



Senator the Hon Michaelia Cash
Minister for Employment, Skills, Small and Family Business
Deputy Leader of the Government in the Senate

Reference: MS21-000384

Dear Dealerships

The Prime Minister announced on 12 March 2021 that the Australian Government is committed to delivering practical reforms for Australia's automotive sector.

As many of you would be aware, my office has recently held a number of roundtables and discussions with Australia's automotive dealers. We have heard the calls for stronger government action, and are making some significant changes in response.

The mandatory Franchising Code of Conduct will be strengthened. The Government is introducing new and significant financial penalties for wrongdoing under the Franchising Code. Manufacturers who breach the Franchising Code may face penalties of up to \$10 million (or higher if they are large companies) for not complying with the code.

The best practice principles that the government released on 11 December 2020 as a voluntary set of guidance measures will be transformed into mandatory obligations under the Code. These will assist in providing clarity on compensation payable in the event that a manufacturer decides to withdraw, or change business model part way in the future through the term of an agreement.

The Government will also ensure that the Franchising Code keeps pace with changes to business practice by explicitly recognising that dealers operating as a manufacturer's agent in relation to new vehicle sales are still protected by the Franchising Code.

These changes are expected to be implemented by the middle of this year and will build on the automotive specific provisions of the mandatory Franchising Code which took effect on 1 June 2020. These previous reforms included: increasing End of Term notification periods; improving transparency for capital expenditure requirements; and clarifying options for dispute resolution. These changes, which were the first time that a sector-specific part of regulations have been included in the Franchising Code, provide the foundation for the most recent announcements.

The new commitments also build on the Government's response to the Parliamentary *Fairness in Franchising* report, which included improvements to disclosure requirements, preventing retrospective contract variation, strengthening dispute resolution and increasing penalties to deter poor conduct in the sector.

Perth

44 Outram Street, West Perth WA 6005
Ph 08 9226 2000

Canberra

Parliament House, Canberra ACT 2600
Ph 02 6277 7610

In addition, the Government is committed to working further with the automotive franchising sector. The Government will consider a new mandatory stand-alone automotive code and will consult the sector further on this in coming months. The Government will also explore mandatory binding arbitration provisions within this new code, similar to those in the Media Bargaining Code, which were developed to curtail the power of the Big Tech platforms.

The ACCC announced on 22 October 2020, a change to collective bargaining requirements to allow franchisees to collectively negotiate with their franchisors without first having to seek ACCC approval. By joining together, small dealers may have a better opportunity to have input into negotiations than if they were to negotiate on their own. These are being presently worked through the Parliament.

On 6 November 2020, the Legislative and Governance Forum on Consumer Affairs agreed changes to strengthen protections against Unfair Contract Terms (UCTs) in the Australian Consumer Law, including:

- making UCTs unlawful and giving courts and tribunals the power to impose civil penalties
- changing the definition of a ‘small business contract’ by increasing the threshold to less than 100 employees and using either this or a business’ annual turnover of \$10 million or less
- removing the contract value threshold, which will apply the protections to more contracts; and
- providing more flexible remedies to a court when it declares a contract term unfair.

The government is committed to further discussion with the automotive franchising sector on whether these increased thresholds provide appropriate protection for automotive dealers from unfair contract terms.

Work is also underway on improving the Supplier Indemnification and Consumer Guarantees provisions in the Australian Consumer Law. There will be a public consultation process looking for input from the sector on a proposal to prohibit manufacturers from failing to indemnify suppliers taking place this year.

The government is responding to the unique challenges placed upon the automotive sector by the COVID-19 pandemic and structural changes. The changes announced by the Prime Minister will ensure that the automotive sector remains an important employer and contributor to the Australian economy.

This is a decisive strengthening of reforms for automotive dealerships and the many local businesses, apprentices, charities and broader communities that they in turn support.

To notify my Department of your interest in ongoing consultation on these important reforms, please contact AutomotiveFranchising@industry.gov.au.

Yours sincerely



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12 / 03 / 2021