



NATIONAL FRANCHISE  
CONVENTION 2015  
11-13 OCTOBER GOLD COAST



# growth & expansion



# 10 Months in: Code Amendment Implementation

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## 21 Financial details

21.1 A statement of the franchisor's solvency that:

- (a) reflects the franchisor's position:
  - (i) at the end of the last financial year; or
  - (ii) if the franchisor did not exist at the end of the last financial year—  
at the date of the statement; and
- (b) is signed by at least one director of the franchisor; and
- (c) gives the directors' opinion as to whether there are reasonable grounds to believe that the franchisor will be able to pay its debts as and when they fall due.

21.5 If the franchisor or consolidated entity (the **entity**) has not existed for 2 or more financial years, then instead of providing the financial reports mentioned in item 21.2 or 21.3, the following:

- (a) a statutory declaration of the entity's solvency;
- (b) an independent audit report on the entity's solvency as at the date of the entity's declaration.

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## 8 Franchisor must maintain a disclosure document

(2) The purpose of a disclosure document is to:

- (a) give a prospective franchisee, or a franchisee proposing to:
  - (i) enter into a franchise agreement; or**
  - (ii) renew a franchise agreement; or**
  - (iii) extend the term or scope of a franchise agreement;**information from the franchisor to help the franchisee to make a reasonably informed decision about the franchise; and
- (b) give a franchisee current information from the franchisor that is material to the running of the franchised business.

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9(2) If a franchisor or franchisee proposes to:

(a) renew a franchise agreement; or

(b) extend the term or scope of a franchise agreement;

the franchisor must give to a franchisee (within the meaning of paragraph (a) of the definition of that expression) the documents mentioned in subclause (1) at least 14 days before renewal or extension of the franchise agreement.

Civil penalty: 300 penalty units.

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***extend:***

- (a) in relation to the scope of a franchise agreement, means a material change to:
  - (i) the terms and conditions of the agreement; or
  - (ii) the rights of a person under or in relation to the agreement; or
  - (iii) the liabilities that would be imposed on a person under or in relation to the agreement; or
- (b) in relation to the term of a franchise agreement, occurs when the period of the agreement is extended, other than because of an option exercisable by the franchisee during the term of the agreement.**

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***renew***, in relation to a franchise agreement, occurs when the franchisee exercises an option during the term of the agreement to renew the agreement.

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## **Item 18 Disclosure Document**

### **Arrangements to apply at the end of the franchise agreement**

18.1 Details of the process that will apply in determining arrangements to apply at the end of the franchise agreement, including:

- (a) whether the prospective franchisee will have an option to:
  - (i) renew the franchise agreement; or
  - (ii) enter into a new franchise agreement; and
- (b) whether the prospective franchisee will be able to extend the term of the franchise agreement, and if so, the processes the franchisor will use to determine whether to extend the term of the franchise agreement; and...

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## 23 Effect of restraint of trade clause if franchise agreement not extended

(1) A restraint of trade clause in a franchise agreement has no effect after the agreement expires if:

(a) the franchisee had given written notice to the franchisor seeking to extend the agreement on substantially the same terms as those:

(i) contained in the franchisor's current franchise agreement; and

(ii) that apply to other franchisees or would apply to a prospective franchisee; **and**

(b) the franchisee was not in breach of the agreement or any related agreement; **and**

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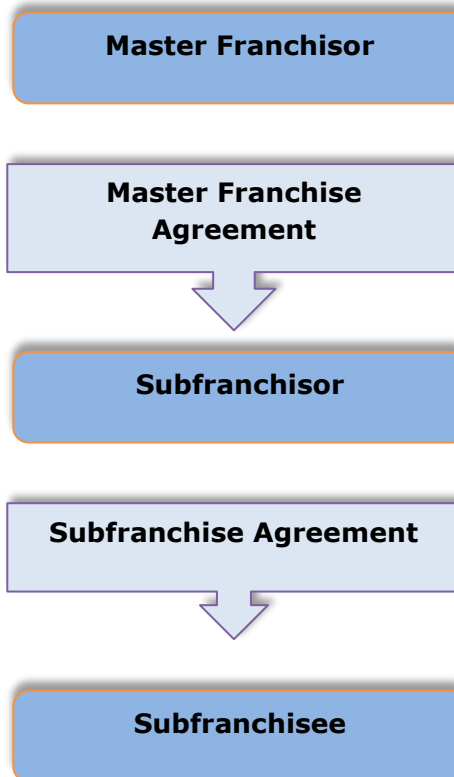


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- (c) the franchisee had not infringed the intellectual property of, or a confidentiality agreement with, the franchisor during the term of the agreement; **and**
- (d) the franchisor does not extend the agreement; **and**
- (e) **either:**
  - (i) the franchisee claimed compensation for goodwill because the agreement was not extended, but the compensation given was merely a nominal amount and did not provide genuine compensation for goodwill; **or**
  - (ii) the agreement did not allow the franchisee to claim compensation for goodwill in the event that it was not extended.

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***franchisor*** includes the following:

- (a) a person who grants a franchise;
- (b) a person who otherwise participates in a franchise as a franchisor;
- (c) a subfranchisor in its relationship with a subfranchisee;
- (d) a subfranchisor in a master franchise system;
- (e) a subfranchisor in its relationship with a franchisee.

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### 30 Capital expenditure

(1) A franchisor must not require a franchisee to undertake significant capital expenditure in relation to a franchised business during the term of the franchise agreement.

(2) For the purpose of subclause (1), ***significant capital expenditure*** excludes the following:

(a) expenditure that is disclosed to the franchisee in the disclosure document that is given to the franchisee before:

- (i) entering into or renewing the agreement; or
- (ii) extending the term or scope of the agreement;

(b) if expenditure is to be incurred by all or a majority of franchisees—expenditure approved by a majority of those franchisees;

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- (c) expenditure incurred by the franchisee to comply with legislative obligations;
- (d) expenditure agreed by the franchisee;
- (e) expenditure that the franchisor considers is necessary as capital investment in the franchised business, justified by a written statement given to each affected franchisee of the following:
  - (i) the rationale for making the investment;
  - (ii) the amount of capital expenditure required;
  - (iii) the anticipated outcomes and benefits;
  - (iv) the expected risks associated with making the investment.

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## 31 Marketing and advertising fees

(1) A franchisor must maintain a separate bank account for marketing fees and advertising fees contributed by franchisees.

(2) If a franchisor operates one or more units of a franchised business, the franchisor must pay marketing fees and advertising fees on behalf of each unit on the same basis as other franchisees.

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- 31(3) Despite any terms of a franchise agreement, marketing fees or advertising fees may only be used to:
- (a) meet expenses that:
    - (i) have been disclosed to franchisees under paragraph 15.1(f) of the disclosure document; or
    - (ii) are legitimate marketing or advertising expenses; or
    - (iii) have been agreed to by a majority of franchisees; or
  - (b) pay the reasonable costs of administering and auditing a marketing fund.

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## Item 15 Marketing or other cooperative funds

15.1 For each marketing or other cooperative fund, controlled or administered by or for the franchisor, to which the franchisee may be required to contribute, the following details:

- (a) the kinds of persons who contribute to the fund (for example, franchisee, franchisor, outside supplier);
- (b) how much the franchisee must contribute to the fund and whether other franchisees must contribute at a different rate;
- (c) who controls or administers the fund;
- (d) whether the fund is audited and, if so, by whom and when;
- (e) how the fund's financial statements can be inspected by franchisees;
- (f) the kinds of expense for which the fund may be used;
- (g) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
- (h) whether the franchisor or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;
- (i) whether the franchisor must spend part of the fund on marketing, advertising or promoting the franchisee's business.

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