



**Don Randall** JP MP

Member for Canning

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Franchising Code Review Secretariat  
Department of Industry, Innovation, Science, Research and Tertiary Education  
Small Business Division  
GPO Box 9839  
Canberra ACT 2601

To Whom It May Concern,

I seek to make a submission to the 2013 Review of the Franchising Code of Conduct in my capacity as federal representative, as well as a small business owner and franchisee.

In my role as the Federal Member for Canning, I have heard from constituents and more widely from franchisees from throughout Western Australia who have been burned financially and emotionally by rogue and opportunistic franchisors. For this reason, I welcome this much needed opportunity to investigate the effectiveness of the Franchising Code of Conduct and of changes that have been made to it in recent years.

I have long spoken out for the need for a well-defined duty of good faith that applies to all aspects of a franchise relationship to be included in the Code. Though improvements have been made over time, there is still more to be done to protect franchisees who suffer at the wrong end of a gross imbalance of power in a franchising relationship.

The idea of good faith as part of regulation and law is not a new one as it is mentioned in around 160 pieces of federal legislation and has it that all parties to a franchise agreement must act fairly, honestly, reasonably and cooperatively. Having seen much evidence on unconscionable conduct in the industry, I believe that including this specific requirement would impose a standard of behaviour that discourages opportunistic and unethical conduct in the franchising sector.

In my experience, there has not been sufficient action taken against those guilty of such unconscionable conduct. While this problem falls largely at the feet of the Australian Competition and Consumer Commission as the industry watchdog with the resources and legislative power to pursue such cases, further protection for franchisees not only in the form of a requirement to act in good faith, but also in the form of civil penalties for breaches of the Code should be considered. Such penalties would further act as a deterrent and ensure full compliance with the Code, acting as



another means to discourage opportunistic and unethical conduct in the franchising sector.

Finally, having consulted with others who are active in the franchising sector I would also raise as part of my submission the possibility of including an exit sale provision in order to protect franchisees when the franchisor gives notice that it will not be renewing a franchise agreement at the end of the term, but wishes the franchise business to continue to operate either as a franchisor-owned outlet or under a new franchisee.

One possibility for improvements to the Code in this area might be to have it that the existing franchisee has the right to sell his franchise at its going concern market value to the franchisor, who has the first right of refusal, or to a third party with the co-operation of the franchisor. A franchisor that does not wish to renew a franchise arrangement and does not agree to such terms as described would be prevented from granting or operating a franchise that would have otherwise been competitive with the previous franchise if the franchise agreement had been renewed or a new agreement granted to that franchisee.

As a member of the federal parliament as well as the owner of a franchise, this is a matter that I will continue to pursue on behalf of those embattled franchisees that have been wronged by 'rogue' franchisors and have been left with little recourse. I have appreciated the opportunity this enquiry has provided to make further comment on the state of the franchising industry and trust that you will give my submission the consideration it deserves.

Yours sincerely,



**Don Randall MP**  
**Federal Member for Canning**