



## **Competition and Consumer (Industry Codes— Franchising) (Additional Information Required by the Secretary) Determination 2022**

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I, Diane Brown, Deputy Secretary, Department of the Treasury, delegate of the Secretary to the Department of the Treasury, make the following determination.

Dated 10 November 2022

Diane Brown  
Deputy Secretary  
Revenue, Small Business and Housing Group  
Department of the Treasury

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## Part 1—Preliminary

### 1 Name

This instrument is the *Competition and Consumer (Industry Codes—Franchising) (Additional Information Required by the Secretary) Determination 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.	

Note: This table relates only to the provisions of this instrument as originally made.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 (Industry Codes—Franchising) Regulation 2014*.

### 4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

***Franchising Code of Conduct*** means the code set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*.

Section 5

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## **Part 2—Additional information to be provided to the Secretary**

### **5 Additional information required to be provided in relation to franchisors that give a disclosure document on or before 31 October 2022**

- (1) Under subclause 53C(4) of the Franchising Code of Conduct, each franchisor to which clause 53C of the Franchising Code of Conduct applies is determined as needing to provide the Secretary with the information covered by section 7 in relation to each disclosure document created by the franchisor.
- (2) However, subsection (1) does not apply to a disclosure document if:
  - (a) the disclosure document relates to a franchise where the franchisor has entered into less than 2 franchise agreements; and
  - (b) the disclosure document relates to a franchise where the franchisor does not intend, or if the franchisor is a company, its directors do not intend, to enter into franchise agreement.

### **6 Additional information required to be provided in relation to franchisors that give a disclosure document to a prospective franchisee**

- (1) Under subclause 53D(4) of the Franchising Code of Conduct, each franchisor to which clause 53D of the Franchising Code of Conduct applies is determined as needing to provide the Secretary with the information covered by section 7 in relation to each disclosure document created by the franchisor.
- (2) However, subsection (1) does not apply to a disclosure document if:
  - (a) the disclosure document relates to a franchise where the franchisor has entered into less than 2 franchise agreements; and
  - (b) the disclosure document relates to a franchise where the franchisor does not intend, or if the franchisor is a company, its directors do not intend, to enter into franchise agreement.

### **7 Details of the additional information to be provided**

- (1) All of the information specified by subsection (2) is covered by this section, unless the information is:
  - (a) personal information that relates to an individual other than a franchisor; or
  - (b) information that relates to a particular franchisee of a franchisor; or
  - (c) information that relates to a particular site being occupied by a franchisee of a franchisor.
- (2) The following information is specified:
  - (a) the number of years that the franchise or franchise system has operated in Australia;

Note: Relates to item 2.4 of Annexure 1 to the Franchising Code of Conduct.

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- (b) the number of existing franchised businesses and franchisees, and businesses owned or operated by the franchisor or an associate of the franchisor in Australia that are substantially the same as the franchised business;  
 Note: Relates to item 6.1 of Annexure 1 to the Franchising Code of Conduct.
- (c) each State or Territory in which a business or franchisee covered by paragraph (2)(a) operates;  
 Note: Relates to item 6.1 of Annexure 1 to the Franchising Code of Conduct.
- (d) in relation to a franchisor's requirements for the supply of goods or services to a franchisee—whether there are restrictions on the acquisition of goods or services by the franchisee from other sources;  
 Note: Relates to item 10.1(b) of Annexure 1 to the Franchising Code of Conduct.
- (e) if the franchisor requires payment before a franchise agreement is entered into—why the money is required, how the money is to be applied, who will hold the money, and the conditions under which a payment will be refunded;  
 Note: Relates to item 14.1 of Annexure 1 to the Franchising Code of Conduct.
- (f) details of the costs payable by a franchisee to start operating the franchised business;  
 Note: Relates to items 14.3 to 14.5 of Annexure 1 to the Franchising Code of Conduct.  
 Example: Details of costs may include upper and lower limits of potential costs, a description of potential costs or both).
- (g) details of payments payable by a franchisee to the franchisor, or an associate of the franchisor, during the term of the franchise agreement;  
 Note: Relates to item 14.6 of Annexure 1 to the Franchising Code of Conduct.  
 Example: Details of payments may include upper and lower limits of potential payments, a description of potential payments or both).
- (h) details of payments payable by a franchisee to a person other than the franchisor or an associate of the franchisor;  
 Note: Relates to item 14.7 of Annexure 1 to the Franchising Code of Conduct.  
 Example: Details of payments may include upper and lower limits of potential payments, a description of potential payments or both).
- (i) whether the franchise agreement may be varied, unilaterally, by the franchisor;  
 Note: Relates to item 17.2 of Annexure 1 to the Franchising Code of Conduct.
- (j) the term of the franchise agreement;  
 Note: Relates to item 18.1(aa) of Annexure 1 to the Franchising Code of Conduct.
- (k) whether a franchisee has an option to renew the franchise agreement;  
 Note: Relates to item 18.1(a)(i) of Annexure 1 to the Franchising Code of Conduct.
- (l) whether a franchisee has any rights relating to any goodwill generated by the franchisee;  
 Note: Relates to item 18.1(fa) of Annexure 1 to the Franchising Code of Conduct.
- (m) whether the franchise agreement includes a restraint of trade or similar clause;  
 Note: Relates to item 18.1(h) of Annexure 1 to the Franchising Code of Conduct.
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