



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Franchising model disclosure document

Guidance

9 September 2022

Franchising model disclosure document

This document provides guidance on a format for a franchising disclosure document.

A franchisor must give franchisees and prospective franchisees a disclosure document in accordance with Annexure 1 of the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (the code).

This document has been created by the Australian Competition and Consumer Commission (ACCC). It does not constitute legal or other professional advice. We strongly recommend you seek advice from professionals with experience in franchising on how to comply with your disclosure obligations and the information and documents you are required to provide and keep.

This document is current as of 9 September 2022, and does not reflect change in the law after this date.

Disclosure documents must inform franchisees, and follow the code

The purpose of the disclosure document is to:

- give a prospective franchisee or a franchisee proposing to renew or extend the term or scope of a franchise agreement information to help them make a reasonably informed decision about the franchise
- give a franchisee current information that is material to the running of their franchised business.

There is a certain format for a disclosure document (which this guidance is designed to assist with). Under the Code subclauses 8(3) and 8(4) require that a disclosure document:

- be set out in the form and order of Annexure 1 of the Code
- use the headings and numbering of Annexure 1 of the Code
- be signed by the franchisor, or a director, officer or authorised agent of the franchisor.

See [our website](#) for further guidance on when a disclosure document must be given and updated.

Disclosure documents must not mislead

You must ensure that all statements or representations made in your disclosure document (and other documents) are true, accurate and able to be substantiated. It is against the law for businesses to mislead.

Penalties may be imposed on you by a court, or the ACCC may issue an infringement notice with a penalty, if you do not adequately disclose information to prospective or current franchisees and/or if you mislead prospective or current franchisees in contravention of the Australian Consumer Law.

This guidance does not cover new vehicle dealership agreements

Note: this document does not contain information on amendments to the Code for new vehicle dealership agreements. The amendments were introduced on 1 June 2020 and can be accessed at the [Federal Register of Legislation](#).

TIP: All content contained in a box with red border or with red text is **guidance** only and **should not be** included in your disclosure document.

TIP: If you provide your disclosure document, or a link to a website that publishes your disclosure document, for inclusion in the Franchise Disclosure Register, you:

- 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.

TIP: To comply with the code requirement to provide **details** of the specified matters, information that is likely to be considered to be important and significantly relevant to a franchisee about the specified matter should be disclosed.

This means if an item refers to “details”, sufficient details should be provided to support the answer.

1. First page

1.1 (a) DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE

(b) the franchisor’s:

	(i) name; and	
	(ii) business address; and phone number; and	
	(iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).	

(c)

.....
Franchisor/director/officer/
authorised agent of the franchisor

(d)

.....
Date of preparation

TIP: If you intend to send the disclosure document in electronic form you must obtain the consent of the prospective franchisee or franchisee to delivery in that format. You may then attach an electronic signature document.

TIP: The following warning statement (e) must appear on the first page of the disclosure

(e) This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement. It should be read together with the key facts sheet and the information statement you have received.

Entering into a franchise agreement is a serious undertaking. Franchising is a business and, like any business, the franchise (or franchisor) could fail during the franchise term. This could have consequences for the franchisee.

A franchise agreement is legally binding on you if you sign it.

You are entitled to a waiting period of 14 days (not 14 business days) before you enter into this agreement.

If this is a new franchise agreement (not the renewal of a franchise agreement, nor the extension of

the term or the scope of a franchise agreement), you will be entitled to a “cooling off” period of 14 days (not 14 business days) after signing the agreement, during which you may terminate the agreement. (In some circumstances a “cooling off” period may end later.)

If you decide to terminate the agreement during the cooling off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor under the agreement. However, the franchisor may deduct from this amount the franchisor’s reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.

Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.

You should make your own enquiries about the franchise and about the business of the franchise.

You should get independent legal, accounting and business advice before signing the franchise agreement.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

If you request the franchisor to give you this disclosure document, any attachments to it, the key facts sheet, the proposed franchise agreement and the Franchising Code of Conduct in printed form, electronic form or both, the franchisor must comply with your request.

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TIP: The numbering and headings of the items in the disclosure document must remain the same. If a particular item in the disclosure document is not applicable, the item should be removed from the body of the disclosure document, and noted in an attachment to the disclosure document which sets out the headings and numbering of the non-applicable items. Disclosure documents must have a table of contents based on the items in Annexure 1, indicating the page number on which each item begins.

TIP: Any annexures or attachments to the disclosure document must be listed in the table of contents in order of appearance. Relevant annexures may include the Code; site or territory history (item 13); earnings information (item 20); financial details (item 21); and franchise agreement.

If your disclosure document refers to a clause in your franchise agreement, then the franchise agreement should be provided with it, or it should be attached as an annexure to the disclosure document (including if a franchisee has requested a current disclosure document pursuant to clause 16 of the Code).

However, for some disclosure items it may be insufficient disclosure to merely refer to a clause in a franchise agreement or other documents such as an operation manual (item 10.1 for example).

2. Franchisor details

TIP: You should refer to subclauses 17(2) and 17(3) of the Code and note your continuous disclosure obligation relating to any changes in majority ownership or control of the franchisor or an associate of the franchisor, or the franchise system.

Significant penalties may be imposed on you by a court, or the ACCC may issue an infringement notice with a penalty, if you fail to tell a franchisee or prospective franchisee about a change in majority ownership or control of the franchisor or an associate of the franchisor, or the franchise system, in writing and within a reasonable time (but not more than 14 days) after you become aware of such a change.

The maximum penalty for each contravention of will be:

- For corporations, the greater of:
 - \$10,000,000
 - If the court can determine 'reasonably attributable' benefit obtained, 3 times that value; or
 - If the court cannot determine benefit, 10% of the annual turnover in the preceding 12 months
- For individuals:
 - \$500,000

2.1 The franchisor's:

(a) name; and

(b) address, or addresses, of franchisor's registered office and principal place of business in Australia; and

(c) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).

2.2 The name under which the franchisor carries on business in Australia relevant to the franchise:

2.3 A description of the kind of business operated under the franchise:

2.4 The number of years that the franchise or franchise system has operated in Australia:

TIP: An 'associate' means a person

- a) who:
- i. is a director or related body corporate of the franchisor, or a director of a related body corporate, of the franchisor; or
 - ii. for a franchisor that is a proprietary company - directly or indirectly owns, controls, or holds with power to vote, at least 15 per cent of the issued voting shares in the franchisor; or
 - iii. is a partner of the franchisor; and
- b) whose relationship with the franchisor is relevant to the franchise system, including because:
- i. the person supplies goods or services to a franchisee; or
 - ii. the person gives the franchisee a right to occupy the premises, whether under a lease or otherwise; or
 - iii. the person owns intellectual property used in the franchise system; or
 - iv. the person is involved in market research, market testing, market development, sales promotion or management of the franchise system.

2.5 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the franchisor that is a body corporate (if any):

Name	
ABN, ACN or ARBN	
Address of registered office	
Principal place of business	

2.6 The name and address of each associate of the franchisor that is not a body corporate (if any), and if applicable, each associate's ABN or ARBN:

Name	
ABN or ARBN	
Address	

2.7 A description of the relationship between:
(a) each associate mentioned in item 2.5 and the franchisor; and
(b) each associate mentioned in item 2.6 and the franchisor;
and the relevance of the relationship to the franchise system and the franchise:

TIP: For example, this includes the directors of the franchisor entity and directors of corporate associates of the franchisor. This could include associates who may be trustees. If you are unsure who to include you should seek legal advice.

2.8 For each officer of the franchisor—name, position held and qualifications (if any):

TIP: The term **'officer'** has the meaning given by the *Corporations Act 2001* and will include:

- a director or secretary of a corporation
- an administrator of the corporation
- if the entity is an unincorporated association — an office holder
- if the franchisor is a partnership — a partner
- a person:
 - who makes or participates in making decisions that affect the whole or a substantial part of the entity's business; or
 - who has the capacity to significantly affect the entity's financial standing

See the *Corporations Act 2001* for a complete definition of 'officer'.

If you are in any doubt about whether a particular person is an officer, you should seek legal advice.

While you should make your own assessment, an 'officer' may include Chief Executive Officer, Chief Operating Officer, Chief Financial Officer.

Name	
Position held	
Qualifications	

3. Business experience

3.1 A summary of the relevant business experience of each person mentioned in item 2.8 for the past 10 years, including length of experience in:

(a) working in the franchise system; and	
(b) working for the franchisor.	

TIP: You should include information regarding all business activities undertaken by the franchisor. This includes both successful and unsuccessful business activities.

In *Australian Competition and Consumer Commission v Morild Pty Ltd* [2017] FCA 1308, [the Federal Court found that Morild](#) (which operated the 'Pastacup' franchise system) had failed to disclose that the company's co-founder and former director was previously a director of two former Pastacup franchisors that each became insolvent.

The Court held that this was relevant business experience that was required to be disclosed to prospective franchisees in the Pastacup disclosure document. The Federal Court ordered Morild to pay \$100,000 and its former director \$50,000 in penalties for breaches of the Code.

3.2 A summary of relevant business experience of the franchisor for the past 10 years, including:

(a) length of experience in:	
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<p>(i) operating a business that is substantially the same as that of the franchise; and</p> <p>(ii) offering other franchises that are substantially the same as the franchise; and</p>	
<p>(b) whether the franchisor has offered franchises for other businesses</p>	
<p>If yes to (b):</p> <p>(i) a description of each such business; and</p> <p>(ii) for how long the franchisor offered franchises for each such business.</p>	

4. Litigation

TIP: You should refer to subclauses 17(2), 17(3) and 17(4) of the Code and note your continuous disclosure obligations in relation to particular types of court proceedings, judgments and/or undertakings given under the *Competition and Consumer Act 2010*. If you do not mention a relevant matter in your disclosure document, you must tell a franchisee or prospective franchisee about the matter, in writing, within a reasonable time (but not more than 14 days) after you become aware of the matter. You must also tell the franchisee or prospective franchisee:

- The names of the parties to the proceedings
- The name of the court or tribunal
- The case number
- The general nature of the proceedings

In addition, you must tell a franchisee or prospective franchisee if the franchisor or an associate of the franchisor becomes a Chapter 5 body corporate in writing, within a reasonable time (but not more than 14 days) after you become aware of the matter. You must also tell the franchisee or prospective franchisee the name and address of the administrator, controller, liquidator or restructuring practitioner.

Significant penalties may be imposed on you by a court, or the ACCC may issue an infringement notice with a penalty, if you fail to meet these continuous disclosure obligations.

The maximum penalty for each contravention of will be:

- For corporations, the greater of:
 - \$10,000,000
 - If the court can determine 'reasonably attributable' benefit obtained, 3 times that value; or
 - If the court cannot determine benefit, 10% of the annual turnover in the preceding 12 months
- For individuals:
 - \$500,000

4.1 Details of:

(a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor, in Australia alleging:

(i) breach of a franchise agreement; or	
(ii) contravention of trade practices law; or TIP: This includes a contravention of the <i>Competition and Consumer Act 2010</i> , a part of which is the Australian Consumer Law.	
(iii) contravention of the <i>Corporations Act 2001</i> ; or	
(iv) unconscionable conduct; or	
(v) misconduct; or TIP: The term 'misconduct' has the meaning given by <i>Corporations Act 2001</i> and includes fraud, negligence, default, breach of trust and breach of duty.	
(vi) an offence of dishonesty; and	
(b) proceedings against the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor, other than for unfair dismissal of an employee, under:	
(i) section 12 of the <i>Independent Contractors Act 2006</i> ; or	
(ii) a law of a State or Territory that regulates workplace relations or independent contractors. TIP: This includes any proceedings under section 558B of the <i>Fair Work Act 2009</i> .	

4.2 Whether the franchisor, a franchisor director, an associate of the franchisor or a director of an associate of the franchisor, has been:

(a) in the last 10 years—convicted of a serious offence, or an equivalent offence outside Australia; or TIP: A 'serious offence' is defined in clause 4 of the Code as: (a) an offence under any law of the Commonwealth or a State or a Territory for which, if the act or omission had taken place in the Jervis Bay Territory, a person would be liable, on first conviction, to imprisonment for a period of not less than 5 years; or (b) a contravention of any provision of the <i>Corporations Act 2001</i> . <i>Note: Jervis Bay Territory is mentioned because it is a jurisdiction in which the Commonwealth has control over the criminal law.</i>	
(b) in the last 5 years—subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1(a); or	

(c) in the last 10 years—bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere.

TIP: 'Chapter 5 body corporate' is defined in the *Corporations Act 2001* as a body corporate:

- (a) that is being wound up; or
- (aa) that is a corporate collective investment vehicle of which one or more sub-funds is being wound up; or
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting; or
- (c) that is under administration; or
- (d) that has executed a deed of company arrangement that has not yet terminated; or
- (da) that is under restructuring; or
- (db) that has made a restructuring plan that has not yet terminated; or
- (e) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

4.3 For items 4.1 and 4.2—the following details (where relevant):

(a) the names of the parties to the proceedings;	
(b) the name of the court, tribunal or arbitrator;	
(c) the case number;	
(d) the general nature of the proceedings;	
(e) the current status of the proceedings;	
(f) the date and content of any undertaking or order under section 87B of the <i>Competition and Consumer Act 2010</i> ;	
(g) the penalty or damages assessed or imposed;	
(h) the names of the persons who are bankrupt, insolvent under administration or externally administered;	
<p>TIP: There are two ways a person can become bankrupt:</p> <ul style="list-style-type: none"> • a creditor makes an application to court to declare the person bankrupt • the person lodges an application to become bankrupt. 	

<p>TIP: The <i>Corporations Act 2001</i> provides a definition of 'insolvent under administration'. It includes a person who has executed a personal insolvency agreement under Part X of the <i>Bankruptcy Act 1966</i>, or is an undischarged bankrupt, or whose property is subject to control under section 50 or Division 2 of Part X of the <i>Bankruptcy Act 1966</i>.</p>	
<p>TIP: External administration includes administration, receivership and liquidation.</p>	
<p>(i) the period of the bankruptcy, insolvency under administration or external administration.</p>	

- 4.4 The percentage of franchisees in the franchise system that were a party to a mediation, conciliation or arbitration process that was conducted, or was pending, in the previous financial year (whether the disputes to which the mediation, conciliation or arbitration processes relate were initiated by the franchisor or one or more franchisees):

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5. Payments to agents

- 5.1 For any agreement under which the franchisor must pay an amount, or give other valuable consideration, to a person who is not an officer, director or employee of the franchisor in connection with the introduction or recruitment of a franchisee—the name of the person:

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TIP: This may include payments to a franchisee when referring someone to the franchise or gifts to another business for promoting the recruitment of franchisees to your franchise. Examples of such payments may include payments to a franchise consultant, estate agent, broker or other advisor.

6. Existing franchises

- 6.1 Number, sorted by State, Territory or region, of:

- (a) existing franchised businesses; and
- (b) existing franchisees; and
- (c) businesses owned or operated by the franchisor or an associate of the franchisor in Australia that are substantially the same as the franchised business:

State/Territory/region	(a) existing franchised businesses; and	(b) existing franchisees; and	(c) businesses owned or operated by the franchisor or an associate of the franchisor in Australia that are substantially the same as the franchised business.
NSW			
Vic			
Qld			

SA			
WA			
Tas			
ACT			
NT			
TOTAL			

TIP: This is the number of franchises in the system at the preparation date the disclosure document is dated.

6.2 For each existing franchisee:

(a) business address, if this is not the franchisee's residential address; and	(b) business phone number; and	(c) year when the franchisee started operating the franchised business.

6.3 However, if there are more than 50 franchises, the franchisor may instead give details under item 6.2 for all franchisees in the State, Territory, region or metropolitan area in which the franchise is to be operated:

(a) business address, if this is not the franchisee's residential address; and	(b) business phone number; and	(c) year when the franchisee started.

6.4 For each of the last 3 financial years and for each of the following events—the number of franchised businesses for which the event happened:

Details of events of each of the last three years	Year 1	Year 2	Year 3
	Period:	Period:	Period:
(a) the franchise was transferred;			
(b) the franchised business ceased to operate;			
(c) the franchise agreement was terminated by the franchisor;			
(d) the franchise agreement was terminated by the franchisee;			
(e) the franchise agreement was not extended;			

TIP: Insert relevant financial years

(f) the franchised business was bought back by the franchisor;			
(g) the franchise agreement was terminated and the franchised business was acquired by the franchisor.			

NOTE: An event may be counted more than once if more than one paragraph applies.

6.5 Subject to subclause 32(1), the franchisor must supply, for each event mentioned in item 6.4 the name, location and contact details of each franchisee if the information is available.

TIP: You should provide useful contact information for former franchisees, such as an email address and phone number. It is unlikely to be sufficient to only provide the former business address and business phone number used by previous franchisees as they no longer operate the franchise.

Former franchisee contact details must be included unless a request in writing is made by a former franchisee that their details not be disclosed to a prospective franchisee under subclause 32(1) of the Code.

You must not attempt to influence the former franchisee to make such a request. Doing so may breach of subclause 32(3) of the code. Penalties apply to this subclause.

Year 1		
Period:		
Event:		
Name	Location	Contact details

Year 2		
Period:		
Event:		
Name	Location	Contact details

Year 3		
Period:		
Event:		
Name	Location	Contact details

7. Master franchises

7.1 If the franchisor is also a subfranchisor—the master franchisor's:

TIP: A master franchise is usually a system where the 'master franchisor' grants another party (the subfranchisor), control over the franchising activities in an area (for example, in Australia or a particular State or Territory). Normally, the subfranchisor then enters into franchise agreements with individual franchisees to grant them a subfranchise.

(a) name; and	
(b) address, or addresses, of registered office and principal place of business; and	
(c) ABN, ACN or ARBN (or foreign equivalent if applicable).	

7.2 The name under which the master franchisor carries on business relevant to the franchise:

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7.3 For each officer of the master franchisor—name, position held and qualifications (if any):

Name	
Position held	
Qualifications	

7.4 For each of the last 3 financial years and each of the following events—the number of:

<div style="border: 2px solid red; display: inline-block; padding: 5px;">TIP: Insert relevant financial years</div>			
Details of events of each of the last 3 years;	Year 1 Period:	Year 2 Period:	Year 3 Period:
(a) franchise agreements terminated by the master franchisor;			
(b) franchise agreements terminated by the franchisor;			
(c) franchise agreements that were not extended by the master franchisor.			

NOTE: An event may be counted more than once if more than one paragraph applies.

7.5 The following details about the master franchise:

(a) the term of the franchise agreement, including the date that it began;	
(b) the territory of the franchise;	

<p>(c) whether the franchise agreement may be renewed;</p> <p>TIP: Renewal is when the franchisee exercises an option during the term of the agreement to renew the agreement.</p>	
<p>(d) whether the term of the franchise agreement may be extended and if so, any preconditions applying to an extension;</p> <p>TIP: In the context of paragraph (d), the term of agreement is 'extended' when the period of the agreement is extended, other than because of a right or an option exercisable by the franchisee during the term of agreement.</p> <p>This may include for example an extension of the franchise agreement by agreement of the parties.</p>	
<p>(e) whether the scope of the franchise agreement may be extended;</p> <p>TIP: In the context of paragraph (e), the word 'extended' means a material change to:</p> <ul style="list-style-type: none"> • the terms and conditions of the agreement; or • the rights of a person or liabilities that would be imposed on a person under or in relation to the agreement. 	
<p>(f) whether the franchise agreement may be transferred, and if so, whether the franchisee is required to become a party to a franchise agreement with the transferee;</p>	
<p>(g) the grounds on which the franchise agreement may be terminated;</p>	
<p>(h) if the franchise agreement is terminated, how a subfranchisor's franchise agreement with a franchisee is affected.</p>	

8. Intellectual property

TIP: 'Intellectual property' refers to original or distinctive logos, designs, slogans etc. that are closely associated with your brand.

TIP: You should refer to subclauses 17(2) and 17(3) of the Code and note your continuous disclosure obligations in relation to any change in the intellectual property, or ownership or control of the intellectual property, that is material to the franchise system.

Significant penalties may be imposed on you by a court, or the ACCC may issue an infringement notice with a penalty, if you fail to meet these continuous disclosure obligations.

The maximum penalty for each contravention of will be:

- For corporations, the greater of:
 - \$10,000,000
 - If the court can determine 'reasonably attributable' benefit obtained, 3 times that value; or
 - If the court cannot determine benefit, 10% of the annual turnover in the preceding 12 months
- For individuals:
 - \$500,000

8.1 For any trade mark used to identify, and for any patent, design or copyright that is material to, the franchise system (**intellectual property**):

(a) description of the intellectual property; and:

	Description
	TIP: Including images of your logos and symbols may assist to describe your intellectual property.
Trademarks	
Patents	
Designs	
Copyright	

(b) details of the franchisee's rights and obligations in connection with the use of the intellectual property; and:

	Franchisee's rights	Franchisee's obligations
Trademarks		
Patents		
Designs		
Copyright		

(c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and:

	Is it registered?	Registration date	Registration number	Place of registration
Trade marks				
Patents				
Designs				
Copyright				

TIP: You should include in the above table classes the trade mark is registered in.

(d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property:

If yes, provide the following details:	
(i) name of court or tribunal; and	
(ii) matter number; and	
(iii) summary of the claim or judgement; and	

(e) if the intellectual property is not owned by the franchisor—who owns it; and:

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(f) details of any agreement that significantly affects the franchisor's rights to use, or to give others the right to use, the intellectual property, including:

(i) parties to the agreement; and	(ii) nature and extent of any limitation; and	(iii) duration of the agreement; and	(iv) conditions under which the agreement may be terminated; and

8.2 The franchisor is taken to comply with item 8.1 for any information that is confidential if the franchisor gives:

- (a) a general description of the subject matter; and
- (b) a summary of conditions for use by the franchisee.

9. Franchise site or territory

9.1 Whether the franchise is:

(a) for an exclusive or non-exclusive territory; or	
(b) limited to a particular site.	

TIP: When disclosing information about exclusive or non-exclusive territory:

- You must provide information that helps someone make a reasonably informed decision about the franchise, using current information material to the running of their franchised business
- The information must not mislead or be likely to mislead.

9.2 For the territory of the franchise:

(a) whether other franchisees may own or operate a business that is substantially the same as the franchised business; and	
(b) whether the franchisor or an associate of the franchisor may own or operate a business that is substantially the same as the franchised business; and	

(c) whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise; and	
(d) whether the franchisee may own or operate a business that is substantially the same as the franchised business outside the territory of the franchise; and	
(e) whether the franchisor may change the territory or site of the franchise and if so, the circumstances in which such a change may occur.	

TIP: Respond to paragraphs 9.2(a) – (e) irrespective of whether the territory is exclusive or non-exclusive.

10. Supply of goods or services to a franchisee

TIP: To ensure compliance with the requirement to provide **details** of the specified matters, information that is likely to be considered to be important and significantly relevant to a franchisee about the specified matter should be disclosed.

For example, names of suppliers and specific types of goods and/or services should be disclosed, if known as at the date of the disclosure document, as these are likely to be important and relevant details. This information will assist a possible franchisee to make informed decisions.

Stating “preferred supplier” or “accepted supplier” or “core products” is not likely to be adequate as such details are likely to be of little use and meaning and is unlikely to constitute a comprehensive response to the requirement to provide details.

If there is a current preferred supplier but the agreement allows the franchisor to unilaterally change the supplier, then this should be stated.

10.1 For the franchisor’s requirements for supply of goods or services to a franchisee—details of:

(a) any requirement for the franchisee to maintain a level of inventory or acquire an amount of goods or services; and	
TIP: If the requirement includes goods or services including leasing and fitting out premises and/or vehicles, minimum insurance, purchasing certain equipment, including IT equipment etc these details should be specified.	
If yes, details	
(b) restrictions on acquisition of goods or services by the franchisee from other sources; and	

<p>TIP: This includes restrictions on where franchisees can purchase equipment, stock, fit out services, IT services and cleaning (to name a few).</p> <p>We recommend if you are unsure what arrangements to disclose to err on the side of caution and include more information.</p>	
<p>TIP: It is likely that details of any exclusive dealing notification/s lodged with the ACCC that you have in place for the franchise system are required to be provided.</p>	
<p>If yes, details</p>	
<p>(c) ownership by the franchisor or an associate of the franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services; and</p> <p>TIP: It is likely that details of any exclusive dealing notification/s lodged with the ACCC that you have in place for the franchise system are required to be provided.</p>	
<p>If yes, details</p>	
<p>(d) the obligation of the franchisee to accept goods or services from the franchisor, or from an associate of the franchisor; and</p> <p>TIP: You must disclose details of all supply restrictions. This includes restrictions on where franchisees can purchase equipment, stock, fit out services, IT services and cleaning (to name a few).</p>	
<p>If yes, details</p>	
<p>(e) the franchisor's obligation to supply goods or services to the franchisee; and</p>	
<p>If yes, details</p>	
<p>(f) whether the franchisee will be offered the right to be supplied with the whole range of the goods or services of the franchise; and</p>	
<p>If yes, details</p>	
<p>(g) conditions under which the franchisee can return goods, and to whom; and</p>	

<p>TIP: A franchisee may have rights under the Australian Consumer Law to seek a remedy from a supplier (which cannot be excluded by agreement).</p>	
<p>If yes, details</p>	
<p>(h) conditions under which the franchisee can obtain a refund for services provided by the franchisor, and from whom; and</p> <p>TIP: A franchisee may have rights under the Australian Consumer Law to seek a remedy from a supplier (which cannot be excluded by agreement).</p>	
<p>If yes, details</p>	
<p>(i) whether the franchisor may change the range of goods or services, and if so, to what extent; and</p> <p>TIP: Unfair contract term laws apply to many standard form agreements, including in franchising.</p> <p>Where it applies, franchisors need to ensure that their franchise agreements, including terms covering supply restrictions and rebates, don't contain unfair contract terms.</p> <p>A term may be unfair term if it causes a significant imbalance in power, goes beyond what is reasonably necessary to protect a franchisor's legitimate business interests and if relied upon causes detriment to franchisees.</p>	
<p>If yes, details</p>	
<p>(j) whether the franchisor, a master franchisor (if different from the franchisor), or an associate of the franchisor or master franchisor, will receive a rebate or other financial benefit from a supplier of goods or services to the franchisee; and</p> <p>TIP: It is likely that details of the types of goods and services subject to the rebates for each supplier and/or business are required to be provided.</p>	
<p>If yes, details</p>	

<p>(k) if the franchisor, master franchisor or associate will receive a rebate or other financial benefit described in paragraph (j) from one or more suppliers:</p> <ul style="list-style-type: none"> (i) the nature of the rebate or other financial benefit received from each supplier; and (ii) the name of each business providing the rebate or other financial benefit; and (iii) the total amount of rebates or other financial benefits received in the previous financial year from each supplier, expressed as a single aggregate percentage of total group purchases from that supplier (not including any purchases made by units of the franchised business operated by the franchisor, master franchisor or associate); and <div style="border: 2px solid red; padding: 5px; margin-top: 10px;"> <p>TIP: The franchisor is not required to disclose the details referred to in subparagraph 10.1(k)(iii) in relation to a supplier if:</p> <ul style="list-style-type: none"> • the franchisee is permitted to acquire goods or services from sources other than the franchisor without the franchisor's approval; or • the whole of the rebate or other financial benefit that will be received by the franchisor, master franchisor or associate from that supplier is to be returned to the franchisee directly as a payment into a cooperative fund controlled or administered by or for the franchisor. </div>	
<p>(l) whether any rebate or financial benefit referred to under paragraph (j) is shared, directly or indirectly, with franchisees.</p>	
<p>If yes, details</p>	
<p>(m) if a rebate or other financial benefit described in paragraph (j) is shared directly or indirectly with the franchisee:</p> <ul style="list-style-type: none"> (i) the method for working out how much of the rebate or other financial benefit is retained by the franchisor, master franchisor or associate, and how much is shared, directly or indirectly, with the franchisee, described by reference to a percentage of the rebate or other financial benefit, or another method for working out how much is retained, and how much is shared with the franchisee; and (ii) a description of each direct and indirect benefit received by the franchisee. 	

NOTE: Before a requirement is made under paragraph (b) or (c), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Part VII of the Act).

TIP: For the purposes of paragraphs 10.1(j) to (m), a rebate or other financial benefit **does not** include:

- the price paid by the franchisee, or a part of that price, for the supply of goods or services by the franchisor, master franchisor or associate
- any incentive or other financial benefit that the franchisor, master franchisor or associate is entitled to receive in connection with a lease of premises or the franchisee's right to occupy premises.

11. Supply of goods or services by a franchisee

11.1 For the franchisor's requirements for supply of goods or services by a franchisee—details of:

(a) restrictions on the goods or services that the franchisee may supply; and

TIP: It is likely that details of any exclusive dealing notification/s lodged with the ACCC that you have in place for the franchise system are required to be provided.

(b) restrictions on the persons to whom the franchisee may supply goods or services; and

TIP: It is likely that details of any exclusive dealing notification/s lodged with the ACCC that you have in place for the franchise system are required to be provided.

(c) whether the franchisee must supply the whole range of the goods or services of the franchise.

NOTE: Before a requirement is made under paragraph (a) or (b), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Part VII of the Act).

12. Supply of goods or services—online sales

TIP: Details of any online food delivery apps should be included in this section.

12.1 Details of whether the franchisee may make available online:

(a) goods of the same type or brand; or

(b) services of the same type.

12.2 If goods or services may be made available online by the franchisee, the following information:

(a) whether the franchise agreement restricts, or places conditions on, the franchisee's ability to make those goods and services available online;

(b) whether goods or services may be made available via a third party website, and if so, specified restrictions or conditions by the franchisor on the franchisee's use of a third party

website;	
(c) the extent to which those goods or services may be supplied outside the territory of the franchise.	

12.3 Details of whether:

(a) the franchisor or an associate of the franchisor makes, or expects to make, goods or services available online; or	
(b) other franchisees make, or expect to make, goods or services available online.	

12.4 If goods or services are made, or are expected to be made, available online by the franchisor, an associate of the franchisor or other franchisees, the following information:

(a) the extent to which those goods or services may be supplied in the territory of the franchise;	
(b) in the case of goods or services made available via a third party website—the domain name or URL of the third party website.	

12.5 Details of any profit sharing arrangements that apply in relation to goods or services made available online and would affect the franchisee, and whether these arrangements may be unilaterally changed by the franchisor.

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13. Sites or territories

13.1 The policy of the franchisor, or an associate of the franchisor, for selection of as many of the following as are relevant:

(a) the site to be occupied by the franchised business;	
(b) the territory in which the franchised business is to operate.	

13.2 Details of whether the territory or site to be franchised has, in the previous 10 years, been subject to a franchised business operated by a previous franchise granted by the franchisor and, if so, details of the franchised business, including the circumstances in which the previous franchisee ceased to operate.

TIP: This should include the name of the former franchisees of the site, the year that they ceased to operate and the reason why they ceased to operate.

13.3 Details of whether the franchisor, or an associate of the franchisor, has an interest in a lease that will be used for the operation of the franchised business, including an interest as a landlord or head lessee, or another interest disclosed under clause 13 of this code.

13.4 The details mentioned in item 13.2 and 13.3 must be provided:

- (a) in a separate document; and
- (b) with the disclosure document.

TIP: If this separate document is attached in the annexure, it should be properly referenced in the table of contents.

14. Other payments

Prepayments

14.1 If the franchisor requires a payment before the franchise agreement is entered into—:

why the money is required,	
how the money is to be applied; and	
who will hold the money.	

14.2 The conditions under which a payment will be refunded:

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TIP: Misleading a franchisee as to their right to a refund on payment may contravene the Australian Consumer Law. You should make sure your requirements for payments and the conditions to receive a refund comply with the code.

Money paid by the franchisee cannot be non-refundable before the 14 days disclosure period ends, this includes legal fees.

If money is received from a prospective franchisee that may become non-refundable, it should be made very clear in the disclosure document when it could become non-refundable.

Guidance

Establishment costs

TIP: The franchisor should provide an estimate for each applicable category of costs. If an estimate cannot be easily worked out, you should provide an upper and lower limit. Avoid excessive ranges to ensure you are providing useful information so prospective franchisees to accurately estimate costs. You are required to keep any documents that support a statement or claim you make in items 14.3, 14.4 and 14.5.

14.3 Details of the range of costs to start operating the franchised business, based on current practice, for the following matters:

Expenditure	14.4(a) description of the payment; and	14.4(b) the amount of the payment or the formula used to work out the payment (if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount); and	14.4(c) to whom the payment is made; and <div style="border: 2px solid red; padding: 2px; margin-top: 5px;">TIP: If known the business should be named. “Preferred Supplier” may not meet disclosure requirements.</div>	14.4(d) when the payment is due; and	14.4(e) whether the payment is refundable and, if so, under what conditions.
	(a) real property, including property type, location and building size;				
	(b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;				
	(c) inventory required to begin operation;				
	(d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;				
	(e) additional funds, including working capital, required by the franchisee before operations begin;				
	(f) other payments by a franchisee to begin operations;				

14.5. For item 14.4, if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.

Other payments

14.6 For each recurring or isolated payment payable by the franchisee to the franchisor or an associate of the franchisor or to be collected by the franchisor or an associate of the franchisor for another person:

(a) description of the payment; and	(b) amount of the payment or formula used to work out the payment (if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount); and	(c) to whom the payment is made; and TIP: If known the business should be named. “Preferred Supplier” may not be adequate disclosure.	(d) when the payment is due; and	(e) whether the payment is refundable and, if so, under what conditions.

14.7 For each recurring or isolated payment, that is within the knowledge or control of the franchisor or is reasonably foreseeable by the franchisor, that is payable by the franchisee to a person other than the franchisor or an associate of the franchisor:

(a) description of the payment; and	(b) amount of the payment or formula used to work out the payment (if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount); and	(c) to whom the payment is made; and TIP: If known the business should be named. “Preferred Supplier” may not meet adequate disclosure.	(d) when the payment is due; and	(e) whether the payment is refundable and, if so, under what conditions.

TIP: Avoid excessive ranges to ensure you are providing useful information to assist prospective franchisees to accurately estimate the cost of the proposed business.

TIP: You need to include in item 14.7 all the costs that a franchisee might reasonably be expected to incur in conducting the business and whether these exclude/include taxes. These descriptions should be specific.

Some examples would be electricity and water costs, real property costs, inventory, costs of hiring, training, wages (which at the least should be reflective of employees’ minimum statutory entitlements), costs of licences or memberships that are required or the cost of any repairs or upgrades that may be needed. This is not to be taken as an exhaustive list.

Specify if costs and payments are stated on an annual or monthly basis.

- 14.8 For item 14.6 or 14.7, if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.
- 14.9 If 2 or more of items 14.1, 14.3 and 14.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.
- 14.10 To avoid doubt, this item covers a payment of significant capital expenditure.

TIP: a franchisor cannot require a franchisee to undertake significant capital expenditure in relation to a franchised business during the term of the franchise agreement.

The Code does not provide a definition for 'significant capital expenditure'. However, it does set out certain expenditure that is not considered significant capital expenditure. This includes:

- a) expenditure that is disclosed to the franchisee in the disclosure document that is given to the franchisee before:
 - i. entering into or renewing the agreement; or
 - ii. extending the term or scope of the agreement;
- b) if expenditure is to be incurred by all or a majority of franchisees—expenditure approved by a majority of those franchisees;
- c) expenditure incurred by the franchisee to comply with legislative obligations;
- d) expenditure agreed by the franchisee.

Franchise agreements before 1 July 2021

For any franchise agreements entered into, extended or renewed **before 1 July 2021**, 'significant capital expenditure' also excludes expenditure that the franchisor considers is necessary as capital investment in the franchised business, justified by a written statement given to each affected franchisee of the following:

- a) the rationale for making the investment;
- b) the amount of capital expenditure required;
- c) the anticipated outcomes and benefits;
- d) the expected risks associated with making the investment.

Franchise agreements after 1 July 2021

For any franchise agreements entered into, extended or renewed on or after **1 July 2021** if a franchisor discloses information about capital expenditure in the disclosure document they must:

- a) Include in the disclosure document as much information as practicable about capital expenditure, including the following
 - i) the rationale for the expenditure;
 - ii) the amount, timing and nature of the expenditure;
 - iii) the anticipated outcomes and benefits of the expenditure;
 - iv) the expected risks associated with the expenditure

Example: The information could include the type of any upgrades to facilities or premises, any planned changes to the corporate identity of the franchisor's brand and indicative costs for any building materials

- b) Before entering into, renewing or extending the term or scope of the agreement, the franchisor and the franchisee or prospective franchisee must discuss the expenditure. The discussion must include a discussion of the circumstances under which the franchisee or prospective franchisee considers that the franchisee or prospective franchisee is likely to recoup the expenditure, having regard to the geographical area of operations of the franchisee or prospective franchisee.

15. Marketing fund or other cooperative funds

- 15.1 For each marketing fund or other cooperative fund, controlled or administered by or for the franchisor or a master franchisor, to which the franchisee may be required to contribute, the following details:

<p>(a) the kinds of persons who contribute to the fund (e.g. franchisee, franchisor, outside supplier);</p> <p>TIP: If you operate a company owned franchised business, you must, for each business, contribute to the marketing fund on the same basis as other franchisees.</p>	
<p>(b) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;</p>	
<p>(c) who controls or administers the fund;</p>	
<p>(d) whether the fund is audited and, if so, by whom and when;</p> <p>TIP: The marketing fund statement must be audited within four months of the end of the franchisor's financial year unless 75% of franchisees who contribute to the fund have voted not to audit the statement.</p> <p>The 75% can include franchisor owned franchises.</p>	
<p>(e) how the fund's financial statements can be inspected by franchisees;</p>	
<p>(f) the kinds of expense for which the fund may be used;</p> <p>TIP: You should disclose all expenses that the marketing fees will, or may, be used to meet. This is important as subclause 31(4) of the Code places certain restrictions on how you may spend marketing fees.</p>	
<p>(g) the fund's expenses for the last financial year, including the percentage spent on production, marketing, administration and other stated expenses;</p>	
<p>(h) whether the franchisor, master franchisor or an associate of either of them supplies goods or services for which the fund pays and, if so, details of the goods or services;</p>	

(i) whether the franchisor or master franchisor must spend part of the fund on marketing or promoting the franchisee's business.	
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TIP: If you're uncertain about how much information to provide your franchisees, you should err on the side of candour and provide more information – as long as the information is true, clear and accurate. Meaningful information in a marketing fund statement requires a sufficient level of information and detail, and a genuine transparency about matters such as:

- Sources of income (e.g. franchisee/corporate store contributions; supplier rebates)
- The nature of the advertising or marketing services provided (e.g. merchandise; photography; brochures/flyers; website design; graphic design; equipment rental; radio advertising; print advertising; general advertising)
- The price of the relevant services
- Geographical scope of the advertising or marketing, where relevant (e.g. local, state or national).

Penalties of \$2.014 million

In 2019, following institution of proceedings by the ACCC, the Full Federal Court found the franchisor Ultra Tune's marketing fund statements did not contain sufficient detail.

The court imposed a penalty of \$2.014 million on Ultra Tune for this and other breaches of the Australian Consumer Law. More information can be found [on our website](#).

16. Financing

16.1 The material conditions of each financing arrangement that the franchisor, its agent or an associate of the franchisor offers to the franchisee for establishment or operation of the franchised business.

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16.2 For item 16.1, the material conditions of a financing arrangement include the following:

(a) any requirement that the franchisee must provide a minimum amount of unborrowed working capital for the franchised business;	
(b) any requirement that a franchisee must meet a stated debt to equity ratio in relation to the franchised business.	

17. Unilateral variation of franchise agreement

TIP: Unilateral variation occurs when you exercise a power to change the agreement in circumstances where you do not require the franchisee's consent or support. This may include a change to the operations manual if the agreement states that the franchisee must comply with the manual, the contents of which are subject to change at any time.

17.1 The circumstances in which the franchisor has unilaterally varied a franchise agreement in the last 3 financial years (including, if applicable, financial years before this code came into force), other than variations of a minor nature:

TIP: If you are unsure whether a variation is of a minor nature or not, you should take a cautious approach and include the details. We recommend you seek legal advice.

Date of variation/s	Details of unilateral variation

17.2 The circumstances in which the franchise agreement may be varied, unilaterally, by the franchisor in the future:

17A. Arbitration of disputes

17A.1 Whether the franchise agreement provides for arbitration of disputes in a manner consistent with Subdivision C of Division 3 of Part 4.

17B. Ways of ending the franchise agreement early

17B.1 A summary of the rights **the franchisor** has under the franchise agreement to terminate the franchise agreement before it expires, and the circumstances in which those rights may be exercised.

17B.2 A summary of the rights **the franchisee** has under the franchise agreement to terminate the franchise agreement before it expires, and the circumstances in which those rights may be exercised.

18. Term of agreement and arrangements to apply at the end of the franchise agreement

18.1 Details of arrangements to apply at the end of the franchise agreement, including:

- (aa) the term of the franchise agreement; and
- (a) whether the prospective franchisee will have an option to:
 - (i) renew the franchise agreement; or
 - (ii) enter into a new franchise agreement; and

TIP: Renew: means the terms of the agreement rollover to a new defined period of time.

New agreement: means the parties enter into a different agreement for the next period of time, where terms may be altered.

If the franchisor requires the franchisee to enter into the franchisor's then current franchise agreement, which may include terms that are different to the current agreement, including different payment terms, this should be stated.

<p>(b) whether the prospective franchisee will be able to extend the term of the franchise agreement, and if so, the process the franchisor will use to determine whether to extend the term of the franchise agreement; and</p>	
<p>(c) if the prospective franchisee will have an option to renew the franchise agreement—whether the prospective franchisee will be entitled to compensation at the end of the agreement if it is not renewed and, if so, how that compensation will be determined; and</p>	
<p>(d) details of the arrangements that will apply to unsold stock, marketing material, equipment and other assets purchased when the franchise agreement was entered into, including:</p> <ul style="list-style-type: none"> (i) whether the franchisor will purchase the stock, marketing material, equipment and other assets; and (ii) if the franchisor is to purchase the stock, marketing material, equipment and other assets—how prices will be determined; and 	
<p>(e) whether the prospective franchisee will have the right to sell the business at the end of the franchise agreement; and</p>	
<p>(f) if the prospective franchisee will have the right to sell the business at the end of the franchise agreement—whether the franchisor will have first right of refusal, and how market value will be determined; and</p>	
<p>(fa) the prospective franchisee’s rights relating to any goodwill generated by the franchisee (including, if the franchisee does not have a right to any goodwill, a statement to that effect); and</p>	
<p>(g) whether the franchisor will consider any significant capital expenditure undertaken by the franchisee during the franchise agreement, in determining the arrangements to apply at the end of the franchise agreement.</p>	
<p>(h) whether the franchise agreement includes a restraint of trade or similar clause.</p>	

18.2 Details of whether the franchisor has, in the last 3 financial years, considered any significant capital expenditure undertaken by franchisees, in determining the arrangements to apply at the end of franchise agreements between the franchisor and those franchisees:

TIP: Sections 18.3 to 18.5 are specific to each franchisee and should be completed for each franchisee. When completing items 18.3 to 18.5 delete the two statements that do not apply

18.3 If the franchisee does not have the option to renew the franchise agreement, the following statement must be included in **bold** 12 point type:

TIP: Renewal is when the franchisee exercises an option during the term of the agreement to renew the agreement for a further period of time.

If the option to renew is conditional, it is still an option to renew and the statements in items 18.3 and 18.5 should not be included.

The franchisee does not have the option to renew the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the franchisor does not extend the term of the agreement, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.

- 18.4 If the franchisee cannot extend the term of the franchise agreement, the following statement must be included in **bold** 12 point type:

TIP: In the context of items 18.4 and 18.5, the term of agreement is 'extended' when the period of the agreement is extended, other than because of a right or an option exercisable by the franchisee during the term of agreement.

The franchisee cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the franchisor does not do so, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.

- 18.5 If the franchisee:
- (a) does not have the option to renew the franchise agreement; and
 - (b) cannot extend the term of the franchise agreement;
- the following statement must be included in **bold** 12 point type:

The franchisee does not have the option to renew the franchise agreement and cannot extend the term of the franchise agreement. At the end of the franchise agreement, the franchisor may, but does not have to, extend the term of the agreement. If the franchisor does not extend the term of the agreement, the franchise agreement ends and the franchisee no longer has a right to carry on the franchised business.

19. Amendment of franchise agreement on transfer of franchise

- 19.1 Whether the franchisor will amend (or require the amendment of) the franchise agreement on or before the transfer of the franchise.

TIP: This includes if you require the franchisee that is purchasing the franchised business to enter into a new agreement.

20. Earnings information

- 20.1 If the franchisor proposes to give earnings information, the franchisor must give it in the disclosure document or in a separate document attached to the disclosure document.

TIP: If you choose to provide earnings information, you must keep any documents that you have relied upon to support the claims you have made. You also have the overarching obligation to ensure that all statements or representations made in your disclosure document are true, accurate and able to be substantiated.

It is against the law for businesses to mislead franchisees in contravention of the Australian Consumer Law. This also includes information or statements given to prospective franchisees but not provided in the disclosure document.

\$4.2 million in penalties against former franchisor and two executives

In *Australian Competition and Consumer Commission v Geowash Pty Ltd* [2019] FCA 72 the court found that Geowash (former franchisor) had made false or misleading representations to prospective franchisees regarding average monthly earnings on its website and that there were no reasonable grounds to make these representations about future earnings.

The Federal Court ordered \$4.2 million in penalties against former carwash and detailing franchisor Geowash Pty Ltd, its director Sanam Ali and its franchising manager Charles Cameron for breaches of the Australian Consumer Law. This included penalties of \$1.045 million against Ms Ali and \$656,000 against Mr Cameron. For more information see the [ACCC website](#).

\$1.9 million in penalties for false or misleading representation to prospective franchisees

In April 2021 the Federal Court ordered Megasave Couriers Australia Pty Ltd (Megasave) to pay \$1.9 million in penalties for making false or misleading representations to prospective franchisees, in proceedings brought by the ACCC. Megasave's sole director Gary Bourne has also been ordered to pay a penalty of \$120,000.

In March 2021, the Court declared by consent that Megasave made false or misleading representations to prospective franchisees about guaranteed minimum weekly payments and guaranteed annual income, and that its sole director Gary Bourne was knowingly concerned in the conduct. More information can be found on the [ACCC website](#).

20.1A If the franchisor gives earnings information to a prospective transferee or a franchisee before giving the prospective franchisee or franchisee a copy of the disclosure document relating to the franchise, the franchisor must also give the prospective franchisee or franchisee earnings information in the disclosure document or an attachment to it.

20.2 Earnings information includes the following information:

- (a) historical earnings data for:
 - (i) the franchised business; or
 - (ii) a franchise in the franchise system;
- (b) if subparagraph (a)(ii) applies—any differences between the franchise in the franchise system and the franchised business;
- (c) projected earnings for the franchised business and the assumptions on which those projections are based;
- (d) any other information from which historical or future earnings information of the franchised business can be assessed.

TIP: If you are providing or offering an income guarantee, this may need to be disclosed as future earnings information. We recommend you seek legal advice on this.

20.2A If earnings information is given by the franchisor in the disclosure document or an attachment to it—the following statement:

To the best of the franchisor's knowledge, the earnings information given is accurate (other than particular earnings information specified in the document as earnings information that the franchisor knows is not accurate).

20.3 If earnings information is not given—the following statement:

The franchisor does not give earnings information about a [insert type of franchise] franchise.

Earnings may vary between franchises.

The franchisor cannot estimate earnings for a particular franchise.

20.4 Earnings information that is a projection or forecast must include the following details:

(a) the facts and assumptions on which the projection or forecast is based;	
(b) the extent of enquiries and research undertaken by the franchisor and any other compiler of the projection or forecast;	
(c) the period to which the projection or forecast relates;	
(d) an explanation of the choice of the period covered by the projection or forecast;	
(e) whether the projection or forecast includes depreciation, salary for the franchisee and the cost of servicing loans;	
(f) assumptions about interest and tax.	

21. Financial details

CAUTION: Obtain legal, accounting and/or other relevant professional advice when completing this item. You should refer to subclause 17(1) of the Code and note your continuous disclosure obligation relating to financial details set out in this item up to the time the franchise agreement is signed.

Significant penalties may be imposed on you by a court, or the ACCC may issue an infringement notice with a penalty, if you provide a prospective franchisee with out-dated financial details or if you fail to give (as soon as reasonably practicable but in any event before the franchisee or prospective franchisee signs the agreement) a new statement, declaration or document if it has come into existence. The maximum penalty for each contravention of s 17(1) will be:

For corporations, the greater of

- \$10,000,000
- If the court can determine 'reasonably attributable' benefit obtained, 3 times that value, or
- If the court cannot determine benefit, 10% of the annual turnover in the preceding 12 months

For individuals

- \$500,000

21.1 A statement of the franchisor's solvency that:

(a) reflects the franchisor's position:

(i) at the end of the last financial year; or

(ii) if the franchisor did not exist at the end of the last financial year—at the date of the statement; and

- (b) is signed by at least one director of the franchisor; and
- (c) gives the directors' opinion as to whether there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.

TIP: It is considered good business practice to date your solvency statement as at the date it is signed by the director.

21.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the franchisor, prepared by the franchisor.

NOTE: See also items 21.4 to 21.6.

21.3 If:

- (a) the franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the consolidated entity; and
- (b) a franchisee requests those financial reports;
financial reports for each of the last 2 completed financial years, prepared by the consolidated entity.

NOTE: See also items 21.4 to 21.6.

TIP: The obligation in item 21.3 is in addition to your obligations under item 21.2 if applicable.

21.4 Items 21.2 and 21.3 do not apply if:

- (a) the statement under item 21.1 is supported by an independent audit provided by:
 - (i) a registered company auditor; or
 - (ii) if the franchisor is a foreign franchisor—a foreign equivalent for that franchisor; within 4 months after the end of the financial year to which the statement relates; and
- (b) a copy of the independent audit is provided with the statement under item 21.1.

TIP: The independent audit report must express an opinion as to whether there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due. Refer to the Australian Audit and Assurance Standards Board guidance statement publications GS018 for guidance on what is required for an audit report.

21.5 If the franchisor or consolidated entity (the *entity*) has not existed for 2 or more financial years, then instead of providing the financial reports mentioned in item 21.2 or 21.3, the following:

- (a) a statutory declaration of the entity's solvency;
- (b) an independent audit report on the entity's solvency as at the date of the entity's declaration.

21.6 If the franchisor or consolidated entity (the *entity*) was insolvent in either or both of the last 2 completed financial years, the following:

- (a) a statement of the period during which the entity was insolvent;
- (b) a statutory declaration of the entity's solvency;
- (c) an independent audit report on the entity's solvency as at the date of the entity's declaration.

22. Updates

- 22.1 Any information given under clause 17 that has changed between the date of the disclosure document and the date the disclosure document is given under the code:

TIP: The reference above in 22.1 to “clause 17” refers to clause 17 of the Franchising Code, disclosure of materially relevant facts.

23. Receipt

- 23.1 On the last page of the disclosure document:
- (a) a statement to the effect that the prospective franchisee may keep the disclosure document; and
 - (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

TIP: This form to acknowledge receipt should be completed and dated the day that the document is received by the franchisee or prospective franchisee. The acknowledgement of receipt will be an indication as to when the 14 day disclosure period commenced. The prospective franchisee can only enter into a franchise agreement after this disclosure period has ended (see clause 9 of the Code).

This form to acknowledge receipt should be separate and distinct from the acknowledgement that the franchisee has read and had a reasonable opportunity to understand the disclosure document and the Code.

Guidance

ANNEXURE

TIP: This form to acknowledge receipt is an example template of a receipt provided by the ACCC. It should be at the end of your disclosure document and annexures.

FORM TO ACKNOWLEDGE RECEIPT OF DISCLOSURE DOCUMENT

I acknowledge receipt of this disclosure document dated [include a date] attaching:

1. copy of the [include the franchise system name] franchise agreement in the form in which it is to be executed; and
2. the Franchising Code of Conduct; and
3. [Include a list all of the additional attachments.]

from the franchisor on the day of 20

.....
On behalf of the prospective franchisee/franchisee

.....
Print name

.....
Date

STATEMENT: The franchisee or prospective franchisee may keep this disclosure document.

TIP: the Information Statement is now separate to the Code and disclosure document.

You must still give a copy of the information statement 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 of the Code (including the disclosure document).

The information statement for prospective franchisees is available from the [ACCC website](#).

The requirement to give a prospective franchisee a copy of the information statement does not apply to the renewal of a franchise agreement or to the extension of the term or scope of a franchise agreement.