

# **GUIDE TO MAKING A SUBMISSION**

## **Parliamentary Inquiry: The operation and effectiveness of the Franchising Code of Conduct**

**03 April 2018**

None of the information in this document is legal advice - this is prepared by an entity independent of government.

# Why do I need to write a submission?

Franchisees have a unique opportunity to help create real change in the way the franchise industry operates. **Don't forget** - lobbyists for the franchising industry such as the Franchise Council of Australia (FCA), and corporate giants such as 7-Eleven, Domino's Pizza and Retail Food Group will be using this Inquiry as an opportunity to promote the franchise industry and keep systems as status quo, even if that is at the detriment of franchisees.

This is your chance to have equal ground to these lobbyists in sharing the reality of being a franchisee, whether that be: poor profitability, high cost of goods compared to being an independent business, high franchise and marketing fees, no support, misleading financials at point of sale, difficult conditions, oral contracts later denied or refused, intimidation and/or threats, or any other experiences that have caused shortcomings of your franchise business.

## Can I make a confidential submission?

- If you're worried about what your franchisor might do if you make a submission, you can ask the committee to keep it confidential. You need to be very clear about this - make sure you put **CONFIDENTIAL** in big letters at the top of your submission.
- If you want your submission to be published but without your name on it, you can ask the Committee to remove your name and any other identifying information.

## What should I be careful about when writing my submission?

x Don't swear   x Don't lie   x Don't abuse any person or entity, including the franchisor, government, media, or people directly involved in your matter   x Don't provide a copy of your submission to any person or entity, until it has been published by the Committee

If you name an individual in your submission and you say something critical, they might be given the right to respond. This may delay the publication of your submission.

## Where do I send it to?

You can upload your submission through the Senate's website. You will receive an email straight away that lets you know that the secretariat has received your submission.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/OnlineSubmission](https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission)

OR

You can email your submission to the Committee secretariat -

[corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

**For information published by the government about this Inquiry, visit this website:**

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/Franchising](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Franchising)

## What do I write?

There are specific matters that the Inquiry will be focusing on, and these are called the Terms of Reference. The Terms might seem confusing or even irrelevant to you. You don't need to write about every single Term of Reference, in fact, even if you only write about '(h) any related matter', that's perfectly okay.

We've put some pointers in **red** below to help you address some of the Terms. **Provide detail** where you can (what/when/where/why/how).

**Make sure you put in recommendations.** You might have thought of ways franchisees can be better protected or systems that would be fairer - include these in your submission. Make a separate heading for Recommendations and detail your suggestions.

## Terms of Reference (our hints are in red)

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(a) the operation and effectiveness of the Franchising Code of Conduct, including the disclosure document and information statement, and the Oil Code of Conduct, in ensuring full disclosure to potential franchisees of all information necessary to make a fully-informed decision when assessing whether to enter a franchise agreement, including information on:

(i) likely financial performance of a franchise and worse-case scenarios,

- **Proper disclosure at the time you signed: financials, outlet numbers, etc**
- **Led to believe financial performance of your franchise was better**

(ii) the contractual rights and obligations of all parties, including termination rights and geographical exclusivity,

- **Pressured to operate more than one franchise due to geographical proximity**
- **Zone-splitting / your exclusive zone taken away or infringed upon**

(iii) the leasing arrangements and any limitations of the franchisee's ability to enforce tenants' rights, and

- **Leasing arrangements - fair or unfair**      - **Franchisor's control over lease**

(iv) the expected running costs, including cost of goods required to be purchased through prescribed suppliers;

- **Cost of goods too high (bargaining power etc)**      - **Rebates/kickbacks**
- **Operating costs different to expected when signed on**

- **Franchisor owns supplier companies you must buy from - quality, cost etc**

(b) the effectiveness of dispute resolution under the Franchising Code of Conduct and the Oil Code of Conduct;

- **Dispute resolution processes you have tried (gone to franchisor, ACCC etc)**
- **What did you dispute (COGS, fees, support, marketing etc)**
- **Detail franchisor/ACCC process for dispute resolution - outcome (resolved), response time, improvements in system after dispute, effective, feel heard etc**
- **Unfairly targeted by your franchisor after lodging dispute**

(c) the impact of the Australian consumer law unfair contract provisions on new, renewed and terminated franchise agreements entered into since 12 November 2016, including whether changes to standard franchise agreements have resulted;

(d) whether the provisions of other mandatory industry codes of conduct, such as the Oil Code, contain advantages or disadvantages relevant to franchising relationships in comparison with terms of the Franchising Code of Conduct;

(e) the adequacy and operation of termination provisions in the Franchising Code of Conduct and the Oil Code of Conduct;

- **Fair/unfair termination process - Breach process - effective - Threatened with termination - fair/unfair**

(f) the imposition of restraints of trade on former franchisees following the termination of a franchise agreement;

- **Trading when your franchise agreement ends - constraints, fair/unfair etc**
- **Pursued for trading outside your restraints as a former franchisee**
- **What are fairer arrangements for trading when a franchise agreement ends**

(g) the enforcement of breaches of the Franchising Code of Conduct and the Oil Code of Conduct and other applicable laws, such as the *Competition and Consumer Act 2010*, and franchisors; and

(h) any related matter.

- **Failing to sell store for months/years, walk out & then franchisor sells quickly**
- **Franchisor hijacks sale of your franchise, directs buyer to corporate store**
- **Expensive refurb/exit fees expected when leaving/selling**
- **Have to work long hours for small profit or loss**
- **Underpayment/nonpayment - loss incurred unless family work for free, etc**

- Told one thing by franchisor, then later told something different
- Spied on / surveilled by your franchisor - Intimidation or threats by franchisor
- Process to air concerns, ask questions and/or request support - is it efficient, effective (length in response time, answers, support provided etc)
- Franchisee committee - effective, advocate for franchisees, represented fair etc
- Threatened legally by franchisor if don't agree to something you are disputing
- Personal lawyer advised you to not fight franchisor - too big, you will lose etc
- Your store suffered due to aggressive growth strategy of your franchisor
- Franchisor offered you franchise fee relief/rent relief - was this revoked or later invoiced, could you sell your store with this relief in place, did the relief help
- Marketing fee - franchisor has good/bad marketing, is marketing fund audit detailed enough, local area marketing assistance
- Franchisor's field visits - consistent, enough time, often enough, too often etc
- Support staff employed by franchisor (BDM, S&P etc) - are they trained well, do they help you improve
- Bankrupted after being a franchisee - Considered bankruptcy
- Being a franchisee in Australia fulfilled your ambitions, helped your financial situation and gave you satisfaction in life

This is just a guide and should not be treated as legal advice. To get information from the source, go to this website:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/Franchising](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Franchising)