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

Statutory Rules 1999 No. 1

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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 25 AUG 1999 1999.

WILLIAM DEANE

Governor-General

By His Excellency's Command,

PETER REITH
 Minister for Employment, Workplace Relations
 and Small Business

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

Statutory Rules 1999 No. 1²

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made under the

Trade Practices Act 1974

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Regulation 1

1 Name of Regulations

These Regulations are the *Trade Practices (Industry Codes — Franchising) Amendment Regulations 1999 (No. 1)*.

2 Commencement

These Regulations commence on gazettal.

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

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

2 *Trade Practices (Industry Codes — Franchising)* 1999, 1
Amendment Regulations 1999 (No. 1)

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Schedule 1 Amendments

(regulation 3)

- [1] **Schedule, subclause 3 (1), definition of *associate*, subparagraph (a) (ii)**

omit

15 per cent

insert

15%

- [2] **Schedule, subclause 3 (1), definition of *associate*, paragraph (b)**

omit

relationship to

insert

relationship with

- [3] **Schedule, subclause 3 (1), after definition of *franchise***

insert

franchise agreement has the meaning given by clause 4.

[4] Schedule, subclause 3 (1), definition of *franchisor*, paragraph (c)

omit

subfranchisee.

insert

subfranchisee;

[5] Schedule, subclause 3 (1), definition of *franchisor*, after paragraph (c)

insert

- (d) a master franchisee in a master franchise system;
- (e) a master franchisee in its relationship with a franchisee.

[6] Schedule, subclause 3 (1), definition of *master franchise*

omit

the franchisor grants to a subfranchisor

insert

the franchisor grants to a subfranchisor or master franchisee

[7] **Schedule, subclause 3 (1), after definition of *master franchise***

insert

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

Examples of motor vehicles

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

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

[8] **Schedule, subclause 3 (2)**

omit

Corporations Law

insert

Corporations Law

[9] Schedule, clause 4, heading

substitute

4 Meaning of *franchise agreement*

[10] Schedule, subclause 4 (3)

omit

do not in themselves

insert

does not in itself

[11] Schedule, subparagraph 4 (3) (f) (ii)

omit

Co-operatives Act 1996

insert

Co-operatives Act 1996

[12] Schedule, subparagraph 4 (3) (f) (viii)

omit

Northern Territory.

insert

Northern Territory;

[13] Schedule, after subparagraph 4 (3) (f) (viii)

insert

(ix) the Corporations Law.

[14] Schedule, paragraph 5 (2) (a)

omit

applies

insert

apply

[15] Schedule, subclause 6 (1)

omit

under

insert

in accordance with

[16] Schedule, subclause 6 (1), at the foot

insert

Note Under the definition of *franchisor*, a franchisor includes a master franchisee, or a subfranchisor, in its relationship with a subfranchisee: see subcl 3 (1).

[17] Schedule, subclause 6 (2)

omit

under

insert

in accordance with

[18] Schedule, subclauses 6 (4) and (5)

substitute

- (4) If a franchisor proposes to grant a master franchise, the franchisor must give a disclosure document in accordance with Annexure 1 to the prospective subfranchisor or master franchisee.

Note Subclause (4) does not apply to a franchise agreement to which para 5 (3) (a) applies.

- (5) If a subfranchisor or master franchisee proposes to grant a subfranchise to a franchisee:
- (a) the franchisor and subfranchisor, or the master franchisee:
- (i) must individually give a disclosure document to the franchisee or prospective franchisee; or
 - (ii) must 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, or the master franchisee, must comply with the requirements imposed on a franchisor by this Part.

[19] Schedule, clause 8

omit

under

insert

in accordance with

[20] Schedule, subclause 9 (1)

omit

under Annexure 1

[21] Schedule, paragraph 11 (3) (a)

after

agreement

insert

with a franchisor

[22] Schedule, paragraph 11 (3) (b)

omit

a franchisor

insert

the franchisor

[23] Schedule, subclause 12 (1)

omit

under

insert

in accordance with

[24] Schedule, after subclause 17 (2)

insert

- (3) A franchisor is taken to have complied with paragraph 12.1 (h) of Annexure 1 if, to the extent to which the franchisor is aware of the details, the franchisor supplies the following information for the period before 1 July 1998 to the franchisee:
- (a) the amounts of expenditure on production, advertising, administration and any other category of expenditure stated in the disclosure document for each marketing or other cooperative fund controlled or administered by or for the franchisor to which the franchisee may be required to contribute;
 - (b) the percentage that each amount disclosed in accordance with paragraph (a) constitutes of the total expenditure disclosed in accordance with that paragraph.

[25] Schedule, paragraph 18 (2) (e)

after

franchisor

insert

in Australia

[26] Schedule, Annexure 1, paragraph 1.1 (d)

omit the first mention of

and

[27] Schedule, Annexure 1, item 3.1

after

a summary of the

insert

relevant

[28] Schedule, Annexure 1, item 6.1

omit

State or Territory

insert

State, Territory or region

[29] Schedule, Annexure 1, paragraph 9.1 (i)

omit

to what extent.

insert

to what extent; and

[30] Schedule, Annexure 1, after paragraph 9.1 (i)

insert

- (j) whether the franchisor, or an associate of the franchisor, will receive a rebate or other financial benefit from the supply of goods or services to franchisees, and whether any rebate or financial benefit is shared, directly or indirectly, with franchisees.

[31] Schedule, Annexure 1, item 10.2

omit

[32] Schedule, Annexure 1, item 11, heading

substitute

11. Sites or Territories

[33] Schedule, Annexure 1, item 11.1

substitute

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

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

[34] Schedule, Annexure 1, item 12.2

substitute

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

[35] Schedule, Annexure 1, item 20.2*substitute*

20.2 Financial reports (including profit and loss statements and balance sheets) for the last 2 years that have been prepared by the franchisor in accordance with the relevant accounting standards under section 296 of the Corporations Law.

Notes

1. These Regulations amend Statutory Rules 1998 No. 162.
2. Made by the Governor-General on *L* 1999, and notified in the *Commonwealth of Australia Gazette* on *L* 1999.

*25 August
1 September*