



AUSTRALIAN  
AUTOMOTIVE  
DEALER  
ASSOCIATION

# INQUIRY INTO THE REGULATION OF THE RELATIONSHIP BETWEEN CAR MANUFACTURERS AND CAR DEALERSHIP MODELS IN AUSTRALIA

## SUPPLEMENTARY SUBMISSION

2 FEBRUARY 2021



## AADA SUPPLEMENTARY SUBMISSION

The Australian Automotive Dealer Association (AADA) is the peak industry advocacy body exclusively representing franchised new car Dealers in Australia. We represent around 1,500 new car Dealers in Australia that operate more than 3,000 Dealerships. The new vehicle retailing sector employs more than 55,000 people including almost 4,500 apprentices. It has a total turnover/sale of more than \$55 billion and generates more than \$2 billion in tax revenue.

We lodge this supplementary submission which can read alongside our previous submissions (25.06.2020; 06.07.2020; and 06.10.2020).

There have been a number of developments since the AADA's most recent submission to the Inquiry into the regulation of the relationship between car Manufacturers and car Dealership models in Australia.

On 11 December, the Government released a set of Voluntary "best practice principles for new car dealership agreements" (see page 3). The AADA is very disappointed that the application of the principles will be voluntary, and we believe they won't help protect Australia's Dealers from being treated unfairly by their overseas franchisors.

The Government has said these voluntary principles will be reviewed in two-year's time, but there is significant damage which can be done in that time and a number of Manufacturers are already in the process of changing their distribution models, leaving Dealers and their employees dangerously exposed.

The AADA has already engaged with our members who are Dealers for every major brand in Australia to understand to what extent existing Dealer agreements comply with the Government's best practice principles for new car dealership agreements. We have not been able to find an agreement which does comply with these principles.

We have also reached out to our members which are in the process of concluding new Dealer agreements or are dealing with renewal of existing agreements. Disappointingly, these agreements have not been structured to comply with the voluntary principles and a number of Manufacturers have refused to comply telling their Dealers that they have no legal obligation to do so.

We would urge the Senate Education and Employment References Committee to formally inquire of the major car Manufacturers in Australia whether they intend for their current and future agreements to comply with the Government's best practice principles for new car dealership agreements.

It remains the AADA's strong belief that car Manufacturers will ignore any voluntary mechanism designed to level the playing field between them and their Dealers. This has been demonstrated through such experiences as their non-compliance with the voluntary agreement on sharing of service and repair information, their resistance to the mandatory Takata airbag recall and most recently General Motors' refusal to accede to Minister Cash's request for them to engage in voluntary binding arbitration with their Dealers.

Only a set of mandatory obligations will result in offshore Manufacturers engaging with their Australian Dealers in a fair and transparent manner.

## BEST PRACTICE PRINCIPLES FOR NEW CAR DEALERSHIP AGREEMENTS

### Principle 1

Franchisors should include provisions in new dealership agreements that provide for fair and reasonable compensation for franchisees in the event of early termination resulting from:

- withdrawal from the Australian market
- rationalisation of their networks
- changes to their distribution models

### Principle 2

Franchisors should not include provisions that exclude compensation in new dealership agreements.

### Principle 3

The 'fair and reasonable compensation' as referred to in Principle 1 should include appropriate allowances for the loss a franchisee may incur, which can include:

- lost profit from direct and indirect revenue
- unrecovered expenditure and unamortised capital expenditure where requested by the franchisor
- loss of opportunity in selling established goodwill
- wind up costs

### Principle 4

When an agreement is entered into it should provide franchisees a fair and reasonable time to secure a return on investments that have been required by franchisors as part of the agreement.

### Principle 5

Agreements should include reasonable provisions for franchisors to compensate or buy back new vehicle inventory, parts and special tools, in the event of:

- non-renewal
- withdrawal from the Australian market
- rationalisation of their networks
- or changes to their distribution models

### Principle 6

Agreements should include provision for timely commercial settlement and dispute resolution.



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