



MTAA



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4 December 2020

Mr Peter Cully
Head of Division
Small and Family Business
Department of Industry, Science Energy and Resources
10 Binara Street,
Canberra ACT 2600
Submitted via email: peter.cully@industry.gov.au ; SmallBusinessFranchising@industry.gov.au

Dear Mr Cully and Small Business Franchising ,

The [Motor Trades Association of Australia Limited](http://www.mtaa.com.au) (MTAA) appreciates the opportunity to make this submission to current consultations on the draft legislation for proposed changes to the Franchising Code. **MTAA** is a federation of various state and territory motor trades associations and automobile chambers of commerce. Membership of these organisations, also entitles businesses to simultaneous membership of specific national automotive industry committees, which operates under the MTAA umbrella.

MTAA represents, and is the national voice of, the 69,365 automobile sector businesses which employ over 379,000 Australians and contribute around \$37.1 billion to the Australian economy equating to about 2.2% of GDP. MTAA member constituents include automotive retail, service, maintenance, repair, dismantling recycling and associated businesses that provide essential services to a growing Australian fleet fast approaching 20 million vehicles.

Some automotive sector industries are significant participants in franchising including new car and motorcycle retailing, farm and industrial machinery and mechanical and vehicle body repair services.

This submission supports previous submissions and input provided by the MTAA into current and previous inquiries into franchising.

Please contact Mr Richard Dudley, CEO MTAA, if any further information or clarity is required regarding this submission at richard.dudley@mtaa.com.au and / or 0412146828.

Yours Sincerely,

Richard Dudley
CEO MTAA LIMITED

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Summary

- The Motor Trades Association of Australia MTAA provides this submission to specifically address the proposed changes to the Franchising Code of Conduct expressed in the exposure draft of legislation and accompanying reference materials.

Entering into a franchise agreement

A new Key Facts Sheet

- MTAA supports the detailed version (Option 2) of the mockups presented of the Key Facts Sheet due to the complexities of car manufacturer/dealer agreements including operations manuals and procedures usually linked to an overarching dealer agreement.
- Options 1 and 3 are considered too high level to be practical and in the view of MTAA supplies opportunity for a lack of transparency which undermines the purpose of the Key Facts Sheet.
- MTAA suggests there should also be increased emphasis on the need to consider and reach agreement on the payment of compensation including goodwill as part of non-renewal or termination arrangements.
- MTAA also suggests that for a key facts sheet for car dealer agreements, reference should also be given to the need for an agreement on arrangements for stock, tools, equipment, and other areas, in case of nonrenewal, termination etc.
- It is further suggested reference be provided to the expectations of Government in announced principles guiding dealer agreements.

Changes to Disclosure Document Requirements

- MTAA agrees with the proposed changes.
- It is suggested that explicit reference be made that disclosure documents must include any documentation which the franchise agreement refers. In the case of car dealer agreements this would include operations, procedures or any other manuals or documents that are referred to in the franchise agreement by statement of implication.
- It is MTAA's experience that in some car retail franchise agreements the real issues of constraint contention and potential dispute are in these supplementary documents to the main franchise agreement.

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Significant Capital Expenditure

- MTAA agrees with the proposed changes.

Supplier Rebates

- MTAA agrees with the proposed changes.

Changes to the Information Statement

- MTAA agrees with the proposed changes.

Leasing of Premises

- MTAA agrees with the proposed changes.

Operating a Franchise

Restriction on Passing on Legal Costs

- MTAA agrees with the proposed changes.

Retrospective Variation

- MTAA agrees with the proposed changes.

Marketing and Cooperative Funds

- MTAA agrees with the proposed changes.
- MTAA suggests consideration be given to expanding the provisions to include 'any other fund' where the franchisee is required under the terms of the franchising agreement to supply funds to the franchisor. MTAA is aware of corporate social responsibility funds, foundation funds which should be captured as well as the more recognizable marketing and cooperative funds.

Ending the Franchise Relationship

Cooling Off

- MTAA agrees with the proposed changes.

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Early exit

- MTAA agrees with the proposed changes.

Termination

- MTAA agrees with the proposed changes.

Restraints of trade

- MTAA agrees with the proposed changes.

Dispute Resolution

- MTAA agrees with the proposed changes as a minimum.
- It is suggested there is still room for improvement to the proposed changes including:
 - Inclusion of a graduated response following the Dairy Code but with clearer timeframes and steps. These may include:
 - Notification of a dispute unable to be resolved through party negotiation leading to:
 - Mediation following the new centralized arrangements with the ASBFEO Office and
 - Ability to have independent binding determination and or arbitration in the event mediation fails.
- Timeframes for the undertaking of mediation are critical and it is suggested some consideration should be given to stipulating smallest timeframes for mediation to occur and concluded. If these cannot be provided in Commonwealth legislation, then potentially at a minimum guidance material be provided on expectations for timeframes.
- MTAA understands the complexities and constraints on the Commonwealth about prescribing dispute resolution processes but every effort should be made to detail the expectations that these are contained in agreements in accord with the revitalised franchising code.

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Application and commencement dates

- MTAA agrees with the proposed changes.
- MTAA cautions that even a short six-month delay to the introduction of the proposed changes may not improve the potential for some franchisors to 'fast-track' agreement preparation and implementation as a means of avoiding increased requirements. The regulator and government should be alive to this issue and look to intervene if such cases are brought to its attention.
- MTAA strongly suggests, and urges, the alignment of associated or relevant laws and regulations which are intended to be introduced and as already announced. For example, planned changes to Unfair Contract Terms and Conditions and the announcement by the ACCC of a new class exemption for collective bargaining for franchisees must be in place or enacted simultaneously to the proposed changes to the Franchise Code of Conduct.

Regulatory Framework – Doubling Penalties

- MTAA agrees with the proposed changes as a minimum.
- However, MTAA preference stays for more substantial penalties to be applied as indicated by the Australian Competition and Consumer Commission in submissions to the Franchising Taskforce.
- MTAA is still concerned that even a doubling of penalties will unlikely be an adequate deterrent to large, internationally headquartered, multinational companies who do not follow requirements or are prepared to deliberately breach provisions for example when exiting the Australian market as a 'necessary cost'.
- While MTAA understands the need to carefully balance regulatory reform so that franchising still is a significant contributor to the Australian economy, significant penalties for non-compliance should not be, and has not been, a problem for companies that abide by compliance requirements

MTAA Secretariat December 2020

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