

Changes between the 2018 and 2022 Franchise Agreement

For the purposes of the following report, we have reviewed and compared the sample documents respectively titled “Franchise Agreement – Nov 2018 Residential” and “Franchise Agreement – Oct 2022 Residential” as provided to us under cover of email from Mario Bonomi on 1 March 2023.

The scope of this review and advice is limited so as to focus only on the changes between the two Franchise Agreement versions provided. We have not reviewed the Franchise Agreement (“FA”) for other matters, such as provisions which may contravene the Franchising Code of Conduct (“the Code”), the *Competition and Consumer Act 2010* (Cth) (“CCA”), unfair contract terms or any other laws. Please advise should you require us to undertake a review for such purposes.

The advice provided is general in nature and applies to the franchise owners council members generally. If any member of the council has an agreement that differs from the sample documents reviewed or requires tailored advice that applies to their specific circumstances, such members should contact us individually.

Note that the 2022 FA provided for review did not include Schedule 2 and accordingly we cannot comment on any of the commercial or other standard terms proposed in that Schedule.

For the avoidance of any doubt, we have not made comment in respect of mere style/formatting changes (including changes to numbering or ordering of clauses and minor changes in terminology), or changes of little practical impact to franchisees.

Clause number (2022 version FA unless otherwise indicated)	Change made	MST comments
Front Page - Acknowledgement by Franchisee Para 1) b.	<ul style="list-style-type: none"><li data-bbox="517 1015 1104 1145">• Inclusion of ‘Keys Fact Sheet’ as an additional document that the franchisee acknowledges having received 14 days before signing the Franchise Agreement.<li data-bbox="517 1166 1104 1230">• Note typo – should correctly be named “Key Facts Sheet”	<p data-bbox="1126 1015 2119 1174">This change is for compliance with new Code clauses 9A and 9(1A)(c), which came into effect from 1 July 2021, requiring Franchisors to create and annually update a Key Facts Sheet (KFS) in the prescribed form and to give prospective franchisees a current KFS together with the other prescribed franchise documentation.</p> <p data-bbox="1126 1198 2119 1326">Franchisees should ensure they receive the Franchisor’s current Key Facts Sheet (updated within 4 months of the last financial year), at least 14 days prior to entering into, renewing or extending a franchise agreement or making any non-refundable payment.</p>

Clause number (2022 version FA unless otherwise indicated)	Change made	MST comments
Acknowledgement by Franchisee Para 4)	<ul style="list-style-type: none"> Reference to Fair Work Handbook now being included in the Disclosure document 	Ensure that the Fair Work Handbook is in fact included in any Disclosure Document issued.
Clause 1 - Definitions (clause 23 in 2018 version FA)	<ul style="list-style-type: none"> Changed definition of 'Cooling off period': now '14 days after the Franchisee enters into this Agreement', whereas it was previously 7 days. New definition of 'Deductable Expenses' - being the amount specified in Item 12 of Schedule 2. <p>Note: There is no Schedule 2 attached to the 2022 FA provided for review. We have assumed the Deductable Expenses are listed as a dollar-figure</p> <ul style="list-style-type: none"> new definition of 'Desktop Audit Fee' – being the fee payable if the franchisor incurs loss due to the franchisee failure to comply with a desktop audit under clause 11.1(b). new definition of 'Effective Control' new definition of 'Franchisee's Nominated Bank Account' – being the account from which fees will be direct debited. 	<p>Code changes to 'cooling off' rights:</p> <p>The change from 7 days to 14 days correctly reflects the amendment of Code clause 26(1), effective from 1 July 2021.</p> <p>However, note that pursuant to further Code changes at clauses 26(1A)-26(1D), the cooling off period may end later in certain circumstances, being 14 days after the franchisee:</p> <ul style="list-style-type: none"> receives a document setting out the terms of its lease or occupancy right granted by the franchisor or its associate; or enters into a lease or occupancy right with the franchisor or its associate, if the franchisee did not previously receive a document setting out the terms of that lease or occupancy right that are substantially identical to the actual terms. <p>This additional cooling-off period applies where the franchisor or its associate is to grant to the franchisee a lease or occupancy right in respect of the premises of the franchised business, and that lease or occupancy right is not in force immediately before the franchise agreement is entered into.</p> <p>Accordingly, we recommend the definition of "cooling off period" should be amended to include the words "or such later date as applicable pursuant to clause 26 of the Code".</p> <p>Note that even if this amendment is not made, the extended cooling-off rights will nevertheless exist (if applicable), by virtue of the Code.</p>

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	<ul style="list-style-type: none"> • new definition of ‘Holding Over Royalty’ – being the royalty payable in any overholding period after expiry of the FA term • new definition of ‘Initial Legal and Administrative Costs’ – being the fee payable for preparation of the FA. • new definition of ‘Inspection Audit Fee’ – being the maximum fee payable under clause 11.1(c) • new definition of ‘Insurance Amounts’ – to be specified in Schedule 2, Item 20 - being the minimum insurance levels the franchisee must obtain, to be specified in Schedule 2, Item 20. • new definition of ‘Late Payment Fee’ – being the fee payable for each month that the Franchise Return required in Clause 9.1(a) is not submitted. • new definition of ‘Minimum Income Amount’ – being the minimum Category One Income the Franchisee must achieve in each year of the Term (per FA clause 10.3), which amount is to be specified at Item 13 of Schedule 2 • change in definition of ‘Promotional Amount’ – previously 2% of Category One Income received in a calendar 	<p>Deductible Expenses:</p> <p>This is the sum the Franchisor may retain (under FA clause 19.4) before refunding the balance of all monies paid by the franchisee if the franchisee terminates the FA during the Cooling Off Period.</p> <p>In the 2018 FA, this sum was not specified, but described (at clause 17.4) to include legal fees and costs of preparing the franchise documents, costs of assessing the Franchisee and Guarantors, training, computer software and other costs incurred relating to the Business Activity and statutory fees in relation to the Business Name.</p> <p>This previous definition was vague and unquantifiable. Assuming Item 12 of Schedule 2 of the 2022 FA includes a dollar-value or quantifiable description of Deductible Expenses, this is preferable for the purposes of clause 26(4) of the Code.</p> <p>Effective Control:</p> <p>This definition simplifies clause 17.2(d). It confirms that any changes to the directors, shareholders or control of a Franchisee company will constitute a transfer/assignment which requires the franchisor’s prior consent. The transfer processes under clause 17 will apply, including payment of the Transfer Fee.</p> <p>Franchisees should not make or permit any changes to the company composition without first seeking the Franchisor’s consent, and should request a waiver of the Transfer Fee for such corporate restructure changes.</p> <p>Initial Legal and Administrative Costs:</p> <p>Under the 2021 Code changes, a franchisor must not require a franchisee to pay all or part of the Franchisor’s costs of legal services relating to preparing, negotiating or executing the franchise agreement. This includes</p>

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	<p>month. Now the amount set out in Item 14, Schedule 2.</p> <ul style="list-style-type: none"> • new definition of ‘Social Media’ • new definition of ‘Transfer Fee’ (note this fee was previously \$5,000 + GST per clause 15.4(b) of the 2019 FA) 	<p>any legal costs incurred after the franchise agreement has been signed such as for breach notices, renewal documents etc.</p> <p>A franchisor can only require a franchisee to pay its legal costs if the costs are specified in the franchise agreement as a fixed dollar amount and defined as set out in the 2002 FA definition.</p> <p>Accordingly, this fee and definition has been introduced to enable the Franchisor to recover its legal costs in accordance with new Code clause 19A.</p> <p><i>Note: pursuant to Code clause 19A(2), such costs can only be charged “before the franchisee starts the franchised business” and therefore this fee should not be charged on renewal of an existing franchise.</i></p> <p>Promotional Amount:</p> <p>Check Schedule 2 to ascertain whether the calculation of this amount has changed.</p> <p>General comments regarding new definitions</p> <p>Several of the new definitions do not introduce new concepts or obligations but merely provide greater clarity as to the meaning of certain terms (e.g. Social Media) or move item specifications into Schedule 2 rather than those items being described within a clause (e.g. Transfer Fee).</p> <p>Having the newly defined fees recorded in Schedule 2 will make it easier to identify the entirety of costs associated with the franchised business.</p> <p>Franchisees should review the fees/variables set out in Schedule 2 and seek to negotiate amendments if the amounts or specifics are not considered reasonable.</p>

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2.1(c)(iii) - Grant of Franchise	New clause inserted as follows: <i>“reference to Primary Area does not grant any exclusivity to that area and other agents, include LJ Hooker Franchisees and Atlas Franchisees may sell or manage property in the Primary Area.”</i>	This simply clarifies the existing position, that franchisees are not granted any exclusive right to conduct the franchised business in any territory, including within the Primary Area.
Previously clause 2.2(d) in 2018 FA	Removed: <i>“The Company must give to the Franchisee within one (1) month of the Franchisee giving a valid notice requesting a New Agreement in accordance with Clause 2.2(b), a current Disclosure Document and a copy of the Company’s template franchise agreement in use at that time. The Franchisee however acknowledges that the Company is under no obligation to grant a New Agreement.”</i>	<p>The deletion of this clause removes the Franchisor’s previous contractual obligation to provide the New Agreement within 1 month of the Franchisee’s request. The Franchisor has no obligation to do so under the Code.</p> <p>This does not affect the Franchisor’s existing obligations under Code clauses 16 and 18 respectively to:</p> <ul style="list-style-type: none"> • provide a copy of the current Disclosure Document within 14 days of written request by a franchisee; and • provide notice of its intent to extend the FA or enter into a new FA at least 6 months before the end of the FA term. <p>However, Franchisees can no longer force the Franchisor to provide a copy of its current FA within any particular timeframe. Franchisees should still request a copy as early as possible to enable sufficient time to review and consider the New Agreement before entering into a further franchise.</p> <p>Note there is no option for the franchisee to renew and the grant of a further franchise is entirely at the Franchisor’s discretion.</p>
3.2(e) holding over	Amended to include underlined wording as follows: <i>“In the event of the Franchisee <u>not entering into a New Agreement and continuing to operate the Franchise for whatever reason after the expiry of the Term, with or without</u></i>	<p>These amendments are favourable for both parties as they remove uncertainty and provide greater clarity about holdover arrangements.</p> <p>The amendments provide that either party may terminate the holdover by providing 30 days’ notice.</p>

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	<p><i>the approval or acquiescence of the Company, such continuation shall strictly be on a month-to-month basis (<u> Holding Over</u>) and <u>either party may terminate the agreement upon the giving of 30 days' notice. The parties acknowledge all terms and conditions of this Agreement apply to the Holding Over, save that the Franchisee must pay the Holding Over Royalty amount until such time as the Holding Over is terminated.</u></i></p>	<p>The amendments also introduce payment of a specified Holding Over Royalty. Check the amount at Schedule 2, Item 10 to ensure this fee is an equivalent pro-rata of the standard Royalty rate.</p> <p>At the end of the term, we recommend that franchisees should enter into a new franchise agreement if possible, rather than relying on holding over arrangements.</p>
4.1(a) premises	<p>Underlined wording removed: <i>"The Franchisee must only operate the Business Activity from the Premises <u>or such other Premises approved by the Company in writing after written application by the Franchisee.</u>"</i></p>	<p>Despite deletion of this wording, the mechanism at clause 4.1(b) remains for obtaining the Franchisor's consent to alternative premises.</p>
5.1(a) conduct of business activity	<p>Inserted underlined wording: <i>"The Franchisee must conduct the Business Activity, which includes maintaining all Financial Records, strictly in accordance with the Manual, the System <u>and any reasonable directions given by the Company to the Franchisee.</u>"</i></p>	<p>This change increases the Franchisor's scope to govern the Franchisee's conduct of their business. This is significant as failure to comply with Franchisor directions may constitute a breach of the FA.</p> <p>It is not clear in what manner such directions will be given (for e.g. will verbal directions suffice?)</p> <p>We recommend the clause be amended to provide further clarity and boundaries, for example that such directions must be given in writing and served on the Franchisee in accordance with clause 24.3.</p>

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5.1(f) - Conduct of Business Activity	Amended – insertion of ‘Guarantors’ in place of ‘Principals’ in the 2 nd line.	<p>This amendment seems incongruous as it the reference is not consistent within the clause.</p> <p><i>We recommend that either the reference revert back to ‘Principals’ or all reference to ‘Principals’ in the paragraph be changed to ‘Guarantors’.</i></p> <p>Query whether there is any practical effect if Guarantors are bound instead of Principals. Are Principals and Guarantors ordinarily the same persons, being the individuals behind the Franchisee company?</p>
5.1(i) & (j)	Insertion of ‘Guarantors’ in addition to the Franchisee and each of the Principals	<p>Guarantors now have primary obligations in relation to the matters in these clauses.</p> <p>As above, this is only a change or expansion of obligations where Guarantors are not the same people as the Principals.</p>
5.3(a) – Employees and Employee Training	Amended to include <i>“any person engaged as an independent contractor”</i>	<p>This will give the Franchisor greater oversight of the people who work with and for the Franchisee. The amendment is reasonable, but may give rise to slightly increased record keeping and reporting obligations for franchisees.</p>
5.8 - Intellectual Property and Customer Data	<p>Inserted sub-clauses (j), (k) and (m):</p> <ul style="list-style-type: none"> • Franchisees must comply with all privacy laws; • Privacy and data-collection requirements are outlined; • customer data collected is Confidential Information and Franchisees are restricted in using or dealing with it 	<p>Such clauses are common in franchising. The Franchisor is most likely bound under current Privacy Laws, and therefore requires compliance by its Franchisees to ensure that the Franchisor remains compliant in relation to any details passed onto it by Franchisees.</p> <p>Proposed reforms to the Privacy Act are likely to broaden privacy obligations and result in franchisees being directly bound (whereas many franchisees are exempt under the current small business exemption for organisations with an annual turnover of AUD \$3 million or less).</p> <p>The amendment may also have been introduced in response to recent company data breaches and is reasonable in the circumstances.</p>

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		Franchisees should ensure they obtain, read and understand the Privacy Act and the Franchisor’s privacy policy and seek specific legal advice if unsure of their obligations in this regard.
5.9 - Referral System	Clause 3.11(b) of 2018 FA removed: <i>“If the Franchisee does not reject a referral to the Franchisee under the Referral System in writing within the number of business days of receipt of that referral as specified in the Manual, the Franchisee will be deemed to have accepted the referral in accordance with the Referral System.”</i>	Franchisees are no longer deemed to have accepted a referral if they do not provide a written rejection within the specified timeframe. This is of benefit to Franchisees as referrals are only considered accepted if the Franchisee actively accepts it. Note this provision may still be included in the Referral System rules set out in the Manual, in which case removal of this clause is of no effect.
5.10 - Insurance	Amendments to 5.10(a)(iii) and 5.10(b) (previously 3.12(b)), to remove dollar figures for insurance coverage and instead include reference to ‘Minimum Insurance Amounts’.	All required insurance levels will now be readily accessible in Item 20 of Schedule 2 (‘Insurance Amounts’). Franchisees should check the schedule to ascertain if the relevant amounts are equivalent to those previously set out in clause 3.12(b) of the 2018 FA or whether any limits have changed.
5.13(a) - Email, Website and Social Networks	Inserted underlined wording: <i>“The company must (ii) provide, <u>at the Franchisee’s cost</u>, an e-mail service for use by the Franchisee in the Business Activity; (iii) give, <u>at the Franchisee’s cost</u>, individual employees of the Franchisee individual email addresses in the form specified by the Company;</i>	Provides that Franchisees are now liable for the costs of e-mail addresses used in the conduct of the business. Franchisees should ascertain the quantum of such costs.
5.15(c)(iii) - Minimum	Inserted: <ul style="list-style-type: none"> • The franchisor may require franchisees to take out <u>additional</u> 	This could be costly for franchisees. However, note these requirements only apply if the Franchisee fails to achieve the Minimum Performance

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Performance Requirements	<u>signing</u> at its own cost, within the Primary Area.	Requirements in any year, as part of a 6-month opportunity to rectify such failure.
6.3 – Referral System	Amended “ <i>the Company must promote and maintain</i> ” (clause 4.3 of 2018 FA) to read “ <i>the Company will use its best endeavours to promote</i> ”	This change somewhat lessens the threshold of the Franchisor’s obligations in this regard.
9.1 - Franchise Returns	Inserted: <ul style="list-style-type: none"> • 9.1(a)(i) “<i>or any other information reasonably requested by the Company</i>” • 9.1(c) “<i>the Late Payment Fee is payable for each and every month that a franchise return is not submitted</i>” • 9.1(d) <i>the Late Payment Fee is a genuine pre-estimate of the Franchisor’s losses...</i> 	Note the Franchisor’s requirements for the contents of the Franchise Returns may be more comprehensive than the requirements set out in the Manual. Clarifies that the Late Payment Fee is payable and accrues each month until the return is submitted. Under clause 7.1(c) of the 2018 FA, arguably the Late Payment Fee could only be charged as a ‘once off’ payment. Presumably clause 9.1(d) has been inserted to ensure that clause 9.1(c) is enforceable and is not considered a ‘penalty provision’ (which courts have deemed unenforceable). Check Schedule 2, Item 16 to ensure the Late Payment Fee is in fact reasonable and not “extravagant” or “unconscionable” in comparison to the likely losses the Franchisor may suffer as a result of the Franchisee’s failure to provide the Franchise Return on time.
9.3(b) – Statements of Gross Income	Change of wording from “true and fair” to true and accurate ”	Note the slightly higher standard imposed. This should be easily met if an appropriately qualified accountant prepares the Gross Income statement.

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10.1(e) - Royalty Fee	<p>New sub-clause (e) inserted as follows: <i>“The Franchise acknowledges that minimum Royalty is payable on the Gross Income Amount in clause 10.3 regardless of Gross Income received by the Franchisee in any month.”</i></p> <p>Note highlighted typo: “Gross” should be amended to read “Minimum” Income Amount</p>	<p>This is not a new obligation (previously included in clause 8.3 (2018 FA), now clause 10.3) but clarifies that the Royalty will be payable on the Minimum Income Amount regardless of actual income earned.</p> <p>Ensure the Minimum Income Amount set out in Item 13 of Schedule 2 is reasonable and achievable.</p> <p>Also ensure the Amount is calculated both on a per month and per annum basis to enable compliance with clause 10.1(e) and clause 10.3.</p>
10.3 - Minimum Income Amount	<p>Amended:</p> <ul style="list-style-type: none"> Franchisees previously required to achieve the threshold Category One Income every month. Now the minimum income must be achieved every year. If the threshold is not achieved then the Franchisee must pay additional Royalty equivalent to at least 7% of the Minimum Income Amount each year. 	<p>This amendment is somewhat positive, as Franchisees have more time to ensure that the annual Minimum Income Amount is achieved. This should provide some protection in the event of monthly fluctuations of income.</p> <p>Note that failure to achieve the Minimum Income Amount is a breach of the FA, which may attract consequences. Accordingly, as above, Franchisees should ensure the specified Minimum is achievable.</p> <p>We presume 7% is the standard Royalty rate and not a higher percentage.</p>
Previously clause 8.4 (2018 FA) - Variation Fee	<p>Removed:</p> <ul style="list-style-type: none"> The Variation Fee 	<p>This fee has been deleted for compliance with Code clause 19A. As above, franchisors cannot require franchisees to pay their costs for any legal services provided after the franchise agreement is entered into, in relation to preparing other documents (such as a variation).</p>

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10.5 - Direct Debit Payments	Inserted new sub-clauses (c) and (d): <ul style="list-style-type: none"> • Franchisees must keep their direct debit arrangements current and cannot change these arrangements or the Nominated Bank Account without prior consent. 	Franchisees should always communicate with the franchisor before making any changes to their banking or direct debit facilities.
11.1(1) - Investigations	Inserted: <ul style="list-style-type: none"> • description of 'desk top' audit. Franchisees must pay the Desktop Audit Fee if they do not provide all requested financial records which causes the franchisor to incur a loss (clause 11.1(b)). • The cost of retaining an independent accountant or auditor will be borne by the franchisee (capped at the Inspection Audit Fee amount per day), in addition to payment of the Desktop Audit Fee (clause 11.1(c)). • Franchisees must pay the Franchisor's reasonable costs, including nominee agent fees, associated with an audit or investigation if the royalty or income disparity is more than 2%. This was previously 4%. (clause 11.1(f)). 	Franchisees are liable for more fees and costs in connection with audits and investigations. Check whether the Desktop Audit Fee at Item 21 of Schedule 2 is a reasonable amount or is otherwise likely to comprise an unlawful penalty. Check the daily Inspection Audit Fee at Item 21 of Schedule 2 and ensure it is reasonable (this amount was previously \$1,500 + GST per day under clause 9.1(c) of the 2018 FA). Franchisees should very carefully check their reported income and Royalty figures to ensure there is no discrepancy as the margin for error has been substantially reduced. Franchisees should seek specific legal advice in relation to any legal fees or costs later charged by the Franchisor, to ensure these are lawful.

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	<ul style="list-style-type: none"> Franchisor may not seek to recover any costs prohibited under clause 19A of the Code (clause 11.1(g)). 	
13 – Marketing and Business Development Fund	Amended clause 13(a) – the Promotional Amount is now capped at the Maximum Promotional Amount annually	This clause appears to limit the Promotional Amount payable, although note the Maximum Amount may also increase by up to 5% each year.
14.1(b) – Indemnity by Franchisee	Amended: <ul style="list-style-type: none"> Franchisees’ indemnify now also covers any claims arising from the actions or negligence of an independent contractor. 	Franchisees should ensure that independent contractors are aware of any obligations and duties under the franchise agreement. Any agreements with independent contractors should include an equivalent indemnity provision in favour of the Franchisee for any loss incurred by the Franchisee, the Franchisor or other third parties arising from the contractor’s actions. MST Lawyers can assist with reviewing or drafting appropriate clauses if required. Franchisees should also ensure they have insurance policies to cover them for such claims.
18.1 - Termination on particular grounds	Amended: <ul style="list-style-type: none"> Franchisor must now provide 7 days’ written notice before termination, rather than terminating with immediate effect. Deleted previous clauses 16.1(h) and (i) as grounds for immediate termination (to accord with the Code). 	The 7-day notice period is a change required by clause 29(1) of the Code. However, clause 29(4) of the Code also provides that if the Franchisee gives written notice disputing the proposed termination, the Franchisor must not terminate the agreement until after the end of 28 days after the notice was given. We recommend you request clause 18 be amended to reflect the provisions of clause 29(4) of the Code. However, note that these rights will still exist under the Code even if they are not included in the Franchise Agreement.

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18.4 - Suspension of business activity	Inserted: <ul style="list-style-type: none"> The franchisor can require the franchisee to cease operating if a notice has been issued under clause 18.1. 	New clause 29(5) of the Code allows for this new provision.
Previously clause 19.2(l) in 2018 FA - Arrangements after Termination / expiration	Removed: <ul style="list-style-type: none"> Franchisee's ability to request the franchisor to reactivate the LJ Hooker Platform for 1 day to enable the franchisee to retrieve data. 	Franchisees should ensure that all data it is entitled to retain is retrieved prior to the termination/expiration of the franchise agreement as there is no express right to request this post-termination. <i>It would be ideal if this clause is re-instated.</i>
21.2(b)	New Sub-clause inserted requiring Guarantors to cause the Principals and employees to ensure the Franchisee complies with its obligations under the FA.	<i>Suggest reference to employees be removed as employees will likely have little or no control over the Franchisee to ensure its compliance.</i>
23.3 - Caveat	Amended to insert the underlined wording: <i>"The Company may lodge a caveat in respect of the charge over any real estate owned by the Franchisee or in which the Franchisee has an interest."</i>	The amendment clarifies and strengthens the franchisor's ability to lodge a caveat over any of the franchisee's real property. Franchisees should be aware of this clause, as the ramifications are significant.
24.3 - Notices	24.3(a) amended such that notices to the Franchisor must now be served by email to the "compliance department" rather than the "Finance Chief" as per 2018 FA.	Franchisees should ensure they are aware of the relevant email address for the Franchisor's compliance department and ensure any notices are properly served under this clause.
24.10 - Dispute Resolution	Amended and inserted: <ul style="list-style-type: none"> Any disputes relating to the agreement or termination of the agreement may follow the dispute 	1. Significant changes to dispute resolution processes were made to the Code in 2021. Clause 24.10 incorporates these changes into the franchise agreement.

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	<p>resolution processes under the Code.</p> <ul style="list-style-type: none"> The parties may agree to participate in arbitration. 	<p>2. Importantly, clause 40B of the Code introduces the ability for similar disputes between two or more franchisees and the franchisor to be resolved and/or go through the dispute resolution process together.</p> <p>3. The Code permits parties to resolve disputes through arbitration if the parties agree in writing to do so. Not all franchisors are agreeable to this dispute resolution process so it is positive that this is available.</p> <p>Franchisees should read and familiarise themselves with Part 4 of the Code in relation to dispute resolution or seek legal advice in the event of any dispute.</p>

Further provisions to consider inserting into the Franchise Agreement

The Council should consider requesting that the Franchisor insert further provisions into the template Franchise Agreement, to reflect new provisions of the Code as set out below.

We reiterate that the Code rights and obligations will exist irrespective of whether they are incorporated into the contract.

Code clause 26A	<p>Cooling off after transfer of franchise agreement</p> <ul style="list-style-type: none"> A 14-day cooling off period will apply where there is a sale of the franchised business involving the transfer of a franchise agreement (i.e. where the FA is assigned rather than the vendor's FA being terminated and the 	<p>This clause can have significant consequences for both the Franchisor and vendor Franchisee.</p> <p>In order to limit exposure under this clause, parties should only complete settlement of a business sale after expiry of the cooling off period before utilising settlement funds.</p>
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	<p>purchaser entering into a new FA with the Franchisor)</p> <ul style="list-style-type: none"> • The purchaser can cool off and terminate the sale or transfer agreement within 14 days of becoming the franchisee or taking possession and control of the franchised business, whichever is earlier. • If the purchaser cools off: <ul style="list-style-type: none"> ○ The franchisor must refund to the purchaser any amounts received, less deductible expenses; and ○ The vendor must refund the purchaser any amounts received, less disclosed reasonable expenses; and ○ the vendor may be required to become the franchisee again. 	
Code clause 26B	<p>Franchisee may propose termination at any time</p> <ul style="list-style-type: none"> • If a franchisee makes written request for termination of the franchise agreement and gives reasons for doing so, the franchisor must give a substantive written response within 28 days and, if the answer is “no” the franchisor must set out its reasons for its refusal to allow termination. 	This is an important right for franchisees and should ideally also be a contractual term of the franchise agreement.

Code clause 29(4)	<p>Rapid appointment of dispute resolution practitioner over proposed termination dispute</p> <ul style="list-style-type: none"> • The franchisor can not terminate the franchise agreement until 28 days after notice was given if the franchisee serves a dispute notice in relation to a proposed termination on particular grounds. • This will not affect the ability of the franchisor to suspend the franchise from operating the business under clause 18.4 of the franchise agreement. 	The franchise agreement cannot be terminated whilst the termination is in dispute. This provides a level of certainty for franchisees and gives time for the parties to undertake a dispute resolution process.
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Warning and Disclaimer:

Note this document contains comments and advice that are general in nature and for information purposes only. The document is not a comprehensive review of the current (2022) template LJ Hooker Franchise Agreement, nor does it identify all changes from the previous (2018) version Franchise Agreement. It does not take into account any different or specific terms that may appear in an individual franchisee's agreement.

Users should not rely on this document and should seek specific legal advice, tailored to their particular circumstances, before signing or entering into any LJ Hooker franchise agreement.

The Council accepts no responsibility for the contents of this document and excludes all liability for any loss suffered or incurred by any person as a result of their use of or reliance upon its contents.

Any queries or concerns regarding a franchise agreement should be directed to the franchisor and not to the Council.