

# Bulletin

## Tasmanian Automotive Chamber of Commerce



Reference No. Franchising Code Review/mm-10-23

Date: 02/10/2023

### Retail automotive industry response to 2023 Franchising Code Review

TACC members who operate a business under a franchise arrangement are advised that our national body, the Motor Trades Association of Australia (MTAA), has lodged its submission in reply to the Australian Government's 2023 Franchising Code Review.

Click on the image below to read the MTAA submission.



#### About the review

On 15 August 2023, the Minister for Small Business, The Hon Julie Collins MP announced a comprehensive review of the *Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Cth)* (the Code).

Minister Collins has appointed Dr Michael Schaper to lead the review of the Code.

The Code Review will evaluate previous franchising reforms and bring a number of reviews under one umbrella, including statutory reviews of the Franchise Disclosure Register and specific new car dealership protections contained within Part 5 of the Code. Importantly the review will consider including farm and industrial, motorcycle and truck dealers under Part 5 of the Code.

### **About the MTAA response**

The MTAA response was written with the support of HWL Ebsworth Lawyers (HWLE). MTAA passes its thanks to HWLE partner Mr Evan Stents for his patience and professional guidance in informing the submission.

The MTAA submission makes the following key recommendations to the Code reviewer:

- a. extending the Franchising Code to cover motorcycle, farm machinery, industrial machinery & truck dealers;
- b. extending the protections offered to dealers under the Franchising Code to franchise automotive aftermarket repairers;
- c. that the Franchising Code clearly mandate a service and parts agreement, that relates to the motor vehicle dealer agreement, falls within the protective umbrella of the Franchising Code;
- d. amending the Franchising Code to recognise the right of dealers to be compensated for established goodwill;
- e. giving dealers the right to sell their dealerships and recover their investment in goodwill where a dealer is not offered a new dealer agreement upon the expiration of the term of its current dealer agreement or where the dealer is not offered a renewal of its dealer agreement;
- f. alternatively to (e), dealers be compensated for their established goodwill where a dealer is not offered a new dealer agreement upon the expiration of the term of its current dealer agreement or where the dealer is not offered a renewal of its dealer agreement (and the dealer is not permitted to sell its dealership);
- g. that 'no fault' termination rights provided for by clause 28 of the Franchise Code should not be permitted to apply to dealer agreements;
- h. amending the Franchise Code to make clear that a franchisor cannot include a clause in a dealer agreement that contains words to the effect that the dealer agrees that the term being offered provides a reasonable opportunity for a return on its investment for the purposes of the franchisor complying with clause 46B of the Franchise Code;
- i. that dealers be granted a minimum five year term for their dealer agreements to provide more certainty regarding obtaining a return on their investment;
- j. that the Franchise Code provides protections against unfair contracts and unjust conduct as provided to dealers in New South Wales pursuant to the *Motor Vehicle Dealers and Repairers Act 2013* (NSW) (**MVDR Act**); and
- k. the creation of a specialised Franchise Dispute List in the Federal Circuit Court of Australia that would provide for a quicker and lower cost Court forum for resolving franchise disputes.

TACC thanks members who have provided evidence-based portfolios to support the MTAA submission.

Please feel free to reach out to me, Michael McKenna, via [mmckenna@vacc.cm.au](mailto:mmckenna@vacc.cm.au) with any queries.

**Michael McKenna MBA MBLaw**  
Industry Policy Advisor