

25 August 2021

Attention - Simon Arnold
Director - Justice | Small and Family Business
Markets Group
The Treasury Building
Langton Crescent
Parkes ACT 2600

Email: simon.arnold@treasury.gov.au

Dear Mr Arnold,

AADA SUBMISSION: PROPOSED FRANCHISING CODE PENALTY INCREASES

Introduction

The AADA welcomes the proposal to increase penalties for breaches of the Franchising Code. Recent amendments to the Code, including the addition of Part 5 which deals with New Vehicle Dealership Agreements, were introduced in recognition of the significant power imbalance that exists between franchisees and franchisors. The effectiveness of these amendments is dependent upon penalties that serve as a genuine deterrent for companies whose turnover is often measured in the billions of dollars.

For this reason, the AADA is fully supportive of the proposed penalty increases, as outlined in the draft Explanatory Statement. Penalties which recognise the harm inflicted upon franchisees by breaches of the Code are fair, reasonable and proportionate given the size of the franchisors concerned and the obligation for them to act in good faith.

Comments on the Proposed Increased Penalties by Clause (with reference to the draft table summary of proposed changes)

As noted above, the AADA fully agrees with and supports the proposed changes however offers comment on the following clauses:

- **Clause 6 (1) The obligation to act in good faith.**
Many franchisors in the automotive franchising sector have strong and mutually beneficial relationships with their franchisee Dealers based on respect and an understanding of the role each party plays. None of the amendments to the Code or the increased penalties will negatively affect them, however the overarching principle of being required to act in good faith places an obligation on both parties to do so and the increased penalty for breach will strongly discourage those seeking to exploit the power imbalance in the relationship unfairly.
- **Clause 18 (1) The Franchisor must notify the franchisee re end of term arrangements.**
Given the investment and employment levels typically incurred by a Dealer, the six-month notification period is dangerously short and if exercised, provides Dealers very little time to get their affairs in order, communicate changes to their customers and potentially re-structure their business. The AADA believe that the proposed 600-point penalty is the minimum that should be considered for breaching this clause.

Conclusion

The proposed changes to the penalties are represent a measured and appropriate update and align well with the intent of the amendments to the Franchising Code. The AADA fully supports the changes and looks forward to them being implemented.

Please do not hesitate to contact me on **E:** jvoortman@aada.asn.au or
M: 61 452 535 696 if you have any questions or wish to discuss further.

Yours sincerely,



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