



# Trade Practices (Industry Codes — Franchising) Regulations 1998

**Statutory Rules 1998 No. 162 as amended**

made under the

*Trade Practices Act 1974*

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**1 Name of Regulations** [see Note 1]

These Regulations are the *Trade Practices (Industry Codes — Franchising) Regulations 1998*.

**2 Commencement**

These Regulations commence on 1 July 1998.

**3 Code of conduct**

For section 51AE of the *Trade Practices Act 1974*, the code set out in the Schedule:

- (a) is prescribed; and
- (b) is a mandatory industry code.

## Schedule Franchising Code of Conduct

(regulation 3)

### Part 1 Preliminary

#### 1 Name of code

This code is the Franchising Code of Conduct.

#### 2 Purpose of code

The purpose of this code is to regulate the conduct of participants in franchising towards other participants in franchising.

#### 3 Definitions

(1) In this code:

*ABN* has the same meaning as it has in the *A New Tax System (Australian Business Number) Act 1999*.

*associate*, for a franchisor, means a person:

(a) who:

(i) is a director or related body corporate, or a director of a related body corporate, of the franchisor; or

(ii) for a franchisor that is a proprietary company — directly or indirectly owns, controls, or holds with power to vote, at least 15% of the issued voting shares in the franchisor; or

(iii) is a partner of the franchisor; and

(b) whose relationship with the franchisor is relevant to the franchise system, including supplying goods, real property or services to a franchisee.

*disclosure document* has the meaning given by clause 6.

*franchise* includes the following:

(a) the rights and obligations under a franchise agreement;

(b) a master franchise;

- (c) a subfranchise;
- (d) an interest in a franchise.

**franchise agreement** has the meaning given by clause 4.

**franchisee** includes the following:

- (a) a person to whom a franchise is granted;
- (b) a person who otherwise participates in a franchise as a franchisee;
- (c) a subfranchisor in its relationship with a franchisor;
- (d) a subfranchisee in its relationship with a subfranchisor.

**franchise system** includes a business system in which a franchisor grants a franchise to a franchisee.

**franchisor** includes the following:

- (a) a person who grants a franchise;
- (b) a person who otherwise participates in a franchise as a franchisor;
- (c) a subfranchisor in its relationship with a subfranchisee;
- (d) a master franchisee in a master franchise system;
- (e) a master franchisee in its relationship with a franchisee.

**interest in a franchise** includes a legal or beneficial interest in:

- (a) a franchise agreement or a franchised business; or
- (b) shares or voting rights in a corporation, not being a listed corporation that owns a franchised business; or
- (c) units or voting rights in a unit or other trust that owns a franchised business; or
- (d) the capital or income of a partnership that owns a franchised business.

**master franchise** means a franchise in which the franchisor grants to a subfranchisor or master franchisee the right:

- (a) to grant a subfranchise; or
- (b) to participate in a subfranchise.

**master franchisee** or **subfranchisor** means a person who is:

- (a) a franchisee in relation to a master franchise; and
- (b) a franchisor in relation to a subfranchise granted under the master franchise.

**motor vehicle** means a vehicle that uses, or is designed to use, volatile spirit, gas, oil, electricity or any other power (except human or animal power) as the principal means of propulsion, but does not include a vehicle used, or designed to be used, on a railway or tramway.

*Examples of motor vehicles*

- 1 motor car
- 2 motor cycle
- 3 motorcycle
- 4 tractor
- 5 motorised farm machinery
- 6 motorised construction machinery
- 7 aircraft
- 8 motor boat

**motor vehicle dealership** means a business of buying, selling, exchanging or leasing motor vehicles that is conducted by a person other than a person who is only involved as a credit provider, or provider of other financial services, in the purchase, sale, exchange or lease.

**prospective franchisee** means a person who deals with a franchisor for the right to be granted a franchise.

**serious offence** means:

- (a) an offence under any law of the Commonwealth or a State or a Territory for which, if the act or omission had taken place in the Jervis Bay Territory, a person would be liable, on first conviction, to imprisonment for a period of not less than 5 years; or
- (b) a contravention of any provision of the *Corporations Act 2001*.

*Note* Jervis Bay Territory is mentioned because it is a jurisdiction in which the Commonwealth has control over the criminal law.

**subfranchisor** has the same meaning as **master franchisee**.

**supply** see subsection 4 (1) of the Act.

*Note 1* Under subsection 4 (1) of the Act, **supply**, when used as a verb, includes:

- (a) for goods — supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
  - (b) for services — provide, grant or confer;
- and, when used as a noun, has a corresponding meaning.



*Note 2 the Act* means the *Trade Practices Act 1974* (see the *Trade Practices Regulations*, r 2 (1)).

*trade mark* has the meaning given by the *Trade Marks Act 1995*.

*Note* A *trade mark* is a sign (including any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent (or any combination of these)) used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person (see *Trade Marks Act 1995*, s 17).

*transfer*, for a franchise, includes an arrangement in which the franchise is granted, transferred or sold.

- (2) In this code, the following terms have the meanings given by the *Corporations Act 2001*:

accounting standard	listed corporation
ACN	misconduct
ARBN	officer
body corporate	proprietary company
director	registered company
externally-	auditor
administered body	registered office
corporate	related body corporate
insolvent under	small proprietary
administration	company

#### 4 Meaning of *franchise agreement*

- (1) A *franchise agreement* is an agreement:
- (a) that takes the form, in whole or part, of any of the following:
    - (i) a written agreement;
    - (ii) an oral agreement;
    - (iii) an implied agreement; and
  - (b) in which a person (*the franchisor*) grants to another person (*the franchisee*) the right to carry on the business of offering, supplying or distributing goods or services in Australia under a system or marketing plan substantially determined, controlled or suggested by the franchisor or an associate of the franchisor; and

- (c) under which the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol:
    - (i) owned, used or licensed by the franchisor or an associate of the franchisor; or
    - (ii) specified by the franchisor or an associate of the franchisor; and
  - (d) under which, before starting business or continuing the business, the franchisee must pay or agree to pay to the franchisor or an associate of the franchisor an amount including, for example:
    - (i) an initial capital investment fee; or
    - (ii) a payment for goods or services; or
    - (iii) a fee based on a percentage of gross or net income whether or not called a royalty or franchise service fee; or
    - (iv) a training fee or training school fee;but excluding:
    - (v) payment for goods and services at or below their usual wholesale price; or
    - (vi) repayment by the franchisee of a loan from the franchisor; or
    - (vii) payment of the usual wholesale price for goods taken on consignment; or
    - (viii) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start business or to continue business under the franchise agreement.
- (2) For subclause (1), each of the following is taken to be a franchise agreement:
- (a) transfer, renewal or extension of a franchise agreement;
  - (b) a motor vehicle dealership agreement.
- (3) However, any of the following does not in itself constitute a franchise agreement:
- (a) an employer and employee relationship;
  - (b) a partnership relationship;

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- (c) a landlord and tenant relationship;
  - (d) a mortgagor and mortgagee relationship;
  - (e) a lender and borrower relationship;
  - (f) the relationship between the members of a cooperative that is registered, incorporated or formed under any of the following laws:
    - (i) *Co-operatives Act 1992* of New South Wales;
    - (ii) **Co-operatives Act 1996** of Victoria;
    - (iii) *Cooperatives Act 1997* of Queensland;
    - (iv) *Co-operative and Provident Societies Act 1903* of Western Australia;
    - (v) *Co-operatives Act 1997* of South Australia;
    - (vi) *Co-operative Industrial Societies Act 1928* of Tasmania;
    - (vii) *Co-operative Societies Act 1939* of the Australian Capital Territory;
    - (viii) *Co-operatives Act 1997* of the Northern Territory;
    - (ix) the *Corporations Act 2001*.

## 5 Application

- (1) This code applies to a franchise agreement entered into on or after 1 October 1998.
- (2) For the parties to a franchise agreement entered into before 1 October 1998:
  - (a) clauses 14 (Copy of lease), 15 (Association of franchisees) and 17 (Marketing and other cooperative funds) apply to the parties on and after 1 July 1998; and
  - (b) the rest of this code applies to the parties on and after 1 October 1998.
- (3) However, this code does not apply to a franchise agreement:
  - (a) to which another mandatory industry code, prescribed under section 51AE of the Act, applies; or
  - (b) if:
    - (i) the franchise agreement is for goods or services that are substantially the same as those supplied by the

- franchisee before entering into the franchise agreement; and
- (ii) the franchisee has supplied those goods or services for at least 2 years immediately before entering into the franchise agreement; and
  - (iii) sales under the franchise are likely to provide no more than 20% of the franchisee's gross turnover for goods or services of that kind for the first year of the franchise.
- (4) Paragraph (3) (b) ceases to apply to a franchise agreement if:
- (a) sales under the franchise provide more than 20% of the franchisee's gross turnover for the goods or services for 3 consecutive years; and
  - (b) the franchisee tells the franchisor that paragraph (a) applies.

## **Part 2 Disclosure**

### **Division 2.1 Disclosure document**

#### **6 Franchisor must maintain a disclosure document**

- (1) A franchisor must, before entering into a franchise agreement, and within 4 months after the end of each financial year after entering into a franchise agreement, create a document (a *disclosure document*) for the franchise in accordance with this Division.
- (2) A disclosure document:
  - (a) must be:
    - (i) if the franchised business has an expected annual turnover at any time during the term of the franchise agreement of \$50 000 or more — in accordance with Annexure 1; or
    - (ii) if the franchised business has an expected annual turnover of less than \$50 000 — in accordance with Annexure 1 or 2; and

- (b) may include additional information under the heading 'Other relevant disclosure information'; and
- (c) must be signed by a director or other officer of the franchisor.

#### **6A Purpose of disclosure document**

The purposes of a disclosure document are:

- (a) to give to a prospective franchisee, or a franchisee proposing to enter into, renew or extend a franchise agreement, information from the franchisor to help the franchisee to make a reasonably informed decision about the franchise; and
- (b) to give a franchisee current information from the franchisor that is material to the running of the franchised business.

#### **6B Requirement to give disclosure document**

- (1) A franchisor must give a current disclosure document to:
  - (a) a prospective franchisee; or
  - (b) a franchisee proposing to:
    - (i) renew a franchise agreement; or
    - (ii) extend the scope or term of a franchise agreement.
- (2) If a subfranchisor proposes to grant a subfranchise to a prospective subfranchisee:
  - (a) the franchisor and subfranchisor must:
    - (i) give separate disclosure documents, in relation to the master franchise and the subfranchise respectively, to the prospective subfranchisee; or
    - (ii) give to the prospective subfranchisee a joint disclosure document that addresses the respective obligations of the franchisor and the subfranchisor; and
  - (b) the subfranchisor must comply with the requirements imposed on a franchisor by this Part.

*Note* A subfranchisor is also sometimes referred to as a master franchisee: see subclause 3 (1).

## **6C Additional information**

If a franchisee or prospective franchisee who is given a disclosure document in accordance with Annexure 2 asks the franchisor for the information referred to in sections 3, 5, 6, 9, 10, 11, 14, 17, 18, 19, 21 and 22 of Annexure 1, the franchisor must give that information.

## **7 Layout**

- (1) Information in a disclosure document must be set out:
  - (a) in the form and the order, and under the numbering, set out in Annexure 1 or 2 as the case requires (the *relevant Annexure*); and
  - (b) under the titles used in the relevant Annexure.
- (2) A disclosure document must have a table of contents based on the items in the relevant Annexure, indicating the page number on which each item begins.

## **Division 2.2 Before franchise agreement**

### **8 Application**

This Division applies to a disclosure document in accordance with Annexure 1 or 2 for:

- (a) a prospective franchisee; or
- (b) a franchisee proposing to enter into, renew or extend a franchise agreement.

### **10 Franchisor obligations**

A franchisor must give:

- (a) a copy of this code; and
- (b) a disclosure document; and
- (c) a copy of the franchise agreement, in the form in which it is to be executed;

to:

- (d) a prospective franchisee at least 14 days before the prospective franchisee:

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- (i) enters into a franchise agreement or an agreement to enter into a franchise agreement; or
  - (ii) makes a non-refundable payment (whether of money or of other valuable consideration) to the franchisor or an associate of the franchisor in connection with the proposed franchise agreement; or
  - (e) a franchisee at least 14 days before renewal or extension of the franchise agreement.

*Note* Subsection 9 (1) of the *Electronic Transactions Act 1999* provides that a requirement under a law of the Commonwealth to give information in writing is satisfied by giving the information electronically if it is reasonable to expect that the information will be readily accessible so as to be useable for subsequent reference, and the person to whom the information is given consents to it being provided electronically.

## **11 Advice before entering into franchise agreement**

- (1) The franchisor must not:
  - (a) enter into, renew or extend a franchise agreement; or
  - (b) enter into an agreement to enter into, renew or extend a franchise agreement; or
  - (c) receive a non-refundable payment (whether of money or of other valuable consideration) under a franchise agreement or an agreement to enter into a franchise agreement;unless the franchisor has received from the franchisee or prospective franchisee a written statement that the franchisee or prospective franchisee has received, read and had a reasonable opportunity to understand the disclosure document and this code.
- (2) Before a franchise agreement is entered into, the franchisor must have received from the prospective franchisee:
  - (a) signed statements, that the prospective franchisee has been given advice about the proposed franchise agreement or franchised business, by any of:
    - (i) an independent legal adviser;
    - (ii) an independent business adviser;
    - (iii) an independent accountant; or

- (b) for each kind of statement not received under paragraph (a), a signed statement by the prospective franchisee that the prospective franchisee:
  - (i) has been given that kind of advice about the proposed franchise agreement or franchised business; or
  - (ii) has been told that that kind of advice should be sought but has decided not to seek it.
- (3) Subclause (2):
  - (a) does not apply to the renewal or extension of a franchise agreement with a franchisor; and
  - (b) does not prevent the franchisor from requiring any or all of the statements mentioned in paragraph (2) (a).

### **Part 3 Conditions of franchise agreement**

#### **13 Cooling off period**

- (1) A franchisee may terminate an agreement (being either a franchise agreement or an agreement to enter into a franchise agreement) within 7 days after the earlier of:
  - (a) entering into the agreement; or
  - (b) making any payment (whether of money or of other valuable consideration) under the agreement.
- (2) Subclause (1) does not apply to the renewal, extension or transfer of an existing franchise agreement.
- (3) If the franchisee terminates an agreement under subclause (1), the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by the franchisee to the franchisor under the agreement.
- (4) However, the franchisor may deduct from the amount paid under subclause (3) the franchisor's reasonable expenses if the expenses or their method of calculation have been set out in the agreement.



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## 14 Copy of lease

- (1) If a franchisee leases premises from the franchisor or an associate of the franchisor for the purposes of a franchised business, the franchisor or the associate from which the premises are leased must give to the franchisee 1 of the documents mentioned in subclause (2) within 1 month after the lease or agreement to lease is signed by the parties.
- (2) For subclause (1), the documents are:
  - (a) a copy of the agreement to lease;
  - (b) a copy of the lease.
- (3) If the franchisee occupies, without a lease, premises leased by the franchisor or an associate of the franchisor, the franchisor or the associate who leases the premises must give to the franchisee 1 of the documents mentioned in subclause (4) within 1 month after:
  - (a) the occupation commences; or
  - (b) for the documents mentioned in paragraph (4) (b) — the documents are signed by the parties.
- (4) For subclause (3), the documents are:
  - (a) a copy of the franchisor's or associate's lease or agreement to lease;
  - (b) a copy of the documents that give the franchisee rights to occupy the premises;
  - (c) written details of the conditions of occupation.

## 15 Association of franchisees or prospective franchisees

A franchisor must not induce a franchisee or prospective franchisee:

- (a) not to form an association; or
- (b) not to associate with other franchisees or prospective franchisees for a lawful purpose.

**16 Prohibition on release from liability etc**

- (1) A franchise agreement entered into on or after 1 October 1998 must not contain, or require a franchisee to sign:
  - (a) a general release of the franchisor from liability towards the franchisee; or
  - (b) a waiver of any verbal or written representation made by the franchisor.
- (2) However, paragraph (1) (a) does not prevent a franchisee from settling a claim against the franchisor after entering into a franchise agreement.

**17 Marketing and other cooperative funds**

- (1) If a franchise agreement provides that a franchisee must pay money to a marketing or other cooperative fund, the franchisor must:
  - (a) within 4 months after the end of the last financial year, prepare an annual financial statement detailing all of the fund's receipts and expenses for the last financial year; and
  - (b) have the statement audited by a registered company auditor within 4 months after the end of the financial year to which it relates; and
  - (c) give to the franchisee:
    - (i) a copy of the statement, within 30 days of preparing the statement; and
    - (ii) a copy of the auditor's report, if such a report is required, within 30 days of preparing the report.
- (2) A franchisor does not have to comply with paragraph (1) (b) for a financial year if:
  - (a) 75% of the franchisor's franchisees in Australia, who contribute to the fund, have voted to agree that the franchisor does not have to comply with the paragraph; and
  - (b) either:

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- (i) that agreement is made within 5 months after the end of the financial year (the *financial year for which agreement is reached*); or
  - (ii) the financial year falls within the period of 2 years after the financial year for which agreement is reached.
- (3) A franchisor is taken to have complied with paragraph 12.1 (h) of Annexure 1 if, to the extent to which the franchisor is aware of the details, the franchisor supplies the following information for the period before 1 July 1998 to the franchisee:
- (a) the amounts of expenditure on production, advertising, administration and any other category of expenditure stated in the disclosure document for each marketing or other cooperative fund controlled or administered by or for the franchisor to which the franchisee may be required to contribute;
  - (b) the percentage that each amount disclosed in accordance with paragraph (a) constitutes of the total expenditure disclosed in accordance with that paragraph.
- (4) If a franchise agreement provides that a franchisee must pay money to a marketing or other cooperative fund, the reasonable costs of administering and auditing the fund must be paid from the fund.

## **18 Disclosure of materially relevant facts**

- (1) If a disclosure document does not mention a matter mentioned in subclause (2), the franchisor must tell a franchisee or prospective franchisee about the matter, in writing, within a reasonable time (but not more than 14 days) after the franchisor becomes aware of it.
- (2) For subclause (1), the matters are the following:
  - (a) change in majority ownership or control of the franchisor;
  - (b) proceedings by a public agency, a judgment in criminal or civil proceedings or an award in an arbitration against the franchisor or a franchisor director in Australia alleging:

- (i) breach of a franchise agreement; or
  - (ii) contravention of trade practices law; or
  - (iii) contravention of the *Corporations Act 2001*; or
  - (iv) unconscionable conduct; or
  - (v) misconduct; or
  - (vi) an offence of dishonesty;
- (c) a judgment against the franchisor, other than for unfair dismissal of an employee, under:
- (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
  - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
  - (iii) section 276 of the *Industrial Relations Act 1999* of Queensland;
- (d) civil proceedings in Australia against the franchisor or a franchisor director by at least 10%, or 10, of the franchisees in Australia of the franchisor (whichever is the lower);
- (e) any judgment that is entered against the franchisor in Australia, and is not discharged within 28 days, for at least:
- (i) for a small proprietary company — \$100,000; or
  - (ii) for any other company — \$1,000,000;
- (f) any judgment that is entered against the franchisor in a matter mentioned in item 4.2 of Annexure 1 or item 3.2 of Annexure 2;
- (g) the franchisor becoming an externally-administered body corporate;
- (h) a change in the intellectual property, or ownership or control of the intellectual property, that is material to the franchise system;
- (i) the existence and content of any undertaking or order under section 87B of the Act.
- (3) For paragraphs (2) (b), (c), (d), (e) and (f), the franchisor must tell the franchisee:

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- (a) the names of the parties to the proceedings; and
  - (b) the name of the court or tribunal; and
  - (c) the case number; and
  - (d) the general nature of the proceedings.
- (4) For paragraph (2) (g), the franchisor must tell the franchisee the name and address of the administrator, controller or liquidator.
- (5) For paragraph 18 (2) (i), this information must be disclosed within a reasonable time (but not more than 14 days) after the undertaking or order is given.

*Note* Nothing in this code affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## **19 Current disclosure document**

- (1) A franchisor must give to a franchisee a current disclosure document within 14 days after a written request by the franchisee.
- (2) However, a request under subclause (1) can be made only once in 12 months.

## **20 Transfer of the franchise**

- (1) A request for a franchisor's consent to transfer of a franchise must be made in writing.
- (2) A franchisor must not unreasonably withhold consent to the transfer.
- (3) For subclause (2), circumstances in which it is reasonable for a franchisor to withhold consent include:
  - (a) the proposed transferee is unlikely to be able to meet the financial obligations that the proposed transferee would have under the franchise agreement; or
  - (b) the proposed transferee does not meet a reasonable requirement of the franchise agreement for the transfer of a franchise; or

- (c) the proposed transferee has not met the selection criteria of the franchisor; or
  - (d) agreement to the transfer will have a significantly adverse effect on the franchise system; or
  - (f) the proposed transferee does not agree in writing to comply with the obligations of the franchisee under the franchise agreement; or
  - (g) the franchisee has not paid or made reasonable provision to pay an amount owing to the franchisor; or
  - (h) the franchisee has breached the franchise agreement and has not remedied the breach.
- (4) The franchisor is taken to have given consent to the transfer if the franchisor does not, within 42 days after the request was made, give to the franchisee written notice:
- (a) that consent is withheld; and
  - (b) setting out why consent is withheld.

## **21 Termination — breach by franchisee**

- (1) This clause applies if:
  - (a) a franchisee breaches a franchise agreement; and
  - (b) the franchisor proposes to terminate the franchise agreement; and
  - (c) clause 23 does not apply.
- (2) The franchisor must:
  - (a) give to the franchisee reasonable notice that the franchisor proposes to terminate the franchise agreement because of the breach; and
  - (b) tell the franchisee what the franchisor requires to be done to remedy the breach; and
  - (c) allow the franchisee a reasonable time to remedy the breach.
- (3) For paragraph (2) (c), the franchisor does not have to allow more than 30 days.

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- (4) If the breach is remedied in accordance with paragraphs (2) (b) and (c), the franchisor cannot terminate the franchise agreement because of that breach.
  - (5) Part 4 (resolving disputes) applies in relation to a dispute arising from termination under this clause.

## **22 Termination — no breach by franchisee**

- (1) This clause applies if:
  - (a) a franchisor terminates a franchise agreement:
    - (i) in accordance with the agreement; and
    - (ii) before it expires; and
    - (iii) without the consent of the franchisee; and
  - (b) the franchisee has not breached the agreement; and
  - (c) clause 23 does not apply.
- (2) For subparagraph (1) (a) (iii), a condition of a franchise agreement that a franchisor can terminate the franchise agreement without the consent of the franchisee is not taken to be consent.
- (3) Before terminating the franchise agreement, the franchisor must give reasonable written notice of the proposed termination, and reasons for it, to the franchisee.
- (4) Part 4 (resolving disputes) applies in relation to a dispute arising from termination under this clause.

## **23 Termination — special circumstances**

A franchisor does not have to comply with clause 21 or 22 if the franchisee:

- (a) no longer holds a licence that the franchisee must hold to carry on the franchised business; or
- (b) becomes bankrupt, insolvent under administration or an externally-administered body corporate; or
- (c) voluntarily abandons the franchised business or the franchise relationship; or
- (d) is convicted of a serious offence; or

- (e) operates the franchised business in a way that endangers public health or safety; or
- (f) is fraudulent in connection with operation of the franchised business; or
- (g) agrees to termination of the franchise agreement.

## **Part 4 Resolving disputes**

### **24 Definitions**

In this Part:

*complainant* means the person who starts the procedure under clause 29.

*parties* means the complainant and the respondent in a dispute arising under a franchise agreement or this code.

*respondent* means the person with whom the complainant has a dispute.

### **25 Mediation adviser**

A mediation adviser is to be appointed for this Part by the Minister.

### **26 Internal complaint handling procedure**

A franchise agreement entered into on or after 1 October 1998 must provide for a complaint handling procedure that complies with clauses 29 and 30.

### **27 Code complaint handling procedure**

A party to a franchise agreement who has a dispute with another party to the franchise agreement may start the procedure under clause 29.

### **28 Choice of procedure**

A party to a franchise agreement who has a dispute with another party to the franchise agreement may, at any time, choose to use the procedure under clause 26 or 27.



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## **29 Procedure**

- (1) The complainant must tell the respondent in writing:
  - (a) the nature of the dispute; and
  - (b) what outcome the complainant wants; and
  - (c) what action the complainant thinks will settle the dispute.
- (2) The parties should then try to agree about how to resolve the dispute.
- (3) For mediation under a franchise agreement:
  - (a) if the parties cannot agree under subclause (2) within 3 weeks, either party may refer the matter to a mediator; and
  - (b) if the parties cannot agree about who should be the mediator, either party may ask the mediation adviser to appoint a mediator.
- (4) For mediation under this code, either party may ask the mediation adviser to appoint a mediator.
- (5) Subject to subclause (5A), the mediator may decide the time and place for mediation.
- (5A) Mediation under this code must be conducted in Australia.
- (6) The parties must attend the mediation and try to resolve the dispute.
- (7) For subclause (6), a party is taken to attend mediation if the party is represented at the mediation by a person who has the authority to enter an agreement to settle the dispute on behalf of the party.

## **30 Mediation under the code**

- (1) The mediation adviser must, within 14 days after referral under paragraph 29 (3) (b) or subclause 29 (4), appoint a mediator for the dispute.
- (2) After mediation under this code has started, the mediator must tell the mediation adviser, within 28 days, that mediation has started.

### **30A Termination of mediation**

- (1) This clause applies if:
  - (a) at least 30 days have elapsed after the start of mediation of a dispute; and
  - (b) the dispute has not been resolved.
- (2) If either party asks the mediator to terminate the mediation, the mediator must do so.
- (3) Subject to subclause (2), the mediator may terminate the mediation at any time unless satisfied that a resolution of the dispute is imminent.
- (4) If the mediator terminates the mediation of a dispute under this clause, the mediator must issue a certificate stating:
  - (a) the names of the parties; and
  - (b) the nature of the dispute; and
  - (c) that the mediation has finished; and
  - (d) that the dispute has not been resolved.
- (5) The mediator must give a copy of the certificate to:
  - (a) the mediation adviser; and
  - (b) each of the parties to the dispute.

### **31 Conditions**

- (1) This Part does not affect the right of a party to a franchise agreement to take legal proceedings under the franchise agreement.
- (2) The parties are equally liable for the costs of mediation under this Part unless they agree otherwise.
- (3) The parties must pay for their own costs of attending the mediation.

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## Annexure 1 Disclosure document for franchisee or prospective franchisee

### 1 First page

1.1 On the first page:

(a) in bold upper case:

**DISCLOSURE DOCUMENT FOR FRANCHISEE OR PROSPECTIVE FRANCHISEE;** and

(b) the franchisor's:

(i) name; and

(ii) business address and phone number; and

(iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor); and

(ba) the signature of the franchisor, or of a director, officer or authorised agent of the franchisor; and

(c) the preparation date of the disclosure document; and

(d) the following statement:

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement.

Entering into a franchise agreement is a serious undertaking.

A franchise agreement is legally binding on you if you sign it.

You are entitled to a waiting period of 14 days before you enter into this agreement.

If this is a new franchise agreement (not a renewal, extension or transfer of an agreement), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement.

If you decide to terminate the agreement during the cooling off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor

under the agreement. However, the franchisor may deduct from this amount the franchisor's reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.

Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.

You should make your own enquiries about the franchise and about the business of the franchise.

You should get independent legal, accounting and business advice before signing the franchise agreement.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

## **2 Franchisor details**

- 2.1 The franchisor's:
  - (a) name; and
  - (b) address, or addresses, of registered office and principal place of business in Australia; and
  - (c) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).
- 2.2 The name under which the franchisor carries on business in Australia relevant to the franchise.
- 2.3 A description of the kind of business operated under the franchise.
- 2.4 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the franchisor that is a body corporate (if any).
- 2.5 The name and address of each associate of the franchisor that is not a body corporate (if any).
- 2.6 For each officer of the franchisor — name, position held and qualifications (if any).

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### 3 Business experience

- 3.1 A summary of the relevant business experience in the last 10 years of each person mentioned in item 2.6.
- 3.2 A summary of relevant business experience of the franchisor in the last 10 years, including:
- (a) length of experience in:
    - (i) operating a business that is substantially the same as that of the franchise; and
    - (ii) offering other franchises that are substantially the same as the franchise; and
  - (b) whether the franchisor has offered franchises for other businesses and, if so:
    - (i) a description of each such business; and
    - (ii) for how long the franchisor offered franchises for each such business.

### 4 Litigation

- 4.1 Details of:
- (a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the franchisor or a franchisor director in Australia alleging:
    - (i) breach of a franchise agreement; or
    - (ii) contravention of trade practices law; or
    - (iii) contravention of the *Corporations Act 2001*; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or
    - (vi) an offence of dishonesty; and
  - (b) proceedings against the franchisor under:
    - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
    - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
    - (iii) section 276 of the *Industrial Relations Act 1999* of Queensland.

- 4.2 Whether the franchisor or a director of the franchisor has been:
- (a) in the last 10 years — convicted of a serious offence, or an equivalent offence outside Australia; or
  - (b) in the last 5 years — subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1 (a); or
  - (c) in the last 10 years — bankrupt, insolvent under administration or an externally-administered body corporate in Australia or elsewhere.
- 4.3 For items 4.1 and 4.2 — the following details (where relevant):
- (a) the names of the parties to the proceedings;
  - (b) the name of the court, tribunal or arbitrator;
  - (c) the case number;
  - (d) the general nature of the proceedings;
  - (e) the current status of the proceedings;
  - (f) the date and content of any undertaking or order under section 87B of the Act;
  - (g) the penalty or damages assessed or imposed;
  - (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
  - (i) the period of the bankruptcy, insolvency under administration or external administration.

## **5 Payments to agents**

- 5.1 For any agreement under which the franchisor must pay an amount, or give other valuable consideration, to a person who is not an officer, director or employee of the franchisor in connection with the introduction or recruitment of a franchisee — the name of the person.

## **6 Existing franchises**

- 6.1 Number, sorted by State, Territory or region, of:
- (a) existing franchised businesses; and
  - (b) existing franchisees; and

- 
- (c) businesses owned or operated by the franchisor in Australia that are substantially the same as the franchise.

6.2 For each existing franchisee:

- (a) business address, if this is not the franchisee's residential address; and
- (b) business phone number; and
- (c) year when the franchisee started operating the franchised business.

6.3 However, if there are more than 50 franchises, the franchisor may instead give details under item 6.2 for all franchisees in the State, region or metropolitan area in which the franchise is to be operated.

6.4 For each of the last 3 financial years and for each of the following events — the number of franchised businesses for which the event happened:

- (a) the franchise was transferred;
- (b) the franchised business ceased to operate;
- (c) the franchise agreement was terminated by the franchisor;
- (d) the franchise agreement was terminated by the franchisee;
- (e) the franchise agreement was not renewed when it expired;
- (f) the franchised business was bought back by the franchisor;
- (g) the franchise agreement was terminated and the franchised business was acquired by the franchisor.

*Note* An event may be counted more than once if more than 1 paragraph applies to it.

6.5 Subject to item 6.6, the franchisor is taken to comply with item 6.4 if the franchisor supplies, for each event mentioned in item 6.4, the name, location and contact details of each franchisee, if the information is available.

6.6 A franchisor does not have to provide details of a franchisee if the franchisee has requested in writing that the details not be disclosed.

## **7 Intellectual property**

- 7.1 For any trade mark used to identify, and for any patent, design or copyright that is material to, the franchise system (*intellectual property*):
- (a) description of the intellectual property; and
  - (b) details of the franchisee's rights and obligations in connection with the use of the intellectual property; and
  - (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
  - (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
    - (i) name of court or tribunal; and
    - (ii) matter number; and
    - (iii) summary of the claim or judgment; and
  - (e) if the intellectual property is not owned by the franchisor — who owns it; and
  - (f) details of any agreement that significantly affects the franchisor's rights to use, or to give others the right to use, the intellectual property, including:
    - (i) parties to the agreement; and
    - (ii) nature and extent of any limitation; and
    - (iii) duration of the agreement; and
    - (iv) conditions under which the agreement may be terminated.
- 7.2 The franchisor is taken to comply with item 7.1 for any information that is confidential if the franchisor gives:
- (a) a general description of the subject matter; and
  - (b) a summary of conditions for use by the franchisee.

## **8 Franchise site or territory**

- 8.1 Whether the franchise is:
- (a) for an exclusive or non-exclusive territory; or
  - (b) limited to a particular site.



8.2 For the territory of the franchise:

- (a) whether other franchisees may operate a business that is substantially the same as the franchised business; and
- (b) whether the franchisor or an associate of the franchisor may operate a business that is substantially the same as the franchised business; and
- (c) whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise; and
- (d) whether the franchisee may operate a business that is substantially the same as the franchised business outside the territory of the franchise; and
- (e) whether the franchisor may change the territory of the franchise.

**9 Supply of goods or services to a franchisee**

9.1 For the franchisor's requirements for supply of goods or services to a franchisee — details of:

- (a) any requirement for the franchisee to maintain a level of inventory or acquire an amount of goods or services; and
- (b) restrictions on acquisition of goods or services by the franchisee from other sources; and
- (c) ownership by the franchisor or an associate of the franchisor of an interest in any supplier from which the franchisee may be required to acquire goods or services; and
- (d) the obligation of the franchisee to accept goods or services from the franchisor, or from an associate of the franchisor; and
- (e) the franchisor's obligation to supply goods or services to the franchisee; and
- (f) whether the franchisee will be offered the right to be supplied with the whole range of the goods or services of the franchise; and
- (g) conditions under which the franchisee can return goods, and to whom; and

- (h) conditions under which the franchisee can obtain a refund for services provided by the franchisor, and from whom; and
- (i) whether the franchisor may change the range of goods or services, and if so, to what extent; and
- (j) whether the franchisor, or an associate of the franchisor, will receive a rebate or other financial benefit from the supply of goods or services to franchisees, including the name of the business providing the rebate or financial benefit; and
- (k) whether any rebate or financial benefit referred to under paragraph (j) is shared, directly or indirectly, with franchisees.

*Note* Before a requirement is made under paragraph (b) or (c), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Act, Part VII).

## **10 Supply of goods or services by a franchisee**

10.1 For the franchisor's requirements for supply of goods or services by a franchisee — details of:

- (a) restrictions on the goods or services that the franchisee may supply; and
- (b) restrictions on the persons to whom the franchisee may supply goods or services; and
- (c) whether the franchisee must supply the whole range of the goods or services of the franchise.

*Note* Before a requirement is made under paragraph (a) or (b), the franchisor may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Act, Part VII).

## **11 Sites or Territories**

11.1 The policy of the franchisor, or an associate of the franchisor, for selection of as many of the following as are relevant:

- (a) the site to be occupied by the franchised business;
- (b) the territory in which the franchised business is to operate.

- 
- 11.2 Details of whether the territory or site to be franchised has been subject to a franchised business operated by a previous franchise granted by the franchisor and, if so, details of the franchised business, including the circumstances in which the previous franchisee ceased to operate.
- 11.3 The details mentioned in item 11.2 must be provided:
- (a) in a separate document; and
  - (b) with the disclosure document.

## **12 Marketing or other cooperative funds**

- 12.1 For each marketing or other cooperative fund, controlled or administered by or for the franchisor, to which the franchisee may be required to contribute, the following details:
- (a) the kinds of persons who contribute to the fund (for example, franchisee, franchisor, outside supplier);
  - (b) whether the franchisor must contribute to the fund in relation to businesses owned or operated by the franchisor that are substantially the same as the franchised business and, if so, whether the contribution is worked out in the same way as for a franchisee;
  - (c) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
  - (d) who controls or administers the fund;
  - (e) whether the fund is audited and, if so, by whom and when;
  - (f) whether the fund's financial statements can be inspected by, or will be given to, franchisees;
  - (g) the kinds of expense for which the fund may be used;
  - (h) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
  - (i) whether the franchisor or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;

- (j) whether the franchisor must spend part of the fund on marketing, advertising or promoting the franchisee's business.

*Note* Subclause 17 (3) of the Code deals with compliance by the franchisor with para 12.1 (h).

## **13 Payments**

### *Prepayments*

- 13.1 If the franchisor requires a payment before the franchise agreement is entered into — why the money is required, how the money is to be applied and who will hold the money.
- 13.2 The conditions under which a payment will be refunded.

### *Establishment costs*

- 13.3 Details of the range of costs to start operating the franchised business, based on current practice, for the following matters:
- (a) real property, including property type, location and building size;
  - (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;
  - (c) inventory required to begin operation;
  - (d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;
  - (e) additional funds, including working capital, required by the franchisee before operations begin;
  - (f) other payments by a franchisee to begin operations.
- 13.4 For item 13.3, the details for each payment must include:
- (a) description of the payment; and
  - (b) amount of the payment or the formula used to work out the payment; and
  - (c) to whom the payment is made; and
  - (d) when the payment is due; and
  - (e) whether the payment is refundable and, if so, under what conditions.

- 
- 13.5 For item 13.4, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

*Other payments*

- 13.6 For each recurring or isolated payment payable by the franchisee to the franchisor or an associate of the franchisor or to be collected by the franchisor or an associate of the franchisor for another person:
- (a) description of the payment; and
  - (b) amount of the payment or formula used to work out the payment; and
  - (c) to whom the payment is made; and
  - (d) when the payment is due; and
  - (e) whether the payment is refundable and, if so, under what conditions.
- 13.7 For item 13.6, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.
- 13.8 If 2 or more of items 13.1, 13.3 and 13.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.

**14 Financing**

- 14.1 The material conditions of each financing arrangement that the franchisor, its agent or an associate of the franchisor offers to the franchisee for establishment or operation of the franchised business.
- 14.2 For item 14.1, the material conditions of a financing arrangement include the following:
- (a) any requirement that the franchisee must provide a minimum amount of unborrowed working capital for the franchised business;
  - (b) any requirement that a franchisee must meet a stated debt to equity ratio in relation to the franchised business.

## **15 Franchisor's obligations**

- 15.1 References to the relevant conditions of the attached franchise agreement that deal with obligations of the franchisor, including:
- (a) any obligation to provide training:
    - (i) before the franchised business starts; and
    - (ii) during operation of the franchised business; and
  - (b) any obligation that continues after the franchised business ceases to operate.

## **16 Franchisee's obligations**

- 16.1 References to the relevant conditions of the franchise agreement that deal with obligations of a franchisee for the following matters:
- (a) selection and acquisition of site and premises;
  - (b) requirements for starting the franchised business;
  - (c) development of the site, premises, vehicles and equipment;
  - (d) training:
    - (i) before the franchised business starts; and
    - (ii) during operation of the franchised business;
  - (e) opening the franchised business;
  - (f) complying with standards or operating manuals;
  - (h) warranties and customer service;
  - (i) territorial development and minimum performance criteria;
  - (j) maintenance and appearance of site, premises, vehicles and equipment;
  - (k) insurance;
  - (l) marketing;
  - (m) indemnities and guarantees;
  - (n) participation requirements for the franchisee or its directors, management or employees;
  - (o) records and reports;
  - (p) inspections and audit.

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## 17 Other conditions of agreement

17.1 References to the relevant conditions of the franchise agreement that deal with the following matters:

- (a) term of the franchise agreement;
- (b) variation;
- (c) renewal or extension;
- (d) conditions the franchisee must meet to renew or extend the franchise agreement;
- (e) termination by the franchisor;
- (f) termination by the franchisee;
- (g) the franchisee's goodwill, if any, on termination or expiry;
- (h) the franchisee's obligations when a franchise agreement is terminated, expires or is not renewed;
- (i) the franchisor's rights to sell its business;
- (j) transfer of a franchise;
- (k) mediation;
- (l) option or right of first refusal, if any, for the franchisor to buy the franchised business;
- (m) the franchisor's rights, if any, to inspect financial and other records of the franchised business;
- (n) confidentiality of the franchisee's records;
- (o) death or disability of the franchisee or a director or shareholder of the franchisee;
- (p) details of the operation or establishment of any franchisee representative body, eg Franchise Advisory Council;
- (q) restrictions on the franchisee's operation of other businesses during or after the term of the franchise agreement;
- (r) operations manual;
- (s) choice of governing law.

## 18 Obligation to sign related agreements

18.1 Summary of any requirements under the franchise agreement for the franchisee or directors, shareholders, beneficiaries,

owners or partners of the franchisee to enter into any of the following agreements:

- (a) a lease, sublease, licence or other agreement under which the franchisee can occupy the premises of the franchised business;
- (b) a chattel lease or hire purchase agreement;
- (ba) an agreement under which the franchisee gains ownership of, or is authorised to use, any intellectual property;
- (c) a security agreement, including a guarantee, mortgage, security deposit, indemnity, loan agreement or obligation to provide a bank guarantee to a third party;
- (d) a confidentiality agreement;
- (e) an agreement not to carry on business within an area or for a time after the franchise agreement is terminated.

18.2 All documents mentioned in item 18.1 must be provided to the franchisee:

- (a) at least 14 days before the day on which the franchise agreement is signed, if they are available at that time; or
- (b) if they are not available at that time — when they become available.

## **19 Earnings information**

19.1 Earnings information for the franchise, if it is given, must be based on reasonable grounds.

19.2 Earnings information may be given in a separate document attached to the disclosure document.

19.3 Earnings information includes information from which historical or future financial details of a franchise can be assessed.

19.4 If earnings information is not given — the following statement:

The franchisor does not give earnings information about a [*insert type of franchise*] franchise.

Earnings may vary between franchises.

The franchisor cannot estimate earnings for a particular franchise.



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- 19.5 Earnings information that is a projection or forecast must include the following details:
- (a) the facts and assumptions on which the projection or forecast is based;
  - (b) the extent of enquiries and research undertaken by the franchisor and any other compiler of the projection or forecast;
  - (c) the period to which the projection or forecast relates;
  - (d) an explanation of the choice of the period covered by the projection or forecast;
  - (e) whether the projection or forecast includes depreciation, salary for the franchisee and the cost of servicing loans;
  - (f) assumptions about interest and tax.

## **20 Financial details**

- 20.1 A statement as at the end of the last financial year, signed by at least 1 director of the franchisor, whether in its directors' opinion there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.
- 20.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the Corporations Act 2001, or the foreign equivalent for a foreign franchisor, prepared by:
- (a) the franchisor; and
  - (b) any consolidated entity to which the franchisor belongs; if:
    - (c) the franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001*; and
  - (d) a franchisee requests the reports.
- 20.3 Item 20.2 does not apply if:
- (a) the statement under item 20.1 is supported by an independent audit provided by:
    - (i) a registered company auditor; or

- (ii) if the franchisor is a foreign franchisor — a foreign equivalent for that franchisor;  
within 12 months after the end of the financial year to which the statement relates; and
- (b) a copy of the independent audit is provided with the statement under item 20.1.

## **21 Updates**

- 21.1 Any information given under clause 18 of the code that has changed between the date of the disclosure document and the date the disclosure document is given under the code.

## **22 Other relevant disclosure information**

- 22.1 Copy of proposed franchise agreement must be attached.
- 22.2 Copy of the code must be attached.
- 22.3 Any other information that:
  - (a) the franchisor wants to give; and
  - (b) does not contradict information required to be given.

## **23 Receipt**

- 23.1 On the last page of the disclosure document:
  - (a) a statement to the effect that the prospective franchisee may keep the disclosure document; and
  - (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

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## **Annexure 2 Short form disclosure document for franchisee or prospective franchisee**

(subclause 6 (2))

### **1 First page**

1.1 On the first page:

(a) in bold upper case:

**SHORT FORM DISCLOSURE DOCUMENT FOR  
FRANCHISEE OR PROSPECTIVE FRANCHISEE;**  
and

(b) the franchisor's:

(i) name; and

(ii) business address and phone number; and

(iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor); and

(c) the signature of the franchisor, or of a director, officer or authorised agent of the franchisor; and

(d) the preparation date of the disclosure document; and

(e) the following statement:

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a franchise agreement.

Entering into a franchise agreement is a serious undertaking.

A franchise agreement is legally binding on you if you sign it.

You are entitled to a waiting period of 14 days before you enter into this agreement.

If this is a new franchise agreement (not a renewal, extension or transfer of an agreement), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement.

If you decide to terminate the agreement during the cooling off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor under the agreement. However, the franchisor may deduct from this amount the franchisor's reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.

Take your time, read all the documents carefully, talk to other franchisees and assess your own financial resources and capabilities to deal with the requirements of the franchised business.

You should make your own enquiries about the franchise and about the business of the franchise.

You should get independent legal, accounting and business advice before signing the franchise agreement.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

## **2 Franchisor details**

- 2.1 The franchisor's:
  - (a) name; and
  - (b) address, or addresses, of registered office and principal place of business in Australia; and
  - (c) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).
- 2.2 The name under which the franchisor carries on business in Australia relevant to the franchise.
- 2.3 A description of the kind of business operated under the franchise.
- 2.4 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the franchisor that is a body corporate (if any).

2.5 The name and address of each associate of the franchisor that is not a body corporate (if any).

2.6 For each officer of the franchisor — name, position held and qualifications (if any).

### 3 Litigation

3.1 Details of:

- (a) current proceedings by a public agency, criminal or civil proceedings or arbitration, relevant to the franchise, against the franchisor or a franchisor director in Australia alleging:
  - (i) breach of a franchise agreement; or
  - (ii) contravention of trade practices law; or
  - (iii) contravention of the *Corporations Act 2001*; or
  - (iv) unconscionable conduct; or
  - (v) misconduct; or
  - (vi) an offence of dishonesty; and
- (b) proceedings against the franchisor under:
  - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
  - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
  - (iii) section 276 of the *Industrial Relations Act 1999* of Queensland.

3.2 Whether the franchisor or a director of the franchisor has been:

- (a) in the last 10 years — convicted of a serious offence, or an equivalent offence outside Australia; or
- (b) in the last 5 years — subject to final judgment in civil proceedings for a matter mentioned in paragraph 3.1 (a); or
- (c) in the last 10 years — bankrupt, insolvent under administration or an externally-administered body corporate in Australia or elsewhere.

- 3.3 For items 3.1 and 3.2 — the following details (where relevant):
- (a) the names of the parties to the proceedings;
  - (b) the name of the court, tribunal or arbitrator;
  - (c) the case number;
  - (d) the general nature of the proceedings;
  - (e) the current status of the proceedings;
  - (f) the date of order or undertaking under section 87B of the Act;
  - (g) the penalty or damages assessed or imposed;
  - (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
  - (i) the period of the bankruptcy, insolvency under administration or external administration.

#### **4 Intellectual property**

- 4.1 For any trade mark used to identify, and for any patent, design or copyright that is material to, the franchise system (*intellectual property*):
- (a) description of the intellectual property; and
  - (b) details of the franchisee's rights and obligations in connection with the use of the intellectual property; and
  - (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
  - (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
    - (i) name of court or tribunal; and
    - (ii) matter number; and
    - (iii) summary of the claim or judgment; and
  - (e) if the intellectual property is not owned by the franchisor — who owns it; and
  - (f) details of any agreement that significantly affects the franchisor's rights to use, or to give others the right to use, the intellectual property, including:
    - (i) parties to the agreement; and

- (ii) nature and extent of any limitation; and
- (iii) duration of the agreement; and
- (iv) conditions under which the agreement may be terminated.

4.2 The franchisor is taken to comply with item 4.1 for any information that is confidential if the franchisor gives:

- (a) a general description of the subject matter; and
- (b) a summary of conditions for use by the franchisee.

## **5 Franchise site or territory**

5.1 Whether the franchise is:

- (a) for an exclusive or non-exclusive territory; or
- (b) limited to a particular site.

5.2 For the territory of the franchise:

- (a) whether other franchisees may operate a business that is substantially the same as the franchised business; and
- (b) whether the franchisor or an associate of the franchisor may operate a business that is substantially the same as the franchised business; and
- (c) whether the franchisor or an associate of the franchisor may establish other franchises that are substantially the same as the franchise; and
- (d) whether the franchisee may operate a business that is substantially the same as the franchised business outside the territory of the franchise; and
- (e) whether the franchisor may change the territory of the franchise.

## **6 Marketing or other cooperative funds**

6.1 For each marketing or other cooperative fund, controlled or administered by or for the franchisor, to which the franchisee may be required to contribute, the following details:

- (a) the kinds of persons who contribute to the fund (for example, franchisee, franchisor, outside supplier);

- (b) whether the franchisor must contribute to the fund in relation to businesses owned or operated by the franchisor that are substantially the same as the franchised business and, if so, whether the contribution is worked out in the same way as for a franchisee;
- (c) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
- (d) who controls or administers the fund;
- (e) whether the fund is audited and, if so, by whom and when;
- (f) whether the fund's financial statements can be inspected by, or will be given to, franchisees;
- (g) the kinds of expense for which the fund may be used;
- (h) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
- (i) whether the franchisor or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;
- (j) whether the franchisor must spend part of the fund on marketing, advertising or promoting the franchisee's business.

*Note* Subclause 17 (3) of the Code deals with compliance by the franchisor with paragraph 6.1 (h).

## **7 Payments**

### *Prepayments*

- 7.1 If the franchisor requires a payment before the franchise agreement is entered into — why the money is required, how the money is to be applied and who will hold the money.
- 7.2 The conditions under which a payment will be refunded.

### *Establishment costs*

- 7.3 Details of the range of costs to start operating the franchised business, based on current practice, for the following matters:



- 
- (a) real property, including property type, location and building size;
  - (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;
  - (c) inventory required to begin operation;
  - (d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;
  - (e) additional funds, including working capital, required by the franchisee before operations begin;
  - (f) other payments by a franchisee to begin operations.

7.4 For item 7.3, the details for each payment must include:

- (a) description of the payment; and
- (b) amount of the payment or the formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

7.5 For item 7.4, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

#### *Other payments*

7.6 For each recurring or isolated payment payable by the franchisee to the franchisor or an associate of the franchisor or to be collected by the franchisor or an associate of the franchisor for another person:

- (a) description of the payment; and
- (b) amount of the payment or formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

7.7 For item 7.6, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

7.8 If 2 or more of items 7.1, 7.3 and 7.6 apply to a payment, the information required by those items in relation to that payment need be set out only once.

## **8 Franchisor's obligations**

8.1 References to the relevant conditions of the attached franchise agreement that deal with obligations of the franchisor, including:

- (a) any obligation to provide training:
  - (i) before the franchised business starts; and
  - (ii) during operation of the franchised business; and
- (b) any obligation that continues after the franchised business ceases to operate.

## **9 Franchisee's obligations**

9.1 References to the relevant conditions of the franchise agreement that deal with obligations for a franchisee for the following matters:

- (a) selection and acquisition of site and premises;
- (b) requirements for starting the franchised business;
- (c) development of the site, premises, vehicles and equipment;
- (d) training:
  - (i) before the franchised business starts; and
  - (ii) during operation of the franchised business;
- (e) opening the franchised business;
- (f) complying with standards or operating manuals;
- (g) warranties and customer service;
- (h) territorial development and minimum performance criteria;
- (i) maintenance and appearance of site, premises, vehicles and equipment;
- (j) insurance;
- (k) marketing;
- (l) indemnities and guarantees;

- (m) participation requirements for the franchisee or its directors, management or employees;
- (n) records and reports;
- (o) inspections and audit.

## **10 Other relevant disclosure information**

- 10.1 Copy of proposed franchise agreement must be attached.
- 10.2 Copy of the code must be attached.
- 10.3 Any other information that:
  - (a) the franchisor wants to give; and
  - (b) does not contradict information required to be given.

## **11 Financial details**

- 11.1 A statement as at the end of the last financial year, signed by at least 1 director of the franchisor, whether in its directors' opinion there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.
- 11.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the *Corporations Act 2001*, or the foreign equivalent for a foreign franchisor, prepared by:
  - (a) the franchisor; and
  - (b) any consolidated entity to which the franchisor belongs;  
if:
    - (c) a consolidated entity is required to provide audited financial reports under the *Corporations Act 2001*; and
    - (d) the franchisee requests the reports.
- 11.3 Item 11.2 does not apply if:
  - (a) the statement under item 11.1 is supported by an independent audit provided by:
    - (i) a registered company auditor; or
    - (ii) if the franchisor is a foreign franchisor — a foreign equivalent for that franchisor;

within 12 months after the end of the financial year to which the statement relates; and

- (b) a copy of the independent audit is provided with the statement under item 11.1.

## **12 Receipt**

12.1 On the last page of the disclosure document:

- (a) a statement to the effect that the prospective franchisee may:
- (i) keep the disclosure document; and
  - (ii) ask the franchisor for the information referred to in the following sections of Annexure 1:
    - section 3 — Business experience
    - section 5 — Payments to agents
    - section 6 — Existing franchises
    - section 9 — Supply of goods or services to a franchisee
    - section 10 — Supply of goods or services by a franchisee
    - section 11 — Sites or Territories
    - section 14 — Financing
    - section 17 — Summary of other conditions of agreement
    - section 18 — Obligation to sign related agreements
    - section 19 — Earnings information
    - section 21 — Updates
    - section 22 — Other relevant disclosure information; and
- (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

## Notes to the *Trade Practices (Industry Codes — Franchising) Regulations 1998*

### Note 1

The *Trade Practices (Industry Codes — Franchising) Regulations 1998* (in force under the *Trade Practices Act 1974*) as shown in this compilation comprise Statutory Rules 1998 No.162 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

### Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
1998 No. 162	25 June 1998	1 July 1998	
1999 No. 188	1 Sept 1999	1 Sept 1999	—
2001 No. 165	29 June 2001	1 Oct 2001	—
2007 No. 240	13 Aug 2007 (see F2007L02475)	1 Mar 2008	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Schedule</b>	
<b>Part 1</b>	
C. 2 .....	am. 2001 No. 165 rs. 2007 No. 240
C. 3 .....	am. 1999 No. 188; 2001 No. 165; 2007 No. 240
Heading to c. 4.....	rs. 1999 No. 188
C. 4 .....	am. 1999 No. 188; 2001 No. 165; 2007 No. 240
C. 5 .....	am. 1999 No. 188; 2007 No. 240
<b>Part 2</b>	
C. 6 .....	am. 1999 No. 188 rs. 2001 No. 165 am. 2007 No. 240
C. 6A.....	ad. 2001 No. 165
C. 6B.....	ad. 2001 No. 165 am. 2007 No. 240
C. 6C.....	ad. 2001 No. 165 am. 2007 No. 240
Note to c. 6 (1).....	ad. 1999 No. 188
C. 8 .....	am. 1999 No. 188; 2001 No. 165
C. 9 .....	am. 1999 No. 188 rep. 2001 No. 165
C. 10 .....	am. 2001 No. 165 rs. 2007 No. 240
Note to c. 10 .....	ad. 2001 No. 165
C. 11 .....	am. 1999 No. 188; 2001 No. 165
Division 2.3 of Part 2.....	rep. 2001 No. 165
C. 12 .....	am. 1999 No. 188 rep. 2001 No. 165
<b>Part 3</b>	
C. 13 .....	am. 2001 No. 165
C. 15 .....	rs. 2007 No. 240
Heading to c. 16.....	rs. 2007 No. 240
C. 16 .....	am. 2007 No. 240
C. 17 .....	am. 1999 No. 188; 2001 No. 165; 2007 No. 240
C. 18 .....	am. 1999 No. 188; 2001 No. 165; 2007 No. 240
C. 19 .....	am. 2001 No. 165
C. 20 .....	am. 2001 No. 16

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
C. 22 .....	am. 2001 No. 165
<b>Part 4</b>	
C. 29 .....	am. 2001 No. 165
C. 30A .....	ad. 2001 No. 165
<b>Annexure 1</b>	
Annexure 1 .....	am. 1999 No. 188; 2001 No. 165; 2007 No. 240
<b>Annexure 2</b>	
Annexure 2 .....	rs. 2001 No. 165 am. 2007 No. 240