

EXPLANATORY STATEMENT

Issued by authority of the Minister for Small Business

Competition and Consumer Act 2010

Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2025

Sections 51AE and 172 of the *Competition and Consumer Act 2010* (Act) provide that the Governor-General may make regulations prescribing industry codes and for monitoring and administering codes and seeking information in relation to the operation of the codes that are not inconsistent with the Act. This includes prescribing fees payable under the Act and all matters and forms required or necessary or convenient to be prescribed for carrying out or for giving effect to the Act or for the conduct of any business at or in connection with any Registry.

The purpose of the *Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2025* (the Regulations) is to give effect to the Government's decision to transfer the administration of the Franchise Disclosure Register (Register) from the Secretary (currently the Secretary of the Commonwealth Department of Treasury) (Treasury) to the Australian Competition and Consumer Commission (ACCC) Chairperson. This transfer aligns the administration of the Register with the ACCC's existing role as the regulator of the Franchising Code of Conduct, thereby improving regulatory coherence and operational efficiency.

The Secretary retains the power to determine by legislative instrument additional information that a franchisor or a class of franchisors must provide given the policy nature of this determination.

The Regulations amend the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* to:

- replace references to the Secretary with Chairperson in provisions relating to the administration of the Register (sections 89, 91, 92 and 93), except where the Secretary retains powers for making legislative instruments concerning information requirements;
- introduce a new delegation power for the Chairperson under section 96A, allowing delegation to SES employees within the ACCC;
- amend section 96, as the Secretary's remaining powers relate only to legislative powers and accordingly delegation of these powers can be made to a Band 3 SES in the Secretary's Department;
- include transitional provisions to preserve the operation of the following existing instruments made by the Secretary:

- *Competition and Consumer (Industry Codes—Franchising) (Approved Form and Manner) Instrument 2025*;
- *Competition and Consumer (Industry Codes—Franchising) (Additional Information Required by the Secretary) Determination 2022*.

The transitional provisions ensure that these identified legislative instruments continue to apply to enable the required administrative functions to be performed by the ACCC following the transfer of the Register function to it.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

No public consultation was undertaken in relation to the Regulations. The measure implements a transfer of administrative responsibility for the Register from the Secretary to the ACCC Chairperson without changes to the requirements for franchisors. The transfer is consistent with the ACCC's existing role as regulator of the Franchising Code of Conduct. Accordingly, as this is an administrative machinery change, public consultation was not considered necessary. Consultation with the ACCC was undertaken during August and September 2025. No significant changes were made.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to disallowance. The Regulations amend the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* which is subject to sunseting.

The Regulations commenced on the day after the registration of the Regulations.

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

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

Details of the Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2025

Part 1 — Preliminary

Section 1 – Name

This section provides that the name of the Regulations is the *Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2025* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commenced on the day after the registration of the Regulations.

Section 3 – Authority

The Regulations are made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedules

This section provides that instruments listed in the Schedule are amended or repealed as stated in the Schedule.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Schedule 1 – Amendments

Section 4 – Simplified outline of the industry code for the franchising industry

Item 1 amends the simplified outline contained in section 4 of the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* to explain that the Code confers functions on the Australian Competition and Consumer Commission (ACCC) Chairperson for the administration of the Franchise Disclosure Register (Register).

Sections 89, 91, 92 and 93 – Franchise Disclosure Register, keeping, updating, providing information

Items 2 to 11 of the Regulations amend the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* to substitute references to the Secretary with Chairperson in the headings to sections 89 and 91 and the headings to subsections 92(4) and 93(4), and also in subsections 89(1), 91(1) to (4), 92(4) paragraphs 92(2)(g), 92(3)(a), 93(2)(c), 93(3)(a). These amendments have the effect of transferring the following functions to the Chairperson:

- the obligation to keep the Register under section 89;

- the power under section 91 to correct clerical errors or mistakes in the Register, to remove or replace documents or information on the Register because of specific circumstances;
- the entitlement under section 92 to receive certain information for which a specific franchisor has been required by legislative instrument to provide; and
- the power under sections 92 and 93 to specify the form and manner in which information must be provided.

Prior to the commencement of the Regulations, the Secretary of the Department administered by the Minister administering the *Australian Small Business and Family Enterprise Ombudsman Act 2015* was responsible for the administration of the Register. Prior to the commencement of these Regulations and in the period after this time, this has been the Secretary of the Commonwealth Department of Treasury (Treasury). References in this Explanatory Statement are to the Secretary.

Section 96 – Delegations by Secretary

Item 12 amends subsection 96(1) to provide that the Secretary may delegate all or part of their functions and powers in relation to the Register to an acting or substantive SES Band 3 in the Department. This delegation mechanism provides operational flexibility while maintaining senior accountability and oversight of these delegated policy making functions.

Item 13 inserts subsection 96(3) to provide that the Secretary may give directions when delegating their functions or powers, which must be in writing.

Section 96A – Delegations by Chairperson

Item 14 inserts section 96A to provide that the ACCC Chairperson may, in writing, delegate all or any of their functions or powers under this Part to an SES employee, or acting SES employee, in the Commission. It also provides that a delegate must comply with any written directions of the Chairperson when performing a delegated function or exercising a delegated power. The Chairperson may issue such directions, which must be in writing. This delegation mechanism provides operational flexibility while maintaining accountability and oversight of delegated functions.

Part 2 — Saving and transitional provisions

Section 102 Saving of the Competition and Consumer (Industry Codes—Franchising) (Approved Form and Manner) Instrument 2025

Item 15 of the Regulations inserts section 102 which provides that the *Competition and Consumer (Industry Codes—Franchising) (Approved Form and Manner) Instrument 2025* (Manner and Form Instrument) made under paragraphs 92(3)(a) and 93(3)(a) of the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* as in force immediately before the commencement of the Regulations continues in force after commencement. It is treated as if it was made under the above provisions but as amended by this instrument. This has the effect that the reference in the definition of Franchise Disclosure Register online portal in section 4 of that instrument to the Department is treated as a reference to the Australian Competition and Consumer Commission. This provides for the continuity of the Manner and Form Instrument to ensure it applies in

relation to the administration of the Register by the ACCC from the commencement of the Regulations.

Section 103 Saving of the Competition and Consumer (Industry Codes—Franchising) (Additional Information Required by the Secretary) Determination 2022

Item 15 inserts section 103 of the Regulations which provides that the *Competition and Consumer (Industry Codes—Franchising) (Additional Information Required by the Secretary) Determination 2022* (Additional Information Determination) made under subsection 92(4) of the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024* as in force immediately before the commencement of the Regulations continues in force after commencement but that the reference in subsection 6(1) to the Secretary is instead treated as a reference to the Chairperson. This ensures the continuity of the Additional Information Determination and ensures it to applies in relation to the ACCC from the commencement 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) Amendment (Franchise Disclosure Register) Regulations 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

The *Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2025* provides for the transfer of the administration of the Franchise Disclosure Register (Register) from the Secretary to the Australian Competition and Consumer Commission (ACCC) Chairperson.

The amendments align the administration of the Franchise Disclosure Register (Register) with the ACCC's existing role as regulator of the Franchising Code of Conduct, improving regulatory coherence and operational efficiency. No change has been made to the Secretary's existing power relating to the Secretary's power to determine additional information required from franchisors. The Regulations include transitional provisions to preserve the operation of identified existing legislative instruments.

Human rights implications

This Legislative Instrument engages the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

The ACCC will hold some personal information concerning contact details supplied by franchisors. While the Register is publicly accessible, personal information is not published on the Register unless franchisors include some business contact information of individuals. The Regulations preserve the Secretary's power to determine, by legislative instrument, the categories of information that may be excluded from publication, including personal information. This ensures that the administration of the Register continues to operate in a manner that protects individual privacy.

The disclosure of personal information to prospective franchisees is governed by section 63 of the *Competition and Consumer (Industry Codes—Franchising) Regulations 2024*, which requires franchisors to notify former franchisees of their right to opt out of having their personal information disclosed. Disclosure is only permitted where the former franchisee has not exercised that right. These safeguards ensure that any interference with privacy is authorised by law, reasonable, and proportionate to the objective of enabling informed decision-making by prospective franchisees.

The Register has been administered by the Secretary in accordance with its obligations under the *Privacy Act 1988*. Following the transfer of administrative responsibility, the ACCC Chairperson will assume responsibility for managing the Register in accordance

with their obligations under the *Privacy Act 1988*, ensuring continuity of the protection of personal information.

Conclusion

This legislative instrument is compatible with human rights because, to the extent that it may limit the right to privacy, those limitations are reasonable, necessary and proportionate.