

Trade Practices (Industry Codes - Franchising) Amendment Regulations 1999 (No. 1) 1999 No. 188

EXPLANATORY STATEMENT

Statutory Rules 1999 No. 188

(Issued by authority of the Minister for Employment, Workplace Relations and Small Business)

Trade Practices Act 1974

Trade Practices (Industry Codes - Franchising) Amendment Regulations 1999 (No. 1)

Section 51AD of the *Trade Practices Act 1974* (the Act) provides that a corporation must not, in trade or commerce, contravene an applicable industry code.

Section 172 of the Act provides that the Governor-General may make regulations for the purposes of the Act.

Section 51AE allows the regulations to prescribe an industry code. An industry code is a code regulating the conduct of participants in an industry towards other participants in an industry. The regulations may declare the industry code to be a mandatory or a voluntary industry code.

The *Trade Practices (Industry Codes - Franchising) Regulations 1998* (the principal regulations) prescribed the Franchising Code of Conduct (the Code) as a mandatory industry code under the Act. The Code commenced on 1 July 1998.

The Code regulates the conduct of participants in franchising towards other participants in franchising. It aims to provide protection for all participants through the establishment of minimum standards of disclosure for franchisors and franchisees entering into, renewing or transferring a franchise. Franchisees have access to the remedies and sanctions available under the Act.

Since the introduction of the Code, attention has been drawn to the need to make minor amendments to various aspects of the Code. Many of the concerns expressed have related expressly to confusion regarding terminology.

The purpose of the Regulations is to amend the principal regulations to clarify aspects of the Code in order to assist the franchising industry comply with the Code.

The Regulations clarify terms such as *franchisor* and *motor vehicle dealership*, as well as make a number of punctuation, grammatical and other technical amendments. The Attachment to this Statement outlines in more detail the amendments to the Code.

The Regulations commenced on the date of gazettal.

Attachment to Explanatory Statement for Trade Practices (Industry Codes Franchising) Amendment Regulations 1999 (No. 1)

Regulation 1 sets out the name for the Regulations.

Regulation 2 provides that the Regulations commence on Gazettal.

Regulation 3 provides that Schedule 1 of the Regulations amends the *Trade Practices (Industry Codes - Franchising) Regulations 1998* (the principal regulations).

The items in Schedule 1 to the Regulations make amendments to the Franchising Code of Conduct (the Code), as set out in the Schedule to the principal regulations.

Item 1 amends subparagraph (a)(ii) of the definition of *associate* in subclause 3(1) of the Code, to insert the percentage symbol (%) to make this consistent with usage elsewhere in the Code.

Item 2 amends paragraph (b) of the definition of *associate* in subclause 3(1) to replace 'relationship to' with 'relationship with' for grammatical accuracy.

For clarification, item 3 inserts a definition of *franchise agreement* in subclause 3 (1) providing that it has the meaning given by existing clause 4.

Item 4 corrects punctuation in the definition of *franchisor* in subclause 3(1) as a result of amendments in item 5.

Item 5 amends the definition of *franchisor* in subclause 3(1) to further clarify the definition.

Item 6 amends the definition of *master franchise* in subclause 3(1) to further clarify the definition.

Item 7 inserts a definition of *motor vehicle* and *motor vehicle dealership*. This amendment aims to clarify the meaning of 'motor vehicle dealership agreement' in paragraph 4(2)(b) of the Code, which provides that such an agreement is taken to be a franchise agreement.

Item 8 amends the citation of the Corporations Law in subclause 3(2).

Item 9 amends the heading to clause 4 of the Code to clarify the purpose of the clause.

Item 10 amends the grammar in subclause 4(3).

Item 11 amends the citation of the Victorian Co-operatives Act in subparagraph 4(3)(f)(ii).

Item 12 amends the punctuation of subparagraph 4(3)(f)(viii) as a result of amendments in item 13.

Item 13 inserts a reference to the Corporations Law in subparagraph 4(3)(f)(viii). This clarifies that all types of registered co-operatives are intended to be exempt from the provisions of the Code.

Item 14 amends a grammatical error in paragraph 5(2)(a).

Item 15 amends a grammatical error in subclause 6(1).

Item 16 inserts a note under subclause 6(1) to clarify the reference to 'franchisor' in the subclause.

Item 17 amends a grammatical error in subclause 6(2).

Item 18 reverses the order of subclauses 6(4) and (5) and makes minor amendments to clarify the meaning of the subclauses.

Item 19 amends a grammatical error in clause 8.

Item 20 deletes an unnecessary reference from subclause 9(1).

Item 21 clarifies the operation of paragraph 11(3)(a).

Item 22 clarifies the operation of paragraph 11(3)(b).

Item 23 amends a grammatical error in subclause 12(1).

To clarify a retrospectivity issue, item 24 inserts a new subclause 17(3) to replace the deletion of item 12.2 of Annexure 1 (see item 34 below). (Annexure 1 outlines the information required to be included in a disclosure document provided by a franchisor to a franchisee or prospective franchisee.)

Item 25 amends paragraph 18(2)(e) to clarify that disclosure is only required in relation to any judgment entered against the franchisor in Australia.

Item 26 deletes an unnecessary word in paragraph 1.1 (d) of Annexure 1.

Item 27 amends item 3.1 of Annexure 1 to make it consistent with item 3.2.

Item 28 amends item 6.1 of Annexure 1 to enable disclosure of the number of existing franchises by region, if appropriate.

Item 29 amends the punctuation of item 9.1 of Annexure 1 as a result of proposed amendments in item 30.

Items 30 and 31 delete item 10.2 of Annexure 1 and instead insert it in item 9. 1.

Item 32 amends the heading of item 11 of Annexure 1.

Item 33 amends item 11. 1 of Annexure 1 to include a reference to 'territory', which makes item 11. 1 consistent with item 11.2.

Item 34 deletes item 12.2 of Annexure 1 (see item 24 above).

Item 35 substitutes item 20.2 of Annexure 1 to clarify the requirement to disclose financial reports.