

GOVERNMENT REQUEST

STRENGTHEN THE FRANCHISING CODE OF CONDUCT

The automotive retail sector is undergoing significant changes, and franchisees deserve fair treatment amid these shifts. Currently, there is a substantial power imbalance between franchisors and franchisees, which is not adequately addressed by the Franchising Code of Conduct (the Code). Most vehicle manufacturers in Australia are controlled by overseas parent firms that impose stringent investment and operational standards on dealers.

Franchise dealers invest heavily in their businesses, creating jobs and contributing to the economy. It is crucial to protect them from misconduct. The MTAA believes that the Code must be strengthened to enhance protections for small to medium-sized franchisees.

We welcomed the Australian Government's response to Dr. Michael Schaper's Independent Review of the Franchising Code, which recognised the need for a fairer balance between franchisees and franchisors. This includes expanding the Code to cover other automotive retailers, such as motorcycle and truck dealers, and clarifying that service and repair work is included.

RECOMMENDATIONS FOR A STRONGER CODE

Protect goodwill

Reform is needed to safeguard the goodwill of retail automotive franchisees who invest time and money into their businesses.

Address emerging trends

The Code should protect against franchisor opportunism that converts dealers into agents (i.e. franchise new car dealers and agents who no longer own the vehicle stock that is being sold on behalf of the manufacturer) without adequate safeguards. Recent cases involving major manufacturers highlight the urgent need for reform.

Include all dealers

Extend protections under the Code to include all automotive franchise and agency dealers, particularly aftermarket repairers, motorcycle dealers, and others currently without protections.

Revise unfair contract terms

Expand the Unfair Contract Terms (UCT) regime to cover all businesses, not just those classified as "small businesses". Many franchise participants do not meet the current thresholds, and turnover does not equate to profit.

RECOMMENDATIONS



Strengthen the Franchising Code by applying protections to all automotive franchise and agency systems, including aftermarket service providers



Mandate protections for service agreements under the Code's protections



Compensate goodwill by recognising franchisees' rights to compensation for their investments



Introduce minimum agreement terms to ensure new car, motorcycle, truck, and farm machinery dealers have a minimum five-year term for their agreements



Extend UCT and unfair trading prohibitions and apply these prohibitions to all businesses, regardless of size