

# FRANCHISING CODE OF CONDUCT CHANGES

SIGNIFICANT CHANGES TO THE MANDATORY FRANCHISING CODE OF CONDUCT BECAME LAW ON 1 MARCH, AND FRANCHISORS ARE URGED TO CHECK THEIR ARRANGEMENTS COMPLY WITH THE CHANGES.

**THE FRANCHISING** Code is contained in the Trade Practices Act and sets the rules franchisors must follow when dealing with franchisees, such as the need to provide detailed disclosure documents to current or prospective franchisees.

In 2006 the Australian Government initiated a review of the disclosure provisions of the code and in August last year, following the review, the government released some amendments. As a consequence, franchisors are now required to provide a greater level of information to franchisees. This means that franchisors should review their disclosure documents and internal procedures to ensure that they comply with the changes to the code.

Under the changes, franchisors will need to take greater care when giving verbal or written promises before signing formal agreements with franchisees. Previously, franchise agreements could include a clause that waived any verbal or written representations made by the franchisor, but from March such waivers will no longer be permitted.

Overseas franchisors with only one Australian franchisee will also no longer be exempted from the code. This means that some overseas franchisors may for the first time, have to provide disclosure documents and other information required by the code.

Changes to the scope of a franchise will trigger the need for new disclosure documents, where previously it may not have been necessary.

Timeframes for providing franchisees with materially relevant facts, such as certain legal proceedings against the franchisor, have also been tightened. Franchisors are now required to present information to franchisees within 14 days, rather than the previous 60 days.

In addition to the disclosure document, the franchisor will be required to provide a franchisee with the franchise agreement in the form it is to be executed 14 days before



they enter into the agreement or pay a non-refundable deposit. The franchisor must also provide a franchisee with other agreements, such as a lease, that the franchisee is required to enter into as a part of the franchise, 14 days before entering into the franchise, if they are available at the time or if not, when they become available.

Franchisors will also be required to disclose the date and content of any undertakings offered to the ACCC under s. 87B of the Act, such as those that might be offered to deal with potential breaches of the Trade Practices Act by the business.

As a part of their research before entering into any franchise arrangement, franchisees may want to contact other former or current franchisees. Franchisors are already required to provide details of the number of franchisees who have ceased operating or transferred in the last three years. Under the new changes, franchisors will also be required to provide names and contact details of past franchisees to all those considering entering an agreement unless the previous franchisee has requested in writing that their details not be disclosed.

**Changes to the scope of a franchise will trigger the need for new disclosure documents, where previously it may not have been necessary.**

Franchisors should speak to their legal or business adviser about the changes to ensure they comply with the changes. The ACCC's small business helpline can also assist with more information about the Franchising code of Conduct and the amendments on 1300 302 021. ●