



Australian Automotive Dealer Association Ltd.

ACN: 167 598 085

The Sir Jack Brabham Automotive Centre of Excellence

8/2728 Logan Road, Eight Mile Plains, Brisbane Queensland 4113

17 July 2015

Senator the Hon Ian Macdonald
Chair
Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Dear Senator Macdonald

Inquiry into the Australian Small Business and Family Enterprise Ombudsman Bill 2015 and the Australian Small Business and Family Enterprise Ombudsman (Consequential and Transitional Provisions) Bill 2015

The Australian Automotive Dealer Association (AADA) thanks you for the invitation to provide a submission on issues of relevance in respect of the proposed legislation. AADA is the peak industry body that represents franchised new car dealers in Australia. Our members include family-owned small businesses, larger businesses and public companies operating in the regions, capital cities, and across all States and Territories.

AADA supports the enactment of legislation to establish an Australian Small Business and Family Enterprise Ombudsman (Ombudsman) with advocacy and assistance functions to assist a small business, currently defined in the Bills as a business that has either fewer than 100 employees or revenue in the previous financial year of \$5 million or less. During the consultation process leading to the drafting of the Bill, AADA provided two submissions to the Treasury, copies of which are attached.

We appreciate and understand that small businesses play a vital role in the economy and the challenges they face in dealing with and resolving disputes with larger businesses. In the case of motor vehicle dealers there is the challenge of resolving, in a cost effective manner, disputes with a global foreign automobile manufacturer operating in multiple jurisdictions.

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Definition of small business and family enterprise (SME)

The proposed definitions of an SME (sections 5 and 6) in the first Bill will limit access of our members to the Ombudsman given the consolidation of businesses occurring in the automotive retail sector as a result of the cessation of manufacturing in Australia in 2017. In our submissions we referred to the myriad of definitions of SMEs found in income tax, other legislation and for the gathering of statistical information. We proposed that the definition of a SME be based on the concept of "relative size" where a significant imbalance of economic or market power exists.

We draw your attention to the Motor Vehicle Dealers and Repairers Act 2013 (NSW) (MVDR Act), which regulates the relationship between NSW motor vehicle dealers and manufacturers in dealing with contractual disputes and unjust conduct by a manufacturer. It also allows complaints to be referred to the NSW Small Business Commissioner for assistance and resolution on a confidential basis, irrespective of an absolute definition of a motor vehicle dealer based on thresholds of employee numbers and/or revenue.

Another key aspect of the MVDR Act is the ability for an approved industry body to represent a complainant in bringing a matter for resolution before the NSW Small Business Commissioner. This would also allow a body of precedents to be developed. AADA is registered as an approved industry body under the MVDR Act.

The Bills before the Committee and the proposed unfair contract terms protections legislation limit the ability of our members to bring individual and industry wide matters for resolution in a cost effective manner.

We ask the Committee to consider the matters raised by AADA and if we can be of further assistance please contact me on 0400 366 535, email bmcdonald@aada.asn.au or our Policy Director, Michael Deed on 0417 742 956, email mdeed@aada.asn.au.

Yours sincerely

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