

EXPLANATORY STATEMENT

Issued by authority of the Secretary of the Department of the Treasury

Competition and Consumer (Industry Codes–Franchising) Regulations 2024

Competition and Consumer (Industry Codes–Franchising) (Additional Information Required by the Secretary) Amendment Determination 2025

Section 51AE of the *Competition and Consumer Act 2010* (the Act) allows the regulations to prescribe industry codes to regulate the conduct of participants in an industry towards other participants in the industry. One such code is the Franchising Code of Conduct contained in Chapter 2 of the *Competition and Consumer (Industry Codes–Franchising) Regulations 2024* (the Regulations), which enhances the welfare of Australians by promoting competition and fair trading in the franchising sector.

Subsection 51AE(1A) of the Act allows an industry code to confer on a person or body a function or power in relation to the code. Subsection 51AE(1C) of the Act allows a code to provide that such a power or function is to be exercised by legislative instrument. The *Competition and Consumer (Industry Codes–Franchising) (Additional Information Required by the Secretary) Determination 2022* (2022 Determination) was made under the *Competition and Consumer (Industry Codes–Franchising) Regulation 2014* (2014 Regulations), which sunset on 1 April 2025.

Section 101 of the Regulations saves the 2022 Determination, despite the 2014 Regulations sunsetting (and being repealed) on 1 April 2025. The *Competition and Consumer (Industry Codes–Franchising) (Additional Information Required by the Secretary) Amendment Determination 2025* (the Amendment Determination) amends the 2022 Determination.

The Regulations were made by the Governor-General on 5 December 2024 and commence on 1 April 2025. Prior to the Regulations being made, the Government tabled and published the 2023 Independent Review of the Franchising Code of Conduct report (the Review) on 8 February 2024, which included a sunset review of the 2014 Regulations. The Review found that the 2014 Regulations were generally fit-for-purpose but could be remade with some changes to improve operation. The May 2024 Government response to the Review agreed or agreed-in-principle with all 23 recommendations. Eleven recommendations have been actioned through the Regulations, which remade the 2014 Regulations.

Recommendation 11 stated that additional information should be included on the Franchise Disclosure Register (FDR) relating to dispute resolution and any adverse actions brought by enforcement agencies as well as provide further information about the arbitration process available to franchisees. The Amendment Determination implements this recommendation as well making general updates to refer to the current Regulations rather than the 2014 Regulations.

Public consultation occurred as part of the Independent Review of the Franchising Code of Conduct, which included a public consultation paper which received 95 responses, more than 40 stakeholder roundtables and meetings, and 544 survey responses. The recommendations were a result of this extensive consultation. The broad categories of

information that should be disclosed on the FDR also align with information that needs to be included in a franchisor's disclosure document that is outlined in Schedule 1 of the Regulations. An exposure draft of the Regulations, including Schedule 1, was released for public consultation from 9 October 2024 to 29 October 2024. The Department of the Treasury received 27 submissions from franchising industry stakeholders. Stakeholders were broadly supportive of the Regulations and feedback was incorporated into the Regulations where appropriate. Due to these previous consultations and as the instrument is administrative in nature, further consultation was not necessary for the Amendment Determination.

Details of the Amendment Determination are set out in [Attachment A](#).

The Amendment Determination is subject to disallowance under section 42 of the Legislation Act 2003.

The Amendment Determination is subject to sunseting under Part 4 of the *Legislation Act 2003*.

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Determination commences on the later of the day after it is registered and 1 April 2025.

A Statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Competition and Consumer (Industry Codes–Franchising) (Additional Information Required by the Secretary) Amendment Determination 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Competition and Consumer (Industry Codes–Franchising) (Additional Information Required by the Secretary) Amendment Determination 2025* (the Amendment Determination).

Section 2 – Commencement

The instrument commences on the later of the day after this instrument is registered and 1 April 2025.

Section 3 – Authority

The instrument is made under the *Competition and Consumer (Industry Codes–Franchising) Regulation 2024* (the Regulations).

Section 4 – Schedules

Section 4 notes that the instrument is amended as outlined in Schedule 1.

Schedule 1 – Amendments

Item 1 – new Regulations

Item 1 replaces references to the *Competition and Consumer (Industry Codes–Franchising) Regulation 2014* (2014 Regulations) that sunset on 1 April 2025, with the Regulations.

Item 2 – definitions

Item 2 provides that the term ‘*Franchising Regulations*’ means the *Competition and Consumer (Industry Codes–Franchising) Regulations 2024*.

Other expressions have the same meaning as in the Regulations as in force from time to time, in accordance with paragraph 13(1)(b) of the *Legislation Act 2003*. This includes the meaning of disclosure document.

Item 3 – repeal section 5

Item 3 repeals section 5 of the *Competition and Consumer (Industry Codes–Franchising) (Additional Information Required by the Secretary) Determination 2022*. This provision is no longer necessary as it was a transitional provision for franchisors that gave a disclosure document on or before 31 October 2022, and an equivalent provision to clause 53C of Schedule 1 to the 2014 Regulations has been omitted from the Regulations.

Item 4 – updating references to subsection 92(4)

Item 4 updates subsection 6(1) to include references to subsection 92(4) of the Regulations, previously subclause 53D(4) of Schedule 1 to the 2014 Regulations, where franchisors are required to provide the Secretary with the information specified in the new section 6 in relation to the franchisor's disclosure documents. References to clause 53C of Schedule 1 to the 2014 Regulations, are removed for reasons noted in item 3.

Items 5 and 7 – additional information to provide to the Secretary

Item 5 adds to the list of additional information that a franchisor must provide to the Secretary under subsection 7(2). In particular, a franchisor must disclose whether the franchisor, an associate of the franchisor, or a director of the franchisor or an associate, has been:

- convicted of a serious offence (or equivalent outside Australia) in the last 10 years;
- subject to final judgment in civil proceedings for a matter mentioned in item 4(1) of Schedule 1 to the Regulations in the last 5 years; or
- bankrupt, insolvent under administration or a Chapter 5 body corporate (within the meaning of the Corporations Act) in Australia or elsewhere.

This assists prospective franchisees gain further information that is relevant to deciding whether to enter into a franchise agreement with a franchisor. The above information assists in letting prospective franchisees know about the franchisor's compliance history.

Collection and use of personal information by Government is subject to the *Privacy Act 1988* (Privacy Act). The Privacy Act imposes obligations to protect personal information, ensuring its collection and use are in accordance with law and any limitations of privacy are reasonable in the circumstances. As such, the Secretary will collect and securely handle personal information in relation to the FDR in accordance with obligations under the Privacy Act.

Supporting this, existing provisions in the Regulations ensure the FDR does not include personal information other than information of the franchisor or identifying information of franchise sites, to protect privacy and commercial sensitivities. The following safeguards are in place in the Regulations to protect any personal information that may be provided:

- the Secretary's power to require a franchisor provide additional information for inclusion in the FDR is subject to express limits, including that it must be drawn from a disclosure document, and it cannot include personal information other than that of the franchisor;
- the Secretary has the power to remove personal information or documents that contain personal information other than that of the franchisor from the FDR.

Accordingly, collecting this information is reasonable in the circumstances as it supports a core function of the FDR which is to provide information that is relevant to prospective franchisees prior to entering into a franchise agreement. Any information a franchisor must provide on court proceedings and judgements is restricted to historical information about concluded processes. This information is already publicly available. The purpose of the FDR is to provide another mechanism to protect prospective franchisees when entering into agreements, particularly where there may be uneven bargaining power. This additional

information will enhance the ability of prospective franchisees to make informed decisions about franchise systems that they are considering purchasing by enabling them to easily compare information about different franchise systems.

Item 7 also adds to the list under subsection 7(2) by requiring the franchisor to provide information about whether the franchise agreement provides for arbitration of disputes in a manner consistent with the Regulations. This is intended to improve awareness of the option to use voluntary binding arbitration facilitated by the Australian Small Business and Family Enterprise Ombudsman and the broader arbitration provisions included in Subdivision C of Division 2 of Part 5 of Chapter 2 of the Regulations.

Item 6 – updating references

Item 6 is a minor update to include the correct reference to paragraph 7(2)(b) under paragraph 7(2)(c). This clarifies that when providing information on the number of existing franchised businesses and franchisees, and businesses owned or operated by the franchisor or an associate of the franchisor in Australia that are substantially the same as the franchised business, the franchisor should provide information on each State or Territory in which the business or franchisee operates.

Items 8 and 9 – removal of notes

Item 9 repeals the notes that were under paragraphs 7(2)(a) to (m), not including the examples. This is because that information can be noted in communication materials but has no legal effect. The new note in item 8 still signposts that each paragraph pertains to an item under Schedule 1 of the Regulations.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Competition and Consumer (Industry Codes – Franchising) (Additional Information Required by the Secretary) Amendment Determination 2025

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 51AE of the *Competition and Consumer Act 2010* (the Act) allows the regulations to prescribe industry codes to regulate the conduct of participants in an industry towards other participants in the industry. One such code is the Franchising Code of Conduct contained in Chapter 2 of the

–*Franchising) Regulations 2024* (the Regulations), which enhances the welfare of Australians by promoting competition and fair trading in the franchising sector.

Subsection 51AE(1A) of the Act allows an industry code to confer on a person or body a function or power in relation to the code. Subsection 51AE(1C) of the Act allows a code to provide that such a power or function is to be exercised by legislative instrument. The *Competition and Consumer (Industry Codes—Franchising) (Additional Information Required by the Secretary) Determination 2022* (2022 Determination) was made under the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014* (2014 Regulations) which sunset on 1 April 2025.

Section 101 of the Regulations saves the 2022 Determination, despite the 2014 Regulations sunsetting (and being repealed) on 1 April 2025. The *Competition and Consumer (Industry Codes – Franchising) (Additional Information Required by the Secretary) Amendment Determination 2025* (the Amendment Determination) amends the 2022 Determination.

The Amendment Determination removes a transitional provision linked to an outdated provision of the 2024 Regulations, adds to the list of additional information franchisors must provide to the Secretary for the Franchise Disclosure Register (FDR), and aligns the wording in the Determination with the wording of the Regulations since it has been updated.

Human rights implications

This Legislative Instrument engages the following rights:

- The right to protection from arbitrary or unlawful interference with privacy under article 17 of the ICCPR.

Right to Privacy

Article 17(1) of the ICCPR provides for the right to not be subjected to arbitrary or unlawful interference with an individual's privacy. In order for the interference with privacy not to be 'arbitrary', any interference must be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality to the end sought and necessity in the circumstances.

Item 5 of the Amendment Determination requires a franchisor to provide the following additional information to the Secretary:

- Whether the franchisor, associate or director of the franchisor was convicted of a serious offence (or equivalent outside Australia) in the last 10 years,
- Subject to final judgment in civil proceedings for a matter mentioned in item 4(1) of Schedule 1 to the Regulations in the last 5 years, or
- Bankrupt, insolvent under administration or a Chapter 5 body corporate (within the meaning of the *Corporations Act 2001*) in Australia or elsewhere.

Collection and use of personal information by Government is subject to the *Privacy Act 1988* (Privacy Act), which gives effect to the right to privacy under the ICCPR. The Privacy Act imposes obligations to protect personal information, ensuring its collection and use are in accordance with law and any limitations of privacy are reasonable in the circumstances. As such, the Secretary will collect and securely handle personal information in relation to the FDR in accordance with obligations under the Privacy Act.

Supporting this, existing provisions in the Regulations ensure the FDR does not include personal information other than information of the franchisor or identifying information of franchise sites, to protect privacy and commercial sensitivities. The following safeguards are in place in the Regulations to protect any personal information that may be provided:

- The Secretary's power to require a franchisor provide additional information for inclusion in the FDR is subject to express limits, including that it must be drawn from a disclosure document, and it cannot include personal information other than that of the franchisor.
- The Secretary has the power to remove personal information or documents that contain personal information other than that of the franchisor from the FDR.

Accordingly, to the extent that the Determination engages the right to privacy, that engagement is reasonable, proportionate and necessary for a legitimate purpose in the circumstances as it supports a core function of the FDR which is to provide information that is relevant to prospective franchisees prior to entering into a franchise agreement. Any information a franchisor must provide on court proceedings and judgements is restricted to historical information about concluded processes. This information is already publicly available, and its provision thus does not further limit the right to privacy. The purpose of the FDR is to provide another mechanism to protect prospective franchisees when entering into agreements, particularly where there may be uneven bargaining power. This additional information will enhance the ability of prospective franchisees to make informed decisions about franchise systems that they are considering purchasing by enabling them to easily compare information about different franchise systems.

Conclusion

The Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.