



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

27 October 2020

Senate Education and Employment Committee
PO Box 6100
Parliament House
Canberra ACT 2600

via email: eec.sen@aph.gov.au

Dear Sir/Madam

Regulation of the Relationship between Car Manufacturers and Car Dealership Models in Australia

We are disappointed with General Motors' decision to shut down its Holden brand and its treatment of its dealers. We appreciate the Committee's decision to include as part of its inquiry into General Motors' actions this investigation of the relevant regulations.

Changes to the Franchising Code of Conduct (the Code) that directly focus on new vehicle dealership agreements came into effect from 1 June 2020. These have improved some of the arrangements regarding end of term obligations, capital expenditure requirements and multi-franchisee disputes.

The Government accepted a number of recommendations to improve the Code in its August 2020 response to the report of Parliamentary Joint Committee inquiry into the operation and effectiveness of the Code. We consider, however, that there are additional aspects of the Code that need to be improved on. For example, the adoption of dispute resolution processes similar to those allowed for under the Dairy Code of Conduct, including arbitration processes, will provide much needed certainty for small businesses.

We advocate for a three-pillar approach to sectoral reform of franchising:

1. Better informed franchisees through reforming disclosure requirements and cooling off periods and implementation of a national register of disclosure documents, verified for overall compliance with critical aspects of the Code;
2. Promoting a mutually beneficial operating environment through effective monitoring of compliance with the Code that ensures unfair contract terms and unfair practices are identified and removed, and their impacts mitigated; and
3. Ensuring access to effective and low cost dispute resolution coupled with fair exit and termination options, with the option for arbitration should mediation not be successful.

Earlier this year we provided comments on the Enhancements to Unfair Contract Term Protections Consultation Regulation Impact Statement (the RIS). We note that unfair contract terms (UCTs) are still present in almost all standard form contracts. This is because the current structure of UCT rules:

- apply only to a subset of standard form contracts (limited in value and scope);
- make UCTs only voidable (not illegal and automatically void);
- require a court ruling to declare a particular term to be a UCT (rather than empowering the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission (for financial matters) to determine this); and,
- allow for no other penalties and compensation.

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The consultation process for the RIS ended at the end of March this year with no indication yet of any actions arising from that process. Smaller dealerships, many of which operate in regional areas would stand to benefit were stronger UCT protections introduced. We have repeatedly called on government to expedite the introduction of strengthened UCT protections.

Finally, with the decision by some car manufacturers to move from a franchise model to an agency relationship with dealers, it is necessary to make it explicit that the current regulations apply to those car manufacturers and dealers that have moved to an agency relationship.

Given the current economic climate and the speed and consequence of change occurring in the motor vehicle sector, small businesses in the sector face an increasingly uncertain future. Leaving long-awaited regulatory reforms unfinished adds to uncertainty amongst the small business community.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mike Kearney on 02 6213 7443 or at michael.kearney@asbfeo.gov.au.

Yours sincerely

A handwritten signature in blue ink that reads "Kate Carnell". The signature is written in a cursive, flowing style.

Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman