



**AUSTRALIAN AUTOMOTIVE
AFTERMARKET ASSOCIATION**

REVIEW OF THE FRANCHISING CODE OF CONDUCT



**The Australian Automotive Aftermarket Association
Response to the Franchising Code of Conduct
Consultation Paper**

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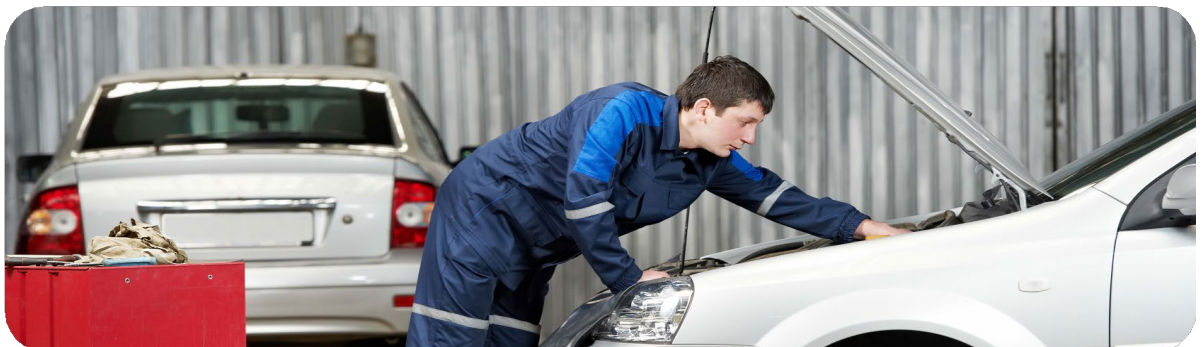
About Us

The Australian Automotive Aftermarket Association (AAAA) is the national industry association representing the Australian supply chain for automotive products, vehicle maintenance, repair, and modification. Our industry supports car owners after the purchase of the car, keeping vehicles safe and providing products for modification to make vehicles fit for purpose, including trade and emergency vehicles. Everything that happens to the car after the initial purchase is part of the Australian automotive aftermarket sector. We support consumers and business fleets for lengthy periods of time - when you find a trusted service provider, you normally keep them. Our members design and manufacture automotive components, distribute replacement and service parts in real-time, wholesale, import and export automotive parts and accessories, retail tools and equipment, provide vehicle service, repair, and modification services in every community in Australia.

The independent aftermarket is the largest segment of the Australian automotive industry. A significant number of AAAA members produce automotive parts and components that are used in the original build of the vehicle and products that are sold by new car dealerships as OEM parts. Our sector also supplies generic automotive parts to fleets and consumers that are of an equivalent, or in many cases superior, quality.

The AAAA is a nominating organisation on Standards Australia committees covering a wide range of parts and accessories, tools and

equipment and our member representatives are actively involved in the development of product quality standards. The AAAA and our member companies passionately defend the reputation and integrity of the independent aftermarket and stand by our products and professionalism. We have strong relationships with state and federal regulators and regularly disseminate information to members on relevant legislation and standards to assist them with their compliance obligations.



Introduction

We would like to thank the review team for the opportunity to contribute to this inquiry. As the peak industry association for the automotive aftermarket, we represent a diverse group of franchisors and individual franchisees. In recent weeks AAAA has met with a range of our franchising members to discuss their direct experience with the Code and what improvements they would like to see.



In line with the review team's request, AAAA has chosen to keep this submission concise, focusing and giving weight to the main issues that our members have raised. However, we are available to provide additional comments on substantive issues if the committee wishes to seek more information or dig deeper into any of the issues raised.

AAAA has undertaken consultation with our members that are both franchisors and franchisees in the automotive aftermarket sector. As such we are well versed in our ability to provide a holistic view of key issues that are important to our members and to highlight the issues that could be addressed to provide a fairer system for all parties entering and continuing in a franchise partnership.

For further comment please contact our Director of Government Relations & Advocacy Lesley Yates at lyates@aaaa.com.au

1 – Increasing Bureaucracy May Be Counterproductive For All Parties.

Disclosure documents are important tools, designed with the intent of providing franchisees with all necessary information about the agreement they may be entering, with the clear intent to ensure that they are able to make well-informed decisions. Further protections were added to this disclosure state with the introduction of the Franchise Disclosure Register.

However, while these necessary protections are important and critical, many AAAA members raised concerns about the increased volume and complexity of these disclosure documents. The volume of information can cause immense confusion and the actual real-world effect may be the direct opposite of what was intended. The sheer volume of information adds a level of confusion rather than clarity, and some would argue that these have been counterintuitive in the decision-making for potential franchisees.

The current system requires franchisors to provide a range of documents in addition to the franchise register, in theory, this should have led to a robust protection which provides all potential franchisees with all available information to make a very informed decision as to if they would like to enter the agreement. In practice, this is leading to more franchisees ignoring all documentation as it is seen as 'death by paperwork'. Our members are seeing several issues arise when these disclosure protections **are put into practice**.

1. The increased volume of documents is overwhelming potential franchisees on substance.

With the mounting paperwork, potential franchisees are often inundated with information. This vast amount of data can be counterproductive, as some franchisees have become overwhelmed and skip over critical sections of the document, missing out on essential information.

2. Doubling up on certain documentation leads to errors.

As both requirements of disclosure documents and the document register are in place many franchisees receive a lot of the same information twice, however, this also results in some documentation not being fully understood as potential franchises believe they have already read the document.



3. Not seeking legal advice due to a mix of high cost and higher confidence.

Our members have told us that some, or many, potential franchisees do not see a legal representative before signing the agreement. Many have theorized that this may be a result of marketing a simpler franchise system for franchisees, we believe this can lead to misunderstanding key aspects of the agreement. Other members have stated that people are forgoing this advice because of the high cost associated with obtaining specific franchising contract advice. While our members will always do their best to simplify and provide clarity in their agreements it highlights key issues that are occurring. Unfortunately, it is our Franchisor members who deal with the repercussions of any failure by franchisees to seek and obtain legal advice.

4. Increased Administrative burden adds stress and costs for many businesses.

Preparing, updating, and maintaining comprehensive disclosure documents alongside a disclosure register is labor-intensive. This increases administrative costs, can be non-productive and divert resources from other essential aspects of the franchise operation.

Our members are very supportive of the disclosure process in principle. However, the systems may not be serving the desired outcome: A disclosure process that provides significant information is only effective if potential franchisees are reading and understanding the information. Our members have recommended a fresh look at the process of ensuring that potential franchisees are conducting the required due diligence in a manner that ensures the intended outcome of a constructive ongoing relationship between franchisee and franchisor.

Education Before entering into franchising agreements.

AAAA acknowledges that there are online resources available to assist both franchisees and franchisors. However, it appears that from our members' experience, potential franchisees are not using them or not fully understanding them (especially before signing a franchise agreement).

As there are already online portals AAAA believes that the review should examine pathways of mandatory courses or interactive on-line training prior to entering into a franchise agreement. This may act as an option to give franchisors and franchisees assurance that they understand what they are entering. Short on-line units of study that must be completed in a step-by-step process could be a more innovative and engaging way to impart the required due diligence and education about the Franchising Code and the franchising agreement.

2 - A Changing Automotive Industry Signals A Difficulty In Predicting Future Capital Expenditure – Specifically Sew Equipment Technology.

The automotive industry is undergoing a significant transformation, driven by technological advancements, changing consumer preferences, and the pressing need for emission reductions and sustainable practices. This rapid evolution, while opening doors to innovation and market expansion, presents challenges in forecasting future capital expenditure, particularly in new equipment technology for both service and repair franchises but also changing stock lists for manufacturers.

In the last decade, we have seen mass adoption of new vehicle technologies with several new technologies still in development. 10 years ago, many would have seen electric vehicles and the idea of electrification as a pipe dream. However, this is quickly becoming a reality, as such this transition requires new manufacturing equipment, battery technology, and charging infrastructure. With changing rules and regulations with this electrification it is impossible to give a fair and accurate estimation of expected capital expenditure.

As we were a decade ago, new vehicle technologies will soon include the potential adoption of hydrogen cell vehicles and will provide an added hurdle in predicting the capital expenditure that may be required. While our members give due warning of what may potentially be required, new and emerging issues will continue to arise in customer-driven markets where our industry is very responsive to consumer trends to provide contemporary and affordable service and repair services to customers.

Our members have raised the following key areas of concern in terms of issues arising from providing capital expenditure forecasting in the franchising Code.

1. Financial Implications: Incorrect predictions can lead to over or under-investment, both of which have significant financial consequences.
2. Operational Efficiency: Investing in outdated technology can hinder an organization's competitiveness and operational efficiency.
3. Strategic Planning Difficulty in predicting capital expenditure can impede long-term strategic planning and alignment with industry trends.

The evolving landscape of the automotive industry brings some complexities in predicting capital expenditures, especially concerning new equipment technology. Potential franchisees need to be aware of these challenges and develop agile, adaptable strategies to navigate this dynamic environment. Our members believe that the Code must place more emphasis on capital investment flexibility, specifically for those industries that are assisting in the transition to net zero emissions, staying abreast of technological advancements in rapidly advancing sectors.

3 – Major Hurdles Faced When Rebranding Under The Code.

The current framework of the Franchising Code raises some challenges for franchisors when initiating rebranding efforts, some of which are caused by a level of ambiguity within the Code.

Our members have raised the following issues directly relating to the business imperative of rebranding or refreshing the brand.

1. Contract Provisions

Existing franchise agreements do not always have provisions that mandate franchisees to comply with rebranding efforts, as it is not always thought of at the time of signing. Altering these contracts or ensuring compliance can be legally challenging and has led to disputes.

2. The fear of non-compliance

The recent changes to the penalties have caused several members to rethink potential rebranding efforts due to perceived risk and ambiguity.

The Wein review was designed to deliver flexibility, however, in the years since the adoption of the Wein reforms it has led to an increased level of ambiguity. Many of our members do not want to make, what could be valid, commercial decisions at the risk of being caught up in an individual interpretation of the Code rather than a clear definition.

“Franchisees contribute so much to this country, they do. However, the cost of doing business is just getting too difficult. I have talked with several other franchise heads and there is one thing in common, everyone’s legal team is finding this difficult to manage. The sign of a sick system isn’t where there are outliers who are fearful of penalties, it is where everyone is fearful.”

Quote from AAAA Member

4 – Brand Damage & Options For Enforcement

For franchisors, the strength of the brand and the consistency of brand messaging is crucial to success. However, many of our members are struggling to use the current mechanisms to enforce compliance. While the Code is designed to balance the rights and obligations of both franchisors and franchisees there have been several limitations for franchisors.

1. Limited avenues for immediate action

How much damage can one store do to the broader franchise? This is a question that is often asked, and our members would like the review to deliberate on this matter. While this Code has been in place there have been numerous cases of a franchisee damaging the broader brand and our consultation would lead us to a conclusion that the Code does not provide franchisors with swift mechanisms to intervene quickly to prevent further damage.

2. ‘Good Faith’ obligations add further concern.

Clause 6 of the Code is designed to assist both parties to act in good faith and to avoid any potential deceptive practices. However, in practice, these obligations are causing a level of confusion for both parties because they are vague and open to interpretation. As a result, many franchisors feel that their options may be limited in the situations where immediate action should have been taken to protect the brand and the business outlook of the other franchisees in the business.

The potential impact on brand damage is significant and our consultation has led us to put forward the view that the current system has flaws that create a strained relationship between franchisees and franchisors and potential collateral damage as other stores are affected by the economic and brand damage that can be inflicted by one individual store. While the Code seeks to have a balanced and fair relationship, the ambiguity in interpretation can cause a significant burden on the sector.



5 – Franchise Scale & Size

Making franchising fair is a key component of what the Franchising Code aims to achieve. While its principles are undeniably important, many members have critiqued the application of a blanket approach across a diverse range of franchises. Given the variability in size, nature, and complexities of different franchise systems, a “one size fits all” approach may not always be the most effective.

1. Scale and Size

An Automotive service and repair chain will have different operational and financial dynamics compared to a restaurant. Unique aspects of our sector include: The very fast technological change in the automotive sector leading to urgent, but largely unknown capital investment and training requirements. The community and government commitment to zero and low emissions requires an urgent response from the automotive sector and our next level of investment will occur quickly and may require significant changes in the next two to five years.

2. Duration and Maturity

Newly established franchises will also have different needs and vulnerabilities compared to franchises that have been operational for decades, especially around the onboarding of new franchisees.

3. Additional regulations and challenges

This is also seen in the challenges that business is facing, as previously mentioned the pathway to Net-Zero requirements paint a vastly different challenge for an automotive business compared to a retail franchise.

However, while there are inconsistencies in the current Code, AAAA members have also suggested that in addition to specific amendments to the existing Code, some consideration should be given to separate individual sector Codes.

For example, it is evident with the Motor Vehicle Dealers amendments that specific considerations of one sector required separate provisions to be introduced. A separate Code for certain industries or a separation within the existing Code would give the opportunity for.

1. Enhanced focus on detailed issues
2. Tailored remedies and a streamlined dispute resolution process