settle a dispute</b></p> <p><b>Clause 22 of the Code.</b></p>	<p>The Code prohibits franchisors from entering "into a franchise agreement that includes a provision that requires the franchisee to pay <b>to the franchisor</b> costs incurred by the franchisor in relation to settling a <b>dispute</b> under the agreement".</p> <p>The wording of clause 22 does not expressly prohibit the franchise agreement from requiring the franchisee to pay costs incurred by the franchisor to a third party.</p> <p>Further, the word "dispute" is not defined in the Code. It is not clear whether "dispute", in the context of clause 22 is intended to encompass both formal and informal disputes.</p>	<p>The Code be amended to include a definition of "dispute" and to make it clear that requiring franchisees to pay the franchisor's costs to any party, in both formal and informal disputes, is prohibited.</p>
<p><b>Former franchisees' contact details</b></p> <p><b>Clause 32 of the Code</b></p> <p><b>Item 6.5 of Annexure 1 of the Code</b></p>	<p>The Code requires franchisors to provide contact details of former franchisees in the disclosure document. The policy intent is to assist a prospective franchisee in conducting their due diligence before entering into an agreement. Contacting former franchisees is an important self-protective step for prospective franchisees.</p> <p>The Code prohibits a franchisor from engaging in conduct with the <b>intention</b> of <b>influencing</b> a former franchisee to make, or not make, a request to not have their contact details disclosed to prospective franchisees.</p> <p>The ACCC is aware that some franchisors may have received legal advice that the privacy principles require franchisors to seek the permission of former franchisees before disclosing their contact details.</p> <p>Regarding the information that is provided about former franchisees, the ACCC has observed that it is common for franchisors to only disclose the former franchised business's phone number, email address or physical address as the former franchisee's contact details. The ACCC's 2019 report on</p>	<p>The Code be amended to support disclosure of contact details that enable prospective franchisees to contact former franchisees. It may be that amendments to the Code that make it clear how the Code obligations interact with the privacy principles and to make it clear that former franchisees' details will be disclosed unless they unilaterally ask for their details not to be disclosed, would better meet the policy intent of clause 32.</p>

	Disclosure practices in food franchising found personal email addresses and mobile numbers allow for the quickest and simplest contact method but only 4 of the 12 franchisors reviewed consistently supplied these to prospective franchisees.	
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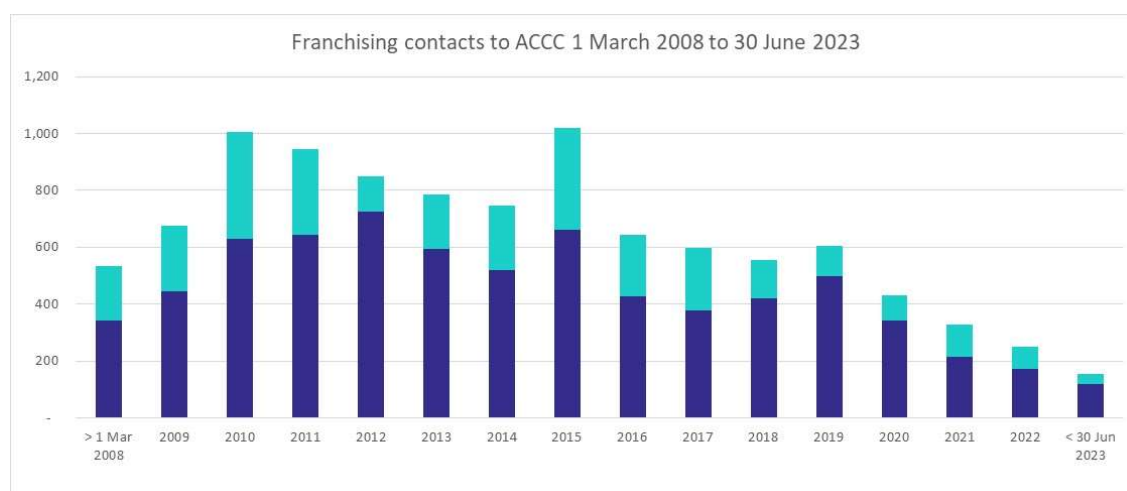
## Attachment A: Code compliance and enforcement

The ACCC currently receives around 300 contacts per year about franchising matters, approximately 75% of which come from franchisees. Only 1 in 5 contacts relate to allegations of misconduct by a larger franchisor<sup>15</sup> within the last three years that affected multiple franchisees. The majority of contacts received annually are “one-offs” (i.e. that contact is the only one received about that system for the year).

Consistently, the top 3 issues raised with the ACCC are failure to act in good faith, misleading or deceptive conduct and disclosure issues. Other issues that are regularly reported include:

- pre-purchase misrepresentations about earnings, profits and business viability
- post-purchase concerns that a franchisor’s actions have significantly reduced the franchisee’s income
- marketing fund issues
- unfair contract terms.

The below table shows franchising-related reports and enquiries over the last 15 years (from 1 March 2008 – 30 June 2023). The ACCC has generally observed increases in contacts around reviews of the Code and inquiries into franchising, as well as amendments to the Code.



The ACCC has observed a reduction in franchising contacts since 2020. The reasons for the reduction in contacts are unclear. However, we note that many franchisees may have benefited from franchise fee reductions or freezes, rent relief and government support during the COVID-19 pandemic. It is possible that the easing of certain financial pressures during this period artificially reduced franchising disputes and contacts.

The ACCC considers that this review provides an opportunity to further contextualise this reduction by hearing from franchisees, current and former, about the level of disputes and issues in franchising.

The Code is one of 9 prescribed codes that the ACCC administers. The ACCC has consistently made compliance with, and enforcement of, the Code a priority area.

<sup>15</sup> In this context, “larger franchisor” refers to a franchisor with approximately 40 or more franchisees.

Since 1 January 2015, the ACCC has had 15 public enforcement outcomes involving franchise systems. This includes:

- payment of infringement notices by 3 franchisors
- instituting court proceedings against 7 franchisors
- accepting court enforceable undertakings from 5 franchisors.

The ACCC utilises its compulsory information gathering power under section 51ADD of the CCA, as well as voluntary information requests, to conduct “compliance checks” on franchisors to assess their compliance with the Code. In 2019, the ACCC published the report, [Disclosure practices in food franchising](#), which summarised our key findings following compliance checks of franchisors in the food services sector.<sup>16</sup> The ACCC is currently conducting a series of compliance checks on franchisors across a variety of industries.

## Education activities

In addition to enforcement of the Code and ACL, the ACCC encourages compliance with the law by informing franchising participants about their rights and responsibilities under the Code and CCA more broadly.

The ACCC’s franchising resources are available from our website. This content is focused on assisting franchisors, franchisees and prospective franchisees to understand the core provisions of the Code. Our guidance primarily takes the form of detailed webpage content but also includes our [Quick Guide to a Franchise Disclosure Document](#) and [short videos](#) to support better disclosure by franchisors and better due diligence by prospective franchisees.

In the 2022-23 financial year, our franchising online content was viewed a total of 182,814 times.

The 10 most viewed franchising pages on the ACCC website are:

1. [Franchising Code of Conduct | ACCC](#)
2. [Franchising free course | ACCC](#)
3. [Thinking about buying a franchise | ACCC](#)
4. [Franchising laws including the code | ACCC](#)
5. [The franchise agreement | ACCC](#)
6. [About franchising | ACCC](#)
7. [Franchise disclosure document | ACCC](#)
8. [Extending or ending a franchise agreement | ACCC](#)
9. [Acting in good faith under the franchising code | ACCC](#)
10. [What to ask before deciding to buy a franchise | ACCC](#)

These 10 pages account for just over half of all franchising content pageviews on the ACCC website.

We promote our web guidance as well as relevant ACCC updates, via our Franchising Information Network email bulletins. The bulletins provide an opportunity to highlight enforcement action, new guidance materials and provide timely reminders of key obligations under the Code. The bulletins have over 3500 subscribers.

The ACCC recognises that starting a business is among one of the biggest decisions that a person makes in their life. To support prospective franchisees in the decision-making

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<sup>16</sup> The food services sector was selected as the focus area as in the period July - December 2018, it was the most reported franchising industry to the ACCC. The food services sector includes cafés and restaurants, and takeaway food industries.

process, the ACCC operates a free online course 'Is franchising for me?' targeted towards people who are thinking about buying a franchise. The course extends beyond educating prospective franchisees about the Code and covers practical topics such as:

- how franchising compares to being an employee or owning an independent small business
- things to look out for to work out if a franchise opportunity is a solid business
- the key parts of the franchise agreement and what information the franchisor must disclose.

Since the course was launched in November 2021, over 2300 people have enrolled to complete the course. One third of prospective franchisees who sign up for the course identify as having just started their franchising research. Feedback on the course indicates that users gain a better understanding of franchising and the importance of taking self-protective action (such as speaking to former franchisees or getting independent professional advice).

**Table 1: Code enforcement outcomes since 2015**

Year	Trader	Outcome	Australian Consumer Law			Franchising Code				Other
			False, misleading or deceptive claims	Unconscionable conduct	Unfair contract terms	Good faith	Disclosure issues	Marketing issues	Other	
2022	<a href="#">Retail Food Group Ltd</a>	Following the institution of court proceedings in 2020, the ACCC and RFG resolved the matter in December 2022 by way of a s.87B court enforceable undertaking. RFG agreed to: <ul style="list-style-type: none"> <li>• pay \$5 million to franchisees of Michel Patisserie stores who paid levies into that franchise's marketing fund between 1 July 2012 and 30 June 2017</li> <li>• make payments to and waive historical debts of a number of affected current and former franchisees, in relation to the purchase of certain corporate stores by these franchisees.</li> </ul>	X	X		X		X		
	<a href="#">Jim's Group Pty Ltd</a>	Jim's Group paid \$24,420 in penalties after the ACCC issued two infringement notices for an alleged contravention of the Code (non-disclosure regarding former franchisees) and an alleged contravention of the ACL (misrepresentation of cooling-off rights under the Code).	X				X			
	<a href="#">Ultra Tune Australia Pty Ltd</a>	The ACCC filed contempt of court proceedings against Ultra Tune for allegedly breaching court orders which restrained Ultra Tune from contravening parts of the Code and allegedly failing to comply with the requirements of a court-ordered compliance program. These proceedings relate to the 2019 judgment against Ultra Tune and are ongoing.								X



	<a href="#">Honda Australia Pty Ltd</a>	The ACCC has instituted proceedings against Honda for making false or misleading representations to consumers that two former authorised Honda franchisee dealerships would close or had closed and would no longer service Honda vehicles in circumstances where both businesses were continuing to trade independently and service vehicles, including Hondas.	X						
2021	<a href="#">Megasave Couriers Australia Pty Ltd</a>	The Federal Court ordered Megasave Couriers to pay \$1.9 million in penalties for making false or misleading representations to prospective franchisees. Megasave's sole director was also ordered to pay a penalty of \$120,000.	X						
	<a href="#">Jump Loops Pty Ltd (in liquidation)</a>	The Federal Court ordered Jump Loops to pay \$23 million in penalties for making false or misleading representations and wrongly accepting payments from franchisees in relation to representations that franchisees would have an operational swim school within 12 months of signing a franchise agreement. Most of those franchisees never received an operational swim school.	X						
2020	<a href="#">Bob Jane Corporation Pty Ltd</a>	The ACCC accepted a s.87B court enforceable undertaking from Bob Jane that it would comply with its Code obligations in relation to the renewal and extension of franchising agreements. The ACCC was concerned that Bob Jane had: <ul style="list-style-type: none"> <li>failed to notify some franchisees whether it intended to renew or extend their franchise agreements at least six months before the expiry date</li> <li>extended the term of certain agreements without first providing the required documentation to franchisees and obtaining a written statement that the franchisees had received, read and had an opportunity to understand certain documentation.</li> </ul>				X		X <sup>17</sup>	
	<a href="#">Back In Motion Physiotherapy Pty Ltd</a>	The ACCC accepted a court-enforceable undertaking by Back In Motion to remove certain terms from its franchise agreements which it admitted may have been unfair.			X				
2019	<a href="#">Ultra Tune Australia Pty Ltd</a>	The Federal Court ordered Ultra Tune to pay penalties in relation to breaches of the Code and ACL in its dealings with a prospective franchisee, including by making false and misleading representations and failing to act in good faith. On appeal, the Full Federal Court upheld the Court's decision that Ultra Tune had breached the Code by failing to ensure its marketing fund statements contained sufficient detail but reduced the penalty imposed from \$2.6 million to \$2 million.	X			X	X	X	
	<a href="#">Geowash Pty Ltd</a>	The Federal Court ordered \$4.2 million in penalties against Geowash, its director and its franchising manager for making false or misleading representations and failing to act in good faith in relation to the sale and marketing of its franchises, in breach of the Code and ACL.	X	X		X			

<sup>17</sup> Clause 18 of the Code.

2018	<a href="#">Luxottica Franchising Australia</a>	The ACCC administratively resolved concerns regarding Luxottica's compliance with the Code following a commitment from the franchisor to be more transparent about the structure and operation of its franchise system to franchisees. The commitment followed an ACCC investigation that found Luxottica's marketing fund financial statement did not provide sufficient information, and its disclosure document did not disclose important information about an associate of the franchisor.					X	X		
	<a href="#">Husqvarna Australia Pty Ltd</a>	The ACCC accepted a court enforceable undertaking from Husqvarna Australia after it admitted it likely misled its franchisees when it stated that the Code did not apply to their contracts.	X		X				X <sup>18</sup>	
2017	<a href="#">Morild Pty Ltd</a>	The Federal Court ordered \$100,000 in penalties against the franchisor for failing to provide a disclosure document which complied with the Code to franchisees. The document in question failed to disclose the former director's previous directorship of insolvent Pastacup franchisors. The former director was ordered to pay \$50,000 for being knowingly concerned in the breaches.					X			
	<a href="#">West Aust Couriers Pty Ltd</a>	The franchisor paid \$9,000 in penalties after the ACCC issued an infringement notice for allegedly breaching the Code by not including details of former franchisees that had terminated or transferred their courier franchises in the disclosure document. The franchisor also provided the ACCC with a s.87B court enforceable undertaking to address the ACCC's concerns that it had made false or misleading representations regarding the future earnings of courier franchisees.	X				X			
	<a href="#">Domino's Pizza Enterprises Ltd</a>	Domino's paid \$18,000 in penalties after the ACCC issued 2 infringement notices for allegedly breaching the Code by failing to provide franchisees with both an annual marketing fund financial statement and an auditor's report within the time limits prescribed under the Code.						X		
2016	<a href="#">SensaSlim Australia Pty Ltd (in liquidation)</a>	The Federal Court ordered a \$3.55 million penalty against SensaSlim for engaging in misleading and deceptive conduct and making false representations. This penalty judgment related to conduct prior to the Code being remade and taking effect in 2015.	X							
2015	<a href="#">South East Melbourne Cleaning Pty Ltd (in liquidation)</a>	The Federal Court ordered a \$500,000 penalty against the franchisor for engaging in unconscionable conduct, making false or misleading representations, and breaching the Code in its dealings with two prospective franchisees who subsequently signed up to the franchise. This penalty judgment related to conduct prior to the Code being remade and taking effect in 2015.	X	X			X			

<sup>18</sup> Clause 27 of the Code.