

# Franchising Code of Conduct

## Dispute Resolution Process

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) responds to requests for assistance from franchisees and franchisors who are in dispute, and can provide:

- Information on the Franchising Code of Conduct (the Code);
- Information on the dispute resolution process under the Code;
- Access to alternative dispute resolution (ADR) practitioners if an ADR process is required;
- Appointment of an ADR practitioner if requested by the parties or if the parties are not able to agree; and
- Access to an arbitrator if binding arbitration is agreed.

### The Franchising Code of Conduct

The Franchising Code of Conduct (the Code) is a mandatory code that applies to all businesses involved in a franchise agreement. The Code describes the behaviours expected of franchisees and franchisors and includes a process for managing disputes.

The Code states that parties must act in good faith in their business dealings with each other. This means parties must act honestly, and not arbitrarily, and cooperate with each other to resolve a dispute.

The Code is prescribed under the [Competition and Consumer \(Industry Codes-Franchising\) Regulation 2024](#). More information about the Code is available on the Australian Competition and Consumer Commission (ACCC) website [here](#).

### Internal dispute resolution and Franchising Code procedures

The Code provides for both internal dispute resolution (using the franchisor's established system) and Code-based dispute resolution procedures.

Parties in dispute may attempt to resolve the dispute either under the franchise agreement's internal procedures, or the Code's procedures.

The franchise agreement's internal dispute process must meet minimum requirements set out in the Code but may have further elements included that are better than the minimum standard. The internal dispute process in the franchise agreement provides options for parties to decide how they wish to handle their disputes, including adding additional steps and aspects that are not present in the Code's provisions.

As franchisees and franchisors can choose to use either the internal dispute resolution procedures or the Franchising Code procedure (set out below), you should read the procedure in your franchise agreement and decide which process you'd like to use.

If the agreement's internal dispute resolution process does not meet the minimum requirements of the Code, the Code's procedures apply.

### Dispute about early termination of a franchise agreement

The changes to the Code enacted in June 2021 allow for a process to be followed should a franchisee wish to terminate their franchise agreement early.

Under the Code, at any time a franchisee may give their franchisor a written proposal for early termination of their franchise agreement. The proposal should include the proposed terms of termination, and the reasons for the proposed termination. Note that the proposal may be different from the terms set out in the franchise agreement.

Once the franchisor has received the proposal for early termination, it must give the franchisee a substantive written response to the proposal **within 28 days**.

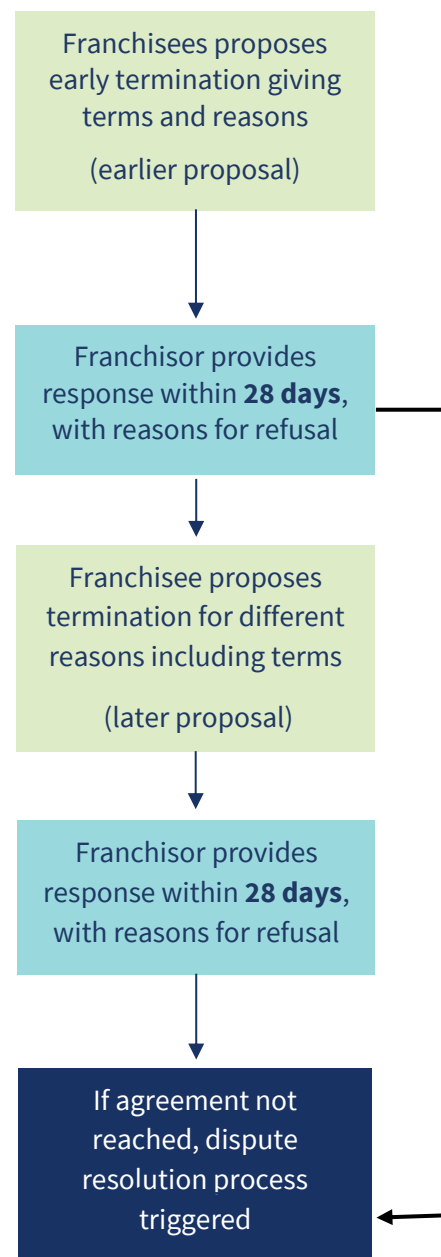
Should the franchisor not agree to terminate on the terms proposed, the matter may be considered to be in dispute and trigger the dispute resolution process in this document. The franchisor is required to include reasons for the refusal in the response.

Note that, following a response from the franchisor to the written proposed termination (the earlier proposal), the franchisee may provide another written proposal for termination (the later proposal) for a different reason that given for the earlier proposal.

Again, the franchisor is required to provide a substantive written response **within 28 days**.

Again, if the franchisor does not agree to terminate on the terms proposed, the matter may be considered in dispute and the dispute resolution process can be triggered. The franchisor is again required to provide reasons for the refusal.

### Flowchart of termination process



### Franchising Code Dispute Resolution Process

The Code provides a procedure for resolving disputes. If a dispute arises, either party may initiate the complaint handling procedure under the Code (or, as previously noted, under the franchise agreement).

The Code requires you to first try to resolve your dispute with the other party by sending them a notice of dispute.

## Step One: Notice of dispute

If a dispute arises, the first step that you can take as prescribed in the Code, is to send the other party a notice of dispute outlining:

- the nature of the dispute;
- what outcome you want; and
- what action you think will resolve the dispute.

Once your notice of dispute is sent to the other party, you and the other party are required to negotiate in good faith to try and reach a solution to the dispute.

Negotiations may first involve agreement on how to resolve the dispute. Examples of ways that parties may agree on how to resolve a dispute could include, for example:

- agreement to a meeting or telephone call to discuss the dispute;
- agreeing to binding arbitration if the parties are not able to resolve the dispute through the ADR process); or
- agreement to conciliation as the most appropriate ADR process.

If you are not able to agree on an outcome within three weeks, either party may refer the matter to an ADR practitioner for an ADR process.

## Step Two: ADR Process

An ADR process under the Code means conciliation or mediation. The process is a cost-effective dispute resolution option for franchisees and franchisors under the Code. Where parties are unable to resolve a dispute through mutual negotiation, either party may refer the matter to an ADR process.

The ADR process is a structured negotiation process in which an independent person, the ADR practitioner, assists the parties to identify and discuss options to resolve their dispute. The focus is on the interests of the parties rather than their adopted position and aims to avoid expensive and lengthy court proceedings.

Once an ADR process is requested, it becomes mandatory for both parties to attend and to genuinely try to resolve the dispute in good faith.

### Multiparty dispute

The Code also provides a procedure for resolving disputes where there are two or more franchisees with similar disputes under their franchise agreements with the same franchisor (multiparty dispute).

In these circumstances, you and the other parties may agree to resolve the disputes in the same way. If there is agreement, all the franchisees or the franchisor may refer the matter to a single ADR practitioner for a single ADR process.

If the matter is referred to a single ADR practitioner for a single ADR process by a group of franchisees, the franchisor is required to attend the ADR process and try to resolve the dispute under the Code.

Each dispute remains separate, even if there is a single ADR process and this means that the ADR practitioner may deal with the disputes together, in groups or individually in order to best resolve the disputes.

For the purpose of deciding whether to agree to resolve their disputes in the same way, franchisees may discuss their disputes with each other despite their confidentiality requirements provided in the franchise agreements.

The ASBFEO maintains a specialist panel of ADR practitioners across each state and territory. All practitioners are accredited under the National Mediator Accreditation Standards system. Whilst the majority of the practitioners are practicing lawyers, they are not able to provide legal advice as part of the ADR process.

We will assist with arranging the ADR practitioner. If both parties cannot agree on an ADR practitioner, the Ombudsman can appoint an ADR practitioner for the dispute. This appointment is to be made within 14 days of the ASBFEO receiving the request to appoint the ADR practitioner.

Once the practitioner has been chosen, the process is then passed on to them to manage fully and independently from the ASBFEO. The parties share the cost of the ADR practitioner (unless the parties agree otherwise). The ADR practitioner will advise you of their costs. In general, the practitioner has a half day rate and a full day rate. The length of time the ADR process will take depends on the complexity of the issue. On average, we have found that mediation costs around \$4,000 (\$2,000 per party for two parties to the dispute) but may vary widely. The ADR practitioner may also seek costs for any associated expenses (for example: room hire or travel expenses) and the cost of expert reports if necessary.

The ADR practitioner is obligated to report back to us to confirm whether the ADR process has occurred, if parties acted in good faith, and if the dispute was resolved or remains unresolved. The details of the process, including any terms of agreement remain confidential. You will be provided with an opportunity complete a satisfaction survey on the assistance you received from us and your experience with the ADR process.

At any point of the ADR process, including before or after ADR takes place, there is an option for the parties to break off for arbitration. This requires the written agreement of both parties.

Note that all parties must observe any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving the dispute by an ADR process.

### Option of arbitration by agreement

The whole dispute or elements of the dispute may be settled with binding arbitration if there is written agreement from the parties. The agreement may be in the franchise agreement or agreed later. The arbitration process may occur instead of the ADR process or in conjunction with this process. This means that you can be part of a mediation or conciliation and by agreement refer any parts of a dispute to a separate arbitration for resolution to be fed back into the mediation/conciliation.

If this is the agreed way to resolve the dispute, the parties may request the Ombudsman to appoint an agreed arbitrator for the dispute or, if there is no agreement on the arbitrator to be appointed, to appoint an arbitrator for the dispute. The appointment is to occur within **14 days** of us receiving the request.

The arbitrator will decide how the arbitration is to be conducted, and the time and place for arbitration. The arbitrator will also give you an indication of the costs of arbitration.

## Flowchart of dispute resolution process

