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Statutory Rules 1998 No. <sup>1</sup>

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## Trade Practices (Industry Codes— Franchising) Regulations 1998

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Trade Practices Act 1974*.

Dated 18 JUN 1998 1998.

**WILLIAM DEANE**  
Governor-General

By His Excellency's Command,

PETER REITH  
Minister for Workplace Relations and Small Business  
for the  
Treasurer

### Name of Regulations

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

**Commencement**

2. These Regulations commence on 1 July 1998.

**Code of conduct**

3. 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.

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**SCHEDULE**

Regulation 3

**FRANCHISING CODE OF CONDUCT**

**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:

*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

**SCHEDULE—continued**

- (ii) for a franchisor that is a proprietary company—  
directly or indirectly owns, controls, or holds with  
power to vote, at least 15 per cent of the issued  
voting shares in the franchisor; or
- (iii) is a partner of the franchisor; and
- (b) whose relationship to the franchisor is relevant to the  
franchise system, including supplying goods or services  
to a franchisee.

**disclosure document** means:

- (a) for the grant, renewal or extension of a franchise—a  
document that contains the information mentioned in  
Annexure 1; or
- (b) for the transfer of a franchise or a franchised business—a  
document that contains the information mentioned in  
Annexure 2.

**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.

**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.

**SCHEDULE—continued**

***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, controlled by a trustee, 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 the right:

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

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

***serious offence*** means 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.

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

***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.

**SCHEDULE—continued**

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

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

**4. 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 or the franchisor; and

**SCHEDULE—continued**

- (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 or services at or below their wholesale price; or
  - (vi) repayment by the franchisee of a loan from the franchisor; or
  - (vii) payment for the wholesale price of 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 do not in themselves constitute a franchise agreement:
  - (a) an employer and employee relationship;
  - (b) a partnership relationship;
  - (c) a landlord and tenant relationship;
  - (d) a mortgagor and mortgagee relationship;
  - (e) a lender and borrower relationship;

**SCHEDULE—continued**

- (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.

**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) applies 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) if the franchisor:
    - (i) is resident, domiciled or incorporated outside Australia; and
    - (ii) grants only 1 franchise or master franchise to be operated in Australia; or
  - (b) to which another mandatory industry code, prescribed under section 51AE of the Act, applies; or

**SCHEDULE—continued**

- (c) 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) (c) 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. Requirement to give disclosure document**

- (1) A franchisor must give a disclosure document under Annexure 1 to:
  - (a) a prospective franchisee; or
  - (b) a franchisee proposing to renew or extend a franchise.
- (2) A person who proposes to transfer a franchise or a franchised business must give a disclosure document under Annexure 2 to the proposed transferee.
- (3) However, a proposed transferee who is the franchisor may waive this requirement.



**SCHEDULE—continued**

- (4) If a subfranchisor proposes to grant a subfranchise:
- (a) the franchisor and subfranchisor must either:
    - (i) individually give a disclosure document to the franchisee or prospective franchisee; or
    - (ii) give to the franchisee or prospective franchisee 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.
- (5) If a franchisor proposes to grant a master franchise, the franchisor must give a disclosure document under Annexure 1 to the prospective subfranchisor.

*Note* This does not apply to a franchise agreement to which paragraph 5 (3) (a) applies.

**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 under Annexure 1 for:

- (a) a prospective franchisee; or

**SCHEDULE—continued**

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

**9. Purpose and content of disclosure document**

(1) The purpose of a disclosure document under Annexure 1 is 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 or prospective franchisee to make a reasonably informed decision about the franchise.

(2) A disclosure document:

- (a) must include the information mentioned in Annexure 1; and
- (b) may include additional information under the heading “Other relevant disclosure information”; and
- (c) must be signed by a director or an executive officer of the franchisor.

(3) A franchisor must update its disclosure document annually within 3 months after the end of each financial year of the franchisor.

**10. Franchisor obligations**

A franchisor must give a copy of this code and a disclosure document in the form set out in Annexure 1:

- (a) to a prospective franchisee at least 14 days before the prospective franchisee:
  - (i) enters into a franchise agreement or an agreement to enter into a franchise agreement; or
  - (ii) pays non-refundable money to the franchisor or an associate of the franchisor in connection with the proposed franchise agreement; or
- (b) to a franchisee at least 14 days before renewal or extension of the franchise agreement.

**SCHEDULE—continued**

**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 non-refundable money 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; and
- (b) does not prevent a franchisor from requiring any or all of the statements mentioned in paragraph (2) (a).

**SCHEDULE**—continued

***Division 2.3—Transfer of franchised business***

**12. Disclosure document for proposed transferee**

- (1) A person who proposes to transfer a franchised business must give to the proposed transferee a disclosure document under Annexure 2.
- (2) However, a proposed transferee who is the franchisor may waive this requirement.

**SCHEDULE—continued**

**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) paying any money 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, repay all money paid by the franchisee to the franchisor under the agreement.

(4) However, the franchisor may deduct from the amount paid under subclause (1) the franchisor's reasonable expenses if the expenses or their method of calculation have been set out in the agreement.

**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.

**SCHEDULE—continued**

(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**

A franchisor must not induce a franchisee not to form an association or not to associate with other franchisees for a lawful purpose.

**16. Prohibition on general release from liability**

(1) A franchise agreement entered into on or after 1 October 1998 must not contain, or require a franchisee to sign, a general release of the franchisor from liability towards the franchisee.

(2) However, subclause (1) does not prevent a franchisee from settling a claim against the franchisor after entering into a franchise agreement.

**SCHEDULE—continued**

**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 3 months after the end of the last financial year, prepare an annual financial statement of the fund's receipts and expenses for the last financial year, including the amount spent on production, advertising, administration, goods or services supplied by the franchisor or an associate of the franchisor and other stated expenses; and
  - (b) have the statement audited by a registered company auditor within 3 months after the end of the financial year to which it relates; and
  - (c) if the franchisee asks for a copy of the statement—give a copy of the statement to the franchisee within 30 days after the request.
- (2) However, a franchisor does not have to comply with paragraph (1) (b) for the financial year if 75% of the franchisor's franchisees in Australia, who contribute to the fund, agree.

**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 it within a reasonable time (but not more than 60 days) after the franchisor becomes aware of it.
- (2) For subclause (1), the matters are:
- (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 in Australia alleging:
    - (i) breach of a franchise agreement; or
    - (ii) contravention of trade practices law; or
    - (iii) contravention of the Corporations Law; or

**SCHEDULE—continued**

- (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 290 of the *Workplace Relations Act 1997* of Queensland;
  - (d) civil proceedings in Australia against the franchisor by 10% or 10 of the franchisees in Australia of the franchisor (whichever is the lower);
  - (e) any judgment that is entered against the franchisor, 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 paragraph 4.2 (a) of the disclosure document;
  - (g) the franchisor becoming an externally-administered body corporate.
- (3) For paragraphs (2) (b), (c), (d), (e) and (f), the franchisor must tell the franchisee:
- (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.



**SCHEDULE—continued**

**19. Current disclosure document**

- (1) A franchisor must give to a franchisee a current disclosure document under Annexure 1 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
  - (e) the disclosure obligations under clause 12 have not been met; 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.

**SCHEDULE—continued**

(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:

- (i) that consent is withheld; and
- (ii) 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.

(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.

**SCHEDULE—continued**

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

(1) This clause applies if a franchisor terminates a franchise agreement:

- (a) before it expires; and
- (b) without the consent of the franchisee; and
- (c) if the franchisee has not breached the franchise agreement; and
- (d) clause 23 does not apply.

(2) For paragraph (1) (b), 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.

**SCHEDULE—continued**

**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.

**SCHEDULE—continued**

**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) The mediator may decide the time and place for mediation.
- (6) The parties must attend the mediation and try to resolve the dispute.

**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.

**SCHEDULE—continued**

**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.

**SCHEDULE—continued**

**ANNEXURE 1**

Subclause 6 (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 name, ACN or ARBN, business address  
and phone number; and
- (c) the date of the disclosure document; and
- (d) the following statement: and

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.

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.

**SCHEDULE—continued**

**2. Franchisor details**

2.1 The franchisor's name, ACN or ARBN, address of registered office and principal place of business in Australia.

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, 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 director, secretary, executive officer, or partner of the franchisor who is likely to have management responsibilities for the franchisor's business operations in relation to the franchise—name, position held and qualifications (if any).

**3. Business experience**

3.1 A summary of the business experience in the last 10 years of each person, other than an executive officer, 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



**SCHEDULE—continued**

- (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 in Australia alleging:
  - (i) breach of a franchise agreement; or
  - (ii) contravention of trade practices law; or
  - (iii) contravention of the Corporations Law; 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 290 of the *Workplace Relations Act 1997* 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.

**SCHEDULE—continued**

- 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 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.

**5. Payments to agents**

5.1 For any agreement under which the franchisor must pay an amount 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 or Territory, 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.

**SCHEDULE—continued**

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 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 The franchisor is taken to comply with item 6.4 if the franchisor supplies details as far as the franchisor is aware that relate to events that happened before 1 July 1998.

**7. Intellectual property**

7.1 For any trade mark used to identify, and for any patent, design or copyright that is significant and 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

**SCHEDULE—continued**

- (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 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 franchised territory:

- (a) whether other franchisees may operate a business that is substantially the same as the franchise; and
- (b) whether the franchisor or an associate of the franchisor may operate a business that is substantially the same as the franchise; and

**SCHEDULE—continued**

- (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 franchise outside the territory; and
- (e) whether the franchisor may change the territory.

**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; 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.

*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).

**SCHEDULE—continued**

**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).

10.2 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 the franchisees, and whether any rebates or financial benefits are shared with franchisees directly or indirectly.

**11. Sites**

11.1 The policy of the franchisor or an associate of the franchisor for selection of the site to be occupied by the franchised business.

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 may be in a separate document and may be made available for inspection at a time and place mentioned in the disclosure document.

**SCHEDULE—continued**

**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.

12.2 The franchisor is taken to comply with paragraph 12.1 (h) if the franchisor supplies details as far as the franchisor is aware that relate to expenses incurred before 1 July 1998.

**SCHEDULE—continued**

**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.



**SCHEDULE—continued**

*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.

**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.

**15. Franchisor's obligations**

15.1 Summary of the conditions of the franchise agreement that deal with obligations for a franchisor (or references to the relevant conditions of the franchise agreement, if attached), including providing training:

- (a) before the franchised business starts; and
- (b) during operation of the franchised business.

**SCHEDULE—continued**

**16. Franchisee's obligations**

16.1 Summary of the conditions of the franchise agreement that deal with obligations for a franchisee (or references to the relevant conditions of the franchise agreement, if attached) for the following matters:

- (a) site selection and acquisition;
- (b) requirements for starting the franchised business;
- (c) site or unit development;
- (d) training before and during operating franchised business;
- (e) opening the franchised business;
- (f) complying with standards or operating manuals;
- (g) using intellectual property;
- (h) warranties and customer service;
- (i) territorial development and sales quotas;
- (j) maintenance and appearance of premises;
- (k) insurance;
- (l) marketing;
- (m) indemnities;
- (n) participation requirements for franchisee, directors, management or employees;
- (o) records and reports;
- (p) inspections and audit.

**17. Summary of other conditions of agreement**

17.1 Summary of the conditions of the franchise agreement (or references to the relevant conditions of the franchise agreement, if attached) 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;

**SCHEDULE—continued**

- (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 Summarise 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 or other agreement under which the franchisee can occupy the premises of the franchised business;
- (b) a chattel lease or hire purchase agreement;
- (c) a security agreement, including a guarantee, mortgage or security deposit;

**SCHEDULE—continued**

- (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.

**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.

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.

**SCHEDULE—continued**

**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 Profit and loss statement and balance sheet of the franchisor, prepared in accordance with accounting standards, for the last 2 years.

20.3 Item 20.2 does not apply if the statement under item 20.1 is verified by a registered company auditor.

**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 may be attached.

22.2 Copy of the code may 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 form in which the prospective franchisee can acknowledge receipt of the disclosure document.

**SCHEDULE—continued**

**ANNEXURE 2**

Subclause 6 (2)

**DISCLOSURE DOCUMENT FOR PROPOSED TRANSFEREE**

**1. Details**

1.1 The franchisor's name, ACN or ARBN, business address and telephone number.

1.2 The franchisee's name, ACN or ARBN and business address.

1.3 Name and business or residential address of each director of the franchisee.

1.4 A summary of the business experience in the last 10 years of the franchisee and each person mentioned in item 1.3, including length of experience in operating the franchised business.

1.5 Description of the franchised business and its business address.

1.6 A copy of:

- (a) the existing franchise agreement of the franchisee; and
- (b) if the franchisee leases property for the franchised business and proposes to transfer the lease to the proposed transferee—each lease or agreement to lease, or a summary of the conditions of each lease or agreement to lease.

1.7 Details of assets of the franchised business to be transferred to the proposed transferee.

1.8 Profit and loss statements and balance sheets of the franchisee or the franchised business for the last 2 years.

1.9 Summary (or references to the relevant conditions of the franchise agreement, if attached) of obligations, that the franchisee has in relation to the franchised business, that are to be assumed by the proposed transferee.

**SCHEDULE**—continued

1.10 Summary (or references to the relevant conditions of the franchise agreement, if attached) of any conditions under the existing franchise agreement for transfer of the franchise.

1.11 Details of each of the franchisee's employees in the franchised business, including:

- (a) name; and
- (b) position; and
- (c) length of service; and
- (d) rate of pay; and
- (e) outstanding obligations of the franchisee.

**2. Other relevant disclosure material**

2.1 Any other information the franchisee wants to give.

**3. Disclaimer**

3.1 A statement that:

- (a) the information is given by the franchisee; and
- (b) the franchisor does not guarantee the accuracy of the information.

**4. Receipt**

4.1 On the last page of the disclosure document—a form in which the proposed transferee can acknowledge receipt of the disclosure document.

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 1998.

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h 25 June