



# SUBMISSION

## Holden Senate Inquiry

**20 March 2020**

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## 2. Background

The Motor Trade Association SA/NT (the MTA) is an employer organisation representing the interests of over 1,200 members and their more than 15,000 employees in the automotive retail, service and repair sector throughout metropolitan and regional South Australia (SA) and the Northern Territory (NT).

Eighty per cent of these businesses employ less than 20 employees. The automotive retail, service and repair sectors in SA and the NT adds more than \$3 billion to the economy annually and employs over 30,000 people.

The MTA also operates a Training and Employment Centre in SA, comprised of both our Registered and Group Training Organisations. It is the automotive industry's training provider of choice with more than 900 apprentices in training and is the largest employer of automotive apprentices in South Australia with 500 employed through over 240 host businesses.

As a representative body, the MTA has 12 divisions representing the full range of trades within the automotive industry including:

- Australia Automotive Dealers Association
- Automotive Dismantlers
- Auto Repair and Engineering
- Body Repair Specialists
- Commercial Vehicle Industry Association
- Farm and Industrial Machinery Dealers Association
- Licensed Vehicle Dealers
- Motorcycle Industry Association
- Towing Services
- Service Stations
- Tyre Dealers
- Vehicle Rental

### 3. Terms of Reference

The announcement, by General Motors on 17 February 2020, to withdraw the Holden brand and operations from Australia, with particular reference to:

- a. the impacts of that decision on:
  - i. Holden employees,
  - ii. the Holden dealership network (small and medium sized businesses and family enterprises, and their employees),
  - iii. the Holden research and development facilities, and
  - iv. owners of Holden vehicles (including service and repair);
- 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.

### 4. Introduction

The MTA welcomes the announcement of the Senate Inquiry into the decision by General Motors to withdraw the Holden brand and its operations from Australia.

Between South Australia and the Northern Territory, there are approximately 20 dealers affected who directly employ around 800 staff in total. Across the country, the Holden Dealer Council estimates around 9,000 employees and their families will be affected when all aspects of each dealership is taken into account.

Holden dealers have invested significant capital in facilities, product and equipment over many years of loyalty to the brand and General Motors. These family run franchisees made calculated business decisions in good faith based on commitments from Holden that they were staying in Australia.

This Inquiry will be essential to set the benchmark for other automotive manufacturers who may consider an exit from Australia, to rationalise their network or changes to their distribution models.

The MTA also views the Inquiry as an opportunity for the Senate to look at the broader context of the Franchising Code. We cannot fix what has happened but by reviewing the way Holden has been withdrawn, hopefully we can learn some lessons to help other dealership franchises in the future.

The scope of franchising reform needs to go further than what is currently included in the Federal Government's draft regulations amending the Franchising Code of Conduct and must be implemented quickly to protect franchisees who are currently at the behest of manufacturers.

## 5. Industry Consultation

This submission summarises the views of the MTA's members in response to the Terms of Reference outlined above.

In developing this submission, the MTA has consulted with members in the Holden dealership network.

## 6. Response to Term of Reference A

The impacts of [the decision by General Motors on 17 February 2020, to withdraw the Holden brand and operations from Australia] on:

- i. Holden employees,
- ii. the Holden dealership network (small and medium sized businesses and family enterprises, and their employees),
- iii. the Holden research and development facilities, and
- iv. owners of Holden vehicles (including service and repair).

When GM confirmed that local design and engineering operations, as well as Maven and Holden Financial Services operations will wind down in Australia, the hardest hit sector in Australia was local dealerships who are left with extensive capital and stock, and great uncertainty when negotiating with Detroit.

Holden vehicle dealers, and the brand itself, are an iconic and beloved institution, both locally and across Australia, represented almost entirely by family businesses. These family businesses provide jobs and generate significant economic activity within local communities.

Between South Australia and the Northern Territory, there are approximately 20 dealers affected who directly employ around 800 staff in total. Across the country, the Holden Dealer Council estimates around 9,000 employees and their families will be affected when all aspects of each dealership is taken into account.

Although GM has indicated that it believes the impact of Holden's departure is primarily limited to its new car sales staff, it fails to recognise the flow on effects to service and finance employees.

Beyond this, the broader impacts to supply chains and secondary businesses is more difficult to quantify, but is also expected to be significant. However, a conservative estimate puts 33,000 people employed in the automotive components sector as likely to be affected nationally<sup>1</sup>.

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<sup>1</sup> <https://www.abc.net.au/news/2013-12-11/holden-to-cess-manufacturing-operations-in-australia-by-2017/5150034>

The GM announcement is expected to negatively affect the price of new and used vehicles, as well as the activity of finance and service units, further compounding the impact to Holden dealers.

Holden Dealers in South Australia and the Northern Territory come from differing levels of exposure to the announcement. Some dealers may sell Holden vehicles alongside other manufacturers, while others are solely dependent on Holden vehicles, having spent millions in capital investment on facilities, plant and equipment which is now obsolete and difficult to repurpose, even under another brand. One dealer in South Australia had almost completed a \$6.5 million facility at the time of the announcement.

Vehicle dealers affected by this announcement are the face of the Holden brand. They invest and employ locally, and they are key sponsors of local community clubs across the country. They are left to manage all of the risk when announcements like GM's are made and when Honda's presence in Australia was questioned following recent media reports, the industry is looking for strong leadership and intervention from Government.

Ultimately, the Government's response to the GM decision will set a precedent for how other OEMs look to their operations in Australia, particularly against the backdrop of significant global economic uncertainty and a rapidly evolving industry.

## **7. Response to Term of Reference B**

### **The Role of the Franchise Code and the Government's proposed dealership amendments to the Franchise Code.**

On Friday, 14 February 2020, the Minister for Industry, Science and Technology, Hon Karen Andrews MP released draft regulations for comment, outlining the implementation of automotive franchising specific sections into the Franchising Code of Conduct.

The MTA welcomes the announcement of automotive franchising draft regulations. After a decade of ongoing advocacy, it is pleasing to see material recognition of the fact that automotive franchising is distinct from other retail sectors, as well as other franchising business models in general.

Power imbalance was over and above the most commonly raised theme by MTA members. Nowhere has this significant power imbalance been more acutely experienced than by Holden dealers who were blindsided by GM's recent decision to withdraw from the Australasian market.

The significant power wielded by OEMs can also be seen through companies such as Great Wall and Opel who setting up franchise operations in Australia, before subsequently withdrawing and leaving dealers to manage the risk associated with their significant capital expenditure. Disappointingly, Great Wall

re-emerged in the Australian marketplace with no regulatory penalty from Government.

Vehicle dealers are ultimately at the mercy of OEMs when they make decisions to withdraw from a market, with few protections for businesses who enter franchise arrangements in good faith and with long term plans.

This highlights the urgent need to implement the Automotive franchising regulations 2020 swiftly to ensure businesses in automotive franchise arrangements have certainty and are protected.

MTA members consulted expressed general satisfaction that the following issues were included in the Automotive franchising draft regulations 2020:

- End of term obligations
- Capital expenditure requirements
- Resolving disputes through multi-franchisee dispute resolution
- Penalties for breach of the code

However, members also raised a number of concerns, both in response to the draft regulations and during consultation for the preceding Regulatory Impact Statement.

Insecurity of tenure for vehicle dealers was raised as a specific issue which is not captured within the draft regulations. This is particularly a concern for automotive dealers in Australia who have shown brand loyalty to the franchisor with investment in millions of dollars in facilities, stock and equipment over a number of years.

The MTA believes use of one-year and below agreements is concerning, particularly when parts of the proposed automotive franchising code of conduct do not apply to agreements under 12 months such as provisions for end of term obligations. Vehicle dealer franchisees are undeniably unique when compared to other businesses and franchises, and they are exposed to far more risk, particularly when dealers are entering franchise agreements with plans beyond one to five year agreements.

Another area of concern raised by an MTA member in this latest round of consultation was the practice of franchisors shifting the costs of legislative compliance to the franchisee when they are dealing with warranties. This member advised that the manufacturer would not reimburse costs associated with the disposal of a receiver-dryer air-conditioning component, despite the requirement to do so under Australian law with significant penalties for non-compliance.

While the issues raised by members should not hold up the progress and passage of the automotive franchising code into regulation, it is the MTA's view that the Federal Government should commit to a review of the effectiveness of the code at 12 months of operation, with a view to expand provisions as needed.

Finally, the MTA reiterates that it wants to see the code expanded beyond new car dealerships to include farm machinery and agricultural equipment, motorcycles, repair, parts and tyre businesses, ideally with a commitment to do so within 24 months.

## 8. Response to Term of Reference C

Government or other policy settings on manufacturing, research and development, business support and transition, and employee support.

Despite GM announcing that it will work with the dealer network on transition arrangements, anxiety remains and dissatisfaction has been reported over initial offers to dealers who have made significant investments in capital, plant, equipment and staff.

While negotiations continue, it is unclear whether transitional support offered from GM will go anywhere near addressing the true impacts of the announcement. As such, it is incumbent upon the Federal Government to ensure that through this uncertain transition period, dealers are able to continue operating as valued and viable businesses wherever possible.

The Federal Government must stand prepared to offer assistance to Holden dealers most acutely impacted by GM's decision, should compensation prove inadequate or negotiations breakdown. Some potential assistance measures may include ex-gratia transition support payments or grants, and/or Commonwealth taxation relief.

The Federal Government should also explore a minimum policy framework which protects vehicle dealer franchisees in the event that another OEM makes a decision to withdraw from the Australian market. This framework needs to look beyond just the terms of franchise agreements to recognise the power imbalance that exists and that dealers enter the market for the long run.

MTA members have also expressed dissatisfaction that the Australian Competition and Consumer Commission (ACCC) has remained silent following the GM announcement and are calling for the ACCC to have an expanded role in the franchise environment.

Finally, the Senate Inquiry should thoroughly investigate and probe GM on its decision to withdraw from the right hand drive market. The inquiry should compel GM to advise:

- when its decision to withdraw was made
- what capital investments it had requested of dealers over the past 5 years; and
- what commitments and assurances it had provided dealers over the past 5 years.



## **9. Response to Term of Reference D**

Any related matters.

The MTA does not offer any comment on Term of Reference D.

## **10. Next Steps**

The MTA is available to provide further information in relation to this submission and to clarify any aspect of it.

This includes meeting with agency representatives and facilitating further consultations with industry on proposed changes.

## **11. Submission Contact**

For further information relating to this submission please contact:

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