



Competition and Consumer (Industry Codes— Franchising) Amendment (Franchise Disclosure Register) 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 31 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
	<i>Competition and Consumer (Industry Codes—Franchising) Regulation 2014</i>	<i>2</i>

1 Name

This instrument is the *Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) 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 this instrument is registered.	1 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Competition and Consumer (Industry Codes—Franchising) Regulation 2014

1 Subclause 4(1) of Schedule 1

Insert:

ANZSIC division and subdivision codes means the division and subdivision codes for an industry that are specified in the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006, published by the Australian Bureau of Statistics, as existing on the day Schedule 1 to the *Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2022* commences.

Register means the Franchise Disclosure Register established and maintained under clause 53.

Secretary means the Secretary of the Department that is administered by the Minister administering the *Australian Small Business and Family Enterprise Ombudsman Act 2015*.

2 At the end of paragraph 9(1A)(b) of Schedule 1

Add:

or (iii) if the disclosure document is created in the financial year in which the copy of the disclosure document is given—as created under subclause 8(1);

3 At the end of paragraph 9(1A)(c) of Schedule 1

Add:

or (iii) if the key facts sheet is created in the financial year in which the copy of the key facts sheet is given—as created under subclause 9A(1);

4 After Part 5 of Schedule 1

Insert:

Part 5A—Franchise Disclosure Register

Division 1—Establishment and content

53 Establishment of Register

- (1) The Secretary must establish and keep a register for the purposes of this Part.
- (2) The register is to be known as the Franchise Disclosure Register.
- (3) The Register must be kept by electronic means.
- (4) The Register must be made available for public inspection, without charge, on the internet.

53A Contents of Register

- (1) The Register must contain the information that is required to be provided by a franchisor under Division 2.
- (2) The Register may contain other information provided by a franchisor if:
 - (a) the information relates to the franchise system of the franchisor or is relevant to prospective franchisees or existing franchisees of a franchise agreement; and
 - (b) the information is not:
 - (i) personal information that relates to an individual other than the franchisor; or
 - (ii) information that relates to a particular franchisee or a particular site being occupied by a franchisee.
- (3) The Register may only contain the following documents that are provided by a franchisor:
 - (a) the disclosure document created and maintained by the franchisor under clause 8;
 - (b) the key facts sheet created and maintained by the franchisor under clause 9A;
 - (c) the standard form of the franchise agreement used by the franchisor.

Note: Before a document is provided for inclusion in the Register certain information must be redacted from the document (see Division 3).

53B Secretary may correct clerical errors and remove, update and replace certain information and documents

- (1) The Secretary may correct, or cause to be corrected, any clerical errors or obvious mistakes in the Register.
- (2) The Secretary must remove or replace a document or information that is included in the Register by a franchisor if:
 - (a) the Secretary receives a request from the franchisor asking for the document or information to be removed because the franchisor has ceased to operate a franchise or franchise system; or
 - (b) the franchisor gives information to replace information included in the Register; or
 - (c) the franchisor gives a document to replace a document included in the Register.
- (3) The Secretary may remove a document or information included in the Register by a franchisor if:
 - (a) the document or information has been in the Register for a period of at least 18 months; and
 - (b) during that period the franchisor has not:
 - (i) given another document to replace the document included in the Register; or
 - (ii) updated the information included in the Register; or
 - (iii) notified the Secretary that the document or information included in the Register remains current.

- (4) The Secretary may remove from the Register a document or information included in the Register by a franchisor if the document contains, or the information is:
- (a) personal information that relates to an individual other than the franchisor; or
 - (b) information that relates to a particular franchisee or a particular site being occupied by a franchisee.

Division 2—Obligation to provide information for inclusion in the Register

53C Initial obligation to provide information for inclusion in Register—franchisors that give a disclosure document on or before 31 October 2022

Franchisors to which this clause applies

- (1) This clause applies to a franchisor if:
- (a) the franchisor has created a disclosure document under clause 8; and
 - (b) on or before 31 October 2022 the franchisor gives a copy of the disclosure document under clause 9; and
 - (c) if the franchisor is the master franchisor in a master franchise system—the master franchise system has 2 or more subfranchisors.

Franchisor must provide information for inclusion in Register

- (2) The franchisor must, in accordance with subclause (3), provide the following information for inclusion in the Register:
- (a) the name of the franchisor;
 - (b) the name under which the franchisor carries on business in Australia relevant to the franchise;
 - (c) if the franchisor has an ABN—the franchisor's ABN;
 - (d) the address, or addresses, of the franchisor's registered office and principal place of business in Australia;
 - (e) the business telephone number and email address of the franchisor;
 - (f) the ANZSIC division and subdivision codes for the industry in which the business operated under the franchise operates;
 - (g) any information required to be provided to the Secretary under subclause (4).

Note: Persons other than the franchisor may provide the information on behalf of the franchisor (see Division 4).

Civil penalty: 600 penalty units.

- (3) The information must:
- (a) be provided in a form and manner approved by the Secretary; and
 - (b) be provided on or before 14 November 2022.

Secretary may require franchisor to provide information

- (4) The Secretary may require the franchisor to provide to the Secretary information that is required to be included in a disclosure document if the information is not:
- (a) personal information that relates to an individual other than the franchisor; or
 - (b) information that relates to a particular franchisee or a particular site being occupied by a franchisee.

53D Initial obligation to provide information for inclusion in Register—other franchisors

Franchisors to which this clause applies

- (1) This clause applies to a franchisor if:
- (a) the franchisor is proposing to enter into a franchise agreement with a prospective franchisee; and
 - (b) a copy of the disclosure document relating to the franchise is required to be given to the prospective franchisee under clause 9; and
 - (c) the franchisor has not previously provided information relating to the franchise for inclusion in the Register under this clause or clause 53C; and
 - (d) if the franchisor is the master franchisor in a master franchise system—the master franchise system has 2 or more subfranchisors.

Obligation to provide information

- (2) The franchisor must, in accordance with subclause (3), provide the following information for inclusion in the Register:
- (a) the name of the franchisor;
 - (b) the name under which the franchisor carries on business in Australia relevant to the franchise;
 - (c) if the franchisor has an ABN—the franchisor's ABN;
 - (d) the address, or addresses, of the franchisor's registered office and principal place of business in Australia;
 - (e) the business telephone number and email address of the franchisor;
 - (f) the ANZSIC division and subdivision codes for the industry in which the business operated under the franchise operates;
 - (g) any information required to be provided to the Secretary under subclause (4).

Note: Persons other than the franchisor may provide the information on behalf of the franchisor (see Division 4).

Civil penalty: 600 penalty units.

- (3) The information must be provided:
- (a) in a form and manner approved by the Secretary; and
 - (b) at least 14 days before the franchisor enters into the franchise agreement with the prospective franchisee.

Secretary may require franchisor to provide information

- (4) The Secretary may require the franchisor to provide to the Secretary information that is required to be included in a disclosure document if the information is not:
- (a) personal information that relates to an individual other than the franchisor; or
 - (b) information that relates to a particular franchisee or a particular site being occupied by a franchisee.

53E Obligation to annually update or confirm information included in Register

Franchisors to which this clause applies

- (1) This clause applies to a franchisor if:
- (a) information is included, or was required to be included, in the Register under clause 53C or 53D; and
 - (b) if the franchisor is the master franchisor in a master franchise system—the master franchise system has 2 or more subfranchisors.

Obligation to update or confirm information

- (2) The franchisor must, in accordance with subclause (3), do the following:
- (a) if information included by the franchisor in the Register remains current—confirm that the information is correct;
 - (b) to the extent that the following information is incorrect, out-of-date or has not previously been provided by the franchisor for inclusion in the Register—provide or update the following information:
 - (i) the name of the franchisor;
 - (ii) the name under which the franchisor carries on business in Australia relevant to the franchise;
 - (iii) if the franchisor has an ABN—the franchisor's ABN;
 - (iv) the address, or addresses, of the franchisor's registered office and principal place of business in Australia;
 - (v) the business telephone number and email address of the franchisor;
 - (vi) the ANZSIC division and subdivision codes for the industry in which the business operated under the franchise operates;
 - (vii) any information that was required to be provided to the Secretary under subclause 53C(4) or 53D(4);
 - (c) provide any information required to be provided to the Secretary under subclause (4) of this clause.

Note: Persons other than the franchisor may provide the information on behalf of the franchisor (see Division 4).

Civil penalty: 600 penalty units.

- (3) The information must be provided:
- (a) in a form and manner approved by the Secretary; and
 - (b) at least once for each financial year; and
 - (c) on or before the 14th day of the fifth month following the end of the financial year.

Secretary may require franchisor to provide information

- (4) The Secretary may require the franchisor to provide to the Secretary information that is required to be included in a disclosure document if the information is not:
 - (a) personal information that relates to an individual other than the franchisor; or
 - (b) information that relates to a particular franchisee or a particular site being occupied by a franchisee.

Division 3—Redacting certain information from documents

53F Redacting certain information from documents

- (1) This clause applies to a franchisor if the franchisor is providing for inclusion in the Register:
 - (a) a document referred to in subclause 53A(3); or
 - (b) a link to a website that publishes such a document.
- (2) Before the franchisor provides the document or link for inclusion in the Register, the franchisor:
 - (a) must redact from the document the following kinds of information:
 - (i) personal information that relates to an individual other than the franchisor;
 - (ii) information that relates to a particular franchisee or a particular site being occupied by a franchisee; and
 - (b) may redact from the document information that is of a commercial nature and is commercially sensitive.

Division 4—Giving of information by agents

53G Agents may provide or give information

A franchisor required under a clause in Division 2 to provide or give information is taken to have complied with the requirement if someone else provides or gives the information in accordance with the clause on the franchisor's behalf.

Division 5—Other matters

53H Delegations by Secretary

- (1) The Secretary may, in writing, delegate all or any of the Secretary's functions or powers under this Part to an SES employee, or acting SES employee, in the Department.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

53J Review of this Part

- (1) The Minister must cause a review of the operation of this Part to be undertaken.

- (2) The review must commence on or after 15 November 2023.
- (3) The person or persons undertaking the review must, on or before 30 June 2024, give the Minister a written report of the review.
- (4) The review must include an opportunity for franchise industry stakeholders to make written submissions on the operation of this Part.