

16 November 2020

By E-mail

File No. 011915242

Private & Confidential

Partners
Elyse Hilton

Mr Alan Raine
Committee Secretary
Senate Education and Employment Committees
eec.sen@aph.gov.au

Leon Zwier

Dear Mr Raine

**Senate Standing Committee on Education and Employment (Committee)
Regulation of the relationship between car manufacturers and car dealers in Australia
(formerly General Motors Holden Operations in Australia) (Inquiry)**

- 1 We act for Honda Australia Pty Ltd (**Honda Australia**), who has been asked to appear at the Inquiry on Tuesday, 24 November 2020.
- 2 We refer to the submission dated 29 October 2020 made by Astoria Honda Brighton, which was uploaded to the Committee's website this morning (**Astoria Submission**). There are a number of matters raised in the Astoria Submission that Honda Australia does not agree with. However, it does not propose to address those matters in this letter. Subject to any legal impediment, Honda Australia is willing to answer any questions in connection with the matters raised in the Astoria Submission when it appears at the Inquiry next week.
- 3 The purpose of this letter is to notify you that the Astoria Submission refers to the content of confidential 'without prejudice' discussions between Astoria Honda Brighton and our client's advisor, Deloitte. Our client retained Deloitte to assist in negotiating with dealers regarding their exit from the Honda network. Communications with Deloitte were without prejudice and formed part of a genuine attempt to resolve a dispute regarding the appropriate compensation payable.
- 4 This 'without prejudice privilege' is a joint privilege of Honda Australia and Astoria Honda Brighton, which neither party may unilaterally waive. Without prejudice privilege is regularly utilised to facilitate the resolution of disputes. It is integral to creating an environment in which parties can speak and explore potential settlement options.
- 5 To preserve the privilege, we request that the Astoria Submission be removed from the Committee's website and replaced with the **enclosed** version, which has been redacted to remove all references to the content of the without prejudice communications. We have also written to Astoria Brighton's lawyers, HWL Ebsworth, to notify them of this.
- 6 Please do not hesitate to contact us if you would like to discuss.

Yours sincerely

Leon Zwier
Partner

Elyse Hilton
Partner



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SUBMISSION OF ASTORIA HONDA BRIGHTON

29 October 2020

To: The Education and Employment References Committee – Inquiry into the relationship between car manufacturers and dealers

Our names are Mark Avis and Ron Klein. We are the directors and shareholders of Brighton Automotive Holdings Pty Ltd trading as Astoria Honda Brighton in Melbourne (**Astoria Honda Brighton**).

Astoria Honda Brighton and its predecessor, Astoria Honda, is a family owned authorised Honda dealership which has been in continuous operation for over 50 years. The late Henry Klein started selling Honda cars in 1967. It was a few years later, on 4 February 1969, that Honda Australia Pty Ltd (**AUH**) was established to sell Honda cars in Australia.

In 2019, Astoria Honda Brighton was the largest selling Honda dealer in Australia. More than 120 new and demonstrator vehicles were delivered each month and we were a finalist in the "Honda National Dream Awards". Over the last 10 years, Astoria Honda Brighton has sold and delivered approximately 18,000 Honda cars and has current data base of over 34,000 customers.

Astoria Honda Brighton is also the largest Honda spare parts dealer in Australia.

In June 2018 Brighton Automotive Holdings Pty Ltd entered into a dealer agreement with AUH for a term of 5 years commencing on 1 July 2018 and expiring on 30 June 2023.

On 23 March 2020 we were informed by AUH, without any prior notice, that our dealer agreement would be terminated with effect from 30 June 2021. We understand that AUH has decided to move to an Agency Model and will be reducing the number of national dealers. AUH had no right under our dealer agreement or the Franchising Code of Conduct to give us notice to prematurely terminate our dealer agreement.

Along with our dealership, approximately 30 other metropolitan Honda dealers Australia wide received similar notices of termination.

The termination of the dealer agreement came as a great shock and disappointment to us. We employ over 100 staff who have been loyal to our company and the Honda brand. Some employees have been with us for over 30 years.

After having received the notice of termination, AUH handed all further communication to Deloitte Financial Advisory Pty Ltd.

The compensation methodology used (as calculated by Deloitte) grossly undervalues the actual loss we will suffer let alone the value of the goodwill we have established in our business.

The National Honda Dealer Council engaged Mr Evan Stents from HWL Ebsworth to represent the terminated dealers and negotiate a fair and reasonable settlement.

Fordham Accountancy Group (a dealership accountancy specialist) was retained to evaluate the terminated dealers' damages claim. At that time, there was over three years to run on our dealer agreement.

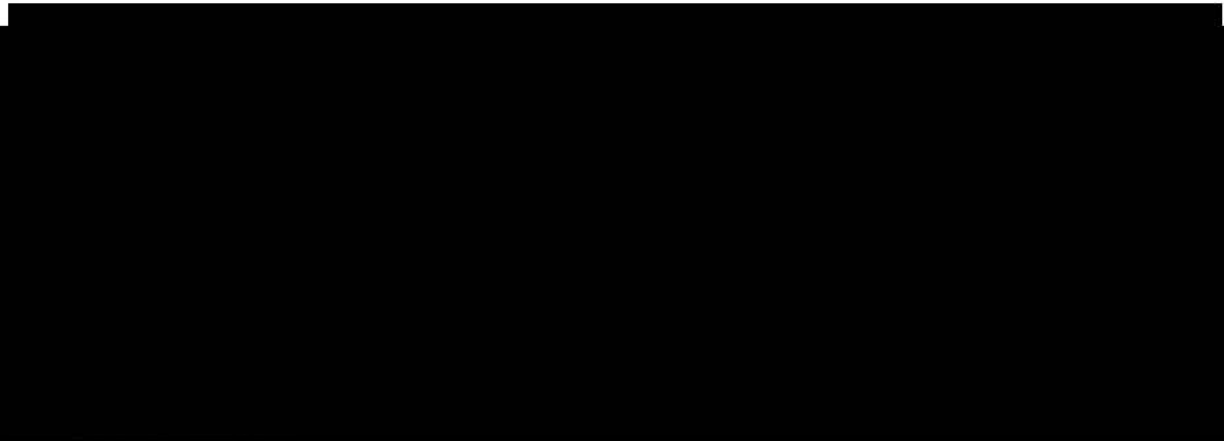
The Fordham compensation payment calculation was four times more than the offer made to us by AUH.

If we were to apply the General Motors compensation formula to our FY19 sales volume, the offer made by AUH is less than 50% of the GM cash component. Furthermore, the GM dealers were offered a five-year parts and service contract.

Parts and service is an important source of revenue for dealers and was not offered to the terminated Honda dealers.

We have had conversations with other Honda dealers. Many have reluctantly decided to accept their offer because they don't wish to be involved in litigation and have otherwise been muzzled by an Exit Deed. They have advised us that they have also been subjected to intimidatory tactics but have folded as they do not have the appetite to continue.

The inadequacy of the compensation offered by AUH combined with the tactics employed to achieve a swift outcome, has made us more resolute to seek a fair and reasonable resolution.



At all times, Astoria Honda Brighton is and has been an innocent party and it was AUH who breached the dealer agreement. However, we have been made to feel that we are the wrongdoer.

In June and July 2020 Astoria Honda Brighton attended a mediation with AUH that was unsuccessful.

Having enjoyed a very cordial relationship with AUH for over 50 years, it is extremely disappointing that the termination of the dealer agreement has occurred in the circumstances described above.

Through no fault on our part, we are not being offered any compensation for the value of the goodwill in the dealership which has been built up for over half a century. The goodwill component is a major consideration for a prospective purchaser in the event of the business being sold. We understand that AUH intend to "gift" our database to the new agency dealer who is allocated our geographical area.

The financial compensation offered does not even cover our loss of profit had the dealer agreement been performed for the balance of its term. As a consequence we are forced to go to court against a multi-national organisation to receive just and fair compensation.

Please feel free to contact us if you require further information.

Yours Sincerely

Mark Avis Ron Klein

Directors

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