

# Submission to the Review of the Franchising Code of Conduct

**Subject:** Advocacy for Fairer Terms and Reasonable Restraints in Franchising

## **Introduction:**

I am a franchise owner who has been deeply involved in providing essential care services to some of Australia's most vulnerable citizens. Through this submission, I aim to shed light on the pressing issues that franchise owners face, emphasizing the need for fairer terms in franchise agreements and reasonable restraints of trade.

## **1. Upholding Fair Terms in Franchising:**

Franchise agreements lay the foundation of the franchisor-franchisee relationship. Yet, it is alarming to witness situations where these agreements are not transparently renewed or where franchisees face unilateral changes that detrimentally impact their business operations.

*Recommendation:* The Code should mandate clear guidelines ensuring that:

- Franchisees are given sufficient notice and information regarding the renewal or non-renewal of their agreements.
- Unilateral changes to agreements that can have a significant impact on a franchisee's business should be approached with caution, and franchisees should be adequately consulted.

## **2. Good Faith in Franchising:**

The essence of every business relationship, especially in franchising, should be the principle of 'Good Faith.' Franchisors should not engage in activities or enforce terms that demonstrate a lack of good faith towards franchisees.

*Recommendation:* Strengthen the Code's provisions on good faith to:

- Explicitly state examples of what constitutes a lack of good faith.
- Provide clearer mechanisms for franchisees to challenge actions that demonstrate a lack of good faith.

## **3. Enhanced Franchisor Transparency:**

Franchisors must be mandated to maintain the highest level of transparency, especially when renegotiating terms with parent or superior companies. In cases similar to mine, there is an alarming lack of direct communication lines between the franchisee and the parent company. This opacity restricts the franchisee's ability to make informed decisions. The Code must ensure that franchisees have the right to be kept in the loop about all negotiations and changes that directly affect their operations.

#### **4. Reasonable Restraints of Trade:**

While it's recognized that restraints of trade have their place in protecting legitimate business interests, they should not be wielded as tools to unreasonably limit franchisees' business activities, especially when essential services are provided.

Given the importance of the services many franchises offer, an immediate shutdown could be detrimental not just for the business but, more importantly, for the clientele they serve. The essential nature of services should be a paramount consideration.

Franchisees, like any other business, should not be unreasonably hamstrung by restriction of trade clauses, especially when they provide essential services to vulnerable sectors of the community. An abrupt cessation of operations due to these clauses can result in significant societal repercussions. The Code should emphasize the ethical and societal implications of enforcing such clauses and demand a higher level of justification from franchisors before such enforcement.

*Recommendation:* The Code should:

- Explicitly state that restraints of trade clauses should not be enforced to the detriment of public welfare.
- Highlight that where franchisees provide essential services, considerations should be made to ensure service continuity, especially when the franchisee has independent accreditations or approvals.

#### **5. Ownership of Data & Approvals:**

In the digital age, data ownership is pivotal. Franchisees often accumulate vast amounts of data during their operations. It's vital to clarify that this data, especially when independently collected, belongs to the franchisee. Furthermore, when franchisees achieve independent approvals or accreditations, these should remain inviolable, irrespective of the state of the franchising agreement.

*Recommendation:* Strengthen clauses in the Code to:

- Ensure data ownership rights favor franchisees for the data they collect independently.
- Safeguard independent approvals or accreditations achieved by franchisees.

#### **6. Equitable Franchise Fees & Value for Money:**

Franchisees often pay significant sums as franchise fees. It's only just that they receive adequate support and resources in return. The quality of support should not diminish over time.

The ability to negotiate franchise fees is paramount. The value proposition offered by the franchisor, in terms of support and resources, should be commensurate with the fees levied. It is essential that the Code recognizes the dynamic nature of businesses and allows provisions for periodic renegotiation of fees, ensuring that franchisees receive tangible value for the financial commitments they make.

*Recommendation:* The Code should:

- Ensure that the franchisor provides services and support commensurate with the fees charged.
- Allow franchisees a platform or mechanism to provide feedback or seek redressal if the quality of support diminishes.

## **7. Consistent Support from Franchisors:**

The ongoing support from a franchisor is often a significant selling point for many potential franchisees. Diminishing or altering this support, especially after a franchisee has made substantial investments, is not only bad business ethics but should also be considered a breach of the Code. In my specific case, despite contributing approximately \$1.8 million annually in franchise fees, the quality and extent of support from the National Office have been waning significantly. This stark disparity is not only financially taxing but also places immense operational strain on franchisees.

## **Conclusion:**

The heart of franchising lies in the symbiotic relationship between franchisors and franchisees. However, like all relationships, it requires respect, transparency, and fairness. Through this review, we have an opportunity to fortify the Franchising Code of Conduct, making it a beacon for fair and equitable business practices that protect both franchisors and franchisees, ensuring a thriving, resilient, and robust franchising sector in Australia.

*Submitted by: Anonymous Franchise Owner*

## **Confidentiality Statement:**

*Given the sensitivity of the current circumstances surrounding my franchise and to ensure the protection of my business, I have chosen to submit this review anonymously. While I am keen on safeguarding my identity in this public domain, I remain open to engaging in further discussions and sharing more granular details about my unique situation, if deemed necessary. I believe that my experience could provide valuable insights into real-world challenges franchise owners face, thus assisting in refining the Franchising Code of Conduct for the betterment of all stakeholders.*