



Australian Motor Dealer Council

Response to the Review of the Franchising Code of Conduct Consultation Paper

Via email to: franchisingreview@treasury.gov.au

Dear Dr Schaper,

We are writing to you in response to the Treasury Discussion Paper regarding the Review of the Franchising Code of Conduct, on behalf of the Australian Motor Dealer Council (AMDC). The AMDC is a body convened under the AADA which comprises the chairpersons and delegates representing the various brand Dealer Councils. These councils provide Dealer representation for most of the larger selling brands in Australia.

The role of a Dealer council is to serve as a collective aligned to a brand which represents the interests of the network of Dealers who are franchised that brand. Councils perform critical duties in providing a direct connection between the franchisee and franchisor on a wide range of issues, the most important of which is the negotiation of new Dealer agreements.


Performing these critical duties is a very difficult task for Councils, as pushing back on unfavourable terms in an agreement invariably makes the council members a target for punitive actions should negotiations become contentious. Our preference in making representation to you would have been for each brand council to submit to you individually, as some are doing, but unfortunately many Dealers are fearful of negative repercussions by their Original Equipment Manufacturer (OEM) franchisors if they are identified as speaking up in support of stronger franchising protections.


Dealers belonging to the AMDC are spread across Australia, sell nearly one million cars a year and service and repair hundreds of thousands more for our customers. Most of the Dealers in our networks are family owned and collectively employ thousands of Australian workers and contribute significant amounts of money and aid to our local communities and the Australian economy more widely.

We write to you to bring to your attention the serious concerns we have about the Dealer Agreements we operate under and the imbalance of power we experience in the franchising relationship.

Many of the Dealers in our network are multi-franchised and it must be said that not all franchisors treat their Dealers unfairly. Unfortunately, there are those who do, and Dealers still find themselves largely powerless to negotiate reasonable terms when dealing with those.

It is in indictment on our franchising system that businesses as well established and sophisticated as ours, remain effectively defenceless against the management decisions of the executive management of our franchisors, people who are often best characterised as aggressively ambitious and transient, dictating terms given to them by their master's offshore at corporate HQ. Without laws to establish a minimum set of standards which will govern the franchising relationship and the obligations of the parties, we remain totally at the mercy of our franchisors. Even those Dealers that enjoy strong, harmonious, and productive relationships with their franchisor, are often only one OEM management or strategy change away from the situation being reversed and turning sour.





We see regularly see occurrences of attempts to negotiate the terms of an agreement being flatly refused and Dealer Agreements offered on a take it or leave it basis. Given the numbers of people we employ, the sometimes decades long brand relationship, loyal customers we serve and significant sums of money we invest, Dealers regularly find themselves feeling compelled to sign agreements containing unfair terms.

Despite the reforms to the Franchising Code (the Code) introduced in 2020 and 2021, the franchise agreements we operate under remain heavily weighted in favour of the franchisor. Our ability to obtain a return on investment in the periods given remains challenging at best, and we now face new risks following the introduction of direct-to-consumer agency models being introduced by some brands and our contracts being separated into sections structured as standalone agreements, a tactic we believe is being used so franchisors can avoid their obligations under the Franchising Code.

By virtue of the recent case between Mercedes-Benz and its Dealers in the Federal Court, we now also know that the goodwill in our businesses is extinguished the moment we no longer have a franchise agreement in place. Historically we believed that the money and resources we invested into our businesses, including that prescribed by our franchisors, was adding value. It is now clear that franchisors can appropriate this value for themselves, entirely at our expense. Especially as franchisors can non-renew our agreements without the need to show cause, which is a right they have but which we believe should be abolished as part of this review of the Code.

In summary, franchisors have become creative with their manipulation of traditional Dealer agreements following recent reforms of the Code. They are emboldened by the fact that there is still nothing in the Code which compels them to negotiate fairly, and they retain the ability to non-renew with no cause and offer short term agreements while still enforcing performance and investment standards.

While we welcome the recent reforms to the Code, there remain some regulatory gaps which should be addressed to better protect Dealers against the immense power of these multinational OEMs. We direct you to the recommendations contained in the AADA submission as a blueprint of changes that we believe will lead to fair and reasonable regulations by which the power imbalance might at least partially addressed.

Thank you for your consideration.

On behalf of the Chairman and Delegates of the Australian Motor Dealer Council.

