



AUSTRALIAN  
AUTOMOTIVE  
DEALER  
ASSOCIATION

# RESPONSE TO THE PRODUCTIVITY COMMISSION'S NATIONAL COMPETITION POLICY ANALYSIS

MAY 2024



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# FOREWORD

The Australian Automotive Dealer Association (AADA) welcomes the opportunity to make a submission to the Productivity Commission's National Competition Policy Analysis Paper.

The AADA is the peak industry advocacy body exclusively representing franchised new car and truck Dealers in Australia.

There are almost 3,200 new car Dealers in Australia which range from family-owned small businesses to larger and publicly owned businesses operating in regional Australia and capital cities across the country. Franchised new car Dealers employ more than 61,000 people directly with a total economic contribution of over \$18.6 billion.

Each year, franchised new car Dealers sell more than 1.5 million new and used vehicles, complete around 48 million individual service, repair and maintenance jobs and facilitate 476,978 finance contracts. In 2023, Dealers employed around 5,530 apprentices and the commitment to training investment was \$31 million. [Dealers make a tax and duty contribution of \\$6.8 billion annually](#) and often make significant contributions to their local economies through sponsorships, advertising and indirect contributions.

The AADA welcomes the Productivity Commission's exploration of the potential impacts of policy reforms on Australia's national economy, and how different segments of the economy are likely to be affected, including consumers and households, relevant industries and sectors (including small businesses), and the government sector.

The AADA understands that this will form part of the two year competition review currently being undertaken by Treasury with a focus on the government's priorities for modernising the Australian economy.

We urge a consideration of ongoing limitations on competition, potential competition reforms and implications for our industry as a result of changing distribution models and significant recent policy developments.

The Australian automotive new car retailing industry can be broadly defined into two categories. Vehicle manufacturers or OEMs, which are largely multinational businesses which supply vehicles into the Australian market. Car Dealers, which are generally Australian privately owned or family businesses who enter franchise agreements to purchase vehicles from these manufacturers to retail to Australian consumers. This system is known as the franchising model and has underpinned the way in which Australians are able to buy new cars for more than a century.

All parties to these franchising agreements must abide by the Franchising Code of Conduct (the Code). The franchising code aims to address problems that arise because of the power imbalance between franchisors and franchisees.

The automotive franchises are distinct from typical franchise relationships due to the size of the investment Dealers are required to make, and the significant size and power of global automotive manufactures. While a unique set of protections exist for car Dealers we believe a number of issues remain which effect fair dealing in the industry.

**James Voortman**  
Chief Executive Officer

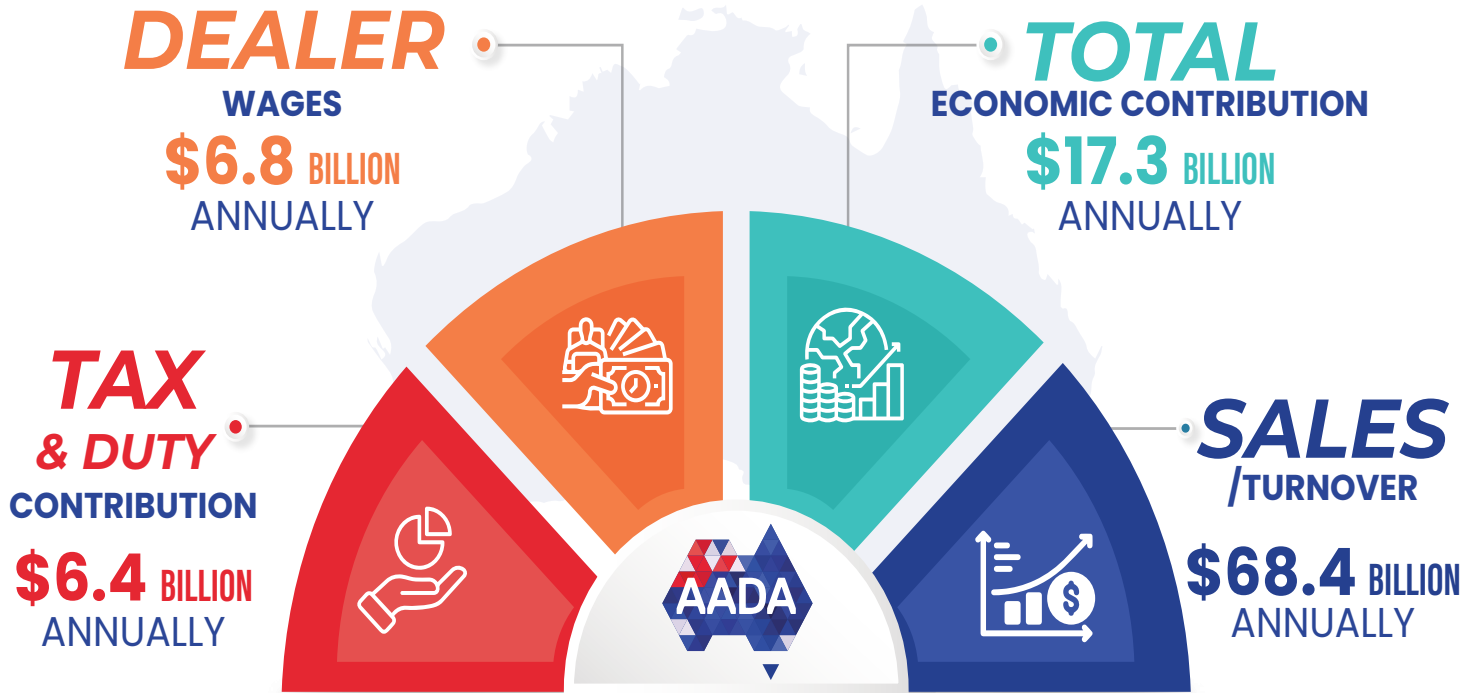




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# DEALERNOMICS

CONTRIBUTION OF  
NEW CAR DEALERS TO  
AUSTRALIAN ECONOMY



DEALER EMPLOYEES

**51,714**



APPRENTICES

**5,115**



TRAINING  
INVESTMENT

**\$30 MILLION**  
ANNUALLY



WORKSHOP JOBS  
COMPLETED

**OVER  
44 MILLION**  
ANNUALLY



CUSTOMER FINANCE  
CONTRACTS  
FACILITATED

**441,129**  
ANNUALLY



NUMBER OF  
DEALERSHIPS

**3,176**  
TOTAL



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# INSECURITY OF TENURE

Insecurity of tenure for franchised new car Dealers is demonstrated in the term lengths of the franchise agreements provided to Dealers. These agreements can be given with a term as short as one year. Due to the significant scale of investment required to open and operate an automotive franchise, franchisors should be required to have minimum agreement terms.

While a Dealer may feel reluctant to enter into an agreement of only one year, they are often placed in a position of disadvantage in the negotiation process as they have invested significant capital and resources over a long period of time into a brand and have an obligation to their employees and customers. As such, Dealers are placed in a position where they must accept the short agreement term or lose the brand altogether.

Insecurity of tenure is compounded by the sweeping powers of non-renewal and termination available to franchisors. Almost every Dealer agreement in Australia has a clause giving the OEM power to issue a non-renewal without cause notice. While the AADA acknowledges that most franchise agreements have a limited term, there is an implied renewal in these agreements so long as the franchisee is meeting their performance obligations. While this arrangement works well in many cases, when the franchisee-franchisor relation sours or the franchisor wants to cull franchisees from its network, franchisees can often be left with no recourse to challenge a non-renewal decision.

# GOODWILL

The AADA considers that the Franchising Code is ineffectual in protecting the goodwill that Dealers invest in when buying and developing their dealership businesses and is in need of reform in this regard.

Goodwill is a well-established source of value in the automotive retail industry. Apart from the capital investment Dealers make in their business, goodwill is the other significant investment Dealers make over time. Dealers pay for goodwill when purchasing a dealership from another Dealer and they also make ongoing financial investments in their goodwill by developing their dealership business including their customer relationships.

The current lack of recognition of goodwill once a franchise agreement ends enables franchisor opportunism, in which the franchisor exploits its rights of termination and non-renewal to pressure a franchisee to conform with its wishes or face the potential loss of their franchise and the goodwill built up in their business.

The AADA considers that there needs to be further exploration of potential reforms to recognise the goodwill franchisees build up in their businesses, particularly in situations where a franchisor has used a non-renewal or termination power to take control of a franchisees' business.

# UNFAIR CONTRACT TERMS AND TRADE PRACTICES

The AADA is encouraged by and welcomes the recent changes to Unfair Contract Terms (UCT) laws which took effect last year, and recent moves to explore implementing an Unfair Trading Practices (UTP) regime. However, due to restrictions on employee count, many Dealers are not covered by the UCT and proposed UTP protections.

Furthermore, in New South Wales, the Motor Dealers and Repairers Act 2013 ensures that all Dealers are protected from unfair terms in contracts and unjust conduct in their dealings with manufacturers.

So as an industry, Dealers across Australia are operating under a patchwork approach to UCT protections and any proposed UTP protections, whereby coverage is determined by the size of your workforce and the location of your business. For example, a dealership employing 101 people will not be protected against a Fortune 100 company which generates revenues of hundreds of Billions of Dollars and employs half a million people. Or another example is where a Dealer operating in Wodonga will not enjoy UCT protections while a Dealer of the same size in Albury will be protected.

Given the power imbalance in the franchising sector, UCT and UTP protections should be made available to all franchisees.

Enabling Dealer access to these protections will strengthen the ability for Dealers to negotiate with their franchisor and help bring Australia's competition regulations in line with community expectations and other OECD countries.

Further detail on the AADA's calls for expanded protections can be found in our [Response to Protecting Consumers from Unfair Trading Practices Consultation RIS](#) and [Response to the Exposure Draft to Strengthen Protections Against Unfair Contract Terms](#) submissions.

# GENERAL COMMENTS ON THE TERMS OF REFERENCE

## Productivity, Prices and Employment

Franchised new car Dealers are dynamic and agile businesses with a deep understanding of the markets they operate in and the business of retailing vehicles to consumers. Intra-brand competition, excellent customer relationships and the ability of Dealers to make independent decisions about their businesses drive productivity within the sector.

Recent policy changes alongside potential changes in the business distribution model which Dealers operate, has the potential to drastically alter the way in which the new car industry in Australia works, potentially to the detriment of consumers. Further detail regarding these changes is provided.

## New Vehicle Efficiency Standard

The NVES requires manufacturers to dramatically reduce their fleet-wide emissions over a very short period of time however, it is Australia's 3,179 new car dealerships which will carry the commercial risk if this policy has an adverse outcome for the industry.

The AADA has concerns with the point at which compliance with the NVES will be expected to be met, described as "the point at which a vehicle is entered onto the RAV which is a register of vehicles imported and manufactured in Australia". Without change, this key element of the NVES could have a significant negative impact on Australia's new car Dealers.

Under the current franchise model, the manufacturer imports vehicles which are then wholesaled to Australian Dealers to be sold to consumers. Manufacturers enjoy superior bargaining power in comparison to their Dealers through the provision of one-sided, standard-form contracts, offered on a take it or leave it basis. Alongside this, is the extensive powers manufacturers have to bring franchise agreements to an abrupt end using non-renewal and termination powers.

Dealers also make significant investments in their businesses which can often lead to a dependency on the manufacturer to grant the ongoing right to run the franchise. With this dependency, the Dealer loses their bargaining power, and the more sunk investment the Dealer commits, the more vulnerable they are.

<sup>1</sup>Cleaner, Cheaper to Run Cars: The Australian New Vehicle Efficiency Standard, Impact Analysis, March 2024



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If the NVES is implemented as described above where the manufacturer can meet its compliance obligation by importing the mix of vehicles it determines to be appropriate to meet its obligations, Dealers could be on the receiving end of vehicles that are not suitable for their consumers and be unable to turnover stock. Manufacturers over supplying difficult to sell cars is a common occurrence in the industry and has been happening for many years. Manufacturers are largely shielded from poor product planning choices by having Dealers at their disposal on which to unload vehicles which have not enjoyed strong market demand. The NVES legislation takes this a step further however. Vehicles which do not meet the efficiency standards will become almost impossible for Dealers to sell, no matter how creative their marketing or large their discount. This leaves Dealers at risk of having to accept an unfavourable vehicle mix in order for the manufacturer to meet their CO2 target. This could damage the competitiveness of the market and lead to poor outcomes for consumers.

The AADA proposes that making the point of compliance at the point of sale will avoid the unintended consequences detailed above. This can be done through a mandatory reporting obligation on the manufacturer when a vehicle is first registered in each state or territory.

### *Changing Distribution Models*

Some automotive businesses are beginning to change their vehicle sales and distribution models. One which has emerged, known as the agency model, is where the OEM converts existing Dealers into agents who act on their behalf and are remunerated through a fixed fee paid to the dealership for each vehicle that is delivered. Several OEMs are now distributing vehicles through a fixed-price agency model in Australia, however anecdotal evidence within the industry suggests that some brands are reconsidering their agency plans.

While this distribution model hasn't saturated the industry, it still represents a significant risk for Dealers if their brand decided to pursue this change.

The move to an agency model often results in the manufacturer leveraging the franchisees' sunk investment in capital, time and effort, allowing it to completely take over or assert more control of the business. The value of the franchisees' business is significantly diminished by the erosion of goodwill which has been appropriated for no cost by the franchisor.

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Under the traditional dealership model, Dealers take on the lion's share of the risk, but are also able to exercise control of their businesses by making key decisions such as the ordering, marketing and pricing of products. When moving to an agency model, manufacturers take responsibility for the marketing, administration, ownership of vehicle stock, insurance and transport costs, and technology investments/improvements. As a result of this, agents have little to no ability to influence vehicle sales outcomes and are less agile in their operations.

The agency model also results in consumer detriment as intra-brand competition is completely eliminated. Vehicles are sold at a fixed price across the network and that price is exclusively set by the OEM. Consumers looking for a particular make and model can no longer shop for a better deal for those brands that have moved to agency.

Examples of this are, extended timeframes for consumers to receive pricing information on vehicles or amend the contract to either add on or remove accessories or modify the finance contract.

The AADA has always maintained that manufacturers have the right to change their businesses distribution model as they see fit. However, we consider that there needs to be guidelines on how they transition their Dealers to agency and how agency models are allowed to operate. We urge the consideration of other jurisdictions and developing policy requirements for the emergence of agency models in the automotive sector.

## CONCLUSION

We would be happy to meet with you to discuss our submission and participate in any further consultation. If you require further information or clarification in respect of any matters raised, please do not hesitate to contact me.

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