



# **Competition and Consumer (Industry Codes— Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 28 May 2020

David Hurley  
Governor-General

By His Excellency's Command

Karen Andrews  
Minister for Industry, Science and Technology  
for the Treasurer

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## 1 Name

This instrument is the *Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	30 May 2020
2. Schedule 1	1 June 2020.	1 June 2020
3. Schedule 2	At the same time as section 15 of the <i>Road Vehicle Standards Act 2018</i> commences.	1 July 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments commencing 1 June 2020

### *Competition and Consumer (Industry Codes—Franchising) Regulation 2014*

#### 1 Subclause 4(1) of Schedule 1

Insert:

*new light goods vehicle* means a new vehicle of the kind referred to in clause 4.5.5 of the Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005.

*new passenger vehicle* means a new vehicle of a kind referred to in clause 4.3 of the Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005.

*new vehicle* has the same meaning as in the *Motor Vehicle Standards Act 1989*.

*new vehicle dealership agreement* means a motor vehicle dealership agreement relating to a motor vehicle dealership that predominantly deals in new passenger vehicles or new light goods vehicles (or both).

Note: A motor vehicle dealership agreement is taken to be a franchise agreement (see paragraph 5(2)(c)).

#### 2 Subclause 4(1) of Schedule 1 (definition of *significant capital expenditure*)

Repeal the definition, substitute:

*significant capital expenditure*:

- (a) in relation to a franchise agreement other than a new vehicle dealership agreement—has a meaning affected by subclause 30(2); and
- (b) in relation to a new vehicle dealership agreement—has a meaning affected by subclause 50(2).

#### 3 Subdivision B of Division 2 of Part 3 of Schedule 1 (heading)

Repeal the heading, substitute:

### **Subdivision B—Notification obligations (other than for new vehicle dealership agreements)**

#### 4 Before clause 18 of Schedule 1

Insert:

#### 17A Application of Subdivision

This Subdivision does not apply to a new vehicle dealership agreement.

Note: For new vehicle dealership agreements, see Division 2 of Part 5.

#### 5 At the end of clause 30 of Schedule 1

Add:

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- (3) This clause does not apply in relation to a new vehicle dealership agreement.

Note: For new vehicle dealership agreements, see Division 3 of Part 5.

## **6 At the end of clause 35 of Schedule 1**

Add:

Note: See also Division 4 of Part 5 in relation to new vehicle dealership agreements.

## **7 After Part 4 of Schedule 1**

Insert:

# **Part 5—New vehicle dealership agreements**

## **Division 1—Preliminary**

### **46 Application of Part**

This Part applies to new vehicle dealership agreements.

## **Division 2—End of term obligations**

Note: Subdivision B of Division 2 of Part 3 does not apply to new vehicle dealership agreements (see clause 17A).

### **47 Notification obligation—franchisor**

- (1) The franchisor of a franchise agreement must notify the franchisee, in writing, whether the franchisor intends to:
  - (a) extend the agreement; or
  - (b) enter into a new agreement; or
  - (c) neither extend the agreement nor enter into a new agreement.
- (2) If the term of the agreement is 12 months or longer, the franchisor's notice must be given:
  - (a) at least 12 months before the end of the term of the agreement; or
  - (b) if the parties to the agreement agree on a later time—before that later time.

Civil penalty: 300 penalty units.

- (3) If the term of the agreement is less than 12 months, the franchisor's notice must be given:
  - (a) if the term of the agreement is 6 months or longer—at least 6 months before the end of the term of the agreement; and
  - (b) if the term of the agreement is less than 6 months—at least 1 month before the end of the term of the agreement.

Civil penalty: 300 penalty units.

- (4) If the franchisor intends to enter into a new agreement, the franchisor's notice must include a statement to the effect that, subject to subclause 16(2), the franchisee may request a disclosure document under clause 16.

Civil penalty: 300 penalty units.

- (5) If the franchisor gives a notice that the franchisor intends to neither extend the agreement nor enter into a new agreement, the notice must include the reasons for the franchisor's intention.

Civil penalty: 300 penalty units.

#### **48 Notification obligation—franchisee**

- (1) The franchisee of a franchise agreement must notify the franchisor, in writing, whether the franchisee intends to:
- (a) renew the agreement; or
  - (b) enter into a new agreement; or
  - (c) neither renew the agreement nor enter into a new agreement.
- (2) If the term of the agreement is 12 months or longer, the franchisee's notice must be given:
- (a) at least 12 months before the end of the term of the agreement; or
  - (b) if the parties to the agreement agree on a later time—before that later time.
- (3) If the term of the agreement is less than 12 months, the franchisee's notice must be given:
- (a) if the term of the agreement is 6 months or longer—at least 6 months before the end of the term of the agreement; and
  - (b) if the term of the agreement is less than 6 months—at least 1 month before the end of the term of the agreement.
- (4) If the franchisee gives a notice to the franchisor that the franchisee intends to neither renew the agreement nor enter into a new agreement, the notice must include the reasons for the franchisee's intention.

#### **49 Obligation to manage winding down of agreement**

- (1) This clause applies if:
- (a) under clause 47, the franchisor gives the franchisee a notice that the franchisor intends to neither extend the agreement nor enter into a new agreement; or
  - (b) under clause 48, the franchisee gives the franchisor a notice that the franchisee intends to neither renew the agreement nor enter into a new agreement.
- (2) The parties must, as soon as practicable, agree to a written plan (with milestones) for managing the winding down of the dealership, including how the franchisee's stock (including new vehicles, spare parts and service and repair equipment) will be managed over the remaining term of the agreement.
- (3) The parties must cooperate to reduce the franchisee's stock of new vehicles and spare parts over the remaining term of the agreement.



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## **Division 3—Capital expenditure**

### **50 Significant capital expenditure not to be required**

- (1) A franchisor must not require a franchisee to undertake significant capital expenditure in relation to a franchised business during the term of the franchise agreement.
- (2) For the purposes of subclause (1), *significant capital expenditure* excludes the following:
  - (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.

Note: Clause 30 (capital expenditure) does not apply to new vehicle dealership arrangements (see subclause 30(3)).

### **51 Information and discussion about capital expenditure**

- (1) This clause applies if a disclosure document for an agreement discloses expenditure of the kind mentioned in paragraph 50(2)(a).
- (2) The franchisor must include in the disclosure document as much information as practicable about the expenditure, including the following:
  - (a) the rationale for the expenditure;
  - (b) the amount, timing and nature of the expenditure;
  - (c) the anticipated outcomes and benefits of the expenditure;
  - (d) 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.

- (3) 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.
- (4) 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.

## **Division 4—Resolving disputes**

### **52 Franchisees may request multi-franchisee dispute resolution**

- (1) This clause applies if:

- (a) a franchisor has entered into franchise agreements with 2 or more franchisees; and
  - (b) 2 or more of the franchisees each have a dispute of the same nature with the franchisor.
- (2) Two or more of the franchisees mentioned in paragraph (1)(b) may ask the franchisor to deal with the franchisees together about the dispute.

Note: See also Part 4 (resolving disputes).

## **Part 6—Application, saving and transitional provisions**

### **Division 1—Amendments made by the Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020**

#### **54 Definitions**

In this Division:

*amending regulations* means the *Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020*.

*commencement date* means 1 June 2020.

#### **55 End of term obligations**

*Agreements entered into on or after commencement date*

- (1) Division 2 of Part 5, as inserted by the amending regulations, applies to:
- (a) a new vehicle dealership agreement that is entered into on or after the commencement date; and
  - (b) such an agreement as later renewed or extended.

*Agreements in force immediately before commencement date*

- (2) Subclauses (3) and (4) apply to a new vehicle dealership agreement that was in force immediately before the commencement date.
- (3) Despite the amendments made by the amending regulations, Subdivision B of Division 2 of Part 3, as in force immediately before the commencement date, continues to apply to the agreement (subject to subclause (4)).
- (4) If the agreement is later renewed or extended, then, on and after the renewal or extension:
- (a) Subdivision B of Division 2 of Part 3, as in force immediately before the commencement date, does not apply to the agreement (as renewed or extended); and
  - (b) Division 2 of Part 5, as inserted by the amending regulations, applies to the agreement (as renewed or extended).

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**56 Capital expenditure***Application of clause 50*

- (1) Clause 50, as inserted by the amending regulations, applies to a new vehicle dealership agreement if:
  - (a) the disclosure document for the agreement is created or updated on or after the commencement date; and
  - (b) the agreement is entered into, renewed or extended after the creation or updating of the disclosure document.

*Application of clause 30*

- (2) Despite the amendments made by the amending regulations, clause 30, as in force immediately before the commencement date, continues to apply to a new vehicle dealership agreement that was entered into, renewed or extended before the commencement date.
- (3) Despite the amendments made by the amending regulations, clause 30, as in force immediately before the commencement date, also continues to apply to a new vehicle dealership agreement if:
  - (a) the disclosure document for the agreement was created, or most recently updated, before the commencement date; and
  - (b) the agreement is entered into, renewed or extended on or after the commencement date.

*Application of clause 51*

- (4) Clause 51, as inserted by the amending regulations, applies in relation to a disclosure document:
  - (a) that is created or updated on or after the commencement date; and
  - (b) that is for a new vehicle dealership agreement that is to be entered into, renewed or extended after the creation or updating of the disclosure document.

**57 Resolving disputes**

Clause 52, as inserted by the amending regulations, applies to a new vehicle dealership agreement that is entered into, renewed or extended before, on or after the commencement date.

**58 Review of amendments**

- (1) The Minister must cause a review of the operation of the amendments made by the amending regulations to be conducted before 1 April 2024.
- (2) The Minister must cause a written report of the review to be prepared.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

## **Schedule 2—Amendments relating to commencement of the Road Vehicle Standards Act 2018**

### ***Competition and Consumer (Industry Codes—Franchising) Regulation 2014***

**1 Subclause 4(1) of Schedule 1 (definition of *new light goods vehicle*)**

Omit “new vehicle”, substitute “new road vehicle”.

**2 Subclause 4(1) of Schedule 1 (definition of *new passenger vehicle*)**

Omit “new vehicle”, substitute “new road vehicle”.

**3 Subclause 4(1) of Schedule 1**

Insert:

*new road vehicle* has the same meaning as in section 78 of the *Road Vehicle Standards Act 2018*.

**4 Subclause 4(1) of Schedule 1 (definition of *new vehicle*)**

Repeal the definition.