



Australian Motorcycle Dealers Association

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Dear Member,

The battle continues for a fairer relationship between Franchisor and Franchisee. Be aware of the following.

- The term 'Dealer' needs to be shelved. You are not a motorcycle dealer. You are a motorcycle franchisee. You should not allow manufacturers to refer to you as a dealer. Under Australian law, you operate as a franchisee under the Franchise Code. Manufacturers or distributors are Franchisors who are required to conform to the code.
- You should familiarise yourself with the Franchising Code. If the supply of new motorcycles is critical to your business, you must be very skilled in managing the relationship with your franchisor.
- The opinion of many, if not all, in the motorcycle and motor vehicle industries, is that the Franchise Code does not provide Franchisees with a fair and reasonable working relationship with Franchisors. If you believe the code does not provide this relationship you should be voicing your concerns to your Federal member of parliament. You can find their details [by clicking here](#)
- For your reference, and in line with comments in the previous point, sections of information from ACCC's website are highlighted below.

Purpose of the Code

The Code aims to regulate the conduct of franchising participants towards one another. In particular, the Code:

- requires franchisors to disclose certain information to prospective and existing franchisees before, and after, entering into a franchise agreement
- stipulates a number of conditions relating to the rights of a franchisor and a franchisee under a franchise agreement

- provides mechanisms for franchisees and franchisors to try to resolve disputes.

The Code also requires franchisors and franchisees to **act in good faith towards one another at all stages of the franchise relationship**, including during pre-contractual negotiations.

DISCLOSURE DOCUMENTS

The Code requires franchisors to disclose specific information about a franchise to both potential and existing franchisees

- The purpose of a disclosure document is to give a prospective franchisee key information about the franchise system, and an existing franchisee current information about the running of the franchise.
- The Code requires franchisors to maintain a disclosure document. Franchisors are required to provide a disclosure document to a person proposing to enter into, renew or extend a franchise agreement.
- The ACCC provides a model disclosure document to see more information about disclosure or to view a copy of the model documents you can [click here](#)

Under the Code, a franchisor must provide specific documents to you upfront to help you make an informed decision about whether to proceed with the franchise.

Prospective franchisees are entitled to receive four key documents when they are considering buying a franchise:

- an information statement
- a disclosure document
- a copy of the franchise agreement
- a copy of the Code.

If you contact a franchisor to formally apply, or express an interest in, acquiring a franchised business (not about renewing or extending an existing agreement), the franchisor must provide you with an **information statement**. The information statement is a 2-page document that highlights some of the risks and rewards of franchising.

If you decide to become a franchisee, the franchisor must also provide you with a **disclosure document, franchise agreement** and a copy of **the Code** at least 14 days before you enter into an agreement or make a non-refundable payment.

The franchisor must also follow this process if you are an existing franchisee who is planning to renew or extend your agreement, or enter into a new agreement.

If you will be required to enter into other agreements as a condition of a franchise agreement—such as a hire purchase, security or confidentiality agreement, or a restraint of trade agreement—these agreements must be provided to you at least 14 days before you sign the

franchise agreement. If the documents are not available at that time, they must be provided as soon as they become available.

ACTING IN GOOD FAITH

Under the Franchising Code of Conduct, parties who enter, or propose to enter, into a franchise agreement must act in good faith towards one another. This means that both current and prospective franchisees and franchisors must act in good faith in their business dealings with each other

Although the Code does not define exactly what good faith means, it does state that the obligation of good faith is to reflect historical judge-made law (known as the 'common law').

Under common law, good faith requires parties to an agreement to exercise their powers reasonably and not arbitrarily or for some irrelevant purpose. Certain conduct may lack good faith if one party acts dishonestly, or fails to have regard to the legitimate interests of the other party.

To find out more about your obligations and rights in regards to acting in good faith

[Click HERE](#)

Conduct that shows lack of good faith

Whether certain conduct will lack good faith will depend on the circumstances surrounding the conduct.

When considering whether your conduct is in good faith, potential questions to ask include:

Have you been honest with the other party?

Have you considered the other party's interests?

Have you made timely decisions?

Have you consulted with the other party regarding issues/proposed changes?

Do you have a contractual right to act in that way?

Are you imposing any conditions on the other party? Are those conditions necessary to protect your interests

Where a dispute has arisen, have you attempted to resolve the dispute (either directly with the other party, or through mediation)?

Are you acting for some ulterior purpose?

EXPENDITURE

During the term of a franchise agreement the Franchisor must not require a franchisee to undertake significant capital expenditure.

The Code does not define what 'significant capital expenditure' means.

However, a franchisor can require franchisees to incur certain expenses.

To find out more about what expenses are required please [click here](#)

VERIFY EARNINGS INFORMATION

The franchisor may choose to provide you with earnings information. This may take the form of historical figures or a projection or forecast.

If the franchisor has provided you with projected earnings, it must also provide you with certain information about the assumptions on which the projection is based. An accountant or business adviser will be able to assist you to compare and verify any figures or projections given to you.

You should ask the franchisor to confirm in writing any verbal claims made to you about earnings.

The ACCC has produced a model disclosure document for Franchisors – Section 20 sets out the relevant clauses regarding duty of earnings disclosure. To see this document please click on this text box

Costs of settling disputes

A franchise agreement must not contain a clause that requires a franchisee to pay the franchisor's costs to settle a dispute under the agreement.

If a franchise agreement contains such a clause, the clause is of no effect.

Questions to keep in mind

- In relation to the disclosure document, does it really provide you with 'key information about the franchise system?' Is there a 'franchise system?'
- The Code allows franchisors to opt out of providing earnings information. This is a huge anomaly within the code when considering our industry. So you invest (heavily) in a franchise with absolutely no idea of what potential earnings are? In practice, this anomaly allows the franchisor to totally disregard any worthwhile discussion on return on investment.
- The question must be asked "why can't the motor industry have its own code, developed through negotiation between franchisors and franchisees?" The intentions of both parties are clear and simple in that Franchisors want to sell a lot of products and Franchisees want to make a lot of money. Australian Consumer Law clarifies the responsibilities of both parties to deliver service and support to consumers. A code that provides balance in the relationship is required.
- Comments passed by motorcycle franchisees who are required to operate under the code, "how many franchise systems have to trade product, hold traded product, invest heavily in parts and service infrastructure and are obligated to perform warranty work,

often at a loss?" Your opinion on being required to operate your business under Australia's Franchise Code need to be heard politically!

The Australian Competition and Consumer Commission (ACCC) website should and can be accessed by all Franchisees by using this link <https://www.accc.gov.au/>

Information contained in this bulletin can be found in the following useful documents

- Franchising code of conduct – [to access click here](#)
- The Franchise Manual – [to access click here](#)
- The Franchisor Compliance Manual – [to access click here](#)

It is important that you are well-informed about the code and the obligations of both parties. Before signing a new franchise agreement, you should seek comment from your Motor Trades organisation, who may refer you the Australian Motorcycle Dealers Association (AMDA)

Any comments on this bulletin can be directed to the undersigned

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The Australian Motorcycle Dealers Association – A National Industry Sector Committee of the Australian Motor Industry Federation and Division of Motor Trades Associations and Automobile Chambers of Commerce

