

Index

- Accessory liability, 51, 87, 166, 170
 - Accountability, 8
 - Agreements to agree, 31
 - Annual disclosure updates, 77
 - Arbitration, 7, 8, 38, 42–43, 42–44, 50, 81
 - Assignment, 185, 190, 192, 204–205
 - Associates, 86–87, 169–170
 - Audit, 93, 95
 - franchisor's solvency, 100
 - internal risks, 194–195
 - rights and obligations, 35
 - Australian Consumer and Competition Commission (ACCC), 8, 79
 - Coles Supermarkets Australia Pty Ltd, 105
 - comprehensive regulatory approach, 162–163
 - Consumer and Competition Act, 53
 - Grocery Holdings Pty Ltd, 105
 - guidance, 164
 - Husqvarna Australia Pty Ltd, 23
 - Kyloe Pty Ltd, 15
 - Woolworths Ltd, 105–106
- Breaches/penalties, 52–55
- Capital expenditure, 62, 95–98, 122, 134
 - Change in scope, 2
 - Civil penalties, 1, 8, 52, 66, 216
 - Code, 59
 - agreements, 9–23
 - disclosure requirements, 65–74
 - relief clauses, 25–27
 - Code review proposals
 - parliamentary inquiry, 7–9
 - Report summarises, 7–9
 - Commonwealth of Australia, 64
 - Confidential information, 188–189, 197, 218, 229–231
 - Confidentiality clauses, 230–231
 - Continuing disclosure, 3, 10, 14, 50, 62, 157
 - Cooling off, 1, 8, 30–33, 57, 137, 207
 - Copyright, 50–51, 82, 173, 183–185
 - Designs, 173, 187–188
 - Disclosure, 2–3, 6, 8
 - disclosure requirements, 49
 - documents (See Disclosure documents)
 - pre-contractual disclosure regime, 11
 - registration, 8
 - Disclosure documents, 26, 57–154, 190, 200, 204
 - Dispute resolution, 8
 - Disputes, 35–44, 42, 208, 209
 - Domain names, 197
 - Earnings information, 101–106, 151, 152
 - E commerce, 108, 109, 174
 - Effective compliance, 82–84
 - Electronic service, 106
 - End of term, 58, 61, 68, 70, 114–117, 193
 - Exchange of consideration, 14
 - Excluded payments, 27–28
 - Exemptions, 23–30
 - Extension, 67–69, 78, 114, 206, 224
 - Fair exit rights, 8
 - Fair Work Commission, 170
 - Financial details, 77–78, 98, 131

- Financial reporting, 98–101
- Financial year, 6, 77, 88–90, 98, 125, 153
- Franchise
 - agreements (See Franchise agreement)
 - Code, 5–55, 7, 8, 9, 91
 - fees, 8, 107
 - relationship, 2, 13, 34, 107, 225
 - systems, 27, 64, 75, 173, 186, 194
- Franchise agreement, 9–11
 - clause 5(1), 12–20
 - extension, 67–69
 - re-disclosure, 87–88
 - renewal, 67–69
 - subclause 9(1) (d), 20–22
 - termination, 30–32
 - terms implied, 33–35
- Franchisee, 8, 22–23, 79, 125–126, 195–196
- Franchisee goodwill, 8
- Franchise relationships, 29–30
- Franchising Taskforce, 7–8
- Franchisor, 6, 103, 110, 136, 176
- Franchisor disclosure, 84–85

- Good faith, 1–3, 57, 155–171, 219, 233
- Goodwill, 8, 98, 114, 195, 205–207
- Governing law, 1, 40

- Implied terms, 33–35
- Industry associations, 8
- Information statement, 47–48, 67, 99, 136
- Injunctions, 19, 36–37, 167, 179
- Insolvency, 30, 79, 118, 190, 308
- Intellectual property (IP), 50, 76, 82, 190–194, 218, 230
 - ancillary issues, 190–194
 - brand loyalty, 173–174
 - confidential information, 188–189
 - copyright, 183–185
 - patents, 185–187
 - registered designs, 187–188
 - Trademarks, 174–183
 - trade secrets, 189–190
- In term obligations, 32, 188, 225–227
- Internet, 110, 180, 194–197
- Interpretation, 48–52

- Jurisdiction, 1, 35, 44–46, 159, 184

- Liability, 44–46

- Marketing fund, 90–95
- Master franchisee, 25, 66, 168
- Materially relevant facts, 58, 77–82, 131
- Mediation, 6, 37–41, 44, 217, 218
- Miscellaneous observations, 46–48

- Non-compete clauses, 206, 224–230
- Notice of breach, 52–55, 104, 186, 212

- Obligations, 35
- Online sales, 108–111
- Operations manual, 72–74, 110, 188

- Parliamentary inquiry, 7–9
- Patents, 185–187, 189
- Penalties, 1, 52–55, 86, 163, 211
- Post termination obligations, 204, 218
- Pre-contract disclosure, 2, 30, 65–67, 74
- Prosecutions, 1, 162–163, 166, 233

- Rebates, 103–104, 105, 120
- Record keeping, 16, 58, 106, 134
- Re-disclosure, 87–88
- Registration, 8, 175, 180, 188, 197
- Regulator, 1, 52, 106, 161–164, 233
- Relief clauses, 25–27
- Relief Clauses in the Code, 25–27
- Renewal, 67–70, 78, 168, 205
- Retail lease arrangements, 9

Sales

franchise agreement, expiration,
218–224

termination, 207–218

transfer, 84–85, 199–207, 225

Special circumstances termination, 8,
30, 209, 211

Supply issues, 111–114

Termination, 30–32, 183, 207–218

Trade marks, 175, 194

brands, logos and get out, 50, 81–82

definition, 174–183

licence, 14

protection, 178–179

third party usage, 196

transition period, 181

Trade secrets, 188, 189–190, 197

Transitional – continued appointment
of mediation adviser, 6

Transparency, 8

Unfair contract terms laws, 8

Unilateral variation, 107–108

Untested provisions, 48–52

Wesfarmers rebate scandal, 104

Whistleblower protections, 8