

Bulletin

Industry Divisions



Reference No. Dealer Councils/mm-10-23

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Farm Machinery, Motorcycle and Truck Franchise Dealers must form their own brand Dealer Councils. VACC can help.

Over the past few years much has happened within the automotive retail franchising sector that has impacted the relationship between the franchisor (i.e., the manufacturer/distributor/importer) and franchisee (i.e., dealer/agent).

It is observed that the dealer-manufacturer relationship is often one-sided and does not take into account the best interests of the franchisee, the franchisee customer and at times the franchisee's local community.

What are the types of issues VACC is seeing impacting Farm Machinery, Motorcycle, Truck and Vehicle Service and Repair Franchise Dealers?

Right now, VACC is seeing a marked increase in farm machinery dealers' agreements terminated, to then be presented with new agreements that include terms that may be in breach of the Competition and Consumer Act 2010 (Cth)(CCA). VACC is awaiting legal opinion on those agreements and will seek the attention of the Australian Competition and Consumer Commission (ACCC) based on the outcome of that advice.

Other common themes VACC sees regularly relate to:

- The post-pandemic supply chain issues that severely impacted the consumer and dealer.
- The return of pre-pandemic supply traits of some brands in the oversupply of motorcycle, farm, and industrial machinery to their franchise dealer network.
- Unrealistic market share expectations by the franchisor.
- Unrealistic retail pricing.
- Lack of support for the provisions of adequate skills, training, and assistance with labour hire for franchise dealers.
- Unilateral franchise agreement variation.
- Subsidiary documents such as Dealer Operations or Warranty Manuals that are often amended unilaterally on an ad-hoc basis by franchisors via release of a manufacturer bulletin.
- No collective bargaining opportunities between franchisor and franchisees.
- Service campaigns and the impact on dealers and consumers.
- Exclusive product distribution.
- Manufacturer indemnity with regards to manufacturing defects.

The absence of independent dealer councils in the Farm Machinery, Industrial Machinery and Motorcycle, Truck and Vehicle Service and Repair Franchise Dealer sector

Many of the issues listed above could be resolved in a larger forum of same brand dealers. There is limited positive outcome by dealing individually. A dealer council is the best way to have a united and powerful voice.

The good news is there are several brands from the various sectors who have an active dealer council and coordinate with great efficiency and professionalism with their franchisors. Those franchisees and franchisors should be congratulated.

However, there are many 'main line' and 'short-line' farm machinery and motorcycle dealers who have no formal dealer council structure, who are actively discouraged by their franchisors from participating or establishing a Franchise Dealer Council.

You must be aware that under Section 33 of the *Competition and Consumer (Industry Codes— Franchising) Regulation 2014 (Cth)*(the regulations), it is prohibited for franchisors to restrict or limit the freedom of franchisees and prospective franchisees from forming an association or from associating with each other. To do so may result in fine of up to \$10 million for the franchisor. An individual can also be penalised up to \$500,000 for a breach of this section.^[1]

How VACC members see the role of Franchise Dealer Councils

Drawing on dialogue from VACC members, the best Franchise Dealer Councils are those that are run independently of the franchisor and have a non-dealer as Chair. The Dealer Council has direct dialogue with the franchisor from time-to-time, but the agenda and deliverables are set by the Dealer Council.

The Dealer Council does not specifically exclude the franchisor from attending meetings, but the franchisor can attend by invitation of the Chair to join a Franchise Dealer Council meeting to address a specific agenda item. This helps feed or accelerate the views of the franchise dealer network to the senior leadership teams at the franchisor and helps improve the performance of the network for the benefit of the franchise dealer, the franchisor, and the consumer.

Does your brand have a Franchise Dealer Council? VACC can help in establishing a Franchise Dealer Council

If your brand currently has a Franchise Dealer Council and you require the assistance from VACC or the Motor Trades Association of Australia (MTAA) with regards to legislative or regulatory issues please reach out to Michael McKenna at VACC.

If your brand, regardless of how small, does not have a Franchise Dealer Council, VACC and MTAA can assist with establishing such an entity. Right now, as a franchise dealer, you should be seriously considering the benefits of forming an active Franchise Dealer Council for your brands. The Franchising Code (the Code) is currently undergoing a review to measure the performance of certain elements of the current Code. VACC has received great support and contribution from Farm, Industrial, Motorcycle, Truck and Vehicle Service and Repair Franchise Dealers in our industry to form a response to that review. With the Code due to sunset on 1 April 2025, it is important that collective views of your brands are consistent and captured in a formal capacity (i.e., a Dealer Council).

What assistance can VACC and MTAA offer your brand to establish a Franchise Dealer Council?

- In the first instance, assistance from VACC will be a value add to your VACC membership.
- VACC will act as Secretariat for your Franchise Dealer Council for the first year of its operation.
- VACC can provide advice on what legal and formal structures a Franchise Dealer Council should undertake – including the most suitable legal representatives for this purpose.
- The ACCC has made a class exemption which allows eligible businesses to collectively bargain without breaching the competition laws. VACC can assist your brand in applying to the ACCC for a class exemption. It is noted that there is not a single group that represents Farm Dealer, Industrial Machinery, Motorcycle Dealer or Vehicle Service and Repair franchise system listed as having lodged a notice with the ACCC for a [Collective Bargaining Class Exemption](#). This must change.
- VACC can ensure that all legislative obligations under the CCA are followed and adhered to.
- VACC will assist dealer councils with meeting agendas, minutes and other administrative tasks.
- VACC will be the initial point of reference for your franchisor to liaise with a dealer council.
- VACC is happy to host meetings at its state-of-the-art location based at 650 Victoria Street North Melbourne.

There are many good reasons why, as a franchise dealer, your brand should form an active dealer council. The opportunity to work with your manufacturer/distributor/importer for better outcomes for all stakeholders is a key reason, along with the potential to access collectively bargaining.

Please contact me, Michael McKenna via mmckenna@vacc.com.au for a confidential discussion on how VACC can assist with setting up your Franchise Dealer Council.

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^[1] Under Section 5A of the Regulations