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NEWS FROM AROUND THE WORLD: AUSTRALIA

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1. Introduction

This section of the paper addresses the following updates relevant to franchising in Australia:

1) The commencement of reforms to the Australian Franchising Code on 1 November 2025 relating to specific purpose funds, mandatory compensation for early-termination in limited circumstances, and provision of a reasonable opportunity to make a return on investment.
2) Amendment to the Franchising Code effective 21 October 2025 to transfer administration of the Franchise Disclosure Register to the Australian Competition and Consumer Commission.
3) Cases of ACCC enforcement of non-compliance with the FDR requirements.
4) Bakers Delight Holdings Ltd v Fair Work Ombudsman [2025] FCAFC 144.
5) Proposed unfair trading practices laws.
6) Amendment to mandatory content of privacy policies under the Australian Privacy Principles.

2. Commencement of 2025 Code Amendments

A new version of the Competition and Consumer (Industry Codes—Franchising) Regulations 2024, first published 5 December 2024, commenced 1 April 2025. However, the transitional provisions of the new Code postponed commencement of a number of the changes made to 1 November 2025. That date aligns with the annual disclosure document update period under the Code for Australian companies which typically have a 30 June financial year end. The changes which commenced 1 November 2025 are summarised as follows:

(a) The new Code introduced a new term, *specific purpose fund*, intended to capture both the previously regulated marketing and cooperative funds as well as other funds controlled or administered by or for a franchisor that, under the franchise agreement, must be used for a specified common purpose relating to the operation of the franchised business. An example is an fund for payment of website and information technology development and maintenance. Clause 31 of the new Code amended the required content of annual financial statements of specific purpose funds such that they must include the percentage of the total income spent on each of the following:

(i) Expenses disclosed in the franchisor's disclosure document;
(ii) Expenses that are legitimate expenses for the specified purpose of the fund;
(iii) Expenses agreed by a majority of franchisees that are required to contribute to the fund; and
(iv) Costs of administering and auditing the fund.

(b) Section 41 of the new Code provides that a franchisor is prohibited from entering into a franchise agreement unless the agreement provides the franchisee with a reasonable opportunity to make a return, during the term of the agreement, on any investment required by the franchisor as part of entering into, or under, the agreement.

(c) Section 43 of the new Code prohibits a franchisor from entering into a franchise agreement unless the agreement provides for the franchisee to be compensated if the agreement is terminated before expiry because the franchisor:

(i) withdraws from the Australian market;
(ii) rationalises its networks in Australia; or
(iii) changes its distribution models in Australia

The agreement must also specify how the compensation is to be determined, with specific reference to:

(i) lost profit from direct and indirect revenue;
(ii) unamortised capital expenditure requested by the franchisor;
(iii) loss of opportunity in selling established goodwill; and
(iv) costs of winding up the franchised business.

The agreement must also provide for the franchisee to return, and the franchisor to accept and buy back or compensate the franchisee for, the following if the agreement is terminated in the above circumstances:

(i) All outstanding stock of the franchise purchased by the franchisee that was specified by the franchisor and required in order to operate the franchise in accordance with the franchise agreement or any operations manual (however described); and

(ii) All essential specialty equipment, branded product or merchandise purchased by the franchisee that:

(1) was specified by the franchisor and required in order to operate the franchise in accordance with the franchise agreement or any operations manual (however described); and

(2) cannot be repurposed for a similar business.

Further, a franchisor is prohibited from entering into a franchise agreement which purports to exclude compensation if the agreement is terminated other than for breach by the franchisee.

On 13 October 2025 the ACCC released guidance on the new Franchising Code including in relation to the following[1]:

(a) Significant capital expenditure.

The guidance note provides that capital expenditure may be significant for the purposes of the Franchising Code if:

(i) it is large compared to the initial investment (eg a 5 yearly refurbishment costing 1/5 of the establishment cost);
(ii) it goes beyond normal repairs, maintenance and end of life replacement; or
(iii) it would make it difficult to maintain solvency or profitability.

The guidance note also provides major store refurbishments and fit outs, relocations, rebranding, equipment, software or technology upgrades are likely to be significant capital expenditure.

(b) Specific purpose funds.
(c) Reasonable opportunity to make a return on investment.

In addition to considering matters such as the term of the agreement, amount of investment and likely financial performance the guidance note suggests that the franchisor should avoid granting franchises to franchisees who do not have necessary skills and experience unless substantial training is included to address this.

The guidance provides that failure to align lease and franchise terms may result in investment required by the landlord or franchisor that cannot be recouped.

In relation to franchise sales, the guidance confirms that the franchisor must act in good faith in not refusing consent to a transfer, but must also consider whether to withhold consent if in all circumstances the purchaser franchisee is unlikely to have a reasonable opportunity to make a return.

[1] Australian Competition and Consumer Commission, 2025 Franchising Code Changes, 13 October 2025

(d) Compensation for early termination
(e) Opting out of the cooling off period
(f) Application of restraint of trade provisions

3. Code amendments relevant to the FDR

The Code was further amended effective 21 October 2025 to transfer responsibility for maintaining the Franchise Disclosure Register from the Secretary of Treasury to the Chairperson of the Australian Competition and Consumer Commission. The power to decide what information (in addition to that prescribed in the Code) must be included on the register is retained by the Secretary.

4. Penalty notices for FDR non-compliance

On 4 August 2025 the ACCC reported payment of an infringement notice in the amount of AU$15,650 issued to a Harvey Norman franchisor for allegedly failing to include mandatory information on the Franchise Disclosure Register[2]. The report noted that required FDR content includes set-up costs and ongoing payments that the franchisee will need to make.

On 30 March 2026 the ACCC reported payment of an infringement notice in the amount of AU$19,800 by Luxottica Franchising Australia, the franchisor of the OPSM and Laubman & Pank eyewear brands[3]. The franchisor had failed to update its FDR content by the deadline set under the Franchising Code. All franchisors required to maintain a registration must update the same by the 14th day of the 5th month following their end of financial year[4].

4. Bakers Delight Holdings Ltd v FWO

In 2023, Make Dough Enterprises Pty Ltd, a Bakers Delight franchisee with 3 units operating in Hobart was placed into liquidation. The Fair Work Ombudsman commenced proceedings against the franchisor of the brand in relation to an alleged $1.25 million in underpayments to staff of the insolvent franchisee. The case is the second instance of proceedings brought by the FWO to enforce the franchisor liability provisions introduced into the Fair Work Act in 2017.

Under section 558B of the Fair Work Act, a franchisor can be liable if it (or its officer) knew or could reasonably be expected to have known that:

(a) the relevant contravention by the franchisee entity would occur; or
(b) a contravention by the franchisee entity of the same or a similar character was likely to occur,

unless, as at the time of the contravention, the franchisor had taken "reasonable steps" to prevent a contravention of the same or a similar character.

The FWO is seeking both civil penalties and orders for payment of compensation by the franchisor. The FWO also brought action against the franchisee and its owners.

The FWO claims:

(a) Bakers Delight was aware or should have been aware of the contraventions as it conducted an audit of the franchisee in February 2019 which revealed non-compliance;
(b) The Franchisor sought a commitment from its franchisee to a number of measures to address the issues, however, that commitment was not made; and

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[2] https://www.accc.gov.au/media-release/harvey-norman-franchisor-pays-penalty-for-alleged-breach-of-franchising-code (accessed 29 April 2026)
[3] https://www.accc.gov.au/media-release/opsm-and-laubman-pank-franchisor-pays-penalty-for-alleged-breach-of-franchising-code (accessed 29 April 2026)
[4] S93(3) Competition and Consumer (Industry Codes—Franchising) Regulations 2024

(c) Bakers Delight took no further action to address the non-compliance and underpayments persisted.

Section 557C of the Act provides that where an employer fails to keep proper records required under the Act, alleged underpayments will be presumed, and the employer will have the burden of disproving the same. The franchisor argued that this reverse onus should not apply to the claims against it as it is not the employer.

In an interim judgement handed down 16 October 2025, the Full Court of the Federal Court determined that the reverse onus applies to claims against a franchisor[5]. Accordingly, the franchisor would need to disprove any of the underpayments if it wished to rely on an argument that they did not occur. The court's reasoning included that the franchisor's liability is a derivative of the employer's and the approach to proving the relevant underpayments is the same as against both the employer and franchisor.

This finding may make it hard for a franchisor to dispute a contravention by the franchisee employer in various circumstances including where the employer does not participate in proceedings as it is in liquidation. It emphasises the importance of franchisors ensuring that they are taking reasonable steps to prevent employee underpayments within their networks.

5. Unfair Trading Practices

On 1 April 2026 the Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026 was introduced to parliament. The proposed laws introduce:

(a) A general prohibition on unfair trading practices towards consumers
(b) Disclosure obligations intended to address drip pricing
(c) Subscription contract requirements

The proposed new s28B of the Australian Consumer Law provides a person engages in *unfair trading practices* if, in connection with supply of, or an offer to supply, goods or services to a consumer, the person engages in conduct that:

(a) manipulates the consumer;
(b) unreasonably distorts the environment in which the consumer makes, or is likely to make, a decision; and

causes or is likely to cause detriment to the consumer.

The proposed new provision gives the following examples of unfair trading practices:

(a) impeding the consumer's ability to exercise legal rights, or seek legal remedies;
(b) failing to disclose material information to the consumer;
(c) disclosing material information to the consumer in a complex, ineffective, unclear, unintelligible, ambiguous, untimely or overwhelming way;
(d) creating an environment (including by using design elements in digital interfaces) which places the consumer under unreasonable pressure in relation to, or obstructs the consumer from, making or fulfilling the consumer's decision.

The Explanatory Memorandum to the bill clarifies that this is not intended to capture legitimate, reasonable or generally accepted marketing or sales practices.

The new provision does not apply if the consumer is a body corporate or the supply is in the course of the consumer carrying on a business.

[5] Bakers Delight Holdings Ltd v Fair Work Ombudsman [2025] FCAFC 144

The proposed new s48A relating to drip pricing requires a supplier offering goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption to display, along with the base price during the sales process, any applicable transaction based charge (or the method of calculation of the same).

The proposed new clause 48D relating to subscription contracts requires disclosure of information about the following when offering the proposed subscription:

(a) liabilities to pay that a party to the contract (other than the supplier) would or may incur under the contract;
(b) period of the contract;
(c) renewal, extension or other continuation of the contract;
(d) any notice required before a party to the contract (other than the supplier) can end the contract;
(e) how a party to the contract (other than the supplier) can end the contract;
(f) any matter prescribed for the purposes of this paragraph.

The supplier must also disclose that, if entered into, the contract will be a subscription contract.

Under the proposed new section 48F, a supplier under a subscription contracts must:

(a) provide a way for the subscriber to end the contract; and
(b) ensure that each way the supplier provides for the subscriber to end the contract:
  (i) is easy to find; and
  (ii) is straightforward; and
  (iii) requires the subscriber to take only steps that are reasonably necessary to end the contract and protect the subscriber's interests; and

(a) if the contract was entered into online, ensure the subscriber can end the contract online.

If passed, it is proposed the new laws will commence 27 July 2027.

5. Privacy Law

From 10 December 2026, entities bound by the Privacy Act 1988 will be required to have amended their privacy policies to disclose whether and how they use automated decision-making technologies if those decisions may have significant consequences for individuals.

Part 15 of the Privacy and Other Legislation Amendment Act 2024 (Cth) amends the Australian Privacy Principles to require additional information to be included in an entity's privacy policy if:

(a) the entity has arranged for a computer program to make, or do a thing that is substantially and directly related to making, a decision; and
(b) the decision could reasonably be expected to significantly affect the rights or interests of an individual; and
(c) personal information about the individual is used in the operation of the computer program to make the decision or do the thing that is substantially and directly related to making the decision.

The new subclause 1.8 of the APPs requires the following information to be included in the privacy policy:

(a) the kinds of personal information used in the operation of such computer programs; and
(b) the kinds of such decisions made solely by the operation of such computer programs; and

(c) the kinds of such decisions for which a thing, that is substantially and directly related to making the decision, is done by the operation of such computer programs. The intention in relation to this item is to capture decisions made by natural persons with substantial and direct assistance from a computer program. An example may be where software determines a credit score which is used to determine whether to offer finance. In this manner the software is facilitating a decision.