

The Reform of franchising in Australia: introduction of the new Franchising Code of Conduct

The new Franchising Code of Conduct (*Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth) (Franchising Code of Conduct)*) was enacted on 30 October 2014 and entered into force on 1 January 2015, replacing the 1998 Franchising Code of Conduct.

Apart from certain provisions which are expressly excluded or with transitional arrangements, the new Code applies to all conducts occurring on and after 1 January 2015 and not only to franchise agreements executed or renewed after that date.

Three major changes retain our attention:

- The implementation of a general duty to act in good faith, which is however not expressly defined and which is in our views merely a codification of the existing case law.
- New disclosure obligations, with the removal of the “double disclosure” obligation imposed on master franchise systems, under which franchisors are no longer required to provide disclosure documents to sub-franchisees.
- Amended dispute resolution rules, under which franchise agreements signed on or after 1 January 2015 cannot contain a clause which requires mediation or proceedings to be brought outside Australia or outside of where the franchised business is located.

The reform introduces as well new civil penalties, rules in relation to marketing funds and capital expenditure, new record keeping obligations and restrictions on restraint of trade rules.

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