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# Senate Education and Employment References Committee:

## General Motors Holden Operations in Australia

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## **Introductory Comments**

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body for the motor vehicle industry in Australia. Sales of new motor vehicles by FCAI members represent over 99 per cent of all new motor vehicles sold in Australia each year.

The FCAI welcomes the opportunity to make this submission Senate Education and Employment References Committee inquiry into General Motors Holden Operations in Australia. As the peak body for a majority of original equipment manufacturer (OEM) representatives in Australia, the FCAI is responding to the following of the inquiry's terms of reference:

- b.** the role of the Franchise Code and the Government's proposed dealership amendments to the Franchise Code;
- c.** Government or other policy settings on manufacturing, research and development, business support and transition and employee support; and
- d.** any related matters.

## **The role of the Franchise Code**

### *Automotive franchising in Australia:*

Australia's new motor vehicle industry is one of the most competitive in the world. Competition lies at the heart of motor vehicle retailing in Australia, with consumers benefiting from access to over 50 brands offering hundreds of models. Given the size of Australia's market of just over one million annual sales, this volume of brands results in numerous suppliers with very-low overall volumes. In fact, in 2019 25 passenger vehicle brands sold less than 5,000 units nationally.

The relationship between OEM Distributors and dealers is not what would normally be considered a 'franchise'. Unlike traditional franchises, dealers do not pay anything in the way of franchise fees, nor do they pay anything to the Distributor when they sell their business. Most typically, all that dealers pay the Distributor for are the vehicles, parts and accessories they purchase from the Distributor, as well as special tools for servicing/repairs.

The relationship between dealers and Distributors is much more like a straight distribution arrangement, rather than a franchise does not generally reflect the characteristics of a traditional franchise arrangement. In general terms, the relationship would not be caught by the general definition of 'franchise agreements' in the Franchising Code of Conduct (Franchising Code). The relationship is captured by the Franchising Code because of a specific provision in the definition of 'franchise agreement' that deems a motor vehicle dealership agreement as being a franchise agreement<sup>1</sup>: but for this deeming provision it would not be a franchise agreement.

Motor vehicle dealerships across Australia are in the main far from small businesses and are not in a vulnerable position vis-a-vis the manufacturers<sup>2</sup>. In fact, over 80 per cent of dealerships are part of a sophisticated conglomerate representing numerous separate dealerships. The largest of these - AP Eagers - with the recent takeover of AHG, owns almost 300 car, truck and bus dealerships and

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<sup>1</sup> Clause 5(2)(c) of the Franchising Code.

<sup>2</sup> Throughout this submission 'manufacturers' has the meaning in the Australian Consumer Law (ACL)

has a market capitalisation of in excess of \$2 billion.

In many cases, dealerships call themselves ‘family owned’, but this does not equate to being a small or an unsophisticated business. All dealers require a level of financial means and business sophistication to be in a position to own and operate a dealership. They are not the ‘mum and dad’ operations as often characterised.

*The Government’s proposed changes to the Franchise Code of Conduct:*

The FCAI broadly supports the changes proposed to new motor vehicle franchising in Australia, as recently outlined in exposure draft regulation released by the Federal Government. In particular, the regulatory changes will be enacted through amendments to the existing Franchise Code concerning the following specific issues:

- Winding down of agreements;
- Provision of new capital expenditure; and
- Dispute resolution.

Whilst the FCAI broadly supports the new changes in principle, the FCAI does not support the proposed 1 July 2020 commencement date. The industry will likely need to implement a series of amendments to practices, disclosure documentation and dealership agreements within a very short time. The proposed timeframe is commercially unworkable and more time is required to adequately implement the changes.

Apart from this complexity, the capacity of FCAI members to investigate, amend and discuss with various dealer representatives the necessary changes to agreements and disclosure documents makes a 1 July 2020 start infeasible and impractical. Furthermore, the pending release of broader proposals from the Franchising Taskforce could also impact the relationship between dealers and Distributors. The FCAI and its members have proposed that the new requirements apply from 1 July 2022, with transitional provisions for existing agreements and disclosure documents.

The FCAI believes that, whilst not perfect, the proposed automotive-specific changes to the Franchise Code strike a fair balance. In an ever-changing market and a volatile economy, it is essential that both dealers and Distributors retain the necessary flexibilities to operate within this environment. Enacting a more restrictive regulatory environment risks accelerating changes to OEM distribution models, which could bring about considerable upheaval to the channels that many new vehicles take to reach the Australian market – as reflected overseas.

**Government and other policy settings:**

With the closure of wide or mass-scale domestic automotive assembly activities in Australia in 2017, there has been considerable change to Australia’s automotive landscape. Whilst domestic manufacturing activities have significantly decreased, Australia’s automotive industry welcomes the opportunity to work with the government on measures to ensure the ongoing contribution of the automotive sector to advanced innovation in Australia.

The automotive industry is in the midst of historic technological advancement, especially with respect to electrification of propulsion and enhanced autonomous and connected vehicles. The advancements in automotive technology also reflect advancements in other high-tech industries such as defence and aerospace. As the Australian Government continues to invest in the latest defence

industries and the expansion of a domestic space industry, high-end and valuable skills developed through decades of automotive manufacturing and ongoing research and development can continue to play a key role.

It is essential that government initiatives to attract investment in these advanced activities are internationally competitive and help level the playing field for skilled Australian-based companies to attract and sustain valuable global innovation work. Australian companies, including FCAI members, continue to develop leading technologies for the next generation of automotive products.

### **Other matters**

#### *Adaptability of Australian automotive dealers:*

New car dealers are entrepreneurial and have adjusted to the challenges of a rapidly evolving market. Over recent decades, the opening of Australia's vehicle market by successive governments has provided choice to the benefit of Australian consumers. The arrival of new brands over recent years has resulted in significant shifts in market fragmentation and ever-increasing competition for what is, by global standards, a relatively small market of a little more than one million new vehicle sales per annum.

Through this transition, new car dealers have adapted to meet the challenges and opportunities afforded through this competition. Significantly, most dealers have diversified to retail multiple brands across their dealer sites. As such, an overwhelming majority of dealers are multi-franchise operations, with, for example, this model accounting for approximately 90 per cent of Holden dealerships in 2020. Many dealers also own their strategically important sites, which is an extremely significant advantage in the competitive Australian market.

#### *The burden of excessive regulation:*

Within such a competitive market, the FCAI and its members urge policy makers to use caution when imposing new regulatory burden on the industry. February 2020 accounted for the 23rd consecutive month of declining sales<sup>3</sup>, which far-exceeds the 15 consecutive negative months experienced during the Global Financial Crisis of 2008-09. Coupled with the significant economic headwinds due to the current COVID-19 pandemic and recent natural disasters, cumulative and excessive regulatory burdens place additional strain on Australia's automotive industry.

Government should be mindful of the impact of new proposed measures, including:

- further changes to the Franchise Code of Conduct;
- the mandatory sharing of automotive service and repair information; and
- measures to regulate new and emerging technologies.

The FCAI urges the Government to ensure that all proposed measures are subject to full and transparent cost-benefit analysis to ensure that the cost of any new regulation is proportional to its proposed benefit. The Government also needs to recognise that every part of our economy evolves. While the automotive dealership model has remained relatively static in Australia for many decades it will inevitably evolve over time along with technologies and consumer requirements. Attempts to stifle this evolution through excessive regulation is likely to deal to new business models with greater change.

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<sup>3</sup> Federal Chamber of Automotive Industries, VFACTS, monthly sales figures measured against the corresponding month in the previous year.