



Australian Government

Australian Government response to the
Senate Education and Employment References
Committee report:

Driving a fairer deal: Regulation of the
relationship between car manufacturers and car
dealers in Australia

August 2021

Introduction

The Australian Government welcomes the opportunity to respond to the Senate Education and Employment References Committee's report, *Driving a fairer deal: Regulation of the relationship between car manufacturers and car dealers in Australia*, released in March 2021.

The Government recognises the importance of a strong and competitive automotive sector in the supply, sales and servicing of vehicles. The Government has been putting in place a comprehensive suite of changes to the frameworks governing the automotive retail component of the car sector. These changes are intentionally designed to make the system fairer and more transparent for consumers, dealers and manufacturers.

The first tranche of changes were the automotive franchising reforms that commenced on 1 June 2020, which amend the Franchising Code of Conduct in three areas: improving end-of-term notification periods, improving transparency for capital expenditure requirements, and clarifying options for dispute resolution. This was the first time that a sector-specific part of the regulations was included in the Franchising Code.

On 12 March 2021, the Government announced a suite of reforms to the automotive franchising sector and a commitment to consult on the merits of a standalone automotive franchising code and options to strengthen alternative dispute resolution mechanisms for automotive franchisees through binding arbitration.

On 1 June 2021, the Government amended the Franchising Code including mandating the automotive best practice automotive principles and explicitly recognising dealers operating as a manufacturer's agent in relation to new vehicle sales. These reforms took effect from 1 July 2021.

A range of other reforms will also benefit new car retailers and include:

- Code amendments in response to the *Fairness in Franchising* report, which was released on 20 August 2020. These include doubling the maximum financial penalties, and introducing voluntary binding arbitration;
- Increasing available penalties under the Franchising Code to up to \$10 million to strengthen penalties for wilful, egregious and systemic breaches of the Franchising Code;
- Changes to collective bargaining requirements, to allow franchisees to collectively negotiate with their franchisors without first having to seek Australian Competition and Consumer Commission (ACCC) approval;
- Strengthening protections against Unfair Contract Terms (UCTs) in the Australian Consumer Law, including: making UCTs unlawful, giving courts and tribunals the power to impose civil penalties; applying the protections to more contracts; and providing more flexible remedies to a court when it declares a contract term unfair.
- Improving the Supplier Indemnification and Consumer Guarantees provisions in the Australian Consumer Law.

The Government is committed to enacting reforms that are impactful and deliver for the nation and regions where transport is integral for economic and social needs. The

Government has also shown its commitment to build on the critical work already done by the Government to ensure the reforms made will better the overall experience of consumers, who ultimately drive the demand that underpins the viability of the automotive sector.

The Australian Government's response to the Senate Committee's recommendations are provided below.

Recommendation 1

The committee recommends that the Australian Competition and Consumer Commission should expedite its investigations into the behaviour and actions of GM Holden and should commit to provide regular public updates on this investigation and similar investigations into the relationship between manufacturers and dealers in the future.

Government response

The Government **notes** this recommendation.

The ACCC is an independent statutory authority and is responsible for its own decisions, which it makes in accordance with its enforcement priorities.

It is a matter for the ACCC to determine when it is appropriate to make public announcements in relation to its investigations or enforcement activities. A relevant consideration would be whether the release of such information could interfere with any active or pending legal proceedings that may be put before the courts.

Recommendation 2

The committee recommends that the Australian Competition and Consumer Commission proactively ensures that General Motors Australia and New Zealand is meeting its Australian Consumer Law obligations to Holden vehicle owners in relation to warranty and recalls, technical support and access to parts.

Government response

The Government **notes** this recommendation.

The Australian Consumer Law (ACL) is administered under the one law multi-regulator model administered by the ACCC in conjunction with State and Territory ACL regulators. As an independent statutory authority, the ACCC exercises its powers and decisions independently in accordance with its Compliance and Enforcement Policy and Priorities.

Recommendation 3

The committee recommends that the Australian Government prioritise the new automotive reforms announced on 12 March 2021 and implement the increased fines, mandatory principles and protection of dealers operating as a manufacturer's agent by 1 July 2021.

Government response

The Government **supports** this recommendation.

The Government has provided further protections supporting the interests of Australian car dealers. On 1 June 2021, the Government amended the Franchising Code including mandating the automotive best practice automotive principles and explicitly recognising dealers operating as a manufacturer's agent in relation to new vehicle sales. These reforms took effect from 1 July 2021.

Further to its 12 March 2021 announcement, the Government is consulting on the merits of a standalone automotive franchising code and options to strengthen alternative dispute resolution mechanisms for automotive franchisees through binding arbitration (see Recommendation 5).

Recommendation 4

The committee recommends that the mandatory best practice principles include a provision for the reimbursement for all reasonable expenses incurred in relation to warranty and recall work, including expenses associated with diagnosis, administration of claims and claim audits.

Government response

The Government **notes** this recommendation.

The Government has amended the Franchising Code to mandate the existing best practice automotive principles from 1 July 2021.

The Australian Consumer Law already provides that a manufacturer of goods is liable to indemnify a supplier, where the supplier provides a remedy for a consumer guarantee failure that is the manufacturer's responsibility.

Australian consumer affairs ministers have agreed that a regulation impact assessment should be undertaken on options to prohibit manufacturers from failing to indemnify suppliers, and prohibit retribution by manufacturers against suppliers who seek indemnification. The assessment will consider the costs and benefits of applying the options across all sectors of the economy; and to new motor vehicles only. A Consultation Regulation Impact Statement is expected to be released in 2021.

Recommendation 5

The committee recommends that the Australian Government introduce mandatory binding arbitration to resolve disputes during contracted negotiation in the automotive industry which are not able to be resolved by other dispute resolution mechanisms.

Government response

This recommendation is **supported-in-principle**.

The Government has committed to further consultation with industry stakeholders to explore options to strengthen alternative dispute resolution mechanisms through binding arbitration of disputes during contract negotiations; and to consider the merits of a standalone automotive franchising code.

Recommendation 6

The committee recommends that the Australian Government appoint a senior officer in the Office of the Australian Small Business and Family Enterprise Ombudsman to investigate and coordinate dispute resolution investigations and facilitate mediation and arbitration arising from the transformation of the voluntary best practice principles into mandatory obligations.

Government response

The Government **notes** this recommendation.

Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) key assistance functions enable it to provide assistance to disputing parties, facilitating communication and making recommendations on dispute resolution options. The Government's legislative amendments to the Franchising Code also ensures that ASBFEO can support the resolution of franchising disputes via the mediation and voluntary arbitration processes outlined in the Franchising Code.

The Government provided ASBFEO with an additional \$1.5 million in the 2021-22 Budget to support its various functions and help small businesses identify and access support for dispute resolutions.

An independent review of ASBFEO's functions was undertaken on a range of matters including the interaction and effectiveness of ASBFEO's functions, and any new roles acquired since the previous review. The review also looked at any possible legislative and administrative improvements that could assist ASBFEO undertake its functions more effectively. A final report was tabled in Parliament in August 2021.

Recommendation 7

The committee recommends that the Australian Government undertake a review into effectively enforcing alleged contraventions of the Competition and Consumer Act 2010 as it relates to the regulation of the relationship between car manufacturers and car dealers.

Government response

The Government **does not support** this recommendation.

The Government does not consider it appropriate to undertake a review at this time as it has recently taken significant steps to strengthen the legislative frameworks governing the automotive retailing sector, as discussed in the response to Recommendations 3 to 5.

The Government is also ensuring that the ACCC has the resources and powers it needs to vigorously enforce Australia's competition and consumer law.

The Government provided the ACCC with an additional \$116m in the 2021-22 Budget to maintain and enhance the ACCC's capability including its enforcement capability and better protect consumers and small businesses.