

# BULLETIN

## Victorian Automobile Dealers Association



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### Franchise relationships between car manufacturers and new car dealers

Members of the Victorian Automobile Dealers Association (VADA) are advised that VACC has provided a submission in response to the Department of Industry, Innovation and Science inquiry into the relationship between car manufacturers and new car franchised motor vehicle dealers. VADA also met with the Government at a specially convened stakeholder meeting in Canberra on 8 February 2019. You can view the VACC submission by [taking this link](#).

The release of the Draft Regulatory Impact Statement (RIS) is a watershed moment in VACC's pursuit of achieving a specific automotive industry code for the entire automotive retail sector.

#### What industry sectors is the RIS relevant to?

Although this RIS only has its terms of reference set on new car dealers, VACC and its national body, the Motor Car Traders Association (MTAA), are united in their view that while the concerns of new car retailers are of critical importance and should be addressed as a matter of priority, that any solutions must equally apply to commercial vehicle, motorcycle, car rental, automotive repairers, outdoor power-equipment and farm machinery franchised retailers who invariably experience the same concerns, albeit with some subtle differences. VACC will further pursue the issues facing other franchise automotive industry participants in another forum.

#### Background

For the past 10 years, VACC has lobbied Federal Government on the ineffectiveness of the Franchising Code of Conduct (the Code) for new car dealers. The current Franchising Code is not fit-for-purpose when applied to new car dealerships. This is highlighted by the imbalance experienced by new car dealers when operating under, negotiating, being terminated or renewing a franchise agreement.

The sophisticated business models, capital outlays, tooling requirements, and the fact that all vehicle manufacturer operations are controlled by their overseas parent companies, dictates that a separate, transparent and automotive industry specific franchise code be introduced for new car dealers. A code that has specific legislation and punitive measures for breaches must be developed.

#### About the VACC submission

In its submission, VACC has responded to the focus of the 3 core elements of the RIS, namely:

- End of term arrangements contained in dealership agreements
- Ability to recoup capital expenditure during the term of the dealership agreement;
- improving the effectiveness of dispute resolution;

VACC was disappointed that the RIS has not considered glaring issues facing dealers regarding warranty issues or unfair contract terms. Never the less, VACC has taken opportunity to address those issues in its submission.

The VACC submission was compiled using evidence gathered over the years from VADA members who have been unfairly dealt with by manufacturers. Using that evidence portfolio and the data drawn from VADA member surveys from the past year VACC has been able to compile an impressive submission.

VACC thanks the 166 VADA members who responded to the cyber car survey of October 2018 and the 64 VADA members who provided responses to the latest VADA survey of 21 January 2019 titled 'Urgent dealer feedback sought re. Franchise relationships between car manufacturers and new car dealers.

A particular note of thanks to those ex members for whom reform to the Franchising Code will come too late.

### **What has VACC asked for in its submission?**

VACC has put forward a series of reconditions in response to the RIS. Some of those recommendations are:

- VACC Recommends that any new automotive dealer specific franchise code mandates a bilateral 12 month notice of intention to not renew an agreement.
- VACC Recommends a minimum 5-year initial term and 5 years renewals at the end of the original term.
- VACC recommends that any new automotive specific franchising code is clear in its edict that the pre-reporting of sold cars (cyber cars, RDA Cars, called cars) is prohibited, and that any influence or pressure applied by the manufacturer constitutes a clear breach of the Code.
- VACC recommends that future disclosure documents must be direct in their intention regarding capital expenditure and provide reasonable estimates for what expense the franchisee will incur in future capital expenditure outlay.
- VACC Recommends that any new Franchise Code stipulates that reasons for non-renewal or termination of any agreement be advised in writing, including reasons for the decision and what efforts the manufacturer has made to allay the decision within the prescribed time frame.
- VACC recommends that any new automotive specific franchise code should ensure that franchisors are legislatively responsible to ensure the outgoing franchisee is not left with excess stock or parts that are of good order.
- VACC supports a mandated Automotive Franchisee Specific Code.
- VACC does not support a voluntary code or schedule to the current Franchising Code

VACC has offered members of the VADA membership to be available to the Department to provide further case studies highlighting the issues surrounding the current code.

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