

2023 FRANCHISING KEY DEVELOPMENTS

This fact sheet outlines the latest regulatory developments to help franchisors stay compliant.

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UNFAIR CONTRACT LAWS



- The Treasury Laws Amendment (More Competition, Better Prices) Bill 2022 expands unfair contract laws, with potential penalties up to \$50 million per breach for corporations. It takes effect on November 9, 2023.
- Franchisors should review their agreements to identify and modify any potentially unfair terms.
- Seek legal advice to assist with compliance and avoid penalties.

MISLEADING AND DECEPTIVE CONDUCT



- Franchisors must avoid misleading or deceptive conduct and ensure that pre-contractual statements are accurate to avoid disputes with franchisees
- Such conduct may result in financial penalties and render the franchise agreement unenforceable and/or render the franchisor liable for damages.
- Franchisors should be cautious when making specific statements, particularly before the contract is signed, and include a disclaimer if in doubt.

SUPER PENALTY PROVISIONS



- From April 15, 2022, amendments to the Franchising Code of Conduct (Clauses 17, 33, 46A(1),(2)(3), and 46B) introduced new “super penalties” for breaches.
- Franchisors who are corporations face penalties of the greater of: \$10 million, 3 times the contravention’s value (if determinable), or 10% of the annual turnover (if indeterminable).

VULNERABLE WORKERS OBLIGATIONS



- The Fair Work (Protecting Vulnerable Workers) Act 2017 holds franchisors accountable for a franchisee’s breach where they failed to take reasonable steps to ensure compliance.
- The ACCC commenced proceedings against 85 Degrees Coffee Australia for its franchisees’ actions (namely, underpayments and breaching record-keeping obligations); 85 Degrees had no direct contracts with the impacted employees.
- Franchisors must take reasonable steps to ensure franchisee compliance to avoid liability.

MARKETING FUND COMPLIANCE



- The Franchising Code of Conduct imposes limitations on franchisor use of marketing funds.
- Specific marketing fund details must be included in the Disclosure Document and Key Fact Sheet. Franchisors must prepare annual financial statements outlining income and expenditure.
- Funds can only be used for agreed expenses.
- Non-compliance risks financial penalties with potential claims by the ACCC or franchisees.

FRANCHISE DISCLOSURE REGISTER



- Franchisors must disclose key information, including name, ABN, address, phone, and email in the Franchise Disclosure Register.
- The register must be updated by October 31 each year, or franchisors face significant penalties.