

MEDIATION

Small business owners in today's competitive marketplace face plenty of pressures, and franchisees are no different.



In fact, franchising can create a unique set of challenges, some of which may lead to friction.

For whatever reason, franchisees may find themselves in dispute with their franchisors, and the ensuing conflict can lead to serious issues that prevent both sides from getting on with business.

Taking the matter to court is often a costly option that many small business owners are reluctant to take. This is when mediation has a role to play.

The first, and usually the best, option is to try to resolve a dispute directly by sitting down and discussing the issues with the other party.

Mediation does not work for everyone, but it does have a good success rate ...

However, after three weeks of unsuccessful attempts at resolving the dispute, the Franchising Code of Conduct can require both parties to attend mediation to work through their difficulties.

The code is part of the Trade Practices Act. If one side in a dispute requests mediation, the other side must attend. If they do not, they risk being found to have breached the code and therefore the Act.

Mediation involves both sides discussing their concerns with a professional third party trained in resolving a range of business disputes.

The two sides can agree to their own mediator, or they can ask the Office of the Mediation Advisor to appoint one.

The OMA was set up by the Australian Government and has a network of advisors around the country.

Once contacted, the advisor will begin assessment of the dispute by talking—usually separately in the first instance—to each party. The mediator will then advise on how best to resolve the problem.

Mediation does not work for everyone, but it does have a good success rate—in fact, 74 per cent of cases handled by the OMA are resolved successfully.

Moreover, taking part in mediation does not remove a party's right to legal action, although this should always be seen as a last resort rather than an alternative to resolving complaints.

Mediation does involve some costs, but generally these are lower than the legal fees that come with court action. The cost of the mediation service is split evenly between both sides in a dispute.

When a case involves a potentially serious breach of the Act, such as a franchisor acting unconscionably towards one or more of their franchisees, the ACCC can also step in and take legal action of its own.

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DISCLOSURE DOCUMENTS

Franchisors are required by law to give prospective franchisees a disclosure document before they sign up or make final payment of any fees related to buying into a franchise.

But what is a 'disclosure document'?

A disclosure document is a set of papers containing important information about the financial health of the franchisor's business

A disclosure document should also provide any information about the system owner that could possibly affect individual franchisees.

WHAT RULES APPLY?

A disclosure document must be updated within three months of the end of each financial year.

It must be provided to a prospective investor 14 days before an agreement begins, or before the investor is required to pay non-refundable fees.

Once part of the business, franchisees are entitled to ask the system owner for a yearly up-to-date disclosure document.

Franchisors who do not provide accurate, updated disclosure documents can be found in breach of the Trade Practices Act.

SO ...

As a prospective franchisee, you should regard a disclosure document as one of your most important research tools when deciding whether to join a franchise.

If you're looking to buy into a franchise, the ACCC strongly recommends going through the disclosure document with the assistance of an independent business advisor, who can cast a critical eye over the state of the business.