

WHAT IS "A FRANCHISE"?

Franchising is one of the most fast-growing types of business system in Australia today. It is therefore surprising that it is so little understood.

A franchise is the right granted by the franchisor to permit the franchisee to use the franchisor's logo and systems to market and operate a business which is owned by the franchisee.

The terms can be a bit confusing. The franchisor is the main business eg McDonalds Head Office, while the franchisee is the owner of the local business eg the McDonalds at, say, Hurstville.

The systems involved can be both marketing systems and operational systems. That is, systems relating not only on how to sell the product but also how to conduct the business to maximum advantage. Anyone who wants to own a McDonalds has to undergo substantial training in order to understand how the business works and how to make it a success.

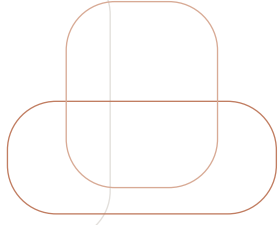
Franchises must comply with the Franchising Code of Conduct which is a mandatory code of practice under the Trade Practices Act.

The Code sets out certain minimum information that the franchisor must supply to a potential franchisee before being able to sign up a franchise. This has to be provided in a Disclosure Document regulated under the Code. There is also a minimum cooling-off period during which a franchisee can pull out.

The franchise agreement must also include certain things set out in the Code.

A typical franchise agreement covers things like

- > the term
- > the territory
- > use of the logo
- > standard of conduct of the franchise
- > adherence to the franchise operational manual
- > hours
- > legal compliance
- > staff conduct and uniforms
- > franchise fee (up-front)
- > royalty fees (periodical based on turnover)
- > compulsory stock purchasing
- > no selling of unauthorised goods
- > training fees
- > advertising levies
- > equipment purchases
- > issues regarding the premises from which the franchise is conducted
- > financial record keeping
- > operational record keeping
- > display standards
- > termination
- > assignment
- > sub-franchises
- > no running other businesses
- > sale of the franchise



Franchisor

The franchisor's main focus will be on

- > standardising arrangements so that all franchisees are on identical contracts
- > ensuring the franchisee has enough experience, motivation, skill and training to successfully conduct the franchise
- > complying with the Code
- > drafting the franchise agreement so that it ensures the franchisee must conduct the franchise in a way that will maximise the chances of success.

Franchisee

The Franchisee will focus on

- > understanding their rights and obligations
- > investigating the market for the franchised product
- > justifying the franchisor's fees
- > ensuring that the term of the franchise is long enough to amortise the franchise fee (that is, that the term of the franchise is long enough to enable the franchisee to make enough money from sales to pay its loan funds, if any, recover the franchise fee and still have enough profit to pay the franchisee a sufficient sum to live on).

Whether you are or want to be a franchisor or a franchisee, if you would like help or advice in negotiating, drafting, checking or disputing a franchise agreement or franchise disclosure document don't hesitate to contact us.