

FRANCHISING IN AUSTRALIA

The franchising industry is worth in excess of \$80 billion a year and employs about 600,000 Australians.

Franchising (from the French for *honesty* or *freedom*) is a means of doing business where a franchisor licenses intellectual property and proven methods of doing business to a franchisee in exchange for ongoing payments comprising a percentage of gross sales or gross profits and annual fees. In return advertising, training and other support services are usually made available to the franchisee.

A franchise agreement will usually specify the territory the franchisee retains exclusive control over as well as the extent to which a franchisee will be supported by the franchisor in relation to marketing and training.

Franchising offers franchisees the advantage of starting up a new business based on a proven trade mark and method of doing business, as opposed to having to build a new business and brand from scratch. A well run franchise should offer a turnkey business, from site selection to lease negotiation, training, mentoring and ongoing support as well as statutory requirements and troubleshooting. Franchisors often offer franchisees considerable training which would not normally be available to individuals starting up their own business.

For franchisees, the main disadvantage of franchising is a loss of control. While they gain the use of a system, trade marks, training and marketing, the franchisee is required to follow the system and get approval for changes from the franchisor. For these reasons, franchisees and entrepreneurs are very different.

Because of standards set by the franchisor, the franchisee often has no choice in regard to signage and shop fittings and may not be allowed to source less expensive alternatives. Added to that is the franchise fee and ongoing royalties and advertising contributions. The franchisee may also be contractually bound to spend money on various improvements as demanded by the franchisor. If you are creative and like to be independent then a franchise may not be for you.

Another problem is that the franchisor/franchisee relationship can easily cause conflict if either side is incompetent or not acting in good faith. An incompetent franchisee can do great harm to the public's goodwill towards the franchisor's brand by providing inferior goods or services. On the other hand an incompetent franchisor can seriously hurt its franchisees by failing to promote the brand properly.

Franchising Code of Conduct

The Franchising Code of Conduct ensures that franchisees are informed of all relevant facts when starting their business, and that they can access a fast and relatively inexpensive way to resolve any disputes. It achieves this by requiring franchisors to disclose specific facts to franchisees and to follow set procedures in their dealings with franchisees. If a dispute arises, either party can require the other to attend mediation.

The Code also ensures that franchisees seek advice from a legal adviser, business adviser or accountant. Potential franchisees must sign a statement that they have been given independent advice or that they were told to seek such advice and chose not to do so.

The Franchising Code of Conduct is a mandatory code under the Trade Practices Act 1974 and as such has the force of law. When problems associated with the code arise, the ACCC will usually recommend mediation as the first and best option. However, if it is obvious that the franchisor has not been diligent in complying with the code or is using its superior bargaining power to disadvantage the franchisee, the ACCC may decide to take action on the franchisee's behalf.

This article contains general information only and is not provided as legal advice. Professional advice should be taken before any course of action is pursued, or any information here is relied upon.

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