

FRANCHISOR LEGAL HEALTH CHECKLIST

This legal health checklist will help you to identify areas in your network that may need further protection or assistance to ensure that you are legally compliant.

PROMOTION + FRANCHISE RECRUITMENT SYSTEMS



Franchisee recruitment is an important part of any franchise network, but issues can arise as a consequence of making misleading statements and false promises in the pre-contract phase. This leaves the Franchisor vulnerable to Franchisee claims and/or ACCC penalties. To help assess your vulnerability here, franchisors should check:

- Promotional advertisements, sales team communications and franchise brochures have been reviewed for accuracy and any risky or misleading statements have been removed
- Financial models and estimated franchisee revenue are based on historical data with legal disclaimers
- Staff are trained on key legal risks from franchisees including claims of misleading and deceptive conduct

FRANCHISE DOCUMENT UPDATES & DISCLOSURE



Franchisors should conduct a regular review of their documents and internal processes and seek legal input on significant changes in the management of the network, including:

- Disclosure document costs are reviewed by an accountant each financial year and cross-referenced with bookkeeping data
- A Franchisor profile has been created on the Franchise Disclosure Register
- The Disclosure document and key facts sheet are updated by 31 October annually
- Financial reports for the last two financial years or annual audit report annexed to disclosure document at item 21
- Annual rebates and financial benefits are included in the disclosure document
- Legal review of franchise agreement for unfair contract terms is completed

CONTRACT FORMATION



The Code has strict requirements for the disclosure process and timing of contract formation, but a lot of networks do not strictly comply, which can result in penalties. Here, franchisors should check:

- The information statement for prospective franchisees is sent within seven days of receiving an expression of interest per clause 11 of the Code
- Any deposits taken before the Franchise Agreement is signed are noted as “refundable” and a deposit receipt is provided per clause 9(1) of the Code
- Particularised franchise documents are provided per clause 9(1A) of the Code 14 days before they are signed or any franchise fee paid

VULNERABLE WORKERS OBLIGATIONS



Franchisors must take reasonable steps to ensure their franchisees comply with workplace laws. To assist with this, franchisors should ensure:

- The operation manuals identify key workplace policies, laws and guidelines
- Franchisor undertakes regular employment legal compliance audits across the franchise network
- The franchisor has an internal complaint-handling procedure for franchisee employees
- Franchisee training is conducted on best practice

FRANCHISOR LEGAL HEALTH CHECKLIST

INTELLECTUAL PROPERTY



Intellectual Property is at the heart of every franchise; it is their brand, their systems, and what makes them unique. Despite this, a lot of franchisors do not have adequate IP protection in place. Franchisors should ensure:

- Dual or multi-company structure (holding company and operating company) is implemented
- Trade marks for the network's name/logo are registered
- The franchisor legally owns improvements or developments to intellectual property
- Franchisees do not have access to critical intellectual property such as business secrets or the client database
- The franchisor is able to monitor duplication, export or sharing of customer data and conduct audits
- The Franchise Agreement protects the franchisor's intellectual property and confidential information

MARKETING FUND COMPLIANCE



The Code is strict on how marketing fund monies can be collected, and applied, as well as the required disclosure.

- Marketing fund income and expenses are in a separate bank account with detailed records
- Marketing fund only used for allowable marketing purposes
- Disclosure document sets out details of marketing fund at item 15
- Annual statement prepared and audited (unless franchisees vote not to audit)
- The Marketing fund report is prepared by an accountant and reviewed by your legal team each new financial year and before the September deadline

DATA AND PRIVACY



In franchises, where personal information is often shared between franchisors and franchisees, it is vital to have appropriate policies and procedures in place.

- Privacy and data-sharing policies have been prepared/ reviewed for legal compliance
- The franchisor data management processes and governance measures are reviewed for vulnerabilities
- Training is provided to franchisees about privacy obligations with personal information about customers
- An information collection notice is drafted and provided to franchisees

UNFAIR CONTRACT LAWS



From November 2023, significant penalties may be imposed against entities that contravene the Unfair Contract Laws by including an unfair contract term in their standard form contracts. These laws will likely apply to most franchise agreements, as well as terms and conditions, supply agreements and similar.

- Franchise Agreement updated in light of these laws
- Processes amended to make related agreements available before the franchise agreement is signed
- Standard form contracts, such as supply agreement, reviewed and amended as necessary

CONTACT US

visit our website | legalvision.com.au
email us | info@legalvision.com.au
call us | 1300 544 755