

**From:** [REDACTED]  
**To:** [REDACTED] [Franchising Review](#)  
**Cc:** [REDACTED]  
**Subject:** RE: [REDACTED] Feedback to Franchise Code Review  
**Date:** Friday, 15 September 2023 9:02:10 AM  
**Attachments:** [REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, 14 September 2023 4:46 PM  
**To:** at <franchisingreview@treasury.gov.au>  
**Cc:** [REDACTED]  
**Subject:** [REDACTED] Feedback to Franchise Code Review

**[External Email – Use Caution]**

Hi [REDACTED]

Firstly, thanks for great session held last Tuesday.

[REDACTED] feedback is as follows (under the headers of the charter):

- the general fitness for purpose of the Franchising Code;
  - Cl 11
    - (2) (a) The words ‘Franchisor to give the information statement to the prospective franchisee’
    - **Issue:** This is a publicly available document and available on the commission’s website. The addition of the document adds the already arduous length of documents obtained by a franchisee.
  - Cl 19A(2)
    - The words ‘starts the franchise business’ is confusing, and there is differing advice, having an effect on the Franchisors ability to recoup the same legal fees at the commencement of second agreement that were incurred when setting up the first
    - Different lawyers are taking different interpretations which only serves to highlight the poor wording. Some of the advice we have is that can't charge legal costs for any type on the second agreement (as there is no option in our Franchise agreement) because the franchisee has already started the business
    - Fact is that we incur significant cost when preparing the new documentation and the fact we can't on charge a legitimate admin legal fee seems unfair. If the lease was in the franchisee name they would have to pay this anyway
  - Cl 30
    - **Issue:** “Significant” is not defined and the term significant varies from Franchisor to Franchisor and location to location. If setup costs are \$1m and

there is a \$10k change, is this significant. I'd say no. If setup costs are \$100k and there is a \$10k change is this significant. I'd say yes, but there is no clear opinion

- Cl 26
  - (1C)
  - **Issue:** "Substantially identical" is not defined and is ambiguous.
- the impact of increased penalties; and
  - **Issue:** Risk vs reward. As discussed at the FCA event, the risk franchisor for acting in a manner inconsistent with the code is in many instances, 6 to 10 times the multiple of loss to the franchisor.
- how the Code interacts with the Franchise Disclosure Register.
  - Cl 9 (1A)
    - (c) Copy of the key facts sheet
    - (d) – Franchisor to give the documents to franchisee or prospective franchise – a copy of the code
    - **Issue:** This is a duplication of already available content. The addition of the document adds the already arduous length of documents obtained by a franchisee.

**Other:** [REDACTED] maintains the opinion that the Franchise Code of Conduct only addresses one part of the risk protection for a potential franchisee. What is missing is a code that regulates the lessors as ultimately, the franchise is dependent on having a site (a lease) to trade from. The obligations of the lessors (in [REDACTED]'s case, shopping centres) is not consistent with the obligations of the Franchisor and Franchisee relationship. Those looser here is the Franchisee who may lose their site due to the mass weight of a lessor acting unbecoming to the same standards of the code **OR** the Franchisor upping their fees to cover the risk of the lessors acting in such a manner.

Kind regards,

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

