

# Franchising

Norton Rose Fulbright

Norton Rose Fulbright Australia – October 2020



# Market leading expertise and unrivalled experience

Norton Rose Fulbright is the pre-eminent franchise law practice in Australia.

Our firm is distinguished by superior industry and regulatory knowledge, unrivalled experience handling major franchise transactions, a leading disputes expertise and an extensive client base of over 200 franchise systems.

We have extensive experience:

- establishing franchise, licence and distribution networks
- providing strategic advice on franchising, licensing and all forms of product distribution;
- advising on the development and implementation of franchising or distribution programmes for manufacturers, retailers and brand owners;
- advising automotive brands on dealer and agency networks, including assisting with network restructuring and market entry and exit;
- advising oil industry and convenience retailers on Oil Code and general regulatory and network matters;
- dealing with Government, and with regulatory and franchise authorities such as the ACCC, ASIC, Small Business Commissioners and ASBFEO;
- handling mergers, acquisitions, joint ventures and investments in the retail, consumer markets and franchise sectors and advising clients on how to corporatize their businesses for sale, investment or listing;
- advising on compliance and risk management and implementing risk management frameworks and franchise document management processes;
- delivering expert competition, consumer law and antitrust regulatory advice to retail, consumer markets and franchise sector clients;
- assisting with dispute resolution, including handling franchisee and dealer disputes, litigation and defending class action claims and prosecutions;
- providing expert trademark and intellectual property advice and registration, and ongoing brand management and IP enforcement; and
- assisting with day to day commercial legal work including drafting and reviewing contracts, general counsel services and support and general legal advice.

We have more than 30 lawyers across Australia from partner to graduate level who regularly represent clients in the franchise sector. Our depth means that we can always ensure work is done at the right seniority level, and thereby deliver rates that are competitive even with much smaller firms.

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## Key contacts

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# Recognition

“Serves an enviable roster of multinational organisations and public entities.”

*Chambers Global, Franchising, 2019*

Globally recognised franchising practice

*Chambers Global, Franchising, 2019*

Band 1 ranked lawyer - Stephen Giles

*Ranked Individual Chambers Global, Franchising*

Thought Leader Global Elite 2020 – Stephen Giles

*Who's Who Legal 2020*

Global Franchise Leader – Nigel Jones

*Who's Who Legal 2020*

Australian Franchising Hall of Fame – Stephen Giles

*Recognised Lawyer, Australian Franchising Hall of Fame 2020*

“Stephen Giles is highly capable, client-oriented, well regarded professionally and hard-working with a very high level of expertise.”

*Chambers Global, Franchising 2019*

“It is a professional team with a strong commitment to customer service, friendly and caring about clients, known for a high level of expertise, and hard-working.”

*Chambers Global, Franchising 2019*

Franchising Lawyer of the Year – Nigel Jones

*Best Lawyers, Franchising 2020*

# One of the world's leading law firms

Norton Rose Fulbright is one of the world's leading law firms. We can provide on the ground support for our global consumer markets, retail and franchise clients from over 50 locations across the globe.

We offer a full business law service to many of the world's best known brands from offices in Europe, Asia, Australia, Canada, Africa, the Middle East, Latin America, the United Kingdom and the United States. Knowing how our clients' businesses work and understanding what drives their industries is fundamental to us. Our lawyers share industry knowledge and sector expertise across borders, enabling us to support our clients anywhere in the world.

We have more than 3700 lawyers operating from more than 50 cities worldwide, including Amsterdam, Athens, Austin, Bangkok, Beijing, Brisbane, Brussels, Bujumbura\*\*, Calgary, Canberra, Cape Town, Casablanca, Dallas, Denver, Dubai, Durban, Frankfurt, Hamburg, Harare\*\*, Hong Kong SAR, Houston, Istanbul, Jakarta\*, Johannesburg, Kampala\*\*, London, Los Angeles, Luxembourg, Melbourne, Mexico City, Milan, Minneapolis, Monaco, Montréal, Moscow, Munich, New York, Nairobi\*\*, Ottawa, Paris, Perth, Piraeus, Québec, Riyadh\*, San Antonio, San Francisco, São Paulo, Shanghai, Singapore, St. Louis, Sydney, Tokyo, Toronto, Vancouver, Warsaw and Washington DC.

\*associate office \*\*alliance



# Our services

## **Advertising and marketing**

Assisting with all aspects of advertising and marketing law from providing copy clearance, developing consumer facing terms and conditions, assisting with trade promotions and sponsorship agreements.

## **Class actions and major disputes**

Acting for franchisors in connection with major franchise disputes and class actions. We are currently acting for an international convenience store in relation to a class action with its franchisees. We acted for a petroleum retailer in a series of disputes with franchisees.

## **Competition & Consumer law**

Advising on all aspects of competition and consumer law, including misleading and deceptive conduct, consumer guarantees, unfair contract terms and unconscionable conduct. We also assist franchisors with competition laws impacting pricing and supply chain issues.

## **Disputes**

Handling franchising disputes including Franchising Code mediations. We advise on all aspects of the more day to day disputes that arise in a franchising network, as well the major disputes set out above.

## **Employment law**

We have had considerable experience recently assisting franchisors that have been investigated by FWO in relation to underpayment issues, and also more generally with franchisor's strategies to ensure that they are compliant with the Fair Work Act obligations on franchisors.

## **M&A**

Specialist knowledge of franchise laws and franchise networks is important to ensure that key risks are protected against in M&A transactions involving franchisors. We have acted on many significant franchise network purchases/divestments.

## **Packaging, labelling and food safety regulations**

Advising in relation to food safety, product labelling and packaging laws.

## **Privacy, IT & security**

Assisting franchisor clients with privacy policies and privacy breaches and technology agreements.

## **Franchising Code of Conduct compliance**

Advising clients on all aspects of the Franchising Code of Conduct, from establishment of a franchise network, annual compliance obligations and in relation to franchisee disputes and terminations and exits. We have acted for many years for a number of high profile franchisors.

## **Insolvency and restructuring**

Advising franchisors in relation to potential restructuring options that can be used where the franchisor is insolvent.

## **Intellectual property**

We can assist with trademark protection and defence and all legal issues impacting one of a franchisors' key assets, the intellectual property.

## **Legal training**

Training clients in relation to the Franchising Code, the CCA and new laws impacting their business. We can provide training in person or by videoconference and also offer tailored online training programs through our Compliance Manager program.

## **Regulatory investigations**

Assisting franchisors with responses to investigations by the ACCC, FWO, ASIC and other regulators. We will work with you to ensure that the concerns of the regulators are addressed, and to minimise legal risks associated with the investigation and related PR and reputational issues.

## **Strategy**

Providing strategic advice to franchisors to support our legal advice. We are able to provide this strategic advice based on our experience with so many different franchise businesses.

## **Trading terms and commercial agreements**

Assisting with all types of commercial agreements, including trading arrangements from supply and distribution agreements, to terms and conditions of sale, procurement and logistics agreements, sponsorship and services agreements.

## **Work health and safety**

Advising franchisors in relation to WHS issues and their responsibilities in connection with franchisee operated workplaces/outlets.

# Our experience

## General

**Establishment of franchise networks** – We have assisted many of Australia's most successful franchise networks from establishment through to maturity. We assist with strategic advice and creating the suite of legal documents requires for the franchise relationship including the recruitment documents, franchise agreement, disclosure document and other documents to protect the franchisor's legal position.

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**An ASX franchisor** – Advising an ASX listed franchisor on all legal issues pertaining to the expansion of its franchise network in Australia into the fuel convenience outlets of one of Australia's largest retail fuel businesses.

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**COVID-19** – Advising franchisors in a broad range of industries in relation to their response to the pandemic, including in relation to employment, leasing, variation of franchise agreements to reflect revision to franchise fees, stand-still arrangements.

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**Numerous confidential clients** – Acting in connection with several confidential transactions where a franchise network was proposed to be sold/acquired, including conducting due diligence in relation to the franchise network.

## Automotive

**A multinational automotive manufacturer** – Advising on all legal issues pertaining to the company's new car sales market exit from Australia and New Zealand. This work represents the most significant market exit decision by any brand within Asia-Pacific, and as such the strategic and legal issues relating to the dealer network were unprecedented. Much of the work is confidential but it involved dealing with complex legal issues involving dealers, consumers, suppliers and others under the active scrutiny of politicians, regulators, a Senate Inquiry and the media.

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**The Australian subsidiary of a German automotive company** – Assisting to defend proceedings by a dealer relating to allegations of bad faith, misleading conduct and unconscionability.

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**A Japanese multinational motorcycle manufacturer** – Assisting with numerous legal matters across Asia Pacific including dealer disputes, drafting of commercial documentation, advice on competition and consumer law issues and general commercial law advice.

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**A leading motorcycle manufacturing company** – Assisted with the cessation of existing independent licensee and distributor relationships and the establishment of direct distribution in the Australian market, including preparing the new franchise agreements for the new model.

## Services

**Postal Services-** – Advising in relation to the application of the unfair contract terms for many of our clients, including representing the organisation in dealings with the ACCC concerning the Licensed Post Office Agreement that also included responding to a collective bargaining application for a group of post office licensees.

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**Australian Courier. Freight and Logistics company** – Assisted an Australian logistics and international postal business with an international expansion of its online business in New Zealand and the United Kingdom.

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**Postal services** – Provided ongoing strategic, regulatory and compliance advice to the postal provider, which boasts Australia's largest franchise network. This included assisting the organisation to successfully terminate a licensee on grounds of fraudulent conduct in very difficult factual circumstances. Also preparing the international trading documentation for their global logistics business. This included the service and procurement agreements for operations in Australia, UK, China, New Zealand and Hong Kong.

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**A national tutoring franchise** – Providing strategic advice in relation to benchmarking and best practices in its franchised business.

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## Government relations

**Peak body for the Australian franchise sector** – Providing representation in all dealings with the Australian Government concerning the franchise regulatory framework, including drafting industry submissions for five separate Government inquiries, representing the organisation in meetings with Government and the regulatory bodies, commenting on draft legislation and offering strategic and legal input at the highest level.

## The peak industry organisation representing automotive manufacturers and importers –

Assisted with research into class action trends in the US and Australia, and provided regular input into complex industry submissions.

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## Travel

**Adventure travel company** – Advising on all legal issues pertaining to the restructure of its global adventure division, which operates through a licensed/franchised model in over 150 cities worldwide. We redrafted the existing franchise agreements to enable them to be used throughout the global network, and complying with local franchising laws where applicable.

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## Convenience

**International convenience store operator** – Defending a class action in the Federal Court of Australia lead by two franchisees. It is the largest franchising matter ever litigated in Australian courts. The class action makes a wide range of claims against the company in relation to the manner in which the network is operated and the role of in store sales.

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## Food & Beverage

**QSR restaurant-** – We acted in the termination of its Master Franchise arrangements in Fiji. We have also assisted with a series of franchisee disputes in relation to franchisee's obligations in relation to fit out.

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**An American fast food corporation** – We conducted a best practice benchmarking and review of their international franchise documentation after winning the work in a competitive tender against leading US and UK firms, and assisted them with market entry transactions in North Africa.

**Salad bar** – We assisted in the implementation of a corporate restructure to address retail leasing challenges, enabling it to proceed through Voluntary Administration and Deed of Company Arrangement to a re-capitalised new trading entity.

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**An Australian founded QSR** – Assisting to update their Master Franchise Agreement ready for international expansion to Singapore and Malaysia.

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**A Canadian bakery chain** – Assisted with the international market expansion of its brand into Australia, New Zealand, India and the USA including customising Master Franchise Agreement for local country requirements and general market entry advice.

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**The world's largest QSR** – Assisting with several complex legal issues arising in its franchise network.

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**An organic health foods provider** – Acting for the purchaser of the brands from the founder. Ongoing advice about compliance and assisting with all aspects of its franchised business.

## Retail

**A jewellery manufacturer and retailer** – Assisted with all aspects of their franchise business since establishment in Australia. This has included, among other things, negotiations concerning the renewal of distribution rights in New Zealand and Australia; advising founders on the sale of shares in the ultimate holding company in Australia and New Zealand; developing franchise documents for the roll out of the Australian franchise network, including full service document management work, retail leasing and dealing with franchisee queries. We also assisted with the implementation of a detailed compliance program arising out of an ACCC investigation in relation to warranty and refund policies.

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**A leading eye care and eyewear retailer** – Advising in relation to an investigation by the ACCC in relation to the operation of the franchise marketing fund. Provided advice and assisting to negotiate an outcome with the ACCC.

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**An eyewear conglomerate** – We worked with the client to resolve a wage underpayment problem affecting 900 employees to a total amount of about \$2 million. We advised on the proper interpretation of the Award; analysed a large volume of records to identify areas of non-compliance; provided advice on changes to operating arrangements; designed communication procedures to manage the provision of information to stakeholders; and advised on dealings with the Fair Work Ombudsman including negotiations of the undertaking.

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**A pet food and supplies company** – Acted in relation to a number of acquisitions and investments. Given each of the target entities are existing suppliers to the franchise network, there were a number of strategic and legal issues that required expert consideration of laws relating to franchising, competition, corporate and taxation law.

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**Confidential leasing negotiations** – Assisting several retail clients in complex retail negotiations arising from the COVID-19 pandemic and related matters.



# Key Contacts



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## **Norton Rose Fulbright**

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3700 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see [nortonrosefulbright.com/legal-notices](https://nortonrosefulbright.com/legal-notices).

### **Law around the world**

[nortonrosefulbright.com](https://nortonrosefulbright.com)