

NATIONAL TOYOTA DEALERS ASSOCIATION

ACN 156 311 456

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Committee Secretary
Senate Standing Committees on Education and Employment
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Senate Inquiry - Into the Relationship between Car Manufacturers and Dealers

1. Introduction

- 1.1 This submission is made on behalf of the National Toyota Dealer Association (NTDA). The NTDA represents the interests of all Toyota dealers in Australia.
- 1.2 The NTDA thanks the Senate Committee for its keen interest in, and exploration of, the relationship between car manufacturers and dealers in Australia having regard to the recent manner of GM Holden's exit from Australia.
- 1.3 The NTDA notes that the Senate inquiry includes a focus on the practices employed by manufacturers in their commercial relations with dealers, with particular focus on:
 - Investment required and tenure provided;
 - Termination and compensation practices;
 - Performance requirements;
 - Behaviour around warranty claims under Australian Consumer Law;
 - Unfair Terms in Contracts; and
 - Goodwill and data ownership.
- 1.4 These submissions primarily focus on the practices and relationship referred to above. The submissions will also touch on the remaining issues listed in the expanded terms of reference.

2. Executive summary

- 2.1 The commercial relationship between Toyota Motor Corporation Australia (TMCA) and its dealers in Australia is exceptional. The relationship is characterised by the ethos "Give respect, get respect".
- 2.2 Toyota dealers rarely have any disputes or complaints with TMCA in relation to the practices listed above.

- 2.3 This is achieved through TMCA and the NTDA working extremely closely in relation to all operational issues. The NTDA and its various sub-committees are comprised of dealer principals who interact and discuss innovations, new processes and operational efficiencies on a regular basis with TMCA.
- 2.4 The collaboration includes key documents such as the TMCA Dealer Agreement. The TMCA Dealer Agreement is extensively discussed and issues/concerns dealt with between TMCA and the NTDA.
- 2.5 The Toyota Dealer Agreement terms and its relationship with dealers has often been described as “best practice” and/or “best in class”.
- 2.6 Accordingly, the nature of this submission is to highlight to the Senate Committee examples of good practice or best practice in order to compare and contrast this experience with examples of bad practice by other manufacturers.

3. Practices employed by manufacturers in their relations with dealers

Investment required and tenure provided

- 3.1 TMCA, like most manufacturers, requires its dealers to make a substantial investment in facility at the outset of a relationship in a new territory and/or continuing investment in upgrading the facility, equipment and operational processes.
- 3.2 TMCA has adopted a very transparent process in that regard. TMCA sets out the expenses, expected outcomes, return on investment and payback period. It does a financial feasibility study for the benefit of the dealer before significant expenditure has commenced.
- 3.3 For example, TMCA has a facility compliance program. The facility compliance program ensures that a proposed new facility and all existing facilities meet the latest TMCA facility standards. To meet the standards, a certain level of investment is required. The amount of investment may vary from dealer to dealer reflecting the condition of an individual dealer's facility at that time.
- 3.4 TMCA's modus operandi is always to ensure that any dealer adopting the requirements of the facility program can achieve a return on investment within a reasonable period. Where the requirements for expenditure are significant, it is not unusual for TMCA to require dealers to demonstrate a seven-year term for payback of the proposed investment. In most cases, this length of term is sufficient to achieve a return on investment. If it does not make sense to embark on a major facility upgrade program, it is not unusual for TMCA to delay the dealer's commencement of the project. For some dealers, a major facility investment is delayed for a number of years before implementation. In these cases TMCA will work closely with Dealers to renovate existing facilities in order to meet facility standards. TMCA approve a facility development program suggested by a dealer on the basis that it is a financially viable investment for the dealer and it brings the Dealer up to the facility standards.
- 3.5 Tenure - TMCA most recently offered a 5 year Dealer agreement to its Dealer network with a further 2 year period available for Facility Compliant Dealers which we believe is Australian Industry best practice. Their stated intention is to renew with existing Dealers unless there are significant issues with a certain Dealer. Their previous track record shows that they will be good with their word on this.

Termination and compensation practices

- 3.6 Commercial relationships between TMCA and a dealer are not always smooth sailing. On occasion, a dealer may underperform or breach material terms of the dealer agreement and this becomes a matter of concern for TMCA.
- 3.7 In terms of underperformance, the terms of the dealer agreement between TMCA and its dealers sets out a fair and reasonable performance management process. Underperforming TMCA dealers are identified and encouraged to adopt performance improvement changes. The focus of TMCA is to improve the performance rather than to use a dealer's underperformance as a reason to terminate or not renew. Importantly, it is not just words; TMCA actively engages in a transparent improvement plan and process collaboratively created by TMCA and the NTDA.
- 3.8 In recent times, the NTDA is only aware of a few dealers who have been terminated. Our understanding is that the terminations resulted from significant and repetitive policy breaches. Even in these circumstances, TMCA allows and facilitates the sale of an outgoing dealer's dealership to the incoming dealer. This enables the outgoing dealer to obtain value for the business that he or she has grown for a period of time. The process of facilitating a sale to a new dealer also safeguards against the dealer and TMCA falling into any legal disputes.

Performance requirements

- 3.9 TMCA does not have sales targets nor does it implement targets in a similar manner to other manufacturers. Each dealer commonly has a sales plan, however, there is no money or bonus linked to achievement of the sales plan, although these do link to an excellence program that is sought after by most Dealers.
- 3.10 Toyota dealers do not have to achieve targets in order to operate a viable and profitable business.
- 3.11 Toyota operates a very broad Dealer Standards program which does have financial impact on the business. The program is evolved each year in consultation with the NTDA to ensure that it is relevant to current market conditions and customer expectations. The Standards program is heavily focused by Dealers and TMCA in providing excellent customer outcomes and experiences.
- 3.12 TMCA promotes dealership behaviours and practices and provides incentives for achievement or compliance with those behaviours and practices. Again, this is not required to run the dealership profitably; rather, they are real bonuses. A large percentage of TMCA dealers achieve their sales plans per annum.
- 3.13 The focus of TMCA is to maintain and grow market share along with a volume number. Market share is a percentage of the overall sales in the market and therefore, accounts for movements in the market due to reasons such as a global pandemic and/or restrictions on access to finance.

Warranty

- 3.14 The NTDA has a parts and service subcommittee made up of dealers who consult with TMCA in a transparent and robust manner. The NTDA subcommittee ask questions and provide opinions on various commercial and operational issues relating to warranty claims under the manufacturer's warranty and under the Australian Consumer Law along other issues related to Parts and Service.
- 3.15 TMCA has undertaken ACL (Australian Consumer law) education sessions with the dealers to help understand all of our obligations under this law and to help dealers understand the warranty policies which assist us in ensuring that we can properly fulfil our legal obligations.
- 3.16 The NTDA has received a low number complaints in recent years from its dealer members in relation to the application or provision of warranty claims for customers and/or reimbursement of claims from TMCA. These issues are usually worked through to mutual satisfaction.
- 3.17 A good example of TMCA's attitude to warranty claims and/or product recalls is, for example, where a product recall is issued, TMCA offers its dealers 110% of the normal warranty labour rate to encourage them to attend to all recall work promptly.

Goodwill / data

- 3.18 The NTDA's understanding is that TMCA acknowledges and recognises that its dealers have significant goodwill attached to ownership of the dealership, together with ownership of the customer data.
- 3.19 TMCA facilitates and cooperates with the sale of dealerships from an outgoing dealer to an incoming dealer to allow a smooth transition of these intangible assets. Even in circumstances where TMCA has encouraged a dealer to sell due to underperformance, it nevertheless acknowledges and recognises the outgoing dealer's goodwill often accrued over many years. TMCA tries to ensure that the dealer obtains a reasonable market value for their dealership business. This reflects the ethos of "Give respect, get respect".

Agency Model

- 3.20 Toyota New Zealand introduced a new business model some years ago. It is a direct selling model whereby Toyota sells a vehicle directly to the customer. Toyota controls the price and uses dealers and dealer facilities as agents rather than franchisees.
- 3.21 The introduction of the agency model in New Zealand was not without difficulties and faults but ultimately, it is proving to be a model that can work in New Zealand.
- 3.22 TMCA has assured the NTDA and all Toyota dealers that there is no plan to introduce a similar model or some other new model in Australia for the foreseeable future. TMCA has advised that it considers that the agency model is suited to New Zealand and that it is not indicative of a general shift to that business model.

4. Leadership

- 4.1 Both TMCA and Toyota in Japan have very stable leadership. In Australia, TMCA appoints home grown leaders who run the business for the long term. For a long period there have been a long term stable leaders within TMCA in the role of Managing Director and Chairman of the Board. The NTDA believes this has been a strong contributor to the success of the brand and the relationship with its Dealer network
- 4.2 The TMCA approach to its exit from manufacturing included the Australian based President of TMCA (a Japanese citizen) extending his stay in Australia, in order to oversee a respectful and successful transition out of manufacturing. The dedication to a reasonable exit for staff, suppliers and dealers included actions such as generous redundancies and relocations to the head office in Melbourne.
- 4.3 The relatively smooth transition assisted dealers significantly and was reflected in the fact that the sale of Toyota vehicles during that period was not impacted.

5. Government Regulation

- 5.1 Given Toyota dealers have the benefit of an excellent working relationship, they have rarely availed themselves of the legal protections available under legislation such as the Franchising Code of Conduct.
- 5.2 The NTDA is generally supportive of measures aimed at levelling the playing field and increasing legislative protections for dealers and franchisees generally.
- 5.3 Proposals in relation to additional protections or Codes of Conduct do require legislative teeth in the form of mandatory compliance rather than voluntary compliance.

6. Conclusion

- 6.1 Toyota dealers are extremely fortunate to not only have a good working relationship with TMCA founded on trust and respect but additionally, a brand that manufactures excellent vehicles with a good reputation in Australia.
- 6.2 TMCA has been able to maintain market leadership and market share in the last decade despite a fiercely competitive marketplace comprising over 60 brands of vehicles (making it one of the most competitive markets in the world). This has allowed Toyota dealers to operate financially viable dealerships that employ approximately 13,000 employees throughout Australia; that contribute substantial dollars to local community activities; and delivers significantly to State and Federal taxes.
- 6.3 I trust that these submissions have been of use to the Committee. Please do not hesitate to contact me if you have any further questions.

Yours Sincerely,

David Hayes
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Dealer Principal/Managing Director of Dubbo Toyota