

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 125**

Issued by the authority of the Treasurer

*Trade Practices Act 1974*

*Trade Practices (Industry Codes - Franchising) Amendment Regulations 2010  
(No. 1)*

The object of the *Trade Practices Act 1974* (TPA) is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

Section 172 of the TPA provides, in part, that the Governor-General may make Regulations, not inconsistent with the TPA, prescribing all matters required or permitted by the TPA to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the TPA.

The *Trade Practices (Industry Codes - Franchising) Regulations 1998* (the Principal Regulations) prescribe a mandatory industry code under the TPA, the Franchising Code of Conduct (Franchising Code) which regulates the conduct of franchisors and franchisees. The Franchising Code provides minimum standards of disclosure and conduct to assist both franchisors and franchisees in undertaking the due diligence process.

The purpose of the Regulations is to give effect to the Government's proposed reforms, as outlined in its responses to both the Parliamentary Joint Committee on Corporations and Financial Services' report, *Opportunity not opportunism: improving conduct in Australian franchising*, and the expert panel report, *Strengthening Statutory Unconscionable Conduct and the Franchising Code of Conduct*, which require changes to the Franchising Code. These amendments seek to increase franchisor disclosure on a number of different matters and to establish guidance to franchisees and franchisors on the conduct expected of them during dispute resolution processes. The amendments should place franchisees in a better position to understand the risks of entering into a franchising system by giving them clearer information up front about the terms and conditions on offer.

An overview of the proposed changes is set out in [Attachment A](#), with the details of the Regulations set out in [Attachment B](#).

The Joint Committee report and the expert panel report were informed by extensive submissions and evidence from small business stakeholders including franchising, business and academic sectors. In addition, a Regulatory Impact Statement (RIS) was prepared to assess the regulatory impacts on business of the proposed reforms stemming from the Government response to the Joint Committee report. The RIS canvasses input from industry stakeholders on the implementation options canvassed in the RIS ([Attachment C](#)).

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2010.

Authority: Section 172 of the *Trade Practices Act 1974*

**An overview of the regulatory changes**

The Regulations implement three broad categories of amendments to the Franchising Code of Conduct (Franchising Code). These three categories of amendments are set out in three parts below.

Some amendments require franchisors to update the disclosure document they provide to their franchisees to include more categories of disclosure. Annexure 1 of the Franchising Code contains a long form disclosure document for franchisees with an annual turnover of more than \$50,000 per annum and Annexure 2 contains a short form disclosure document for franchisees with an annual turnover of less than \$50,000 per annum. The long form disclosure mirrors the same categories of information as the short form disclosure and includes additional categories. The wording of the mirror categories within Annexure 1 and Annexure 2 is intended to be identical. Therefore, where the proposed amendments require an amendment to Annexure 1 of the Franchising Code, the mirror provisions in Annexure 2 are amended in an identical manner.

**Part I: Regulatory amendments as a result of the Government's response to the Joint Committee on Corporations and Financial Services' report *Opportunity not opportunism: improving conduct in Australian franchising***

The Joint Committee report focused on the rights of franchisees at the end of the franchise agreement term, the behaviour of parties in approaching mediation under the Franchising Code, franchise system failure and inappropriate behaviours by parties to a franchise agreement. The following proposed amendments to the Franchising Code increase franchisor disclosure and clarify these areas under the Franchising Code:

- arrangements to apply at the end of the agreement (item 28, new item 17C and item 37, new item 9C);
- pre-expiry notice (item 16, new clause 20A);
- good faith (item 17, new clause 23A);
- behaviours in dispute resolution (item 18, new subclause 29(8)); and
- franchise business failure (item 22 and item 32).

**Part II: Regulatory amendments as a result of the Expert Panel report *Strengthening statutory unconscionable conduct and the Franchising Code of Conduct***

The expert panel's report focused on a number of behaviours identified during industry consultation which may be inappropriate in a franchising agreement. These behaviours related to: unforeseen capital expenditure; unilateral contract variation; attribution of dispute resolution costs; confidentiality agreements; and changes to franchise agreements when a franchisee is trying to sell the business. The following proposed amendments to the Franchising Code implement the expert panel's findings in relation to these five behaviours:

- unforeseen capital expenditure (item 27, new item 13A and item 36, new item 7A) and other payments (item 25, new item 13.6A and item 34, new item 7.6A);
- unilateral contract variation (item 28, new item 17A and item 37, new

- item 9A);
- attribution of costs of dispute resolution (item 27, new item 13B and item 36, new item 7B);
- confidentiality obligation (item 28, new item 17B and item 37, new item 9B); and
- amendments to franchise agreement on transfer or before novation of a franchise agreement (item 28, new item 17D and item 37, new item 9D).

### **Part III: Minor technical amendments**

The Regulations also make a number of minor amendments to increase consistency and formatting within the Franchising Code in the following items 1 to 14, 20 to 23, 24, 29 to 33, 38 and 39.

Details of the Regulations are in Attachment B.

**Details of the Trade Practices (Industry Codes — Franchising) Amendment Regulations 2010 (No. 1)**

**Regulation 1 – Name of Regulations**

This Regulation provides that the title of the Regulations is the *Trade Practices (Industry Codes — Franchising) Amendment Regulations 2010 (No. 1)*.

**Regulation 2 – Commencement**

This Regulation provides that the Regulations commence on 1 July 2010.

**Regulation 3 – Amendment of Trade Practices (Industry Codes — Franchising) Regulations 1998**

This Regulation provides that Schedule 1 amends the *Trade Practices (Industry Codes — Franchising) Regulations 1998*.

**The following items amend the current schedule to the Franchising Code**

**Item 16 – Pre-expiry notice**

**Item 16** inserts a new clause, clause 20A, into the Franchising Code which deals with the pre-expiry notice that must be provided by the franchisor.

Clause 20A requires franchisors to inform franchisees, at least six months prior to the end of the franchise agreement, of their decision either to renew or not renew a franchise agreement. Where franchise agreements are for a term less than six months, franchisors are required to inform franchisees at least one month prior to the end of the franchise agreement of their decision to renew or not renew a franchise agreement.

**Item 17 – Good faith**

**Item 17** inserts a new clause 23A within the Franchising Code to provide that nothing in the Code limits any obligation imposed by the common law, applicable in a state or territory, on the parties to a franchising agreement to act in good faith.

The insertion of the new clause 23A within the Code preserves and recognises any developments in the case law on the concept of ‘good faith’.

**Item 18 – Behaviour in dispute resolution**

**Item 18** inserts subclause 29(8) within the Franchising Code which incorporates a non-exhaustive list of behaviours that provide guidance to franchisees and franchisors of the conduct expected of them when engaging in dispute resolution processes under the Franchising Code. The list of behaviours includes:

- attending and participating in meetings at reasonable times;

- at the beginning of the mediation process, making the party’s intention clear as to what the party is trying to achieve through the mediation process;
- observing any obligations relating to confidentiality that apply during or after the mediation process;
- not taking action during the dispute, including by providing inferior goods, services, or support, which has the effect of damaging the reputation of the franchise system; and
- not refusing to take action during the dispute, including not providing goods, services or support, if the refusal to act would have the effect of damaging the reputation of the franchise system.

In regards to ‘action’, the provisions refer to both action and inaction by a party that damages the franchise reputation (new paragraph 29(8)(d) and new paragraph 29(8)(e)). For instance, a franchisor refusing to supply goods to the franchisee while engaging in mediation would be an instance of a party acting in a manner to damage the reputation of the franchise business.

Generally, paragraphs 29(8)(d) and 29(8)(e) are referring to conduct by parties that is not in accordance with what would ordinarily be expected of parties in the course of conducting the franchise business. So, it is not intended that if a franchisee were to approach the ACCC to take enforcement action against a franchisor, that would be viewed as an indicator of action which has the effect of damaging the reputation of the franchise business. The provision is not intended in any way to limit the ability of franchisees to approach the ACCC in relation to breaches of the Franchising Code or the TPA.

In relation to paragraph 29(8)(b) (where parties must make their intentions in attending mediation clear), it is intended that parties should honestly disclose their aims in attending mediation. That is, if the aim of the parties is to negotiate an exit arrangement, then this should be made clear at the outset of mediation.

### **Item 19 – Attribution of costs of dispute resolution**

Subclause 31(2) of the Franchising Code notes that ‘The parties are equally liable for the costs of mediation under this Part unless they agree otherwise.’

**Item 19** inserts clause 31(4) within the Franchising Code to clarify the meaning of ‘costs of mediation’ to include:

- the cost of the mediator;
- the cost of room hire;
- the costs of any additional input (including expert reports) agreed by both parties to be necessary to the conduct of the mediation.

### **The following items relate to Annexure 1 of the Franchising Code**

#### **Item 22 – Franchise business failure**

**Item 22** implements the Government response in relation to franchisor failure by amending paragraph 1.1(d) of Annexure 1 of the Franchising Code. This amendment requires franchisors to provide a statement in their disclosure document that

franchising is a business and, like any business, the franchise (or franchisor) could fail during the franchise term and this could have consequences for the franchisee.

### **Items 25 and 26 – Other payments**

Item 13.6 requires franchisors to disclose details of payments payable by the franchisee. Item 13.6 of the disclosure document covers payments payable to the franchisor (or associate of the franchisor) or collected by the franchisor (or an associate of the franchisor) for another person. However, item 13.6 does not require franchisors to disclose payments to third parties. Where expenditure of this kind is within the knowledge or control of the franchisor, or is reasonably foreseeable by the franchisor, it is appropriate to require it to be disclosed. Accordingly, **item 25** inserts a new item 13.6A within Annexure 1 of the Franchising Code.

**Item 26** is a consequential amendment as a result of the amendment at item 25. Currently, for the purposes of item 13.6, the Code provides that if the amount of the payment payable by the franchisee cannot easily be worked out, the franchisor must disclose the upper and lower limits of the amount. Items 26 amends the Code to provide that with the payments referred to in item 13.6A, if the amount payable by the franchisee cannot be easily worked out, the upper and lower limits of the amount need to be provided.

### **Item 27 – Significant capital expenditure and attribution of costs of dispute resolution**

The expert panel considered the issue of significant capital expenditure required of franchisees by their franchisor, particularly towards the end of a franchise agreement (finding 3.2.2 of the Report).

In considering capital expenditure that would be considered to be of a ‘significant’ nature, the expert panel referred to shop re-fits, new capital equipment and refurbishment, particularly when unilaterally imposed on the franchisee towards the end of the franchise term. Industry input also noted that IT infrastructure would likely constitute capital expenditure of a significant nature. Accordingly, for the purposes of the proposed amendments, it is considered that franchisor imposition of unilateral capital expenditure of this nature on the franchisee would be considered significant.

**Item 27** inserts item 13A.1 within Annexure 1 and requires franchisors to disclose whether the franchisor will require the franchisee, through the franchise agreement, the operations manual (or equivalent), or any other means, to undertake significant capital expenditure that was not foreseen and, therefore, not disclosed by the franchisor before the franchisee entered into the franchise agreement.

**Item 27** also inserts item 13B.1 within Annexure 1 to require franchisors to state whether the franchisor will attribute their costs, including legal costs, incurred in dispute resolution, to the franchisee.

**Item 28 – Unilateral contract variation; confidentiality obligations; arrangements to apply at the end of the agreement; novation of a franchise agreement**

**Item 28** makes four changes to Annexure 1 after item 17.

Firstly, **item 28**, inserts item 17A within Annexure 1 requiring franchisors to disclose to franchisees the circumstances in which the franchisor has unilaterally varied a franchise agreement in the last three financial years and the circumstances in which unilateral variations to their agreement may take place in the future.

Secondly, **item 28** inserts items 17B.1 and 17B.2 within Annexure 1 of the Franchising Code.

Item 17B.1 requires franchisors to disclose to prospective franchisees whether a confidentiality obligation will be imposed on the franchisee, and the type of matters that could be covered by the confidentiality obligation. Item 17B.2 provides guidance as to the types of matters that franchisors should disclose and includes:

- outcomes of mediation;
- settlements;
- intellectual property;
- trade secrets; and
- particular aspects of individual agreements, such as fees.

Thirdly, **item 28** inserts item 17C.1 within Annexure 1 of the Franchising Code to require franchisors to disclose to franchisees the details of the process that will apply in determining arrangements to apply at the end of the agreement. Item 17C.1 would require the franchisor to include information on:

- a) whether the prospective franchisee will have any options to renew, or extend, or extend the scope of the agreement and, if so, the processes the franchisors will use to determine whether to renew, extend, or extend the scope of the agreement or enter into a new franchise agreement;
- b) whether the prospective franchisee will be entitled to an exit payment at the end of the agreement and, if so, how the exit payment will be determined or earned;
- c) details of the arrangements that will apply to unsold stock, marketing material, equipment and other assets purchased when the agreement was entered into, including:
  - i. whether the franchisor will purchase the assets; and
  - ii. if the franchisor is to purchase the assets – how prices will be determined;
- d) whether the prospective franchisee will have the right to sell the business at the end of the agreement;
- e) if the prospective franchisee will have the right to sell the business at the end of the agreement – whether the franchisor will have first right of refusal, and how market value will be determined; and
- f) whether the franchisor will consider any significant capital expenditure undertaken by the franchisee during the agreement, in determining arrangements to apply at the end of the agreement.



The valuation method by which parties would determine the value of the business and any stock is a matter for agreement between the franchisees and franchisors. The parties may choose to have an independent valuation of the business and stock for instance.

In addition, items 17C.2 and 17C.3 require franchisor disclosure of the details of whether the franchisor has, during the last three financial years, considered any significant capital expenditure undertaken by franchisees in determining the arrangements to apply at the end of their agreements.

Paragraph 17C.1(f) within Annexure 1 of the Code requires franchisors to disclose whether they will consider any significant capital expenditure undertaken by the franchisee during the agreement, in determining the arrangements that apply at the end of the agreement. This provision is intended to alert franchisees as to the possibility that a franchisor may or may not take any capital expenditure that has been incurred by the franchisee into account, for instance, in renewing a franchise agreement.

Item 6.4 of Annexure 1 currently provides that franchisors must disclose over the last three financial years where a franchise was transferred, ceased to operate, was terminated (by either the franchisee or franchisor), was not renewed, was bought back by the franchisor or was terminated and acquired by the franchisor.

Paragraph 17C.1(f), items 17C.2 and 17C.3, along with item 6.4, will together provide a franchisee with more comprehensive information on the franchise business, including the extent to which the franchisor has required significant capital expenditure by its franchisees and how many franchisees have left the franchise system over the last three financial years. This information should act as a trigger for franchisees to ask further questions of the franchisor as to the details and circumstances of the capital expenditure incurred in the past, and possibly would be incurred in the future, by franchisees operating within the franchise system.

Finally, **item 28** inserts item 17D into Annexure 1 of the Franchising Code requiring franchisor disclosure of whether the franchisor will amend the franchise agreement on or before the transfer or novation of a franchise agreement.

The new item 17D recognises that franchisor initiated changes may arise during two different circumstances: on the transfer of a franchise agreement and before the novation of the current franchisee's agreement and the execution of a new agreement with the proposed transferee. It should be noted that since novation would involve the execution of a new agreement, the prospective franchisee is entitled to all the rights afforded to a prospective franchisee entering a new agreement and a franchisor has the same responsibilities as if he were entering a new agreement.

***The following items relate to Annexure 2 of the Franchising Code***

Annexure 1 of the Franchising Code contains a long form disclosure document and Annexure 2 contains a short form disclosure document. The short form disclosure document contains fewer categories of disclosure than the long form disclosure document. The wording of mirror categories in both the short form disclosure

document and the long form disclosure document is intended to be identical. As such, amendments to Annexure 2 mirror the provisions outlined above in Annexure 1. The mirror amendments are contained in the following item numbers:

- arrangements to apply at the end of the agreement (item 37, new item 9C);
- franchise business failure (items 32).
- unforeseen capital expenditure (item 36, new item 7A) and other payments (item 34, new item 7.6A and item 35);
- unilateral contract variation (item 37, new item 9A);
- attribution of costs of dispute resolution (item 36, new item 7B);
- confidentiality obligation (item 37, new item 9B); and
- amendments to franchise agreement on transfer or before novation of a franchise agreement (items 37, new item 9D).

### **Minor technical changes**

The following Regulations increase consistency and formatting within the Franchising Code.

**Item 1** will define novation as the ‘termination of the franchise and entry into a new franchise with a proposed transferee on the same terms as the terminated franchise.’ Novation is a new concept introduced as a result of these amendments.

**Item 2** provides that the term 'consolidated entity' in clause 3(2) is defined by reference to the *Corporations Act 2001*. Existing terms that relate to corporations are defined in clause 3(2) of Part 1 of the Franchising Code by reference to the *Corporations Act 2001*. Item 2 ensures that there is greater consistency within the Code since the term ‘consolidated entity’ is also specifically defined within the Code by a reference to the *Corporations Act 2001*.

**Item 3** clarifies the application date of the previous amendments to the Franchising Code that entered into effect on 1 March 2008 and the application date of the proposed amendments to the Code that are to commence on 1 July 2010.

Subclause 5(1A) clarifies that any amendments to the code that commenced on or after 1 March 2008 are to apply to franchise agreements entered into on or after the date of commencement. A new subclause 5(1B) provides that any amendments to the code that commence on or after 1 July 2010 will apply to franchise agreements entered into on or after the date on which the amendment commences.

Some provisions require the franchisor to provide information relating to the last three financial years:

- provisions of franchise agreements that were unilaterally varied by the franchisor (item 17A within Annexure 1 and item 9A of Annexure 2);
- where the franchisor has considered any significant capital expenditure undertaken by the franchisee during the agreement, when renewing the agreement (item 17C.2 and 17C.3 within Annexure 1 and item 9C of Annexure 2).

This information may not be readily available such that franchisors are able to provide this information to their franchisees from 1 July 2010 onwards. To minimise compliance burdens on businesses and so that they are provided adequate time to

collate information in relation to these areas, the Regulations in relation to these particular provisions have a ‘stepped’ introduction (item 17A.1 within Annexure 1; item 9A.1 within Annexure 2; item 17C.2 within Annexure 1; item 9C.2 within Annexure 2). That is, franchisors would have to provide information for one financial year after the first year of the operation of the provisions, two financial years after the second year of the operation of the provisions and so on. The provisions with a stepped introduction will be fully operational three years following the introduction of the provisions, that is, 1 July 2013 onwards (item 17A.2 within Annexure 1; item 9A.2 within Annexure 2; item 17C.3 within Annexure 1; item 9C.3 within Annexure 1).

**Item 4** amends paragraph 6(2)(c) of the schedule to refer to ‘the franchisor, or a director, officer or authorised agent of the franchisor’ to be consistent with item 1.1(c) in Annexure 1 and item 1.1(c) in Annexure 2. Paragraph 6(2)(c) provides that the disclosure document provided by the franchisor must be signed by a ‘director or other officer of the franchisor’. Annexure 1 and Annexure 2 provide the form of disclosure that must be followed by the franchisor depending on the expected annual turnover during the term of the franchise agreement. Item 1.1(c) in Annexure 1 and item 1.1(c) in Annexure 2 stipulate that the first page of the disclosure document, provided by the franchisor to the franchisee, must contain ‘the signature of the franchisor, or of a director, officer or authorised agent of the franchisor’.

**Item 5** replaces the previous paragraph 6B(1)(b). The previous paragraph provided that a franchisor must provide a disclosure document to a prospective franchisee or a franchisee proposing to renew or extend (the term or scope) of a franchise agreement. The policy intent of the provision is that the disclosure document must be provided by the franchisor irrespective of whether a franchisee or the franchisor is proposing to renew or extend the franchise agreement. The current reworded paragraph 6B(1)(b) clarifies this area.

**Items 6 and 7** are consequential changes that are a result of the amendment in item 5. These changes ensure consistency within the Franchising Code.

**Item 8** restructures previous paragraph 16(1)(b). Broadly, previous paragraph 16(1)(b) provided that a franchise agreement must not contain, or require a franchisee to sign a waiver of any verbal or written representation made by the franchisor. This provision was inserted within the Code by the *Trade Practices (Industry Codes - Franchising) Amendment Regulations 2007*. Clause 16, as it was previously drafted, applies to franchise agreements entered into on or after 1 October 1998. Amendments to the Franchising Code are made on a prospective basis. The amendments explicitly provide for the prospective application of the Regulations. The Regulations amend and renumber clause 16. Item 8 substitutes subclause 16(1A) which now specifically provides that a franchise agreement entered into on or after 1 March 2008 must not contain, or require a franchisee to sign, a waiver of any verbal or written representation made by the franchisor.

The prospective application of the amendments implemented by the *Trade Practices (Industry Codes - Franchising) Amendment Regulations 2007*, and which commenced on 1 March 2008, is further clarified by item 3. Item 3 inserts subclause 5(1A) within the Code to provide that any amendments to the Code that commenced

on or after 1 March 2008 apply to franchise agreements entered into on or after 1 March 2008.

**Item 9** is a consequential amendment as a result of the insertion of subclause 16(1A) into the Code. Item 9 amends subclause 16(2) to refer to both subclause (1) and (1A). That is, from ‘(1) does not’ to ‘(1) and (1A) do not.’ This amendment preserves the ability of the franchisee to settle any claims against the franchisor after entering into the franchise agreement involving the circumstances outlined in subclauses 16(1) and 16(1A).

**Item 10** changes the reference to 5 months in subparagraph 17(2)(b)(i) to 3 months to correct a drafting error within the 2007 amendments. Broadly, subclause 17(1) stipulates that a franchisor must provide a franchisee, within 4 months after the end of the last financial year, an annual audited statement of marketing and other cooperative funds relating to a franchise business. The franchisor does not have to have the funds audited if 75 per cent of the franchisor’s Australian franchisees agree. Previously, subparagraph 17(2)(b)(i) provided that the franchisees can decide against having the funds audited within 5 months after the end of the financial year. However, since the franchisor is obliged to provide the audited statement within 4 months after the end of the financial year, it was intended that the franchisees would have to make their decision within 3 months after the end of the financial year. That is, at a period prior to when the franchisor is obliged to provide the audited statement.

**Item 11** rewords the previous subparagraph 17(2)(b)(ii) so that it is easier to read. The provision makes it clear that where franchisees have decided to exempt their franchisors from providing an annual audited statement, of the marketing and other cooperative funds relating to a franchise business, they will have to revisit their decision every three years. Item 11 has restructured clause 17 so that this requirement will be stipulated within subclause 17(3).

This amendment results in a repeal of the previous subclause 17(3). The subclause 17(3) was a transitional provision governing a franchisor’s disclosure obligations, in relation to marketing and cooperative funds relating to a franchise business, prior to 1 July 1998 (when the Franchising Code came into operation). This transitional provision was inserted into the Franchising Code to assist franchisees conduct their due diligence in relation to franchise business operations prior to 1 July 1998.

Given that the Code has been in operation for nearly 12 years, and it is unlikely that franchisees would be seeking information on franchise business operations conducted prior to 1 July 1998, subclause 17(3) was redundant. Accordingly, item 11 repeals this provision.

**Item 12** amends subparagraph 18(2)(c)(i) to substitute the reference to independent contractors provisions within the *Workplace Relations Act 1996* with the relevant references to the *Independent Contractors Act 2006*. Subparagraph 18(2)(c)(i) previously referred to sections 127A and 127B of the *Workplace Relations Act 1996* which deal with independent contractors. However, these sections have been repealed and are now located within the *Independent Contractors Act 2006*.

**Item 13** changes the reference to paragraph 18(2)(i) in subclause 18(5) to read as (2)(i) to ensure formatting consistency.

**Item 14** amends the heading of clause 20 to refer to both ‘the transfer or novation of the franchise agreement’. **Item 15** amends clause 20 to provide that the ‘transferee,’ for the purposes of clause 20, includes a franchisee seeking to acquire the franchise business through either transfer or novation.

**Item 20** amends the format of the title of Annexure 1 to be consistent with that of Annexure 2.

**Item 21** reletters paragraphs 1.1(ba), (c) and (d) as (c), (d) and (e) to be consistent with the lettering of the paragraphs in Annexure 2.

**Item 23** amends item 6.5 of Annexure 1 by omitting ‘is taken to comply with item 6.4 if the franchisor supplies’ and inserts ‘must supply’ to clarify that franchisors must comply with both items. Items 6.4 and 6.5 of Annexure 1 refer to information that a franchisor must provide to the franchisee about their particular franchise business. Under item 6.4, franchisors are required to state the number of times a certain event happened to their particular franchise business, for example, how many times the franchise was transferred. Item 6.5 provides that the franchisor must provide the name, location and contact details of each franchisee listed in item 6.4, if the information is available. As previously drafted, it was possible that a franchisor would read the provisions in conjunction to mean that if they comply with item 6.5, then they do not have to comply with item 6.4. The amendment at item 23 clarifies that franchisors must comply with both item 6.4 and item 6.5.

**Item 24** is a consequential amendment which was needed to remove references to the current subclause 17(3) in the notes for item 12.1 of Annexure 1.

**Item 29** changes the format of paragraph 20.2(c) and 20.2(d) of Annexure 1 to read as item 20.2 and item 20.2A. This item also changes the format of item 20.2 of Annexure 1 to italicise the reference to *Corporations Act 2001*.

**Item 29** also clarifies the obligations of foreign franchisors that are part of consolidated entities. Item 20.2 provides that franchisors must provide financial reports for each of the last two financial years in accordance with sections 295 and 297 of the *Corporations Act 2001*, or a foreign equivalent of that Act applicable to the franchisors. Similarly, where a franchisor is part of a consolidated entity, the franchisor must provide audited financial reports as prepared under the *Corporations Act 2001* (proposed item 20.2A). Item 20.2A recognises foreign franchisors and insert the words ‘or a foreign equivalent of that Act applicable to the consolidated entity’ after ‘*Corporations Act 2001*’.

**Item 30** is a consequential amendment as a result of the amendments at item 29 and amends item 20.3 to refer to both items 20.2 and 20.2A.

**Item 31** clarifies item 22.1 of Annexure 1 to be consistent with the wording in paragraph 10(c). That is, the franchisor must provide a copy of the franchise

agreement ‘in the form in which it is to be executed’ rather than ‘a copy of the proposed franchise agreement’.

**Items 33**, as in item 24, is a consequential amendment which was needed to remove references to the previous subclause 17(3) in the note for item 6.1 of Annexure 2.

**Item 38** amends the layout of item 10 and item 11 of Annexure 2 to reflect the format and layout of item 20 and item 22 in Annexure 1. This ensures consistency in formatting and wording within Annexure 1 and 2.

**Item 39** changes the wording in a number of paragraphs to ensure consistency with the Code. Previously Annexure 1, paragraph 16.1(f), referred to operating manuals, where other areas of the Code referred to operations manuals. As such, item 39 amends the reference from operating to operations manual to ensure consistency within the Code. Item 39 also substitutes the word ‘extension’ with ‘extension and extension of the scope’. This substitution ensures consistency when referring to extension of a franchise agreement.