



Competition and Consumer (Industry Codes— Franchising) Amendment (Penalties and Other Matters) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 17 March 2022

David Hurley
Governor-General

By His Excellency's Command

Stuart Robert
Minister for Employment, Workforce, Skills, Small and Family Business

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
Part 1—Main amendments		2
	<i>Competition and Consumer (Industry Codes—Franchising) Regulation 2014</i>	2
Part 2—Other amendments		9
	<i>Competition and Consumer (Industry Codes—Franchising) Regulation 2014</i>	9
Part 3—Application, saving and transitional provisions		10
	<i>Competition and Consumer (Industry Codes—Franchising) Regulation 2014</i>	10

1 Name

This instrument is the *Competition and Consumer (Industry Codes—Franchising) Amendment (Penalties and Other Matters) Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after the end of the period of 28 days beginning on the day this instrument is registered.	15 April 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

1 After Division 2 of Part 1 of Schedule 1

Insert:

Division 2A—Amount of civil penalty for certain contraventions by bodies corporate

5A Amount of civil penalty for certain contraventions by bodies corporate

- (1) This clause has effect for the purposes of the following civil penalty provisions of this code:
 - (a) subclauses 17(1) and (2);
 - (b) clause 33;
 - (c) subclauses 46A(1), (2) and (3);
 - (d) clause 46B.
- (2) The amount of the civil penalty for a contravention of a civil penalty provision referred to in subclause (1) by a body corporate is the greatest of the following:
 - (a) \$10,000,000;
 - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, has obtained directly or indirectly and that is reasonably attributable to the contravention—3 times the value of that benefit;
 - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period of 12 months ending at the end of the month in which the contravention occurred.

2 Subclause 6(1) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

3 Subclauses 6(4) and (5) of Schedule 1

Repeal the subclauses, substitute:

Franchisor must not enter into franchise agreement that includes provision limiting or excluding obligation to act in good faith

- (4) A franchisor must not enter into a franchise agreement that includes a provision that limits or excludes, or purports to limit or exclude, the obligation to act in good faith.

Civil penalty: 600 penalty units.

- (5) A franchisor must not enter into a franchise agreement that includes a provision that limits or excludes, or purports to limit or exclude, the obligation to act in

good faith by applying, adopting or incorporating, with or without modification, the words of another document, as in force at a particular time or as in force from time to time, in the agreement.

Civil penalty: 600 penalty units.

4 Subclause 8(1) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

5 Subclause 8(6) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

6 Subclause 8(8) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

7 Subclause 9(1) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

8 Subclause 9(2) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

9 Subclause 9(2A) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

10 Subclause 9A(2) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

11 Subclause 9A(4) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

12 Subclauses 11(1) and (3) of Schedule 1

Repeal the subclauses, substitute:

- (1) A franchisor must give a copy of the information statement relating to franchising that is published on the Commission’s website to a prospective franchisee. The copy of the information statement must be given:
 - (a) as soon as practicable, and not later than 7 days, after the prospective franchisee formally applies or expresses an interest in acquiring a franchised business; and
 - (b) before the franchisor gives the prospective franchisee any of the documents described in clause 9.

Civil penalty: 600 penalty units.

13 Subclause 13(1) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

14 Subclause 13(2) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

15 Subclause 13(2A) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

16 Subclause 13(2B) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

17 Subclause 13(3) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

18 Subclause 13(4) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

19 Subclause 13(4A) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

20 Subclause 13(4B) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

21 Subclause 14(1) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

22 Subclause 15(2) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

23 At the end of subclause 15(4) of Schedule 1

Add:

Civil penalty: 600 penalty units.

24 Subclause 16(1) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

25 Subclause 17(1) of Schedule 1 (penalty)

Repeal the penalty, substitute:

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

26 Subclause 17(2) of Schedule 1 (penalty)

Repeal the penalty, substitute:

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

27 Subclause 18(2) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

28 Subclause 18(3) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

29 Subclause 19A(1) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

30 Clause 22 of Schedule 1

Repeal the clause, substitute:

22 Costs of settling disputes

A franchisor must not enter into a franchise agreement that includes a provision that requires the franchisee to pay to the franchisor costs incurred by the franchisor in relation to settling a dispute under the agreement.

Note: See subclauses 3(4) and (5).

Civil penalty: 600 penalty units.

31 At the end of subclause 25(2) of Schedule 1

Add:

Note: A franchisor may reasonably withhold consent to the transfer of a franchise agreement in the circumstances provided by subclause (6A).

Civil penalty: 600 penalty units.

32 Subclause 25(3) of Schedule 1

Repeal the subclause.

33 Subclause 25(6) of Schedule 1

Repeal the subclause, substitute:

- (6) A franchisor must not unreasonably revoke the franchisor’s consent to the transfer of a franchise agreement.

Note: A franchisor may reasonably revoke the franchisor’s consent to the transfer of a franchise agreement in the circumstances provided by subclause (6A).

Civil penalty: 600 penalty units.

Circumstances in which franchisor’s consent may reasonably be withheld or revoked

- (6A) A franchisor may reasonably withhold consent, or reasonably revoke consent, to the transfer of a franchise agreement in the following circumstances:
- (a) the proposed transferee is unlikely to be able to meet the financial obligations that the proposed transferee would have under the franchise agreement;
 - (b) the proposed transferee does not meet a reasonable requirement of the franchise agreement for the transfer of the franchise agreement;
 - (c) the proposed transferee does not meet the selection criteria of the franchisor;

- (d) the proposed transferee does not agree, in writing, to comply with the obligations of the franchisee under the franchise agreement;
- (e) the franchisee has not paid or made reasonable provision to pay an amount owing to the franchisor;
- (f) the franchisee has not remedied a breach of the franchise agreement;
- (g) the franchisor has not received from the proposed transferee a written statement that the transferee has received, read and had a reasonable opportunity to understand the disclosure document and this code.

Paragraphs (a) to (g) do not limit the circumstances in which a franchisor's consent may be reasonably withheld or revoked.

34 Subclause 26(3) of Schedule 1 (penalty)

Omit "300", substitute "600".

35 Subclause 26A(4) of Schedule 1 (penalty)

Omit "300", substitute "600".

36 Subclause 26A(6) of Schedule 1 (penalty)

Omit "300", substitute "600".

37 Subclause 27(2) of Schedule 1 (penalty)

Omit "300", substitute "600".

38 Subclause 27(4) of Schedule 1

Repeal the subclause, substitute:

- (4) If the breach has been remedied in accordance with paragraphs (2)(b) and (c), the franchisor must not terminate the franchise agreement because of the breach.

Civil penalty: 600 penalty units.

39 Subclause 28(3) of Schedule 1 (penalty)

Omit "300", substitute "600".

40 At the end of subclause 29(2) of Schedule 1

Add:

Civil penalty: 600 penalty units.

41 At the end of subclause 30(1) of Schedule 1

Add:

Civil penalty: 600 penalty units.

42 Subclause 31(2) of Schedule 1 (penalty)

Omit "300", substitute "600".

43 Subclause 31(3) of Schedule 1 (penalty)

Omit "300", substitute "600".

44 Subclause 31(4) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

45 Subclause 32(3) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

46 Clause 33 of Schedule 1 (penalty)

Repeal the penalty, substitute:

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

47 Subclause 41A(3) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

48 Subclause 43B(8) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

49 Subclause 46A(1) of Schedule 1 (penalty)

Repeal the penalty, substitute:

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

50 Subclause 46A(2) of Schedule 1 (penalty)

Repeal the penalty, substitute:

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

51 Subclause 46A(3) of Schedule 1 (penalty)

Repeal the penalty, substitute:

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

52 Clause 46B of Schedule 1 (penalty)

Repeal the penalty, substitute:

Civil penalty:

- (a) for a contravention by a body corporate—the amount under clause 5A; or
- (b) for a contravention by a person who is not a body corporate—\$500,000.

53 Subclause 47(2) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

54 Subclause 47(3) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

55 Subclause 47(4) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

56 Subclause 47(5) of Schedule 1 (penalty)

Omit “300”, substitute “600”.

Part 2—Other amendments

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

57 Section 6

Repeal the section.

58 Clause 3A of Schedule 1

Repeal the clause, substitute:

3A Code does not apply in relation to franchise agreement that forms part of arrangements relating to certain co-operatives or mutual entities

This code does not apply in relation to a franchise agreement that forms part of arrangements under which the franchisee is:

- (a) a member of a co-operative that is entered on a register maintained under:
 - (i) the Co-operatives National Law; or
 - (ii) the *Co-operatives Act 2009* (WA), as in force on the day this clause commences; or
- (b) a member with voting rights of a mutual entity.

Note: For *Co-operatives National Law*, see subclause 4(1). For *mutual entity*, see subclause 4(2) of this code and section 51M of the *Corporations Act 2001*.

59 Subclause 4(2) of Schedule 1

Insert:

mutual entity

Part 3—Application, saving and transitional provisions

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

60 In the appropriate position in Part 6 of Schedule 1

Insert:

Division 4—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (Penalties and Other Matters) Regulations 2022

71 Application of amendments relating to penalties

The amendments made by Part 1 of Schedule 1 to the *Competition and Consumer (Industry Codes—Franchising) Amendment (Penalties and Other Matters) Regulations 2022* apply in relation to contraventions occurring on or after the commencement of that Part.