

Franchising and Privacy Update

by Katrina Chambers, Partner

Changes to the Franchising Code

The Franchising Code of Conduct (the Code) was recently amended by the federal government, taking effect from 1 July 2010.

Any franchise agreement entered into after 1 July 2010 must comply with the changes, including changes to the disclosure document requirements.

In broad terms the changes relate to:

- **End of the franchise term:** Franchisors must provide the franchisees with at least 6 months' notice of whether the franchisor will offer the franchisee another franchise agreement.
- **Good faith:** A new clause makes it clear that the Franchising Code of Conduct does not preclude any common law obligations of good faith.
- **Mediation:** Parties to a franchise dispute are required to attend mediation in 'a reconciliatory manner'.
- **Disclosure documents:**
 - An additional **warning** statement is required to the effect that the franchise business could fail, and that this could have consequences for the franchisee.
 - Particulars of **third party payments** (e.g. advertising costs) are to be provided in addition to payments to the franchisor and associates of the franchisor.
 - Disclose whether the franchisee could be required to incur **unforeseen significant capital expenditure**, e.g. purchase of equipment, refurbishment of premises.
 - Disclose whether the franchisee is required to contribute to the franchisor's **costs in the event of a dispute**.
 - The circumstances in which the franchisor can **unilaterally vary** a franchise agreement must be disclosed, e.g. change in manual, new form of agreement upon renewal. Similarly, details must be provided about whether the franchisor will amend the franchise agreement upon **a transfer or novation**.
 - Franchisors must disclose the extent to which franchisees will be bound by **confidentiality obligations**.
 - The process that will be used by the franchisor at the **end of the franchise term** must be spelled out, e.g. exercise of options, sale of unsold stock,

plant and equipment, rights of first refusal, exit payments, whether any significant capital expenditure by the franchisee will be taken into account.

The Australian Competition and Consumer Commission (ACCC) has power to investigate non-compliance with the Code. Recently, the ACCC initiated action in the Federal Court in Brisbane against the Seal-A-Fridge franchisor. The Court found that the franchisor had engaged in unconscionable conduct towards its franchisees and failed to comply with the Code.

Privacy Law Update

From 1 July 2010, compliance by local councils with the privacy principles contained in the *Queensland Information Privacy Act 2009* (Qld) will become mandatory. These principles apply to the handling of personal information by Queensland public sector agencies including State government departments, local governments and public authorities. Councils can apply to the Queensland Office of the Information Commissioner for an approval waiving or modifying a local government's privacy obligations on the basis of public interest.

Separately, the federal government has now released an exposure draft of the new 'Australian Privacy Principles' (APPs) for consideration by the Senate Finance and Public Administration Legislation Committee. Most private sector businesses are aware of the privacy obligations already imposed under the National Privacy Principles (NPPs) prescribed by the *Privacy Act 1988* (Cth). If adopted, the APPs will replace the existing NPPs, as well as the Information Privacy Principles that apply to federal government agencies. We will keep you updated on the progress of these amendments.

For any queries or assistance with respect to either Franchising or Privacy Law, please contact Katrina Chambers.



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