

Better informat



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Franchising in Australia is a \$130 billion industry and it's still growing strongly. Over 45 000 people a month use Google to find franchising information, searching for 'buying a franchise' or 'buy a franchise'.

On 1 July an amended Franchising Code of Conduct came into effect, helping to strengthen and protect this sector of the economy.

Recent years have seen substantial growth in new franchisees' business across a wide range of opportunities, like fast food and coffee shops, travel agencies, and domestic services like cleaning and gardening, to name only a few.

According to Franchise Australia, between 2006 and 2008 there was growth of approximately 9500 new franchise units, not including people who bought existing franchise businesses.

The amendments to the code provide greater transparency by providing greater disclosure to prospective franchisees and by ensuring there is better information flow to the more than 70 000 businesses currently in a franchise. The amendments also strengthen mediation processes and provide an avenue to help resolve franchise disputes at low cost.

Despite franchisors having an obligation under the franchising code to provide accurate disclosure documents to potential franchisees, 41 per cent of franchisees surveyed said they faced surprises after buying their franchise.

The new amendments require franchisors to provide additional information to prospective franchisees to assist with their due diligence.

Franchisors are now required to provide prospective franchisees with a disclosure document at least 14 days before entering into a new agreement. Information must include:

- › a notice that, like any business, the franchise or franchisor could fail
- › details of any payments to any third parties, known or reasonably foreseeable
- › if the franchisor's dispute resolution costs, including any legal costs, will be attributed to the franchisee
- › whether a confidentiality agreement will be required and what it will cover
- › any past incidences of unilateral variation of a franchise agreement or the circumstances in which an agreement may be unilaterally varied in the future
- › arrangements that will apply at the end of the franchising agreement, including whether there will be an option to renew the agreement or enter into a new one, and whether the franchisee will have the right to sell the business if they don't wish to renew.

Gut feeling is not enough

Franchising research in 2009 found that, alarmingly, 49 per cent of franchisees relied heavily on their gut feeling when deciding to go into franchising, despite disclosure requirements.

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So the ACCC recognised that more needed to be done to encourage prospective franchisees to do their home work before entering into a franchise agreement. To assist with this, the ACCC, in conjunction with Griffith University, is offering a short, free, pre-entry franchisee education program.

The program is designed to provide prospective franchisees with information about franchising, the risks, their rights under the code and other practical things they need to consider.

It's intended to be a one-stop shop for prospective franchisees.

Topics covered include:

- › disclosure
- › franchise agreements
- › royalties
- › obtaining finance
- › site selection
- › leasing
- › marketing funds
- › the operations manual
- › dispute resolution
- › questions to ask franchisors and existing and former franchisees
- › useful business skills
- › assessing your suitability to become a franchisee.

It is an online education program delivered by Griffith University and, to date, over 700 prospective franchisees have signed up.

The pre-entry education program and the changes to the code will benefit both franchisors and prospective

franchisees. Franchisees who are well informed about the business and how to run it are more likely to be successful.

Information for current franchise holders

Changes to the code also apply to existing franchise holders whose agreements are transferred, renewed or extended after 1 July 2010.

Franchise agreements run for a set term, usually five or 10 years, and there is no guarantee that the franchisee will operate the business beyond that term. In addition to disclosing what will happen at the end of the agreement, a franchisor must notify a franchisee, at least six months before the contract comes to an end, of its decision to renew or not to

renew the contract or to enter into a new one.

If the agreement is not renewed, the franchisee will lose the right to use the franchisor's brand and

operating system. Most franchise agreements will also prevent the franchisee from setting up a similar business under a different name.

The franchisor must provide an updated disclosure document to franchisees between 1 July and 31 October each year. The code sets out what must be included in updates and what materially relevant facts, such as majority ownership changes, must be notified to franchisees within 14 days.

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Mediation for franchise disputes

The aim of the new pre-entry education program and the amendments to the disclosure provisions is to prevent conflict and litigation by helping prospective franchisees make more informed decisions before entering franchise agreements.

However, if a dispute arises, the updated code provides a mechanism for parties to resolve the dispute through mediation. The code now requires that both parties must try to solve disputes in a reconciliatory manner, including by making their intentions clear at the outset and not damaging the reputation of the franchise system. The code sets out the expectations of parties in this process and says that each party is equally liable for the costs of mediation, unless they agree otherwise.

Further information

The ACCC has a number of free publications designed to assist prospective franchisees, including a Franchisee Manual and a Franchisee Start-up Checklist. You should also read the new fact sheet that outlines the recent Franchising Code of Conduct amendments. These publications are available online at www.accc.gov.au/franchising or by calling our small business hotline on 1300 302 021.

For more information on the pre-entry franchise education program or to sign up, visit www.franchise.edu.au/pre-entry-franchise-education.

