

2 APRIL 2014

FRANCHISE UPDATE

MAJOR AMENDMENTS TO FRANCHISING CODE FORESHADOWED

THE AUSTRALIAN GOVERNMENT HAS TODAY RELEASED AN EXPOSURE DRAFT OF THE COMPETITION AND CONSUMER (INDUSTRY CODES-FRANCHISING) REGULATIONS 2014 WHICH SEEKS TO MAKE MAJOR AMENDMENTS TO THE FRANCHISING CODE OF CONDUCT (CODE) AND THE RELEVANT PROVISIONS IN THE COMPETITION AND CONSUMER ACT 2010 (CCA).

Stakeholders are invited to comment on the draft bill and Regulations by **30 April 2014** with the changes expected to take effect from **1 January 2015**. The highlights of the amended Regulations include:

Increased Penalties and Enforcement

- A drastic enhancement of the enforcement tools available to the Australian Competition and Consumer Commission (ACCC), the active enforcement body of the CCA, to deal with serious breaches of the Code. The ACCC will now have power to seek civil pecuniary penalties of up to \$51,000 from the court and issue infringement notices of up to \$8,500 for a body corporate, without having to seek a court order.

- Allowance for the ACCC to use its **audit powers** to obtain documents that the franchisor has relied upon to support statements and claims made in their disclosure document.

Improvements for franchisors

- The removal of **double disclosure** requirements which are currently imposed on master and foreign franchisors - a great benefit for multi-tiered systems.
- The removal of **double disclosure** obligations in relation to summarising provisions of the franchise agreement in the disclosure document.
- The removal of the redundant **short form disclosure document** from Annexure 2 of the Code.

Improvements for franchisees

- Requirement that franchisors provide prospective franchisees with a **short information statement** which outlines the risks and rewards of franchising at an initial stage. The sheet will include unforeseen capital expenditure, importance of education and due diligence, and the prospect of franchisor failure.
- Improved disclosure of the **online trading** activities of franchisors to assist franchisees in assessing the viability of the proposed business.
- Requirement that franchisors remind franchisees of their entitlement to a current **disclosure document** when either party proposes to renew the franchise agreement.
- Improved transparency of how **marketing funds** are used and accounted for including:
 - additional disclosure on the types of expenses for which marketing funds are being used;
 - providing franchisees with the option to vote for an annual audit of the marketing fund;
 - requiring franchisors to keep marketing funds in a separate account to the rest of their monies;
 - ensuring that franchises owned by the franchisor also contribute to the system's marketing and other cooperative funds.
- Enhanced protections against significant **capital expenditure** imposed by a franchisor.
- Prevention of franchisors from unreasonably imposing **restraints of trade** on former franchisees.

Other notable amendments

- An introduced general **duty** on franchisors and franchisees to act in **good faith** during all dealings with each other, including during negotiations, agreements and dispute resolution.
- Prevention of franchisors from improperly interfering with prospective franchisees' ability to speak with ex-franchisees.

- Prevention of parties to a franchise agreement from attributing their costs in **dispute resolution** to the other party.

If introduced, these changes would be the most major reform since the introduction of the Code in 1998 and will result in a Code in a substantially rewritten form.

MORE INFORMATION

If you would like further advice on how the proposed changes affect you or assistance with making a submission please contact:



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