

Wednesday, 29 July 2020

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

eec.sen@aph.gov.au

Dear Senators and Committee Secretary,

I provide the following submission to your enquiry into The General Motors Holden Operations in Australia.

1. Personal Details

I have personally operated our Holden Dealership in Inverell NSW for 20 years, having started here pumping fuel after school in 1977. I was offered an apprenticeship in 1981 and worked my way up through the company, eventually becoming a Shareholder in 1997.

However, this family business was established in 1912 and became a General Motors Dealer in 1928. We were appointed an inaugural Holden Dealer in 1948. This Dealership now employs 32 people and pumps in excess of \$1.7m in wages and salaries alone into the local economy per year. That is without the many outside services, suppliers and contractors we engage to effectively run our business.

2. Request for Confidential Treatment of this submission-NOT APPLICABLE

Normally, most submissions like this would come with a request for confidentiality. However, I am on record as taking this fight right up to General Motors-Holden. This is not about dollars for me, it's about values and principles. I am prepared to put everything on record and I also make myself personally fully available to any Senate enquiry or to provide any further information the Senate enquiry may need.

I am one of only 12 mostly smaller dealers across the country that have refused to take Holden's offer and are prepared to go to litigation to seek fairness. I have told both Holden and the other 11 dealers that I will not sell any of the remaining dealers out for my own financial gain. This is about making a stand against injustice from a multi-national giant. A David and Goliath battle that I am not at all frightened of fighting.

3. Submission Items

I wish to make submissions in relation to the following within the terms of reference:

- a. *the impacts of that decision on:*
 - i. *the Holden dealership network (small and medium sized businesses and family enterprises, and their employees),*
 - ii. *owners of Holden vehicles (including service and repair);*
 - iii. *the effects on the local communities where Holden Dealerships have been present for generations.*
- b. *the role of the Franchise Code and the Government's proposed dealership amendments to the Franchise Code;*
- c. *Government or other policy settings on manufacturing, research and development, business support and transition, and employee support; and*

I was travelling en-route to New Zealand when Holden released the news to Dealers. The media and public found out at the same time. There was no prior discussions or suggestions from Holden that they were planning this.

When we were advised that we would be appointed a Dealer Transition Manager (DTM) and that Holden would be making a settlement with all Dealers, we were heartened that at least there was going to be communication and compensation. That feeling proved very short-lived.

From the very first meeting with our terribly unprepared and inexperienced DTM, it was evident that there was to be no discussion or negotiation. Holden's offer was fixed and final. This was extremely unfair to this Dealership as we are and have always been a "benchmark" Dealer. It was clear that there was absolutely no consideration of our past or present performance. Also, right from the start Holden had indicated there was to be a deadline for the first and final offer.

I indicated very early in my discussions with Holden that I would not be accepting their offer until we could sit down and discuss it. I was told numerous times that the offer was "not negotiable." I also informed my staff of this and guaranteed them that their jobs were still safe regardless because someone had to stand up for the Dealers that for one reason or another could not stand up for themselves.

The stress this situation has brought on myself personally, my wonderful staff (with an average length of service in excess of 11 years), my business partner, our families and our loyal customers is immeasurable. Nothing lasts forever, I understand that. However, when a relationship of any sort, let alone a business relationship of almost 100 years ends, any reasonable person could expect that there would be at least an attempt at an amicable settlement. This is precisely what has not happened or even been offered or attempted here.

I have listed below the reasons GM-Holden's offer was considered unfair and what is needed going forward to prevent the same thing happening to small and medium businesses right across the country;

1. **Security of Tenure** – A minimum five year-term for Dealer Agreements and, a link between capital investment and the term of the agreement (which will allow Dealers to recover their mandated investments).
2. **Unfair Contract Terms** – Extend Unfair Contract Term legislation to all Motor Dealer agreements (franchise or otherwise)
3. **Fairness** – Include a requirement for Fairness in the Code. Unconscionable conduct is proving too difficult to regulate.
4. **Binding Arbitration** – Require binding arbitration in the Code to settle disputes.
5. **Stock on Termination** – Require an obligation on Manufacturers to buy back stock in the event of non-renewal. Including aged stock.
6. **Warranty reimbursement** – Protections for Dealers against unfair warranty claw backs.
7. **Compensation** – A principles-based Industry Standard for Compensation from OEM's looking to withdraw from Australia, rationalize their networks or, change their distribution models. Such compensation must account for the losses and or damages that a Dealer suffers when its dealer agreement comes to an end. These elements include the:
 - a. **foregone revenue** in not being permitted to perform the balance of the dealer agreement or any renewal term contained in the agreement.
The revenue a dealer derives from performing its dealer agreement can be classified into:
 1. Direct Revenue Streams, which covers revenue from:
 - a. The sale of vehicles and parts; and
 - b. performing service and repairs on vehicles;
 2. Indirect Revenue Streams, which include the:
 - a. trade-ins on vehicles;
 - b. sale of used vehicles;
 - c. sale of finance and insurance;
 3. sale of aftermarket products, services and accessories; and
 - b. **unrecovered expenditure** incurred in:
 - i. acquiring the goodwill in dealership business; and/or
 - ii. building or refurbishing showroom and/or service facilities;
 - c. **loss of opportunity** in selling the goodwill that the Dealer has maintained or built up in the dealership business; and
 - d. **consequential losses** such as:
 - i. the cost of removing a manufacturer's signage and special fixtures; and
 - ii. redundancy costs.
8. **Distribution Models** – A definition of vehicle distribution in the regulations which capture future distribution models, including agency models.
9. **New end of term obligations** – 12-month notice and provision of reason for non-renewal to apply to all agreements - not just those of 12 months and over.
10. **Dispute Resolution** – Obligation for the franchisor to accede to the franchisees' request for multi-party dispute resolution. The issue of breaching confidentiality clauses in Dealer Agreements by pursuing multi-party dispute resolution needs to be addressed.
11. **Penalties** – Appropriate penalties for breaches of the regulations

GM Holden and General Motors applied unconscionable pressure on me to accept their unfair offer. However, as stated I have resisted this pressure and will do so even if I am the last one standing!

The terms of the Transition and Release Deed, the Holden Service Operations Agreement and the associated policies and procedures are manifestly unfair.

On the final days when most Holden Dealers signed, they were in the position that they felt they could not risk the timeline or outcome of litigation and had no other financial survival option but to

sign away their rights. They had no other choice but to sign under duress. Please accept this as an official complaint to the Government. Also please note, it is for the Dealers that were forced into this situation that I maintain my stance. This is why I am standing up to the bully. It is NOT about money for me. It's about something much more. This is precisely what GM-Holden do not yet understand.

Perhaps I can help the Senate understand a little more by explaining it like this;

When the last manned lighthouse in Scotland was converted to automatic, the Lighthouse Keeper was asked how he felt. Through his well salted, old grey beard in the thickest of Scottish accents replied thus. "The problem with today's world is everything is costed, nothing is valued."

Well, I put a value on 94 years of loyal service to a company. I put a value on 32 loyal staff. I put a value on the blood, sweat and tears of my 39 years here. I put a value on the Holden brand in my community. I put a value on our premises. I put a value on respect and principles. I ask the Senate to assist this business, all the Holden Dealers that were forced into accepting an unfair offer, future Dealers and businesses that may find themselves in the same position to make the balance of power fairer between the franchisor and the franchisee.

Yours Sincerely

Mark Palmer

Dealer Principal
Gaukroger Sales Pty Ltd

