

AUSTRALIAN FRANCHISING AMENDMENTS

By Brett Cowell and Rick Davies*

The franchising industry in Australia is regulated under the Australian *Trade Practices Act* 1974 by the mandatory application of the *Franchising Code of Conduct* (the “**Code**”).

The Code defines a franchise agreement in very broad terms. This means that the Code regulates a wider range of agreements than many franchisors and lawyers in overseas jurisdictions may expect. The Code applies to agreements, whether written, oral or implied, that (in summary):

1. grant a right to carry on business under a system or marketing plan;
2. require an association with the grantor’s specified trade mark, advertising or commercial symbol; and
3. involve payment to the grantor.

This definition can catch what may otherwise be thought to be a licence agreement, for example.

The Code was amended by the Australian government in late 2007. The revised Code takes effect as of 1 March 2008.

Since the introduction of the Code years ago, franchisors have been required to make certain written disclosures to franchisees. The bulk of the revisions require greater transparency and the giving of more information to both existing and potential franchisees. Any disclosure documents provided by franchisors in Australia as of 1 March 2008 must comply with the revised Code. The Code revisions may result in some franchisors having to use modified franchise agreements as of 1 March 2008.

To date, overseas franchisors who grant a single franchise agreement in Australia (generally a master franchise) have been exempt from application of the Code. That exemption will no longer apply to franchise agreements entered into or renewed on or after 1 March 2008.

Breaches of the Code can result in serious sanctions under the *Trade Practices Act*. Overseas franchisors should seek advice regarding their Australian franchises without delay.

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