

Our Ref: RCG:166397

10 November 2008

Secretary
Parliamentary Joint Committee on Corporations
and Financial Services
Department of the Senate
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Dear Sir

Further Supplementary Submission to the Inquiry on the Franchising Code of Conduct

I refer to my Supplementary Submission to the Inquiry dated 31 October 2008 attaching a recent decision of the Supreme Court of Queensland in *PE Lockhart and MAP Enterprises Pty Ltd -v- GM Holden Ltd (the Lockhart Case)* relating to the assignment of motor vehicle dealerships. In the Lockhart case Douglas J considered GMH's dealership policies about ownership of its dealerships. In particular, one of the policy documents provided that the person upon whom General Motors relies to operate a dealership (**dealer operator**) should have a complete ownership but must have at least substantial ownership interest in the dealership ... The Policy Statement then went on to describe the relationship between General Motors-Holden's and each of its franchisees as being in the nature of a personal service contract wherein General Motors-Holden's relies upon the personal qualifications of the individuals named in the franchise agreement who have and exercise full managerial authority in the ownership and/or operation of the franchise.

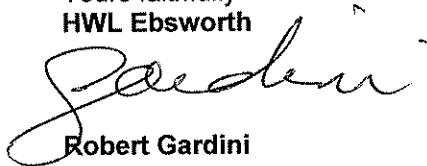
In my view, it is significant that the dealership contract is described in the nature of a personal service contract. As the Committee will be aware, the *Independent Contractors Act 2006* provides power for the Court to review a services contract on either or both of the grounds that it is unfair or is harsh. This reflects the standard that was adopted and recommended by the Reid Committee and would provide an effective remedy for motor vehicle dealers having regard to the present difficulties they face in not having an effective remedy under the *Trade Practices Act* or in the *Franchising Code of Conduct*.

Accordingly, I would urge the Committee to give serious consideration to amending the *Independent Contractors Act 2006* (Cwth) so that it would apply to contracts between motor vehicle distributors and motor vehicle dealers.

Brisbane
Melbourne
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Sydney

Please note the above views are my personal views and do not necessarily reflect the views of
HWL Ebsworth.

Yours faithfully
HWL Ebsworth



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Encl.