AUSTRALIAN COMPETITION & CONSUMER COMMISSION

# Information statement for prospective franchisees

April 2025

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The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission
Land of the Ngunnawal people
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# Before you sign the franchise agreement

Entering a franchise is a big decision. Check these important things off your list before signing up.

## ☐ Learn about franchising

Franchisees who participate in pre-entry training tend to have better relationships with their franchisor and be more successful in business. Free online courses for prospective franchisees can be found at www.accc.gov.au/by-industry/franchising/franchising-education-program.

Information about franchising (including translations) can be found at www.accc.gov.au/by-industry/franchising/before-you-sign-a-franchise-agreement-and-buy-the-franchise.

## ☐ Conduct due diligence

Thoroughly research the franchise system. Study the disclosure document, the franchise agreement and any other documents provided by the franchisor. Talk to current and former franchisees about what they find rewarding and challenging about the business.

## ☐ Get professional advice

It's important to get legal, accounting and business advice from independent professionals with expertise in franchising. They will identify risks and help you make decisions.

## ☐ Consider other options

Look at more than one franchise business. It's a good way to test if a franchise is the right fit for you.

The Franchise Disclosure Register is a free directory of franchisors available in Australia.

Use it to compare important information about different franchises, such as costs and contract terms. This can help you make informed decisions.

Check the Franchise Disclosure Register accessible via https://franchisedisclosure.gov.au.

# Understand franchising

**It is important that you understand what franchising is before you enter a franchise**

Franchising is a way of doing business based on a brand name and business system. Usually the franchisor controls the system closely. The franchisor grants you the right to operate a business in line with its system, normally for a set time. As a result, you may be limited in the changes you can make in the business without the franchisor's agreement.

**In some ways your franchise is your business and in some ways it's not**

You could be bound by confidentiality obligations. This may include limits on your rights to discuss the franchise business with third parties or to use the franchisor's intellectual property or business system outside the franchise.

The franchisor might make changes to the franchise system to adjust to market conditions. A franchisor may make these changes, even if you don't agree with them.

When the agreement ends franchisors are not generally required to provide compensation for goodwill. Goodwill refers to the market value added to the franchise business by the franchisee for example, by building a client-base.

## Benefits

Some franchise systems offer benefits other types of businesses cannot

- an existing product or service
- an existing reputation and image
- a pool of resources to fund advertising
- economies of scale when purchasing supplies.

Not all franchise systems offer the benefits listed.

## Risks

Even with a well-established brand, franchising is not risk free

### Watch out for site turnover

Look for warning signs about a franchise system like high site turnover. If one site has had many owners (known as churning) it could mean it's not in a suitable location. A high turnover across a system might indicate the system has expanded too quickly or without a plan to make existing businesses successful (known as burning).

### Think about potential unexpected expenses

Franchisors can impose significant capital expenditure on you if certain conditions are met. For example, if some conditions are met a franchisor can make you pay for new equipment or refurbish your store - even if it costs you a lot of money.

## If something is important, make sure it's in the franchise agreement

Some franchise agreements contain 'no agent' and 'entire agreement' clauses. Franchisors include these clauses so the terms of the franchise agreement can override any previous information provided to you. This could include all verbal or written information from an agent, the franchisor, or an associate of the franchisor. If there is something important that you've been promised verbally or in writing that is not in the franchise agreement, consider the risk you are taking.

You can choose not to sign the agreement, and you should seek independent advice from a lawyer, accountant and business adviser before you do.

# Questions to ask

Take your time to do your research and seek professional advice. If the franchisor tries to rush you, remember you can walk away. There will be other opportunities.

Some of the following questions are answered in the Franchise Disclosure Register.

You will also have lots of questions to ask your franchisor, professional advisers, and current and former franchisees. Here are questions to consider:

## Franchisor experience and reputation

- How long has the franchise system been operating? What success has it had and where?
- Has the franchise system had any reputational issues?
- What were they and when did they occur?
- What experience does the franchisor and its key staff have in managing a business?
- What is the franchisor doing to encourage, support or train franchisees regarding complying with workplace laws?

## Start-up costs

- How much working capital or extra funds will you need to get the business established?
- How long will it take you to break even after paying the costs of setting up the business?

## Ongoing costs

- Can you only get products from an approved supplier?
- Does the franchisor receive rebates from suppliers and how is that rebate used?
- Will you pay franchise fees even if you are not making a profit?
- What monthly fees do you have to pay your franchisor? Franchise agreements may include royalties, levies or interest payments, and they can be based on a percentage of your turnover, not your profit.
- Does your franchise system have a specific purpose fund? What is the fund used for and how much are you required to pay?
- What other ongoing costs will be required? Read your franchise agreement carefully and ask your franchisor.
- Will you make enough money to pay yourself as well as any staff? Labour costs can be hard to estimate. It's up to you to know what employment laws apply and to comply with them. The Fair Work Ombudsman can help you understand workplace rights and obligations: www.fairwork.gov.au/franchises
- What happens when there is product 'wastage' and 'shrinkage'? Some franchise agreements include clauses on wastage and shrinkage. Wastage refers to products that are no longer fit for sale. Shrinkage can include theft, another loss or accounting error.

## Earnings

- Have any profit or earning promises been made to you? Ask current and former franchisees if profit or earning promises were kept. Their contact details will be in the disclosure document.
- Will you have an exclusive territory in which to operate your business?
- Does your franchisor have the ability to compete with you online?
- What other businesses will you be competing with in the area?

## Changes

- What changes can be made without your approval and how will this impact your business?

## Franchisor-franchisee relationships

- What are the dispute resolution procedures? Will the franchise agreement include a commitment by the franchisor to binding arbitration? Arbitration can be a quicker and less expensive way to resolve disputes than going to court. It might be hard to imagine needing arbitration, but it could become important if things go wrong.

## What happens at the end of a franchise agreement?

- Will you be able to renew the agreement if you want to? Are there conditions on this?
- What rules apply if you want to sell the business before the end of the term?
- When the franchise term ends, what are you entitled to (such as paid market value for your equipment or for goodwill), and what happens if you are in debt? Goodwill refers to the market value added to the franchise business by the franchisee for example, by building a client-base. However, in franchising, franchisees often have limited rights once the franchise agreement ends. You may not get any value for goodwill at the end.
- Are there any restrictions on you starting a similar business if the agreement is not renewed? It's a good idea to obtain legal advice on restraint of trade clauses.
- If the franchise ends unexpectedly, how would this impact you? Are you aware of the types of events that may lead to non- renewal or termination of an agreement? For example, if the franchisor becomes insolvent, you may not be compensated for the loss of your business. You may not get back the money you contributed to a specific purpose fund.

Speak to former franchisees to find out what happened at the end of their agreement.

# If you change your mind

## Take your time before you sign

The Franchising Code of Conduct gives you at least 14 days to read all the information that a franchisor provides you. This usually includes the franchise agreement, disclosure document and information about any lease arrangement.

You can take longer than 14 days to study this information and get advice. For most people this is a bigger investment decision than buying a house so it's okay to take your time before signing a franchise agreement.

If you make a payment to the franchisor during the 14 days, known as the consideration period, you may give written notice asking the franchisor to repay that amount.

## Cooling off period

You are usually entitled to terminate a new franchise agreement within 14 days. If you choose to exercise this right, you are entitled to a refund of the payments you have made (though reasonable expenses may be retained).

If you have, or have recently had, another franchise agreement with the franchisor you may waive your cooling off rights. You should be careful when waiving your cooling off rights because it can be difficult to terminate your franchise agreement once you sign.

Your cooling-off rights are outlined in the Franchising Code of Conduct.

## If you have doubts

If you have any doubts, consider not signing the franchising agreement or exercising your right to back out of the agreement during the cooling-off period.

Even if you have already invested time and money, it's worth considering how much more you could lose if the business is not successful.

# After you sign the franchise agreement

## Know your rights

A franchisee may have private rights of action under the Franchising Code of Conduct, the Australian Consumer Law and the law of contract. Your franchise agreement is a contract that contains many of your legal rights and obligations. You may have rights in contract law if the franchisor does not honour the agreement.

The Franchising Code of Conduct requires franchisors to disclose certain information to both potential and existing franchisees.

It also sets out minimum conditions on the rights of the parties under a franchise agreement. It can be found at www.legislation.gov.au.

## Dispute resolution

Franchisors must have an internal procedure for handling complaints. If you can't agree on an outcome within 3 weeks, either party may refer the matter to mediation or conciliation facilitated by an Alternative Dispute Resolution (ADR) practitioner. Arbitration is also an option when both parties agree to this process.

Dispute resolution services are provided by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). Visit the ASBFEO website, or call 1300 650 460.

## Enforcing your rights

If something goes wrong after you sign the agreement, you may need to take your own legal action to enforce your rights.

## ACCC's role

The Australian Competition and Consumer Commission (ACCC) enforces the Australian Consumer Law and the Franchising Code of Conduct. The ACCC can investigate alleged breaches of these laws and take action in relation to systemic and widespread misconduct. The ACCC is not a complaint handling body. We rarely become involved in resolving individual disputes.

You can make a report to the ACCC via its website at www.accc.gov.au/contact-us-or-report-an-issue.

## Sign up to the ACCC's Franchise Information Network

Subscribers receive regular email bulletins about current franchising issues, including changes to the law, information for franchisors about compliance and updates about the ACCC's franchising work. To subscribe, visit www.accc.gov.au/about-us/news/sign-up-to-newsletters/franchising-information-network.

## More information about franchising and running a business

www.business.gov.au offers information about franchising and running a business.

www.accc.gov.au/by-industry/franchising includes a franchisee manual and other information, videos and publications for people thinking about buying a franchise, including in languages other than English.

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