

FRANCHISING CODE

ABOUT THE FRANCHISING CODE OF CONDUCT

Role of the Mediation Adviser

The Franchising Mediation Adviser is appointed by the Commonwealth government to assist franchisors and franchisees resolve their disputes under the Franchising Code of Conduct. The Code, is a mandatory code prescribed by Commonwealth government regulation under s. 51AE of the *Competition and Consumer Act 2010*.

The Code provides a simple 3-Step process to assist franchisees and franchisors resolve their disputes in a simple and inexpensive way. The Code also requires franchisees and franchisors to act in “*good faith*” in trying to resolve their dispute.

The OFMA is funded by the federal government, so there is no charge to contact the OFMA and discuss your dispute, enquire about the resolution service or request that a suitable mediator be appointed to resolve your dispute. However, the OFMA and the Adviser cannot provide legal advice.

Mediation under the Code

The OFMA provides mediation services under the Franchising Code. If you are a franchisee or a franchisor involved in a dispute, you can receive assistance.

The Mediation Adviser has established a panel of accredited mediators to provide low cost mediation services under the Code. At your request, an industry experienced mediator can be appointed to assist with the resolution of the dispute under the Code.

You make your request for a mediator to be appointed to assist with the resolution of your dispute by making a [Request for a Mediator Appointment](#).

Who are the Mediators

A mediator is an independent third party, who will work with the franchisee and the franchisor to try and resolve their dispute. Mediators do not give legal advice nor make decisions like a judge; instead they assist the parties to come together and negotiate an outcome that is acceptable to all of them.

The Adviser maintains a [panel of experienced and accredited mediators](#) who are available in every State. The Adviser will appoint a mediator from the panel, usually dependent on the state in which the parties want the mediation to be held.

Once appointed, the mediator decides:

- how the mediation will be carried out
- the time and place for the mediation (subject to the requirement that it must be conducted in Australia), and
- the date on which the mediation commences, for the purpose of the Code.



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The parties must attend the mediation and negotiate in good faith, or could face a civil penalty. Either party may be assisted or represented at the mediation instead of attending in person. However, their representative must have the authority to enter into an agreement to settle the dispute.

What is the cost of Mediation?

The Commonwealth government has set the fee that a mediator appointed under the Code can charge as up to a maximum of **\$330 (inclusive of GST) per hour**. The mediation process under the Code is one of the most inexpensive dispute resolution procedures available.

The minimum charge that the mediator will make once appointed is for setting up and administering the mediation, of up to three hours, if the mediation does not proceed. Each party must pay half the mediation costs but a party only pays for the time they spend on an hourly basis.

The mediator will require a deposit against the mediation costs to be paid before commencing the mediation process. This fee is shared between the parties, who are jointly liable for the mediator's fees, unless they agree between themselves who will be responsible. The parties pay for their own costs (and of their advisors or lawyers) of attending the mediation.

Role of the Australian Competition & Consumer Commission

The **ACCC** administers the Franchising Code. The ACCC is an independent statutory government authority that is Australia's peak consumer protection and competition agency. The ACCC regulates the Franchising Code of Conduct and may investigate alleged breaches of the Franchising Code or the *Competition and Consumer Act 2010*.

It can take enforcement action if it considers it appropriate under its compliance and enforcement policy. It may be appropriate for parties to contact the ACCC to report a complaint or get advice regarding their situation. But the ACCC does not investigate disputes where there is only a contractual issue involved.

What if the Dispute is not resolved?

The Code does not affect the right of a party to a franchise agreement to bring legal proceedings to resolve the dispute, especially where the mediation process fails to provide an complete resolution to the dispute. If after 30 days from the mediation starting, there is no resolution, either party can ask the mediator to terminate the mediation.

Legal Advice

The Code and the franchise agreement are legal documents and contain specific protections requiring each party to the franchise relationship, to take various actions. It may be necessary to consider whether the relationship is even governed by a "franchising" agreement. Where difficulties occur, it is recommended that the parties consider consulting a lawyer who can provide specific advice about the Code and your agreement.



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