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## TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED

A.C.N. 009 686 097 A.B.N. 64 009 686 097

13 September 2021

Department of Treasury  
Canberra ACT 2601

### **Re: Feedback on the Treasury Department's Automotive Franchising Discussion Paper.**

Toyota Motor Corporation Australia (**Toyota**) appreciates the opportunity to provide feedback on the Treasury Department's (**the Department's**) Automotive franchising discussion paper.

The automotive franchising industry has been under significant review since 2017 which has given rise to a number of significant reforms that have been implemented and other whole of industry reforms that continue to be under study. Toyota is of the view that further unique changes, to the automotive industry are not necessary and instead time is needed to allow the recent changes to take full effect. In relation to Toyota and its dealer network, we do not believe that further reforms will deliver added benefit for the consumer, as Toyota already has a strong and close working relationship with its dealer network that has been proven over an extended period.

The following provides insights into Toyota's business arrangements in Australia, and our relationship with our dealer network. We have provided responses to the options raised in the discussion paper, however for broader comments, Toyota supports the Federal Chamber of Automotive Industries' (FCAI) comprehensive analysis and submission.

### **Background**

As previously shared when Toyota made its submission to and appeared before the Senate Inquiry investigating the regulation of the relationship between all car manufacturers and car dealerships in Australia, Toyota has an expansive dealer network that is comprised of 194 dealers and 275 dealership sites across Australia. We note that dealerships are often referred to as small family-run businesses, however the purchase price on resale of a Toyota dealership can range between \$2.5 million and \$30 million, with many Toyota dealers being large and well-resourced businesses, often part of group entities including publicly listed companies with operating profits exceeding \$100 million per annum.

Toyota is dedicated to ensuring best practice is exercised across our dealership network to deliver the best experience for our dealers and our customers. The National Toyota Dealer Association (**NTDA**) was established to ensure a collaborative relationship between the dealership network and Toyota while respecting the requirements of the *Competition and Consumer Act 2010* (Cth).

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The NTDA has many functions, including exploring new opportunities, sharing industry learnings, as well as providing a forum to raise concerns or complaints so they can be addressed in an informal forum without the need to progress to expensive and lengthy formal dispute resolution. Toyota also invites its dealers to participate in a broad range of other forums, including business improvement forums which facilitate enhanced benchmarking. The core objective is to continuously improve the performance of our dealers and therefore the success of the Toyota brand to benefit both Toyota and the dealer network with the focus to deliver exceptional guest experience.

It should be noted that during the senate inquiry in November 2020 and in the subsequent Committee report, Toyota was acknowledged for its open and transparent relationship with its dealership network and its pursuit of mutual benefit.

***Senator O'NEILL:** I take the opportunity to congratulate you and Toyota, Mr Callachor, on what clearly is a very professional and respectful relationship—albeit a robust business relationship—with the dealers who have given evidence this morning. I'm particularly heartened by their evidence and yours about mechanisms to enable the complex elements of business to be discussed. You've talked about careful planning for the future and also dispute resolution, although it doesn't sound like there's been an awful lot of it over recent times, so that's a great credit to Toyota.<sup>1</sup>*

Disruption happens in all industries and the automotive industry is no exception. As Toyota's President Matthew Callachor noted during his appearance before the Senate Committee, disruption is occurring, and Toyota and the dealer need to "continue to get better and better in each component of what we are doing". Manufacturers and dealers must have the flexibility to react to changes as they occur. The automotive industry is continuing to undergo significant transformation, as evidenced through events such as the closure of manufacturing facilities and the shift from vehicle ownership to vehicle usership with the arrival of car share/ride share companies. COVID-19 has demonstrated that industry needs to be able to make necessary changes in response to changing market conditions, contactless vehicle sale by click and collect has been a necessity and has allowed new car sales to continue growing throughout COVID. Other intermediary groups and new entrants, with different distribution models e.g. direct sales to the customer, and technology companies focused on autonomous vehicles, will continue to disrupt the entire industry along with a range of Government policy measures, for example the Specialist and Enthusiast Vehicle Scheme allowing uncapped import volumes that compete with established dealers without the support framework offered for vehicles imported by branded distributors. The industry must be prepared for changes and ensure a pragmatic approach is taken so dealers, manufacturers and other key players stay relevant and continue to thrive commercially.

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<sup>1</sup> Official Committee Hansard, Senate Education and Employment References Committee, The announcement by General Motors, on 17 February 2020, to withdraw the Holden brand and operations from Australia, Page 10

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### **Existing legislative, regulatory, and self-regulatory arrangements**

The relationship between dealers and manufacturers/importers/distributors has been constantly under review in recent years, starting with the Market Study into New Car Retailing Industry was released in 2017 by the Australian Competition and Consumer Commission (**ACCC**). This was followed by a Regulation Impact Statement into Franchise Relationships Between Car Manufacturers and New Car Dealers in 2019 by the Department of Industry, Innovation and Science.

After careful consideration of all the possible options and being mindful of the disadvantages that arise with fragmentation of codes, in February 2020, the Government released the Automotive Franchising Draft Regulations, which resulted in the most recent Franchising Code reforms that were implemented from 1 June 2020. Further, on 20 August 2020, the Government released its response to the 2019 Parliamentary Joint Committee's 'Fairness in Franchising' report which investigated the operation and effectiveness of the Franchising Code.

In October 2020, the ACCC announced a blanket class exemption for franchisees and small businesses and the Senate Inquiry investigating the regulation of the relationship between all car manufacturers and car dealerships in Australia was held.

As of 1 July 2021, the 'Best Practice Automotive Dealer Principles' reforms have been introduced along with additional changes to the general franchising code. Most recently on the 23 August, the Government released an Exposure Draft Bill which, among other changes, increases the coverage of the Unfair Contract Terms (UCT) regime, including changes to the eligibility threshold for the protections from businesses employing less than 20 employees increased to those employing less than 100 employees.

Toyota acknowledges the importance of dealing with car dealers' concerns in respect to their franchising relationships with car manufacturers. However, Toyota is of the view that many if not all of these concerns have been dealt with by virtue of the June 2020 reforms to the Franchising Code, coupled by the further introductions of the 'Best Practice Automotive Dealer Principles' and changes to the general Franchise Code.

Toyota's position has always been that enforcement of the current regulations should be the priority, rather than the introduction of new and over burdensome regulation that will stifle changes determined via market and consumer behaviour. Again, given the short timeframe since the latest reforms, Toyota believes it is too soon to be considering additional change, and government should be mindful of the additional 'red tape' and its impact on business that comes with continual change and a fragmented approach to reform. Over recent years Toyota has allocated additional resources to revisit its dealership agreement with every dealer, on multiple occasions to comply with new regulations and requirements. This is significantly burdensome for Toyota and its dealer network and ties up significant resources

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that should otherwise be used to grow and evolve our business in the interests of Toyota, dealers and the guests.

### **Options for further supporting the automotive industry**

#### **Option 1:** Amend the Franchising Code and its automotive specific provisions when required

Toyota has proven its strong relationship and working arrangements with its dealer network, with the aim to make change to the mutual benefit of parties. Toyota believes that automotive should not be treated significantly different from other sectors and therefore, if amendments are required it should be within the franchise code, not a standalone code. Significant change has already been enacted with specific reference to automotive and these provisions provide the additional safeguards.

#### **Option 2:** Establish a standalone automotive franchising code

Toyota does not support implementing a standalone automotive franchising code.

### **Questions**

- 1. What are the key problems or issues being faced by the automotive sector that you believe have not adequately been addressed by the Government's recent reforms?**  
Toyota does not believe there is any major gap condition that needs to be addressed with any change and there is no evidence from our relationship with the dealer network that it is warranted.
- 2. What evidence can you provide about the magnitude of the problem (i.e. quantitative and qualitative data)?**  
Toyota does not believe there are any difficulties between itself and its network that cannot be resolved through existing mechanisms.
- 3. Which option do you consider to be the most effective solution and why?**  
Toyota does not believe that option 1 or 2 are required. Refer to comments above.

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**Options for arbitrations**

**Option 1:** Pre-contractual arbitration model

**Option 2:** Arbitration model used in the Media Bargaining Code

**Option 3:** Industry-led improvements to dispute resolution

Toyota is supportive of the FCAI's work with the other key stakeholders towards an industry led binding dispute resolution process for circumstances where a dealership agreement is terminated early by the distributor due to the brand leaving the market, a change in the distribution model or a significant change to the network.

Toyota is supportive of the FCAI's submission which provides a comprehensive response to the matter of arbitration.

Should you wish to discuss any of the above, please contact me on [REDACTED]

Yours faithfully

**TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED**

[REDACTED]

**Andrew Willis**

Manager External Affairs