

# **Trade Practices (Industry Codes - Franchising) Amendment Regulations 2001 (No. 1) 2001 No. 165**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 2001 No. 165**

Issued by the authority of the Treasurer

*Trade Practices Act 1974*

Trade Practices (Industry Codes - Franchising) Amendment Regulations 2001 (No. 1)

Section 172 of the *Trade Practices Act 1974* (the Act) provides that the Governor-General may make regulations prescribing matters that are required or permitted to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Section 51AD of the Act provides that a corporation must not, in trade or commerce, contravene an applicable industry code. Section 51AE allows the regulations to prescribe an industry code regulating the conduct of 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* prescribed the Franchising Code of Conduct (the Code) as a mandatory industry code under the Act. The Code commenced on 1 July 1998.

The purpose of the proposed Regulations is to improve the effectiveness of the Code by streamlining its operation. The Code regulates the conduct of participants in the franchising industry towards other participants in franchising. The Code requires the mandatory disclosure of 23 categories of information to existing and prospective franchisees. The Code also provides for the mediation of disputes and a cooling off period. Franchisees have access to the remedies and sanctions available under the Act.

These amendments are part of the Government's response to a review of the Code by the Franchising Policy Council (a Government-appointed advisory body on the franchising industry). The amendments:

- remove the existing requirement on a franchisee to provide a disclosure document where that franchisee is selling a franchised business to another franchisee;
- introduce a new shorter form of the disclosure document where a franchised business has an expected annual turnover of less than \$50,000; and,
- make a number of technical and minor changes.

More details of the Regulations are at Attachment 1.

The Regulations commence on 1 October 2001.

## ATTACHMENT 1

### DETAILS OF THE TRADE PRACTICES (INDUSTRY CODES - FRANCHISING) AMENDMENT REGULATIONS 2001 (No. 1)

#### Regulation 1 - Name of Regulations

This is a formal provision that provides the name for the Regulations.

#### Regulation 2 - Commencement

This regulation provides that the Regulations commence on 1 October 2001.

#### Regulation 3 - Amendment of *Trade Practices (Industry Codes - Franchising) Regulations 1998*

Regulation 3 is a formal provision stating that the *Trade Practices (Industry Codes Franchising) Regulations 1998* are amended by Schedule 1.

### SCHEDULE 1 Amendments

#### 1. Schedule, clause 2

Clause 2 of the Franchising Code of Conduct (the Code) provides that the purpose of the Code is to regulate the conduct of participants in franchising towards other participants in franchising. This item makes a technical amendment to the paragraph that is necessary because item 2 introduces a new paragraph into clause 2.

#### 2. Schedule, clause 2

Item 2 introduces a new paragraph into clause 2. The new paragraph provides that, for franchise agreements concerning the retail marketing of fuel, the Code is intended to operate concurrently with the *Petroleum Retail Marketing Franchise Act 1980* (PRNTA Act). The purpose of the amendment is to clarify the interaction between the Code and the PRNTA Act.

#### 3. Schedule, subclause 3(1), before definition of *associate*

Clause 3 of the Code sets out definitions of a number of terms that are used in the Code. This item inserts a new definition of ABN, or Australian Business Number. The definition cross refers to the primary legislation that establishes a registration system for Australian businesses which involves the allocation of ABNs.

#### 4. Schedule, subclause 3(1), definition of disclosure *document*

This item removes the existing definition of 'disclosure document' and provides that the meaning of that term is to be set out in new clause 6. Item 11 of the Schedule to these Regulations inserts clause 6 and the details of that clause are described below.

#### 5. Schedule, subclause 3(1), definition of interest in *a franchise*, paragraph (c)

This item removes a redundant reference to a trust 'controlled by a trustee'.

#### 6. Schedule, subclause 3(1), after definition of *master franchise*

This item introduces a definition of the term 'master franchisee'. The term 'master franchise' is already defined in the Code as a franchise in which the franchisor grants to the subfranchisor or master franchisee the right to grant or participate in a subfranchise.

The definition provides that a master franchisee (or subfranchisor) means a person who is a franchisee in relation to a master franchise and a franchisor in relation to a subfranchise granted under the master franchise.

#### **7. Schedule, subclause 3(1), after definition of *serious offence***

This item introduces a definition of the term 'subfranchisor'. The definition provides that a subfranchisor has the same meaning as a master franchisee.

#### **8. Schedule, subparagraph 4(1)(d)(v)**

Clause 4 of the Code deals with the meaning of 'franchise agreement'. Paragraph 4(1)(d) provides that a franchise agreement is an agreement under which a franchisee must pay or agree to pay a particular amount before commencing or continuing the business. A number of examples of payments are given in the subparagraphs.

Subparagraph 4(1)(d)(v) currently provides that payments for goods or services at or below their wholesale price are excluded from being payments which indicate the existence of a franchise agreement. The amendment ensures that the reference to the wholesale price is a reference to the 'usual wholesale price', not an artificially set price.

#### **9. Schedule, subparagraph 4(1)(d)(vii)**

Subparagraph 4(1)(d)(vii) currently provides that payments for the wholesale price of goods taken on consignment are excluded from being payments which indicate the existence of a franchise agreement. The amendment ensures that the reference to the wholesale price is to the 'usual wholesale price'. The amendment is intended to clarify that the price referred to in the paragraph is a genuine wholesale price.

#### **10. Schedule, clause 6**

This item omits the existing clause 6 and substitute four new clauses into the Code relating to the obligations on a franchisor to create and distribute a 'disclosure document'. The contents of the clauses are detailed below.

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

Subclause 6(1) provides that before entering a franchise agreement, and within three months after the end of the financial year of entering a franchise agreement, a franchisor must create a document in accordance with Division 2.1. (The provision incorporates obligations that were previously imposed under subclause 9(3) and clause 12 of the Code.)

Subclause 6(2) sets out the requirements for a disclosure document. Where a franchised business has an expected annual turnover of \$50,000 or more the disclosure is to be in accordance with Annexure 1. Where the franchised business has an expected annual turnover of less than \$50,000 the disclosure is to be in accordance with Annexure 2. A new Annexure 2 is inserted by these Regulations. The new Annexure 2 contains a shortened form of disclosure that is considered to be more appropriate for franchised businesses with a lower annual turnover.

In keeping with the existing provisions, the disclosure document may contain additional information and must be signed by a director or executive officer of the franchisor.

### *Purpose of a disclosure document*

The purposes of a disclosure document are set out in clause 6A. The purposes of a disclosure document are:

- reasonably informed decision about the franchise;
- to provide current information that is material to running a franchised business, to a franchisee.

### *Requirement to give a disclosure document*

Clause 6B replaces clause 6 of the existing Code with a revised provision that ensures that a franchisor must give a current disclosure document:

- to a prospective franchisee; or
- a franchisee proposing to extend or renew a franchise agreement.

The provision also ensures that in the case of the grant of a subfranchise, the franchisor and the subfranchisor must either give:

- separate disclosure documents in relation to the master franchise and subfranchise, to the prospective franchisee; or,
- give a joint disclosure document that addresses the obligations of the franchisor and the subfranchisor.

Subclause 6B(2)(b) clarifies that all the obligations that apply to a franchisor, will also apply to a subfranchisor.

The same obligations that apply to a subfranchisor, under these provisions will also apply to a master franchisee. A note is also included to direct attention to the definition clause that contains definitions of subfranchisor and master franchisee.

### *Additional information*

Clause 6C ensures that a prospective franchisee, who receives the shortened form of the disclosure document in accordance with Annexure 2, will be able to ask the franchisor for the additional information that would have been provided if the disclosure had been in accordance with Annexure 1.

The franchisor is required to give the franchisee this additional information unless it is reasonable, in the circumstances, to withhold it.

## **11. Schedule, clause 8**

Clause 8 provides that Division 2.2 applies to a disclosure document in accordance with Annexure 1. This item makes a consequential change to ensure that the Division applies to disclosure documents in accordance with Annexure 1 and 2.

## **12. Schedule, clause 9**

This item omits clause 9. This change is consequential to the changes made by item 11 of the Schedule to these Regulations (discussed above).

### **13. Schedule, clause 10**

This item omits a reference to disclosure 'in the form set out in Annexure 1. The omission is consequential to the changes made by item 11 of the Schedule to these Regulations (discussed above).

### **14. Schedule, subparagraph 10(a)(ii)**

Clause 10 provides that the franchisor must give a copy of the Code and the disclosure document to the prospective franchisee at least 14 days before the parties enter a franchise agreement or before the franchisee pays non-refundable money in connection with the agreement.

The item replaces the reference to 'non-refundable money' with a reference to 'a nonrefundable payment (whether of money or other valuable consideration)'. The change is intended to ensure that the relevant documents .will be available before any non-refundable payment is made by a prospective franchisee.

### **15. Schedule, clause 10, at the foot**

Item 15 inserts a note drawing attention to subsection 9(1) of the *Electronic Transactions Act* 1999. The note states that documents required to be given in writing can be offered electronically provided the information is readily accessible and useable for subsequent reference and the person receiving the information consents to the information being provided electronically.

### **16. Schedule, paragraph 11(1)(c)**

Subclause 11(1) provides that a franchisor is not to enter into a franchise agreement, an agreement about a franchising agreement, or receive non-refundable money, unless the franchisee has provided a written statement that they have: received the disclosure document; received a copy of the code; and had a reasonable opportunity to understand that material.

This item replaces the reference to 'non-refundable money' with a reference to 'a nonrefundable payment (whether of money or other valuable consideration)'. The change is intended to ensure that the protection provided under subclause 11(1) extends to any valuable consideration.

### **17. Schedule, Division 2.3**

This item omits Division 2.3, which consists of clause 12 of the Code. That clause required a person who proposed to transfer a franchised business to another franchisee to provide a disclosure document in accordance with Annexure 2.

This clause has been repealed because a disclosure document will not be required from the selling franchisee in these circumstances. It should be noted that in many cases which involve the transfer of a franchised business, a new franchise agreement would be entered into, and the obligations on a franchisor to provide disclosure under the Code will apply.

### **18. Schedule, paragraph 13(1)(b)**

### **19. Schedule, subclause 13(3)**

Clause 13 of the Code provides for a cooling off period for a franchisee entering a franchise agreement for the first time. The cooling off period is currently 7 days from entering into the agreement or from the date of paying any money under the agreement. There is provision for the repayment of any money paid where a franchisee terminates an agreement.

The amendments replace the references to 'money' with references to making 'any payment (whether of money or of any other valuable consideration)'. The effect of the amendments is that the current protection for franchisees in relation to any money that is paid under an agreement will extend to the payment of other valuable consideration as well.

**20. Schedule, subclause 13(4)**

This item is a technical amendment to correct a numerical reference in the subclause.

**21. Schedule, paragraph 17(1)(c)**

Clause 17 of the Code deals with annual financial statements and auditing requirements for any marketing or cooperative fund that is provided for in a franchising agreement.

Paragraph 17(1)(c) allows a franchisee to ask for a copy of the statement, and requires the statement to be provided within 30 days of that request. The amendment requires a franchisee to make the request for the statement in writing.

**22. Schedule, after subclause 17(3)**

The item inserts a new subclause into clause 17. The new subclause ensures that the reasonable costs of auditing and administering any marketing or cooperative fund will be able to be paid out of that fund. This is to avoid the interpretation that the costs relating to any such fund should be the sole responsibility of the franchisor.

**23. Schedule, subclause 18(1)**

Clause 18 of the Code deals with the disclosure of 'materially relevant facts'. The provision imposes an obligation on a franchisor to disclose matters that are listed in subclause 18(2) to the franchisee within 60 days of the franchisor becoming aware any such matter.

This item requires that any disclosure, made under subclause 18(1), be in writing.

**24. Schedule, subparagraph 18(2)(c)(iii)**

The 'materially relevant facts' that are listed in subclause 18(2) include changes in ownership or control of the franchisor and certain legal proceedings against the franchisor.

Paragraph 18(1)(c) requires the disclosure of any judgements against the franchisor under particular provisions of specified legislation. This item inserts an updated reference to the unfair contracts jurisdiction that now applies under the *Industrial Relations Act 1999* (Queensland).

**25. Schedule, paragraph 18(2)(d)**

Paragraph 18(2)(d) requires the disclosure as a 'materially relevant fact' of any civil proceedings by 10% or 10 (whichever is lower) of the franchisees in Australia of the franchisor. A strict interpretation of the provision would be that proceedings involving any number but 10 or any other percentage than 10% of franchisees would not be covered by the paragraph.

This item amends the paragraph to ensure that the disclosure will be required if at least 10% or at least 10 of the Australian franchisees are engaged in civil proceedings against the franchisor.

**26. Schedule, paragraph 18(2)(f)**

Paragraph 18(2)(f) currently requires the disclosure as a 'materially relevant fact' of any judgment entered in relation to a matter set out in paragraph 4.2(a) of the disclosure document.

The amendment corrects an oversight in the existing Code and extends the obligation to all matters dealt with in item 4.2 of Annexure 1.

This means that franchisors will be required to disclose as materially relevant facts any matters referred to in paragraphs 4.2(a), 4.2(b) or 4.2(c) of Annexure 1. These matters are whether the franchisor or a director of the franchisor has been:

- convicted of a serious offence in the last 10 years; or,
- subject to specified civil proceedings in the last 5 years; or,
- bankrupt, insolvent under administration or an externally-administered body corporate in the last 10 years.

Consequent on the introduction of the shortened form of disclosure, the materially relevant facts will also include any matter set out in item 3.2 of Annexure 2.

**27. Schedule, paragraph 18(2)(g)**

**28. Schedule, after paragraph 18(2)(g)**

These items will add a paragraph to the list of 'materially relevant facts' that must be disclosed to a franchisee. New paragraph 18(2)(h) covers changes relating to intellectual property, including the ownership and control of intellectual property that is material to the franchise system.

**29. Schedule, subclause 19(1)**

Clause 19 of the Code requires a franchisor to give a copy a current disclosure document under Annexure 1 to a franchisee within 14 days of a written request being made.

This item removes the reference to Annexure 1. The effect of the change is that the disclosure document may be that required under Annexure 1 or Annexure 2, as appropriate.

**30. Schedule, paragraph 20(3)(e)**

The item removes reference to the disclosure obligation under clause 12, consequent on the removal of clause 12 of the Code (see item 18 of the Schedule to these Regulations).

**31. Schedule, paragraphs 20(4)(i) and (ii)**

This is a technical amendment that corrects a numbering error in the Code.

**32. Schedule, subclause 22(1)**

Clause 22 deals with the termination of a franchise agreement prior to its expiry by a franchisor. The provision requires reasonable notice to be given to the franchisee provided that the franchisee has not breached the agreement.

It has been suggested that the existing clause might mean that a franchisor has a right under the Code to terminate a franchise agreement at will. The intention of the provision was that it apply only where the franchise agreement makes provision for termination by the franchisor.

This item replaces subclause 22(1) with a provision that expressly states that the termination of the franchise agreement must be in accordance with the franchise agreement.

### **33. Schedule, subclause 22(2)**

The change made by this item is consequential to the changes made to subclause 22(1) by the previous item.

### **34. Schedule, after subclause 29(5)**

Part 4 of the Code is concerned with resolving disputes that may arise under franchise agreements or the Code. Clause 29 deals with the procedures that are to be followed to resolve disputes, including a process of mediation.

This item inserts a new subclause that would provide that mediation under the Code must be conducted in Australia. This provision is intended prevent parties from nominating an overseas jurisdiction as the venue for Code mandated mediation.

### **35. Schedule, after subclause 29(6)**

Subclause 29(6) requires parties to attend a mediation and try to resolve a dispute.

This item inserts a provision that will require a mediation under subclause 29(6) to be attended by a person who has the authority to enter into an agreement to settle the dispute on behalf of a party. This provision is designed to ensure that mediation will be more effective at finally settling disputes.

### **36. Schedule, after clause 30**

This item inserts a new provision that will allow for the termination of a mediation in certain circumstances. The clause allows either party to ask the mediator to terminate a mediation after 30 days if the mediation has not resolved the dispute. The mediator may terminate mediation if satisfied that resolution of the dispute is not imminent.

On terminating a mediation the mediator is required to issue a certificate stating the names of the parties, the nature of the dispute, that mediation has finished and that the dispute is not resolved. The purpose of the amendment is to provide a mechanism for parties to end Codemandated mediation. This would allow the parties to pursue other dispute resolution mechanisms that may be specified in the agreement, or otherwise available.

### **37. Schedule, Annexure 1, paragraph 1.1(b)**

Annexure 1 to the Code sets out the form of the disclosure document that will be required in relation to franchised businesses where the expected annual turnover is \$50,000 or more.

Paragraph 1.1(b) requires the disclosure of the details of the franchisor.

This item requires the ABN, of the franchisor to appear on the first page of the disclosure document. ABN is defined in clause 3 of the Code.

### **38. Schedule, Annexure 1, paragraph 1.1(b)**

This item adds an additional requirement to paragraph 1 of Annexure 1. The additional matter that must now appear on the first page of the disclosure document is the signature of the franchisor, or a director, officer or authorised agent of the franchisor.



### **39. Schedule, Annexure 1, paragraph 1.1(c)**

Paragraph 1.1 (b) of Annexure 1 requires the date of a disclosure document to appear on the first page of the document. This item amends the paragraph to ensure that the date required is the date when the disclosure document was prepared.

### **40. Schedule, Annexure 1, paragraph 1.1(d)**

Paragraph 1.1 (d) of Annexure 1 contains a statement that is required to appear on the first page of a disclosure document.

This item adds two new sentences to the required statement. The sentences are intended to draw the attention of potential franchisees to:

- the waiting period of 14 days before a franchise agreement is entered; and,
- the cooling off period of 7 days after the signing of an agreement, during which the agreement may be terminated without cost.

### **41. Schedule, Annexure 1, item 2.1**

### **42. Schedule, Annexure 1, item 2.4**

Item 2 of Annexure 1 provides for the disclosure of details about the franchisor, including details of the any business names, associated businesses and people with management responsibilities in relation to the proposed franchise agreement.

These items ensure that references to the ABN of a franchisor, and the ABN of an associate of a franchisor (in addition to the name, ACN or ARBN of such a body) be provided in the disclosure document.

### **43. Schedule, Annexure 1, subparagraph 4.1(b)(iii)**

Item 4 of Annexure 1 deals with litigation and requires the disclosure of specified proceedings against the franchisor. This item inserts an updated reference to the unfair contracts jurisdiction that now applies under the *Industrial Relations Act 1999* (Queensland).

### **44. Schedule, Annexure 1, item 5.1**

Item 5 of Annexure 1 requires the disclosure of the payments that are made to agents in connection with the introduction or recruitment of a franchisee.

The item ensures that the provision will apply to the payment of any other valuable consideration, not only money amounts that may be associated with the franchise agreement.

### **45. Schedule, Annexure 1, item 6.4**

Item 6 of Annexure 1 requires disclosure in relation to existing franchisees. Item 6.4 requires the disclosure of the number of franchised business to which specified events have occurred in the last three years. The item clarifies that the disclosure will be required in relation to the last three financial years.

### **46. Schedule, Annexure 1, item 7.1**

Item 7 of Annexure 1 is concerned with the disclosure of information about intellectual property associated with the franchised business.

Currently the disclosure is required for any trade mark, patent, design or copyright that is 'significant and material to the franchise system'. The item provides that the disclosure should be made where intellectual property is material to the franchise system.

**47. Schedule, Annexure 1, item 8, heading**

This item substitutes a new heading that makes reference to a 'site' as well as 'territory'.

**48. Schedule, Annexure 1, item 8.2**

Item 8.2 of Annexure 1 requires the disclosure of specified issues concerning the territory of a proposed franchise, such as whether another franchisee may operate a business that is substantially the same as the franchised business in that territory.

The change replaces a reference to 'franchised territory' with a reference to 'territory of the franchise' to better reflect the content of item 8.

**49. Schedule, Annexure 1, paragraph 8.2(a), (b) and (d)**

This item affects a minor technical amendment in the three paragraphs.

**50. Schedule, Annexure 1, paragraph 8.2(d) and (c)**

This item makes two minor amendments that clarify that it is the territory of the franchise that is the subject of paragraph.

**51. Schedule, Annexure 1, paragraph 9.1(d)**

Paragraph 9.1 (d) of Annexure 1 requires disclosure of details of any requirement on the franchisee to accept goods or services from the franchisor. The amendment will extend the obligation to apply also to any obligation to accept goods or services from an associate of the franchisor.

**52. Schedule, Annexure 1, after item 13.7**

Item 13 of Annexure 1 requires the disclosure of payments that are required in connection with a franchised business. The item applies to prepayments, establishment costs and other payments including recurring or isolated payments.

This amendment inserts item 13.8 to clarify that a single payment that might fall within two or more of the categories need only be disclosed once.

**53. Schedule, Annexure 1, after item 14.1**

Item 14 of Annexure 1 requires the disclosure of material conditions of each financing arrangement that the franchisor offers in respect of the franchised agreement.

This item amends this provision to clarify that the disclosure must cover any requirement on a franchisee to provide a minimum amount of unborrowed working capital in the franchised business, and any requirement that the franchisee maintain a stated debt to equity ratio in the franchised business.

**54. Schedule, Annexure 1, item 15.1**

Item 15 of Annexure 1 requires a summary of the obligations of the franchisor under the franchise agreement.

This item amends the provision so that any obligation on the franchisor that might be ongoing after a franchised business has ceased to operate is expressly required to be disclosed in the summary.

**55. Schedule, Annexure 1, paragraph 16.1 (c) and (d)**

Item 16 of Annexure 1 requires disclosure of the obligations of the franchisee under the franchise agreement.

Paragraph 16.1 (c) currently refers to the development of a 'site or unit'. The amendment replaces that reference with a reference to 'site, premises, vehicles or equipment'. These words more fully capture the intended reach of the provision.

Paragraph 16.1(d) relates to franchisee obligations in relation to training. The item clarifies that the disclosure will extend to training before the franchised business starts and ongoing training obligations during the operation of the franchise agreement.

**56. Schedule, Annexure 1, paragraph 16.1(g)**

Paragraph 16.1(g) relates to the franchisee obligations relating to the use of intellectual property. This item repeals this paragraph as appropriate provision for disclosure in relation to this matter is already made in item 7.1 (b) of Annexure 1.

**57. Schedule, Annexure 1, paragraph 16.1(i)**

Paragraph 16.1(i) deals with the franchisee obligations for territorial development and sales quotas. The amendment replaces the reference to sales quotas with a broader reference to minimum performance criteria.

**58. Schedule, Annexure 1, paragraph 16.1(j)**

Paragraph 16.1(j) relates to franchisee obligations for the maintenance and appearance of premises. The amendment will extend the provision to ensure that it also includes the maintenance and appearance of vehicles and equipment.

**59. Schedule, Annexure 1, paragraph 16.1(m)**

Paragraph 16.1 (m) requires the disclosure of any franchisee obligations in relation to indemnities. This item extends the provision to 'guarantees'.

**60. Schedule, Annexure 1, paragraph 16.1(n)**

Paragraph 16.1 (n) relates to participation requirements for a franchisee, directors, management or employees. The amendment clarifies that it is the obligations on the franchisee or its directors that will need to be disclosed under this paragraph of item 16.

**61. Schedule, Annexure 1, item 18.1**

This is a minor technical amendment to the opening words of item 18 to ensure consistency with the opening words of items 15.1 and 17.1.

**62. Schedule, Annexure 1, paragraph 18.1(a)**

Item 18 requires the disclosure document to summarise any requirements under a franchise agreement on a franchisee, directors, beneficiaries, owners or partners in a franchise to sign related agreements.

Paragraph 18.1(a) currently applies to a lease or other agreement under which a franchisee can occupy the premises of the franchisee's business. This item will expressly extend the provision to apply to a sublease or licence to occupy premises.

**63. Schedule, Annexure 1, after paragraph 18.1(b)**

This item adds a new paragraph to item 18 of Annexure 1. The new item will apply to any requirement to sign an agreement for the ownership or use of intellectual property.

**64. Schedule, Annexure 1, paragraph 18.1 (c)**

Paragraph 18.1 (c) currently applies to a security agreement, including a guarantee, mortgage or security deposit. This item will expressly extend the provision to apply to security agreements including an indemnity, loan agreement, or obligation to provide a bank guarantee to a third party.

**65. Schedule, Annexure 1, item 20.2**

Item 20 of Annexure 1 sets out the financial details that must appear in the disclosure document. Item 20.2 requires, financial reports for each of the last two financial years, prepared in accordance with a particular section of the Corporations Law.

This item updates the reference to the sections in the Corporations Law to provide a full explanation of what must be in the financial reports.

**66. Schedule, Annexure 1, item 20.3**

Item 20.3 currently provides that the financial reports required by item 20.2 need not be provided if the franchisor provides the statement under item 20.1 that is verified by a registered company auditor. (Item 20.1 requires a solvency statement which is a statement from the franchisor that, in the directors' opinion, there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.)

This item strengthens item 20.3 by requiring the solvency statement to be supported by an independent audit provided by a registered company auditor.

In addition, the item provides that a copy of the independent audit is to be provided with the solvency statement under item 20.1.

**67. Schedule, Annexure 1, item 23.1**

Item 23 of Annexure 1 requires the last page of the disclosure document to include a form on which a prospective employee can acknowledge receipt of the disclosure document.

This item applies an additional requirement that the last page of the disclosure document contains a statement that the prospective franchisee may keep the disclosure document.

**68. Schedule, Annexure 2**

Annexure 2 to the Code currently sets out a disclosure document that a transferring franchisee had to provide to a proposed transferee of a franchised business under subclause 6(2). Consequent on the repeal of Division 2.3 by these Regulations, the existing provisions of Annexure 2 are no longer required.

This item substitutes a new Annexure 2, 'Short form disclosure document for franchisee or prospective franchisee' to be provided by the franchisor where the franchised business has an expected annual turnover of less than \$50,000.

Annexure 2 will require the disclosure of 11 of the 23 categories of information that are required under Annexure 1. Under clause 6C, proposed by item 11 of the Schedule to these Regulations, a franchisee who is in receipt of a disclosure document under Annexure 2 will be able to ask the franchisor for information from the remaining 12 categories of information from Annexure 1 and the franchisor will be required to give that information unless it is, in the circumstances, reasonable to withhold it.