

29 September 2023



Franchising Review Secretariat Unit  
Small and Family Business Division  
The Treasury

By email to: [franchisingreview@treasury.gov.au](mailto:franchisingreview@treasury.gov.au)

Attention: Dr Michael Schaper  
Independent Reviewer  
Review of the Franchising Code of Conduct

Dear Dr Schaper

Subject: Submission – Review of the Franchising Code of Conduct

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The Newsagents Association of NSW and ACT Ltd (NANA) is the primary representative body for newsagencies and similar retailers in NSW and the ACT.

NANA supports the review of the Franchising Code of Conduct.

Description of Industry Sector

Most newsagencies in NSW and ACT are franchisees. Most franchises are with New South Wales Lotteries Corporation Pty Ltd (NSW Lotteries) in respect to the agency sales of lotteries products in a retail setting.

Newsagency businesses are diversified in their retail offering. Products available for sale include newspapers, magazines, lottery products, stationery, cards and gift wraps, tobacco products, electronic peripherals, postal products, puzzles, games and giftware. Some newsagencies also incorporate a licensed Post Office into their business under an agency or franchise arrangement with Australia Post. Newsagencies structured in this manner may be subject to multiple franchises.

Newsagents in rural and regional areas may also conduct home and business deliveries of newspapers and magazines including to out of town RMB mailboxes. Some newsagencies also supply sub agencies with newspapers and magazines.

Newspaper and magazine sales and distribution are conducted on an agency basis and agreements with publishers and distributors are not subject to the Franchising Code of Conduct.

Lotteries franchises are a significant part of newsagency businesses. The franchise operates in a dedicated area within the footprint of the total retail business. In NSW and the ACT the franchises are branded as The Lott and/or NSW Lotteries but only in respect to their lotteries sales.

Generally, newsagencies trade under their own business name such as Parramatta Newsagency, Kings Cross Newsagency and Cessnock West Homewares and News.

A small number of newsagencies are also franchisees of The Lucky Charm system. Newsagencies in this franchising system trade under The Lucky Charm brand. Consequently, newsagencies in this group respond to at least two franchise agreements with at least two different franchisers.

Some newsagencies are also members of marketing groups which may trade under a group banner name such as Newspower and newsXpress. These arrangements operate on a membership model and not as franchises. Other newsagencies may participate in nextra/newsextra franchise marketing groups.

Overall, given that some newsagencies may also operate tobacco product franchises (CTC, King of the Pack, Cignall, TSG), it is possible that a newsagency business participates in four franchise systems simultaneously.

This submission primarily comments on the franchise relationship and franchise operation between newsagencies and NSW Lotteries.

In all States and Territories (except western Australia) including NSW and the ACT, The Lottery Corporation Ltd through its subsidiary State licensed entities (including NSW Lotteries) operates as a monopoly franchisor in respect to lottery products.

In primarily commenting on the franchise relationship and franchise operation between newsagencies and NSW Lotteries, this submission focusses mostly on the dispute handling procedure under the Code and how the lotteries franchisor responds to the dispute handling procedure requirements placed on them by the Code.

Other comments are made in relation to alternate dispute resolution processes and barriers to accessing arbitration as a form of alternate dispute resolution, the appointment of Mediators by Small Business Commissioners and the timing of the review of the Code.

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#### Dispute Handling Procedures

Clause 34 of Part 4 – Division 1 places a requirement on franchisors to provide a compliant complaint handling procedure that has the same effect as subclauses 40A(1) to (4) and clause 41A except for providing for the imposition of a civil penalty.

Subclauses 40A (1) to (4) and clause 41A specify procedures to be followed:

- when notifying a dispute;
- when attempting to reach agreement on how to resolve the dispute;
- in the absence of an agreement as to how to resolve a dispute, reference to an ADR practitioner; under either the franchise agreement of the code; and
- the appointment of an ADR practitioner by the Ombudsman.

Subdivision C, Clauses 43A to 43D inclusive of the Code provides for parties in dispute to enter into voluntary arbitration.

#### Does compliance with the Code Result in a Fair Dispute Handling Procedure?

Whilst different requirements of the Code require the provision of a complaint handling procedure within franchise agreements, we do not believe that the complaint handling procedure that franchisors include in franchise agreements necessarily lead to equitable outcomes for franchisees.

We believe that all dispute handling procedures, whether they are inserted into franchise agreements or are otherwise as provided by the Code, must comply with Australian Standard AS 1000:2022 *Guidelines for complaint management in organizations*.

The Australian Standard provides for the sharing of all information relevant to the dispute and the resolution of the dispute. The Australian Standard also provides for a much higher level of independence in the dispute resolution process thereby restricting a franchisor's ability to apply an in-house approach and bias towards the management, processes and resolution of disputes.

A copy of the Retailer Complaint Handling Charter and Dispute Resolution Process authored by the franchisor for the lotteries franchise system appears at APPENDIX 1.

Our experience, accumulated over a number of years and more than ten (10) mediations to resolve franchisee complaints and disputes concerning lotteries franchise matters shows:

- The complaint handling procedure authored by the franchisor does not provide for independent management, review and decision-making processes. The complaint handling management, review and decision-making processes are all managed in-house by the franchisor without any independent and unbiased review mechanisms available.
- Neither the complaint handling procedure nor the process of mediation requires the franchisor to disclose all information upon which they have relied in making a decision which is adverse to the franchisee's interests and which is the subject of the dispute.
- Neither the complaint handling procedure, the mediation process nor the provisions of the Code require the franchisor to make available to the franchisee information relevant to the complaint and dispute which the franchisor deems to be commercial-in-confidence. This has repeatedly been a hindrance experienced even when the information deemed by the franchisor to be commercial-in-confidence is directly relevant to the nature of the complaint and the matter in dispute.

- Participation in a mediation by the franchisor, being physically present (attending and participating in meetings at reasonable times), does not mean that the franchisor participates in mediation in a conciliatory, cooperative or resolution-oriented manner, all required in order to resolve complaints and disputes.

Participation does not confirm the franchisor intends to act in good faith in the mediation process.

We have used the mediation services provided through the NSW Small Business Commission. The use of this mediation service is acceptable to and agreed by the franchisor.

Access to mediations managed by the NSW Small Business Commission is relatively prompt and inexpensive.

#### Voluntary Arbitration

On the occasions when we have requested the franchisor to consider the complaint and dispute to be handled through the voluntary arbitration alternate dispute resolution process, the franchisor has in all cases declined to agree to voluntary arbitration.

#### Alternatives to Dispute Handling Procedures and the Right to Bring Proceedings

The Dispute Resolution provisions of the Code do not prevent a party to a franchise agreement from bringing legal proceedings, whether under the franchise agreement or otherwise.

Most franchisees in a lotteries franchise relationship with The Lottery Corporation and its subsidiaries (including NSW Lotteries) cannot afford what we view as the likely prohibitive costs associated with initiating and sustaining a Court based action.

The prospect of facing a costs indemnification order and/or a costs order regardless of the outcome of legal proceedings actively discourages small and family business franchisees from pursuing legal proceedings in order to obtain an equitable outcome.

Even if a franchisee could enter legal proceedings with a guarantee they are only exposed to their own costs and not those of the other party, we still believe the costs associated with court-based proceedings would generally be beyond most newsagencies which are small and family businesses.

We are aware of an instance of voluntary arbitration involving a lotteries franchisee and the franchisor becoming derailed due to the franchisor allegedly implying or threatening they would apply for a costs order against the franchisee. This is alleged to have occurred early in the arbitration proceedings, almost as a threshold issue even before the matters subject to dispute were considered by the arbitrator. Consequently, the arbitration did not proceed as the franchisee could not countenance the possibility of a costs award.

### Nominating Mediators

As mentioned above, we have relied upon the NSW Small Business Commission to appoint mediators. We have found that individual mediators who have dealt with a number of cases involving franchisees and the franchisor in the lotteries space develop a better understanding of the franchise relationship and the scope of the matters in dispute and how those matters impact small and family businesses.

As the mediations in which we have been involved do not involve ASBFEO, those matters have not been included in the demand for ASBFEO assistance with franchising disputes. Consequently, the ASBFEO demand statistics do not provide a full picture of the demand for overall assistance for franchising disputes. There may be value in the review team obtaining supplementary data from the State based Small Business Commissions as to their experience with assistance with franchising disputes.

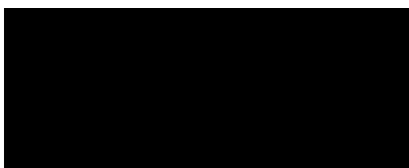
### Timing of Reviews of the Code

We believe there is merit in reviews of the Franchising Code of Conduct being set to a three, four or five year cycle which will enable industry associations and other industry participants to better anticipate the development of submissions. A set review timetable, particularly with a lower three yearly cycle will enable the Code to better respond to changes in the franchising environment in a timely manner.

### Final Comments

NANA is available to discuss this submission with the review team and I may be contacted on 1300 113 044, [REDACTED] or by email to [nana@nana.com.au](mailto:nana@nana.com.au).

Yours faithfully

A large black rectangular box redacting the signature of Ian Booth.

Ian Booth FSAE, MICDA  
Chief Executive Officer

# Retailer Complaint Handling Charter and Dispute Resolution Process

As part of The Lott's\* ongoing commitment to retailers, The Lott wants to ensure complaint handling is accessible and responsive. This allows The Lott to manage any expressions of dissatisfaction consistently, fairly and efficiently. The Lott is committed to the process outlined in your Franchise Agreement and the [Franchising Code of Conduct](#). This charter informs you of your rights and responsibilities during The Lott's internal complaints handling process.

### How do I make a complaint?

You can make the complaint by emailing [retail@thelott.com](mailto:retail@thelott.com) and including "Formal Complaint - [your outlet ID and trading name]" in the subject line.

### What must I include in my complaint?

- Your name, outlet address, outlet ID number and contact details
- Details of the nature of the complaint
- The outcome you are seeking
- What action you think will resolve the dispute.

### You may also wish to provide the following information:

- Any details of your complaint that may enable us to assess and process your complaint
- Copies of any documents relating to your complaint
- Details of any prior contact with The Lott regarding the issue/s.

### What are my rights when making a complaint?

You have the right to:

- lodge a complaint and where required, seek assistance to lodge it, at no charge from The Lott;
- have your complaint dealt with in a fair, efficient and courteous manner;
- have information identified by you as confidential, treated as confidential by The Lott unless there are reasonable grounds for doing otherwise (e.g. an audit or a report to the Minister or Regulator);
- seek your own legal advice;
- know whether this charter has been followed;
- be informed of The Lott's response and the reason for this response; and
- provide directly relevant material in support of the complaint.

### How will my complaint be handled?

When The Lott receives a complaint, we will record the details and provide you with an initial acknowledgement.

We will then try to come to an agreement with you about how to resolve the complaint.

The Lott aims to give all expressions of dissatisfaction fair and genuine consideration and deal with them in an effective way to achieve fair outcomes. The Lott will review your complaint and consult with relevant lottery staff and agencies (where appropriate) within a reasonable timeframe, having regard to the nature and complexity of the complaint.

The Lott will keep you informed of progress and attempt to resolve the complaint within 21 days from when it was received.

Under the [Franchising Code of Conduct](#), either we or you may refer the matter to a mediator for mediation if we cannot agree on how to resolve the complaint after 21 days. You and The Lott will be equally liable for the costs associated with the mediation (i.e. mediator fees, room hire and expert reports).

### Other important information

- Someone else may make a complaint on your behalf; however, it may still be necessary for The Lott to contact you directly.
- If you are experiencing difficulty expressing your complaint, you may seek our assistance.
- If you make an anonymous complaint, The Lott's capacity to enquire into the issue may be limited. Whilst all attempts will be made to protect your identity, your identity may become apparent during the course of the inquiry.
- The Lott may request your assistance to enable the assessment and process your complaint.
- Please do not make complaints that are vexatious or frivolous or that relate to a matter that has been dealt with in a previous complaint.

For further information please refer to your Franchise/Agent Agreement, and for details about how we handle personal information, please refer to our [Privacy Policy](#).

\*The Lott is the collective reference for these licenced entities Tattersall's Sweeps Pty Ltd (Tatts), Tatts NT Lotteries Pty Ltd (Tatts NT), New South Wales Lotteries Corporation Pty Ltd (NSW Lotteries), Golden Casket Lotteries Corporation Limited (Golden Casket) and Tatts Lotteries SA Pty Ltd (SA Lotteries).