



## Franchising Code Updated

Amendments to the Franchising Code of Conduct ("the Code") came into force on 1 July 2010 and there are a number of key changes for franchisors & franchisees.

The [updated Franchising Code](#) is available on the ComLaw website.

### Key Changes

#### ***Disclosure Obligations:***

All franchise agreements entered into, on, or after, 1 July 2010, must now provide additional information in the franchisor's disclosure documents. This includes:

1. Franchisors must provide franchisees with notice of their decision to renew an existing franchise agreement, or enter into a new agreement, 6 months before the end of the current franchise term.
2. Information must be provided about the processes that will apply at the end of the franchise term, such as arrangements for unsold stock.
3. Franchisors must disclose which party will pay costs, should dispute resolution processes be required.
4. Details must be provided regarding whether franchisees will be required to undertake unforeseen significant capital expenditure, which was not disclosed by the franchisor before the franchise agreement was entered into.
5. Franchisors will be required to provide information detailing the circumstances (from 1 July 2010 onwards) where the franchisor has unilaterally varied the franchise agreement.
6. Franchisors must disclose whether they will amend franchise agreements before a franchisee transfers or novates the franchise.
7. Franchisors must provide details about any foreseeable reoccurring or isolated payments prospective franchisees may incur.

#### ***Confidentiality Obligations:***

Franchisors must inform franchisees about the scope of their confidentiality obligations.

#### ***Franchisors Extending the Scope of Existing Franchise Agreements:***

Franchisors will now be required to provide disclosure documents when an existing franchise agreement is extended in scope, before the agreement is amended.

### What are the implications?

#### ***For Franchisors***

Franchisors are set to face increased disclosure requirements under reforms to the Code.

The regulatory changes to the Code are applicable to all Franchise Agreements entered into, on, or after, 1 July 2010.

Non-compliance with the Code is a breach of the *Trade Practices Act (1974)*, which could result in legal action being taken by the franchisee or the ACCC. Franchisors will need to review and amend their Franchise Agreements and Disclosure Documents to ensure compliance by 1 July 2010.

In addition to the amendments to the Code, the ACCC has been granted new powers to conduct random audits of franchisors. These audits will focus on ensuring franchisors comply with the law. The ACCC will have the power to name franchisors that do not comply. This is likely to have a significant impact on a franchisor's ability to recruit new franchisees and may reduce the value of existing franchises when franchisees seek to sell.

## ***For Franchisees***

Franchisees will now have more protection and greater certainty in their dealings with franchisors under amendments to the Code. The amendments, aimed at protecting franchisees, mean franchisors are now required to disclose more information that franchisees need to make decisions about their businesses. The amendments were designed to empower prospective franchisees when negotiating with franchisors.

For assistance with all your franchising & commercial law needs, email us at [info@mslawyers.com.au](mailto:info@mslawyers.com.au) or visit our website [www.mslawyers.com.au](http://www.mslawyers.com.au). Alternatively, contact our professional team at our Gold Coast or Brisbane office.



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