



20 May 2020

Senator Louise Pratt
Chair
Senator the Hon James McGrath
Deputy Chair
The Senate Education and Employment References Committee
Parliament House
CANBERRA ACT 2600

Email: eec.sen@aph.gov.au

Dear Senator Pratt and Senator McGrath,

Thank you for your letter seeking an update on the progress of the retirement of the Holden brand, the wind-down of design and engineering operations, and transition arrangements for employees and dealers. General Motors Holden Australia NSC Pty Ltd (Holden) is pleased to provide the following response to Senators of the Committee. Holden will also lodge a submission to the Committee by 25 June.

Please also find at the end of this letter, per your request, a copy of the letter which we sent on 13 March to select Members and Senators representing areas where Holden dealerships are located.

Employee Transition

Since the 17 February announcement, Holden has been working through the transition of approximately 550 employees in new vehicle sales operations and Design and Engineering, who will be leaving Holden throughout the year. Some people in the Design and Engineering operations have been offered relocation opportunities within General Motors (GM). Approximately 200 people will remain in the business to manage the ongoing aftersales operations, as Holden will continue to provide service and repair support to its customers throughout Australia and New Zealand for at least the next ten years.

Employees who are leaving Holden are receiving financial packages, as well as employment transition support including health and well-being counselling, financial counselling and outplacement support. This transitional assistance has been underway since March. Approximately 165 impacted employees have left the business to date.

The majority of the Engineering group will finish their work by the end of June, and the Proving Ground operations at Lang Lang will finish by the end of August, followed by decommissioning of GM intellectual property at the facility. We are in the early stages of a potential sale process of the Proving Ground.

The Design operations at Fishermans Bend are now in the process of being wound down and decommissioning of the Design Centre will be complete by the end of September. Most people in Design will have finished their work by the end of June.

Covid-19 Impact

Covid-19 has impacted all of Holden's operations. Throughout the Covid-19 situation, the health and safety of Holden employees has been our highest priority, with appropriate measures to look after employees being implemented across all Holden facilities at Fishermans Bend, Dandenong and Lang Lang. All Holden employees who are able to work at home have been doing so and Holden has promoted the Commonwealth Government's Coronavirus information and COVIDSafe apps to all its employees. Holden has not had any recorded instances of Covid-19 infections in its workforce to date.

Covid-19 particularly impacted the aftersales business during April and May and adjustments were promptly made to that part of the business. These adjustments included a restructure of work shifts at the service parts National Distribution Centre to help cope with distancing requirements, impacts if employees were unable to work, and the economic downturn.

Holden appreciates that the Commonwealth and State governments allowed vehicle service and repair operations to remain open throughout the crisis, as this is an important function which supports Australians logistically and economically. Even with dealerships remaining open, there was inevitably still a significant downturn in the aftersales area of the business as customers complied with stay-at-home restrictions.

As has been widely communicated, Covid-19 has placed significant liquidity pressure on businesses. The global automotive industry has been significantly impacted, with the idling of factories and substantial disruption of supply chains. Very careful financial management and thorough oversight of all expenses across the whole Holden operations have been critical factors in managing the Holden business through the Covid-19 crisis. Holden is not a recipient of JobKeeper payments.

GM has developed global protocols governing the return to the workplace, which will be adapted and implemented in Australia accordingly. Holden is also utilising the online tools and advice provided by the Australian Government for Covid-19 and return to the workplace.

Dealer Transition

Holden has continued to work through the transition with its dealers since the announcement on 17 February. Holden formed a team of Dealer Transition Managers who have met with all dealers on an individual basis, with Holden acting in good faith throughout the process. The Transition Managers have been working with dealers

individually since the end of February to provide details of the Transition Support Program (TSP) Holden is offering to dealers.

We are concerned that our offer has been the subject of much malign and misinformed criticism in the public domain. This letter provides facts which have been regularly misconstrued in various media articles. We firmly believe in the fairness of our offer and we have been careful to conduct talks with each dealer in good faith since February.

The TSP takes into account the financial impact on dealers' businesses of the loss of new vehicle sales, as well as unamortized capital investment and signage. The compensation formula is consistent for all dealers and was designed to be favorable by looking back three years to 2017 when Holden sales and the overall industry were stronger. When assessed against past sales results and future forecasts for Holden and the wider industry at the time the offers were formulated, Holden believes its offer is entirely fair and reasonable. The offers were formulated prior to the onset of the Covid-19 pandemic. Contrary to regrettable allegations we have seen, we have been careful not to let the Covid-19 crisis affect our talks with dealers and we have not reduced the financial offers to dealers.

As part of the transition offer, all Holden dealers are given the opportunity to continue to maintain an extensive customer base to service Holden vehicles and provide spare parts and accessories. It is important to emphasize, due to deliberate misrepresentation of Holden's position in the automotive news media, that even if a dealer does not accept our offer, there are still two and a half years under the current dealer agreement during which dealers can continue to be authorized Holden service and repair operations. If dealers accept the TSP, they have the opportunity to continue as authorized Holden Service Outlets through to the end of 2025 and at the end of that time, a new agreement for an additional five years could potentially be negotiated.

It is important to recognise that in line with the Franchise Code, the dealers do not have an automatic right to have their dealer agreement renewed. Holden's five-year agreements are at the longer end of the industry average. The Federal Chamber of Automotive Industries has advised us that dealer agreements are typically three to five years and some are less than that. As it has previously announced, Holden will be providing service, repair, warranty and any possible recall action support to its customers for at least the next ten years.

Like most Australian businesses operating through the Covid-19 pandemic, Holden has had to very carefully steer the overall business through the height of the crisis in order to ensure appropriate governance and protection of as many jobs as possible. Holden wrote to dealers on 16 April advising of some adjustments to the timing of payment instalments of the TSP offer but no changes to the amount of compensation offered, of which each dealer has been advised since February/March. Holden asked for dealers to provide a response to the TSP offer by the end of May to provide clarity for financial planning across the whole business.

Within this same timeframe since February, almost all of Holden's dealers in New Zealand have considered, reviewed, negotiated and accepted the New Zealand TSP offer, which is equally fair as the offer in Australia and is calculated with the same

methodology used for the Australian TSP. Further, we have not rushed this important process and built in ample time to ensure that all special dealer circumstances were considered. The timeframe to consider the TSP is consistent with or longer than on previous occasions where GM has exited its brands from markets, such as Europe and South Africa.

Our discussions with dealers have not been a one-way street. Ever since the individual TSP discussions commenced in late February, the Dealer Transition Managers have been asking dealers to provide information about capital investment costs and other special circumstances in order for Holden to understand and negotiate suitable additional compensation specific to those dealers. The process has been lengthy in many cases and Holden willingly extended the timeframe for supply of information several times. The necessary information has now been provided by most dealers. Where applicable, appraisals of facilities were conducted by real estate firm CBRE.

Following the assessment of applicable capital costs, nearly all dealers have now been sent Transition and Release Agreements (TARAs), which will document the compensation payments and transition arrangements (if accepted), when signed. The remainder will receive TARAs applicable to their individual circumstances within the next week. In all cases, dealers will have at least 15 business days to review and take advice on their TARA (and the Holden Service Operations Agreement), even where that takes them beyond 31 May.

Holden has at all times sought to act in good faith and has had courteous and respectful discussions with dealers throughout this process.

While the individual dealer dialogues were underway, Holden received a letter from HWL Ebsworth ("HWLE") on behalf of Holden's Dealer Council, with a request to meet. Before a meeting could be scheduled, there were concerns regarding confidentiality, conflicts of interest and the potential exposure arising from unauthorised collective negotiations by competitors, which first needed to be resolved. HWLE advised that it did not consider there to be such concerns, so in the interests of progressing a discussion, a meeting occurred on 16 April between some dealers, Holden, its legal representatives and HWLE.

At that meeting HWLE made a number of claims and allegations and put forward an alternative compensation proposal which it had developed with KPMG. Holden received a letter from HWLE on 17 April setting out in detail these claims, allegations and its compensation proposal. Holden then immediately engaged financial services firm PwC to work with KPMG to thoroughly understand and review the assumptions and bases for KPMG's analysis.

After careful consideration of HWLE's letter, including with the benefit of PwC's analysis, Holden's view was that its original compensation offer to dealers was entirely fair. It should be noted that the PwC analysis actually found that a lesser compensation amount would be justified. Again, Holden has chosen to maintain its original offer despite the PwC analysis and the continued significant decline in new car sales in 2020. Holden communicated its response to HWLE and dealers on 5 May.

More recently, Holden has been in communication with HWLE regarding a dispute resolution notice provided by HWLE. Holden will continue its efforts to address issues raised by HWLE and the dealers, and to endeavour to reach a resolution with dealers particularly as Holden wishes to continue its ongoing business relationship with them. Of course, if Holden is not able to reach a resolution with any dealer, Holden is fully prepared to vigorously defend itself and the fair and reasonable offer it has provided.

As these matters had already appeared in Australian automotive media on several occasions without any effort to seek our views or input, Holden issued an explanatory media statement after responding to HWLE, in the following terms:

5 May 2020

GM HOLDEN RESPONSE TO HWL EBSWORTH CLAIM

GM Holden has today responded to a proposal from law firm HWL Ebsworth (HWLE) regarding compensation of dealers impacted by the decision to wind down Holden sales in Australia.

Detailed analysis has been undertaken by PricewaterhouseCoopers (PwC) and Norton Rose Fulbright and a response provided to HWLE.

We consider that Holden's Transition Support Program (TSP) is more than fair and reasonable, even before the devastating impact of COVID-19 on the economy and industry.

The HWLE proposal made a number of inaccurate claims, assumptions and costs allocations. It also made baseless allegations of unconscionable and misleading conduct which are plainly wrong and unsupported by fact or law. These allegations are categorically rejected by GM Holden.

Compensation

GM Holden has always considered that its Transition Support Program (TSP) for dealers is fair and reasonable.

The compensation for new vehicle sales was calculated using three fiscal years, 2017 – 2019, and includes highly profitable Commodore units that were produced in Australia. It includes all facets of new vehicle profitability and amounts to \$1500 per car. This compensation is over four times what the average dealer made in the new vehicle department over this same timeframe.

HWLE has claimed that such amount should be \$6110. The PwC analysis of HWLE's modelling for such amount identified a number of inaccurate assumptions and cost allocations.

For example, it omitted to factor in dealers' opportunity to continue the service, repair, warranty and parts activities. Aftersales is typically one of the most profitable parts of a dealer's business representing on average up to 115% of a dealer's total net profit in 2019. GM Holden is committed to maintaining an Aftersales operation in Australia for at least 10 years to provide warranty, service and parts to Holden customers.

The HWLE proposal was also wrongly based on 7.7 years of compensation when there is approximately 2.5 years remaining on the current agreement. After the wind down of Holden new vehicle sales, dealers can continue to service and repair vehicles through to the end of the current agreement. If they accept the compensation offer, dealers are also given the opportunity to continue as Holden authorised service operations beyond the current agreement.

PwC, after making appropriate corrections and adjustments, concluded that an appropriate range of compensation is actually \$350-1409 per vehicle.

GM Holden's offer also includes compensation for un-recouped Holden facility investments. These are valued independently and dealt with separately in addition to the compensation offered using the formula discussed above.

Unconscionable and Misleading Conduct Claim

GM and GM Holden flatly reject HWLE's claims of misleading, deceptive or unconscionable conduct. These claims are based on a bizarre and illogical argument that GM has secretly planned to shut down Holden since at least 2015, but made various significant investments in programs, plans and strategies to support and promote Holden in order to mislead dealers into thinking that there was no secret plan to shut down Holden.

It defies logic to believe that GM intended to close Holden while investing heavily in new or updated right hand drive (RHD) models for the Australian market including Equinox and Acadia, launched new here in 2017 and 2018 respectively, and significantly updated Trailblazer, Trax and Colorado models introduced across a similar period.

In that timeframe GM also launched in Australia its mobility business Maven, its captive finance company Holden Financial Services and invested heavily in the new RHD Corvette to ensure its availability in Australia.

There were also large investments made in marketing campaigns to improve Holden's brand image and sales, ongoing spending on motorsport and other sponsorships, and significant investments in engineering staff and major upgrades to facilities at the company's proving ground at Lang Lang in Victoria.

Investments such as these cannot by any logic be held to be the actions of a company that allegedly intended to close through that time.

Those investments and the work undertaken by the Holden team through that period had the same objective: to turn around Holden's sales and financial performance.

As the company stated on 17 February 2020, ultimately GM came to the very difficult decision that it could not support further investment in growing the Holden business into the future, because it could not meet GM's investment thresholds.

Case studies

Below are two examples which show the excessive nature of the dealers' claims:

Case Study 1: Medium-sized dealership

For a medium-sized Holden dealership which sold 190 cars in 2019, GM Holden's per vehicle compensation offer totals \$712,500. This significantly exceeds the average medium-sized dealer's total net profit in 2019 across its business of ~\$200,000. It should be noted the \$200,000 figure includes the very profitable service and parts business which dealers will continue to benefit from going forward. In contrast, under the HWLE formula, the compensation for that dealer would be \$8,936,930.

Case Study 2: Large-sized dealership

In the case of a large Holden dealer who sold 466 cars in 2019, the per vehicle compensation offered by GM Holden totals \$1,747,500. This significantly exceeds the average large-sized dealer's total net profit in 2019 across its business of ~\$330,000. It should be noted the \$330,000 figure includes the very profitable service and parts business which dealers will continue to benefit from going forward. In contrast, under the HWLE formula, the compensation for that dealer would be \$21,923,902.

Ends

Throughout this process Holden has continued to engage with dealers who have questions about Holden's offer, including reviewing and negotiating additional claims and supporting information that dealers continue to submit in support of their claims.

Holden is now awaiting the responses of individual dealers to Holden's offers, as set out in their TARAs and Holden Services Operations Agreement, and Holden continues to be available to answer questions or make adjustments if new information on unamortized dealer investments becomes available.

As the details of the compensation have been the subject of discussion with dealers since February, we consider that this timeframe for consideration of acceptance of the TARA is ample and fair. It will enable dealers and Holden to have clarity for the future planning of their businesses.

Throughout this process since the 17 February announcement, Holden has also had proactive briefings and cooperative dialogue with the ACCC, including correspondence and meetings and has been providing prompt, comprehensive answers to requests made by the ACCC.

Holden has also proactively provided regular briefings to Minister Karen Andrews and the Department of Industry, Science, Energy and Resources throughout the transition. Further, we have offered to make ourselves available for briefings with any Senator or Member of Parliament who is interested in learning the facts of this complex matter.

Holden will make a submission to the Senate Committee by 25 June and would welcome an opportunity to appear before the Committee during hearings.

Holden is mindful of the various public commentary and media interest our announcement and transition has attracted. Unfortunately, as noted above, some of that commentary has been misinformed and unfair. Holden looks forward to the opportunity to address any misapprehensions or other concerns that may be held by Committee members in the course of the inquiry proceedings. We thank Committee members for remaining impartial and reserving judgement until all key witnesses have been heard.

We thank the Committee for the opportunity to provide this update.

Yours sincerely,

Kristian Aquilina
Interim Chairman and Managing Director

13 March 2020

Dear (*Senator or Member's name*),

We are writing to update you on progress in our wind-down of GM Holden operations in Australia and how Holden continues to deliver a commitment to treat stakeholders fairly and support an orderly transition. Holden will make a submission to the Senate Education and Employment References Committee.

Holden is undertaking a professional and respectful wind-down of its new vehicle sales, design and engineering operations, with an ongoing commitment to servicing and supporting the estimated 1.6 million Holden vehicles currently on the road in Australia. Holden appreciates the impact of the decision on dealers, consumers, suppliers, community and business partners and has made good progress in discussions with our stakeholders.

Employee Transition

Although this has been a difficult period for our employees, it is inspiring to see how our people have committed to supporting a respectful and orderly transition of our sales, design and engineering operations.

We have completed individual discussions with nearly all Holden employees to ensure they have clarity around their next steps. The majority of impacted employees will be leaving Holden in June and August. Those leaving have a clear commitment from Holden that they will be paid an appropriate separation payment as well as receive transition support.

We currently plan to have around 200 people in the Aftersales team going forward to support Holden's commitment to maintain service, warranty, recalls, parts supply and other repair services for our customers for at least the next 10 years.

Dealership Transition

As part of our transition offer, all Holden dealers are given the opportunity to continue to maintain an extensive customer base to service Holden vehicles and provide spare parts and accessories, in addition to being offered a compensation package that takes into account the financial impact on their business of the loss of new vehicle sales, as well as unamortized capital investment and signage. The compensation formula was designed to be favorable to dealers by looking back three years to 2017 when Holden sales and the overall industry were stronger.

Holden's Dealer Transition Managers have met with over three-quarters of our 185 dealers in Australia over the past three weeks, with meetings scheduled for the remaining dealers. Any assertion that all dealers have received our offer and rejected it is false. Many dealers who have received the offer are now constructively working through the process.

Initial meetings outline the framework for the transition arrangements, the broad terms of the vehicle service and parts offer, and how the relevant dealer compensation payment has been calculated. Dealers require time to consider their position but we are already well down the path to reach a mutually acceptable outcome with several dealers in Australia and New Zealand. Some dealers have presently indicated they intend to decline our offer, which is their right.

Some dealers have indicated they wish to receive additional compensation and have enlisted the support of third parties such as accountants, lawyers and journalists to advance their case. However, significant time and effort has been put into the compensation formula and we have used actual financial information provided by dealers to produce our offer. We remain of the view that it is a fair and reasonable offer.

Holden is applying a consistent formula across our dealer network and it would not be appropriate to discuss individual cases in public. For larger dealerships with higher Holden new car sales volumes in recent years, the compensation offer can reach into the millions of dollars. Individual discussions are complex, as they take into account each dealer's projected sales volume for the remainder of the term of the dealer agreement, investments they may have made in their Holden new car showroom and signage facilities, and any appropriate special circumstances warranting further consideration.

Only ten per cent of Holden dealers are solely dependent on the Holden franchise for their income. That dependency has been considered in our compensation calculation, with an additional supplemental payment.

Ninety per cent of Holden dealers today are multi-franchise, with Holden representing on average across the network approximately 29 per cent of their new vehicle sales. Over a long period of time, dealers have responded to an increasingly fragmented market and have diversified risk by taking on other brands. This practice intensified as Holden sales declined.

With the vast majority of Holden dealers selling other brands, as well as having used-vehicle sales operations, redeployment of dealership staff is likely to occur in many cases, either at their same dealership location or other sites. With most dealers also likely to continue as authorised Holden Service Operations, this will mean retention of their service staff and apprentices.

In 2019, dealers collectively reported to Holden that there were 400 New Sales Consultants, 157 New Sales Managers, 49 Fleet Sales Consultants and 40 Fleet Managers, dedicated to the Holden brand across the whole network of 185 dealers. This is far less than numbers which have circulated in some media articles.

There may be some impact on jobs at dealers but not anywhere near the exaggerated numbers we have seen reported in media. We regret this additional impact to some dealership employees and anticipate that dealers will utilise a portion of their compensation packages to do the right thing for their employees, just as Holden is doing for its employees.

To that end, we are heartened by comments made in the media by a number of dealers across Australia that they don't envisage an immediate impact on jobs and intend to re-assign impacted employees to other parts of their businesses.

Customer Transition

Our customers are the focus of what we do at Holden. We continue to assure our existing customers of Holden's firm commitment to provide aftersales support – servicing, spare parts, honoring warranties and conducting recall actions if required – for at least the next 10 years.

Feedback we have received is that while many customers are saddened by the decision to wind down Holden new vehicle sales operations, they understand that our aftersales network will continue to support them as usual throughout their ownership experience.

We will continue to honour all commitments given to consumers at the time of purchase, including the 7-year free service commitment. This service commitment is funded by Holden, which pays dealers for services undertaken on Holden vehicles. We will also be providing appropriate resourcing for warranty claims and product quality issues.

Conclusion

Holden has developed a detailed plan to professionally and respectfully exit the Australian new car sales market that takes into consideration the implications for customers, dealers, suppliers, business and community partners, and others. We take extremely seriously our obligations to support our various stakeholders.

Discussions with dealers are on an individual basis and to date have been cordial and respectful. We believe our compensation offer is very fair and that in due course most dealers will choose to engage with Holden as they exit Holden new car sales and seek to retain Holden service and repair operations as they transition their businesses.

We will provide you with future updates as Holden's transition progresses and please don't hesitate to reach out to us with questions at any time.

Yours sincerely,

Kristian Aquilina

Interim Chairman and Managing Director
GM Holden

David Magill

Director – Government Relations and Public Policy
GM Holden