


# Disclosure documents and franchise agreements

## Time for a Spring clean!



### Disclosure documents

Yes, it is that time of the year again! If you have entered into a franchise agreement in the past financial year and/or intend to enter into any new franchise agreements in the coming financial year, it is time to make sure your disclosure document is current.

Under the *Franchising Code of Conduct* (Code), you have until **31 October 2018** to issue an updated disclosure document to franchisees.

You must therefore ensure that all information in your disclosure document is current.

Some key items that you may be required to update include:

- your list of officers and their business experience for the past 10 years;
- your list of 'associates';
- your list of existing franchised businesses, including details of any franchises that have been transferred, ceased operating, bought back or acquired, or any franchise agreements that have been terminated or not extended;
- your intellectual property; and
- any incidences of unilateral variations that have been made to existing agreements.

You will also need to provide:

- updated financial records for your business reflecting your performance in the past financial year (or an independent auditor's report);

- updated financial records for any marketing cooperatives funds; and
- a statement of solvency for the last financial year given by a director.

### Franchise agreements

In addition to updates to your disclosure documents, we remind you that:

#### 1. Franchise agreements can be subject to the unfair contracts regime.

If any of your franchisees fall within the definition of 'small business' in the Australian Consumer Law, you should ensure that terms in your franchise agreements do not constitute 'unfair terms'.

Particular attention should be paid to those clauses that are not necessary or appropriate to protect your interests, including restraints, liquidated damages clauses, and requirements to purchase supplies from specific (more expensive) suppliers.

#### 2. Amendments to the *Privacy Act 1988 (Cth)* came into effect earlier this year.

These amendments introduced an obligation to notify individuals whose personal information is involved in a data breach that is likely to result in serious harm.

While your franchisees may not be required to comply with such amendments, any breaches pertaining to any data that you own (including customer databases) may need to be disclosed.

You should review your privacy policy and operating manuals to ensure that these changes are properly addressed.

#### 3. The ipso facto law reforms came into effect on 1 July 2018.

Under these reforms, you will not be able to rely on any ipso facto clauses in your franchise agreements where a franchisee has gone into administration, if those agreements were entered into after 1 July 2018. If you intend to enter into new franchise agreements this financial year, we recommend reviewing your termination rights under those agreements.

If you would like to discuss any of the above, please feel free to contact our franchising team.

### Contact



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