



# **Trade Practices (Industry Codes — Franchising) Amendment Regulations 2007 (No. 1)<sup>1</sup>**

**Select Legislative Instrument 2007 No. 240**

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I, PHILIP MICHAEL JEFFERY, 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 9 August 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

FRAN BAILEY  
Minister for Small Business and Tourism

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**1 Name of Regulations**

These Regulations are the *Trade Practices (Industry Codes — Franchising) Amendment Regulations 2007 (No. 1)*.

**2 Commencement**

These Regulations commence on 1 March 2008.

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

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

**Schedule 1 Amendments**

(regulation 3)

**[1] Schedule, clause 2**

*substitute*

**2 Purpose of code**

The purpose of this code is to regulate the conduct of participants in franchising towards other participants in franchising.

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

*omit*

goods or services

*insert*

goods, real property or services

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**[3] Schedule, subclause 3 (1), definition of *serious offence*, excluding the note**

*substitute*

*serious offence* means:

- (a) 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; or
- (b) a contravention of any provision of the *Corporations Act 2001*.

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

*omit*

Corporations Law

*insert*

*Corporations Act 2001*

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

*omit*

executive officer

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

*omit*

secretary

**[7] Schedule, subparagraph 4 (3) (f) (ix)**

*substitute*

(ix) the *Corporations Act 2001*.

**[8] Schedule, subclause 5 (3)**

*substitute*

- (3) However, this code does not apply to a franchise agreement:
- (a) to which another mandatory industry code, prescribed under section 51AE of the Act, applies; or
  - (b) 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.

**[9] Schedule, subclause 5 (4)**

*omit*

Paragraph (3) (c)

*insert*

Paragraph (3) (b)

**[10] Schedule, subclause 6 (1)**

*omit*

3 months

*insert*

4 months

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**[11] Schedule, subparagraph 6 (2) (a) (i)**

*after*

annual turnover

*insert*

at any time during the term of the franchise agreement

**[12] Schedule, paragraph 6 (2) (c)**

*omit*

an executive officer

*insert*

other officer

**[13] Schedule, paragraph 6B (1) (b)**

*substitute*

(b) a franchisee proposing to:

(i) renew a franchise agreement; or

(ii) extend the scope or term of a franchise agreement.

**[14] Schedule, clause 6C**

*omit*

, unless, in the circumstances, it is reasonable to withhold the information

**[15] Schedule, clause 10, excluding the note**

*substitute*

**10 Franchisor obligations**

A franchisor must give:

(a) a copy of this code; and

(b) a disclosure document; and

- (c) a copy of the franchise agreement, in the form in which it is to be executed;  
to:
- (d) 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) makes a non-refundable payment (whether of money or of other valuable consideration) to the franchisor or an associate of the franchisor in connection with the proposed franchise agreement; or
- (e) a franchisee at least 14 days before renewal or extension of the franchise agreement.

**[16] Schedule, clause 15**

*substitute*

**15 Association of franchisees or prospective franchisees**

A franchisor must not induce a franchisee or prospective franchisee:

- (a) not to form an association; or
- (b) not to associate with other franchisees or prospective franchisees for a lawful purpose.

**[17] Schedule, clause 16, heading**

*substitute*

**16 Prohibition on release from liability etc**

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**[18] Schedule, subclause 16 (1)**

*substitute*

- (1) A franchise agreement entered into on or after 1 October 1998 must not contain, or require a franchisee to sign:
- (a) a general release of the franchisor from liability towards the franchisee; or
  - (b) a waiver of any verbal or written representation made by the franchisor.

**[19] Schedule, subclause 16 (2)**

*omit*

subclause (1)

*insert*

paragraph (1) (a)

**[20] Schedule, paragraph 17 (1) (a)**

*substitute*

- (a) within 4 months after the end of the last financial year, prepare an annual financial statement detailing all of the fund's receipts and expenses for the last financial year; and

**[21] Schedule, paragraph 17 (1) (b)**

*omit*

3 months

*insert*

4 months

**[22] Schedule, paragraph 17 (1) (c)**

*substitute*

- (c) give to the franchisee:
- (i) a copy of the statement, within 30 days of preparing the statement; and

- (ii) a copy of the auditor's report, if such a report is required, within 30 days of preparing the report.

**[23] Schedule, subclause 17 (2)**

*substitute*

- (2) A franchisor does not have to comply with paragraph (1) (b) for a financial year if:
  - (a) 75% of the franchisor's franchisees in Australia, who contribute to the fund, have voted to agree that the franchisor does not have to comply with the paragraph; and
  - (b) either:
    - (i) that agreement is made within 5 months after the end of the financial year (the *financial year for which agreement is reached*); or
    - (ii) the financial year falls within the period of 2 years after the financial year for which agreement is reached.

**[24] Schedule, subclause 18 (1)**

*omit*

60 days

*insert*

14 days



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**[25] Schedule, subclause 18 (2)**

*omit everything before paragraph (a), insert*

(2) For subclause (1), the matters are the following:

**[26] Schedule, paragraph 18 (2) (b)**

*after*

the franchisor

*insert*

or a franchisor director

**[27] Schedule, subparagraph 18 (2) (b) (iii)**

*omit*

Corporations Law

*insert*

*Corporations Act 2001*

**[28] Schedule, paragraph 18 (2) (d)**

*omit*

against the franchisor

*insert*

against the franchisor or a franchisor director

**[29] Schedule, paragraph 18 (2) (h)**

*omit*

system.

*insert*

system;

**[30] Schedule, after paragraph 18 (2) (h)**

*insert*

- (i) the existence and content of any undertaking or order under section 87B of the Act.

**[31] Schedule, after subclause 18 (4)**

*insert*

- (5) For paragraph 18 (2) (i), this information must be disclosed within a reasonable time (but not more than 14 days) after the undertaking or order is given.

*Note* Nothing in this code affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

**[32] Schedule, Annexure 1, paragraph 1.1 (b)**

*substitute*

- (b) the franchisor's:
  - (i) name; and
  - (ii) business address and phone number; and
  - (iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor); and

**[33] Schedule, Annexure 1, paragraph 1.1 (d)**

*omit*

If this is a new franchise agreement (not a renewal, extension or transfer) of an agreement, you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

*insert*

If this is a new franchise agreement (not a renewal, extension or transfer of an agreement), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement.

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If you decide to terminate the agreement during the cooling off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor under the agreement. However, the franchisor may deduct from this amount the franchisor's reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.

**[34] Schedule, Annexure 1, item 2.1**

*substitute*

2.1 The franchisor's:

- (a) name; and
- (b) address, or addresses, of registered office and principal place of business in Australia; and
- (c) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).

**[35] Schedule, Annexure 1, item 2.6**

*substitute*

2.6 For each officer of the franchisor — name, position held and qualifications (if any).

**[36] Schedule, Annexure 1, item 3.1**

*omit*

person, other than an executive officer,

*insert*

person

**[37] Schedule, Annexure 1, paragraph 4.1 (a)**

*after*

the franchisor

*insert*

or a franchisor director

**[38] Schedule, Annexure 1, subparagraph 4.1 (a) (iii)**

*omit*

Corporations Law

*insert*

*Corporations Act 2001*

**[39] Schedule, Annexure 1, paragraph 4.3 (f)**

*substitute*

(f) the date and content of any undertaking or order under section 87B of the Act;

**[40] Schedule, Annexure 1, item 6.5**

*substitute*

6.5 Subject to item 6.6, the franchisor is taken to comply with item 6.4 if the franchisor supplies, for each event mentioned in item 6.4, the name, location and contact details of each franchisee, if the information is available.

6.6 A franchisor does not have to provide details of a franchisee if the franchisee has requested in writing that the details not be disclosed.

**[41] Schedule, Annexure 1, paragraph 9.1 (j)**

*substitute*

(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, including the name of the business providing the rebate or financial benefit; and

(k) whether any rebate or financial benefit referred to under paragraph (j) is shared, directly or indirectly, with franchisees.

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**[42] Schedule, Annexure 1, item 11.3**

*substitute*

- 11.3 The details mentioned in item 11.2 must be provided:
- (a) in a separate document; and
  - (b) with the disclosure document.

**[43] Schedule, Annexure 1, item 15.1**

*omit*

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

*insert*

References to the relevant conditions of the attached franchise agreement that deal with obligations of the franchisor, including:

**[44] Schedule, Annexure 1, paragraph 15.1 (a)**

*omit*

an obligation

*insert*

any obligation

**[45] Schedule, Annexure 1, item 16.1**

*omit*

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:

*insert*

References to the relevant conditions of the franchise agreement that deal with obligations of a franchisee for the following matters:

**[46] Schedule, Annexure 1, paragraph 16.1 (a)**

*substitute*

(a) selection and acquisition of site and premises;

**[47] Schedule, Annexure 1, paragraph 16.1 (j)**

*before*

premises

*insert*

site,

**[48] Schedule, Annexure 1, section 17, heading**

*substitute*

**17 Other conditions of agreement**

**[49] Schedule, Annexure 1, item 17.1**

*omit*

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:

*insert*

References to the relevant conditions of the franchise agreement that deal with the following matters:

**[50] Schedule, Annexure 1, after item 18.1**

*insert*

18.2 All documents mentioned in item 18.1 must be provided to the franchisee:

- (a) at least 14 days before the day on which the franchise agreement is signed, if they are available at that time; or
- (b) if they are not available at that time — when they become available.

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**[51] Schedule, Annexure 1, item 20.2**

*substitute*

20.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the *Corporations Act 2001*, or the foreign equivalent for a foreign franchisor, prepared by:

- (a) the franchisor; and
- (b) any consolidated entity to which the franchisor belongs;  
if:
- (c) the franchisor is part of a consolidated entity that is required to provide audited financial reports under the *Corporations Act 2001*; and
- (d) a franchisee requests the reports.

**[52] Schedule, Annexure 1, paragraph 20.3 (a)**

*substitute*

- (a) the statement under item 20.1 is supported by an independent audit provided by:
  - (i) a registered company auditor; or
  - (ii) if the franchisor is a foreign franchisor — a foreign equivalent for that franchisor;  
within 12 months after the end of the financial year to which the statement relates; and

**[53] Schedule, Annexure 1, item 22.1**

*omit*

may

*insert*

must

**[54] Schedule, Annexure 1, item 22.2**

*omit*

may

*insert*

must

**[55] Schedule, Annexure 2, paragraph 1.1 (b)**

*substitute*

(b) the franchisor's:

- (i) name; and
- (ii) business address and phone number; and
- (iii) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor); and

**[56] Schedule, Annexure 2, paragraph 1.1 (e)**

*omit*

If this is a new franchise agreement (not a renewal, extension or transfer) of an agreement, you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

*insert*

If this is a new franchise agreement (not a renewal, extension or transfer of an agreement), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement.

If you decide to terminate the agreement during the cooling off period, the franchisor must, within 14 days, return all payments (whether of money or of other valuable consideration) made by you to the franchisor under the agreement. However, the franchisor may deduct from this amount the franchisor's reasonable expenses, if the expenses or their method of calculation have been set out in the agreement.



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**[57] Schedule, Annexure 2, item 2.1**

*substitute*

2.1 The franchisor's:

- (a) name; and
- (b) address, or addresses, of registered office and principal place of business in Australia; and
- (c) ABN, ACN or ARBN (or foreign equivalent if the franchisor is a foreign franchisor).

**[58] Schedule, Annexure 2, item 2.6**

*substitute*

2.6 For each officer of the franchisor — name, position held and qualifications (if any).

**[59] Schedule, Annexure 2, paragraph 3.1 (a)**

*after*

franchisor

*insert*

or a franchisor director

**[60] Schedule, Annexure 2, subparagraph 3.1 (a) (iii)**

*omit*

Corporations Law

*insert*

*Corporations Act 2001*

**[61] Schedule, Annexure 2, item 8.1**

*omit*

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

*insert*

References to the relevant conditions of the attached franchise agreement that deal with obligations of the franchisor, including:

**[62] Schedule, Annexure 2, paragraph 8.1 (a)**

*omit*

an obligation

*insert*

any obligation

**[63] Schedule, Annexure 2, item 9.1**

*omit*

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:

*insert*

References to the relevant conditions of the franchise agreement that deal with obligations for a franchisee for the following matters:

**[64] Schedule, Annexure 2, paragraph 9.1 (a)**

*substitute*

(a) selection and acquisition of site and premises;

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**[65] Schedule, Annexure 2, paragraph 9.1 (i)**

*before*

premises

*insert*

site,

**[66] Schedule, Annexure 2, sections 10 and 11**

*substitute*

**10 Other relevant disclosure information**

- 10.1 Copy of proposed franchise agreement must be attached.
- 10.2 Copy of the code must be attached.
- 10.3 Any other information that:
  - (a) the franchisor wants to give; and
  - (b) does not contradict information required to be given.

**11 Financial details**

- 11.1 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.
- 11.2 Financial reports for each of the last 2 completed financial years in accordance with sections 295 to 297 of the *Corporations Act 2001*, or the foreign equivalent for a foreign franchisor, prepared by:
  - (a) the franchisor; and
  - (b) any consolidated entity to which the franchisor belongs;  
if:
    - (c) a consolidated entity is required to provide audited financial reports under the *Corporations Act 2001*; and
    - (d) the franchisee requests the reports.

11.3 Item 11.2 does not apply if:

- (a) the statement under item 11.1 is supported by an independent audit provided by:
  - (i) a registered company auditor; or
  - (ii) if the franchisor is a foreign franchisor — a foreign equivalent for that franchisor;  
within 12 months after the end of the financial year to which the statement relates; and
- (b) a copy of the independent audit is provided with the statement under item 11.1.

## **12 Receipt**

12.1 On the last page of the disclosure document:

- (a) a statement to the effect that the prospective franchisee may:
  - (i) keep the disclosure document; and
  - (ii) ask the franchisor for the information referred to in the following sections of Annexure 1:
    - section 3 — Business experience
    - section 5 — Payments to agents
    - section 6 — Existing franchises
    - section 9 — Supply of goods or services to a franchisee
    - section 10 — Supply of goods or services by a franchisee
    - section 11 — Sites or Territories
    - section 14 — Financing
    - section 17 — Summary of other conditions of agreement
    - section 18 — Obligation to sign related agreements
    - section 19 — Earnings information
    - section 21 — Updates
    - section 22 — Other relevant disclosure information; and

- 
- (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).