



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Collective bargaining class exemption

Guidelines

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Australian Competition and Consumer Commission
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The collective bargaining class exemption

These guidelines provide information about the ACCC's class exemption for collective bargaining.

Smaller businesses, including farmers, can sometimes benefit from negotiating with their customers or suppliers as a group (referred to as **collective bargaining**). Working together, they may be able to negotiate more efficiently with larger businesses, and achieve better terms and conditions, than they can on their own. However, without some form of legal protection, this kind of joint bargaining would be at risk of breaching competition laws.

The ACCC has made a class exemption which allows eligible businesses to collectively bargain without the risk of breaching the competition laws.

Broadly, the class exemption enables:

- a business or independent contractor with aggregated turnover of less than \$10 million in the preceding financial year, to form or join a collective bargaining group to negotiate with suppliers or customers about the supply or acquisition of goods or services
- franchisees who have franchise agreements with the same franchisor to collectively bargain with their franchisor regardless of their size or other characteristics
- fuel retailers who have fuel re-selling agreements with the same fuel wholesaler, and operate under the same system or marketing plan determined, controlled or suggested by the fuel wholesaler or an associate of the fuel wholesaler, to collectively bargain with their fuel wholesaler regardless of their size or other characteristics

without the risk of breaching competition laws.

To obtain the protection of the class exemption, an eligible business must ensure that a one-page *Collective bargaining class exemption notice form* has been given to the ACCC by the group they're forming or joining and that the notice form is also given to any target business that the group proposes to collectively bargain with.

Provided this notice form has been given, each business in the group that meets the eligibility criteria gets immediate, automatic protection under the competition law when collectively bargaining as part of the group within the terms of the class exemption.

Collective bargaining class exemption notice forms will be placed on the ACCC's [public register](#), and can be viewed there.

If some members of a proposed bargaining group do not meet the requirements (for example, if their turnover is too high), the group may still be able to seek legal protection to collectively bargain by using the ACCC's '[authorisation](#)' or '[notification](#)' processes.

The ACCC is available to answer questions about the collective bargaining class exemption and the authorisation and notification processes. If you're not sure whether you are eligible for protection under the class exemption, we're always happy to discuss this with you.

Please direct inquiries to the General Manager, Competition Exemptions, ACCC at exemptions@acc.gov.au.

What is collective bargaining?

Collective bargaining occurs where two or more competitors come together as a group to negotiate with a supplier or customer (known as the **target** business)¹ about terms, conditions and/or prices. A group of businesses may sometimes appoint a representative, such as an industry association, to act on their behalf in negotiations.

There can be many benefits from negotiating as a group with the target business rather than individually, including:

- reducing and/or sharing the time and the cost of putting supply arrangements in place
- creating more opportunities to negotiate terms of supply that better reflect the group's needs (as compared to just signing a standard form contract)
- gaining better access to information, for example by sharing relevant information, or sharing the costs of engaging a professional advisor
- creating new marketing opportunities when the combined volume becomes more attractive to larger or new buyers or sellers, and
- streamlining and coordinating ordering and delivery, and hence creating supply chain efficiencies.

The target business can also benefit from:

- reduced costs due to negotiating with a single representative, or subset of the group, rather than each member separately
- more supply certainty due to bulk ordering and savings from aligning transport and distribution
- better access to information—more effective and efficient negotiations enable the transfer of more useful information between the parties.

Collective bargaining is most effective when it provides mutual benefits for the group and target business.

The class exemption does not oblige target businesses to negotiate with any bargaining group. Nor does it override any existing legal or contractual obligations between the parties, such as confidentiality clauses in contracts.

The class exemption simply removes the risk that collective bargaining by eligible businesses will breach the competition law.

Collective boycotts not protected by class exemption

Collective bargaining groups sometimes want to be able to refuse to supply to, or to buy from, a particular customer or supplier, unless or until they reach agreement on terms and conditions with that customer or supplier. This is often referred to as a '**collective boycott**'.

In certain circumstances, a collective boycott may help the group achieve some of the benefits of collective bargaining. For example, attempts by small businesses to collectively bargain with a large customer or supplier without the ability to threaten and/or engage in a collective boycott can be ineffective where the target business refuses to negotiate with the group.

However, in some cases collective boycotts can be costly and damage a wide range of market participants, including the group that is engaging in the boycott.

¹ Collective bargaining in the context of competition law does not include employee/employer collective bargaining.

The class exemption **does not** provide protection from competition laws for collective boycotts. Businesses can, however, seek legal protection to engage in collective boycotts using the authorisation or notification processes. The ACCC will assess each collective boycott proposal on a case-by-case basis.

Why does collective bargaining risk breaching competition laws?

Collective bargaining by businesses often raises concerns under competition laws because, in broad terms, competition laws require businesses to operate independently of their competitors when making decisions about:

- the prices they charge or are willing to pay
- which businesses they deal with
- the terms and conditions on which they do business.

Without legal protection provided by the class exemption, or a specific notification or authorisation, collective bargaining may breach the *Competition and Consumer Act 2010* (Cth) (the CCA).

What is a class exemption?

A 'class exemption' is a determination by the ACCC that specified provisions in the CCA do not apply to certain kinds of conduct, because the ACCC is satisfied that the conduct either:

- would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or
- would result, or would be likely to result, in a benefit to the public that outweighs its detriment to the public.²

A class exemption allows eligible businesses to engage in the kind of conduct specified by the class exemption without risk of breaching the competition law.

The ACCC's existing [authorisation](#) and [notification](#) processes continue to be available, in addition to any class exemptions made by the ACCC. Businesses can continue to use these processes to obtain protection from competition laws, including for collective bargaining arrangements (for example, if they don't fit within the class exemption eligibility criteria or they are also seeking legal protection for a collective boycott).

The main difference is that businesses within the scope of a class exemption get *automatic* protection for the kind of conduct specified in the class exemption, without having to lodge a formal application and pay a fee under the notification or authorisation process.

We expect that the class exemption will be beneficial for most eligible businesses involved in collective bargaining arrangements.

If a business already had legal protection under an authorisation or notification *before* the class exemption was introduced, their existing protection provided by the authorisation or notification continues to apply until their authorisation or notification expires. Upon expiry, the business can consider whether to:

- rely on the class exemption, provided they meet the eligibility criteria, instead of lodging a new notification or seeking re-authorisation, or

² *Competition and Consumer Act 2010* (Cth) section 95AA.

- seek re-authorisation of or re-notify their arrangements, if they consider that having an authorisation or notification in place provides benefits over and above the protection afforded by the class exemption.

It would also be open to such a businesses to use the class exemption without waiting for their existing authorisation or notification to expire. To do this they need only lodge the one-page *Collective bargaining class exemption notice form* with the ACCC. In these cases, the legal protection provided by the authorisation or notification would also continue to apply until the authorisation or notification expires or is revoked.

A comparison between the features of the collective bargaining class exemption, notification and authorisation, is at **Attachment A** of these guidelines.

What kinds of businesses come within the class exemption?

In broad terms, the class exemption provides legal protection from the CCA for:

- a business or independent contractor to participate in collective bargaining, provided the business or independent contractor had an aggregated turnover of less than \$10 million in the most recent financial year prior to joining the group, and
- any franchisee or fuel retailer, regardless of turnover, to participate in collective bargaining with their franchisor or fuel wholesaler.

To obtain the protection provided by the class exemption, businesses within the bargaining group must give the ACCC a [Collective bargaining class exemption notice form](#) that provides basic details about the group and the proposed collective bargaining. This notice form must also be given to any target business the group proposes to negotiate with when the group first approaches the target business.

Each business must self-assess whether they meet the eligibility criteria and, therefore, whether they can rely on the class exemption. Details about how to make this assessment, including how to calculate aggregated turnover, are provided below.

Businesses under \$10 million turnover

The ACCC has generally not had concerns about collective bargaining proposals involving groups of small businesses negotiating with larger target businesses. Collective bargaining by groups of larger businesses has greater potential to raise competition concerns (for example, by reducing competition, leading to consumers paying prices above competitive levels). For this reason, to ensure that the class exemption only applies to collective bargaining arrangements that would be unlikely to substantially lessen competition, or are likely to result in a net public benefit, businesses will only be eligible for the class exemption if they have less than \$10 million aggregated turnover in the preceding financial year.

The \$10 million turnover threshold is consistent with the threshold used by the Australian Tax Office to determine if a business is a 'small business entity' for tax concession purposes.

The \$10 million turnover threshold does not apply to franchisees and fuel retailers negotiating with their franchisor or fuel wholesaler, as discussed below.

Franchisees and fuel retailers

The class exemption applies to:

- any franchisees whose businesses and contracts are governed by the Franchising Code of Conduct (Franchising Code), who wish to collectively bargain with **their franchisor** (including via group mediation)
- any fuel retailers who have a fuel re-selling agreement as defined by the Oil Code of Conduct³ (Oil Code) with the same fuel wholesaler, and operate under the same system or marketing plan determined, controlled or suggested by the fuel wholesaler or an associate of the fuel wholesaler, who wish to collectively bargain with **their wholesaler** (including via group mediation).

This is regardless of the size of individual franchisees or fuel retailers. This allows all franchisees of the same franchisor, or fuel retailers who have a fuel re-selling agreement with the same fuel wholesaler and operate under the same system determined by the fuel wholesaler, to form a single bargaining group.

This reflects that there is unlikely to be substantial harm to competition from collective bargaining by franchisees, and that franchisees are generally in a weaker bargaining position in negotiating with their franchisor due to the nature of the franchising business model. In order to achieve consistency in branding and product/service offerings across a franchise network, franchisors often require their franchisees to sign agreements whereby the franchisor maintains significant control over day-to-day operations of the franchisee's business.

However, if franchisees or fuel retailers propose to collectively bargain with any supplier or customer that is not their franchisor or fuel wholesaler as defined above (such as a supplier of inputs into their business), the class exemption will only apply if they meet the \$10 million turnover threshold.

Participation is voluntary for members of a bargaining group and the target

The class exemption does not oblige businesses to join a collective bargaining group, or force any target business to deal with a bargaining group if it does not wish to. It simply means that a business is able to collectively negotiate with the target without the risk of breaching the competition law.⁴ For example, if a group of eligible farmers wishes to negotiate with the processor they supply:

- they cannot force other farmers to join the bargaining group
- the processor is not obliged to deal with them as a collective and may instead elect to negotiate with each farmer individually.

This kind of voluntary collective bargaining is most effective when it provides mutual benefits for the businesses wishing to collectively bargain and the target business.

Requirement to inform the ACCC when a bargaining group is formed

The legal protection provided by the class exemption only applies upon the group giving the ACCC a *Collective bargaining class exemption notice form*. This provides details about the bargaining group they are forming or joining. Therefore it is important that you ensure that the group has taken this step before you commence collective bargaining, at least, or within 14 days of doing so.

The *Collective bargaining class exemption notice form* is [available here](#). The *Collective bargaining class exemption notice form* includes instructions for filling it out, and how to provide it to the ACCC.

3 This definition covers paragraph (b) of the definition of 'retailer' in the Oil Code. It does not cover paragraph (a) or paragraph (c) of that definition.

4 This also applies to authorisations and notifications. All three processes are limited to giving exemption from competition laws; they cannot impose obligations on target businesses.

The *Collective bargaining class exemption notice form* must include:

1. details of the collective bargaining group
2. details of the target business(es)
3. what the group proposes to bargain about
4. details for a contact person.

The *Collective bargaining class exemption notice form* is a single page. It does not require technical or complex information, and in most cases the ACCC expects that it should be able to be completed without the need for legal advice or other outside assistance.

Collective bargaining class exemption notice forms will be placed on the ACCC's [public register](#), and can be viewed there.

Upon the bargaining group providing their *Collective bargaining class exemption notice form*, all the businesses in the group will have legal protection to collectively bargain, provided they meet the eligibility criteria. The ACCC will provide bargaining groups with a letter confirming receipt of their *Collective bargaining class exemption notice form*.

The group must also provide the *Collective bargaining class exemption notice form* to any target business the group proposes to collectively bargaining with. This should be done when the group or their representative first approaches the target business about collective bargaining.

There is no fee for providing a *Collective bargaining class exemption notice form* to the ACCC.

If you are unsure whether the group you are forming or joining has provided a *Collective bargaining class exemption notice form* to the ACCC, you should confirm this with other members of the group. You can also check the ACCC's [public register](#) to confirm that the group you are forming or joining has provided the notice form.

When do businesses wishing to rely on the class exemption have to inform the target?

In many cases businesses will not have a specific target business in mind when they decide to form a group to collectively bargain. The class exemption will provide protection where an eligible business is contemplating collectively bargaining with a range of targets, including unidentified targets.

For example:

- a group of farmers agreeing to sell their produce to any potential purchaser rather than naming a particular target business.
- a group of businesses getting together to run a collective tender process to appoint a supplier of electricity to group members.

Businesses wishing to rely on the class exemption do not have to inform the target when they form a collective bargaining group. However, when a bargaining group or their representative first approaches a target to negotiate, they must tell the target that they are doing so as a group or on behalf of the group and give the target a copy of the *Collective bargaining class exemption notice form* provided to the ACCC.

Does the group need to provide a new Collective bargaining class exemption notice form if members of the group or targets change?

If the members of your group or targets change so that they no longer match the *Collective bargaining class exemption notice form* you provided to the ACCC, you will need to provide a new notice form before the new members of the group, or collective bargaining with new targets, will be covered by the class exemption.

When preparing a *Collective bargaining class exemption notice form*, you should consider describing your bargaining group in broad enough terms to cover those businesses and types of businesses who

are currently members of the group, as well as those who may join in the future. For example, if the group is small and new members will not be added in future, you can name each member of the group. In most cases, though, it will be better to describe your group in general terms, for example: *A group of dairy farmers in the Manning Valley area in New South Wales*. The more general approach offers greater flexibility to allow for future changes.

You should also consider whether the description of the target businesses is broad enough to cover known target businesses and, if relevant, classes of target businesses the group proposes to collectively bargain with in the future. For example, if your bargaining group intends to negotiate with a specific target business or a small number of known target businesses, you can name each target business. Otherwise, it may be preferable to describe the type of target businesses the group intends to collectively bargain with in general terms. For example: *Dairy processing companies*.

How do businesses determine if they are eligible?

Calculating turnover

Each member of a bargaining group or proposed bargaining group must self-assess whether they are eligible to rely on the class exemption. You must each have a 'reasonable belief' that your aggregated turnover was less than \$10 million in the financial year prior to you joining the collective bargaining group. You should undertake this assessment yourself, separately to other members of the group or proposed group.

Franchisees and fuel retailers do not need to meet the aggregate turnover threshold when collectively bargaining with a common franchisor or fuel wholesaler. However, if franchisees or fuel retailers want to collectively bargain with any other target business, such as a supplier of inputs into their business, they will only be able to rely on the collective bargaining class exemption if they meet the \$10 million turnover eligibility threshold.

How do I calculate my aggregated turnover?

When assessing your turnover you should use the same method that you use to calculate *aggregated turnover* to determine whether you are a 'small business entity' for the purpose of any tax concessions when lodging your tax return. Please refer to the [ATO website](#) for a complete description of these requirements.

In broad terms, *aggregated turnover* is the sum of:

- your businesses' annual turnover (all ordinary income earned in the ordinary course of running a business for the income year). If you start or cease a business part way through an income year, you must make a reasonable estimate of what your annual turnover would have been if you had carried on the business for the entire income year⁵
- the annual turnover of any business 'connected' or 'affiliated' with your business, whether based in Australia or overseas. Broadly, an entity is 'connected' with you if either entity controls the other (for example, if you have shares entitling you to 40% of the voting power in a company), or both entities are controlled by the same third entity.⁶ An 'affiliate' is any individual or company that, in relation to their business affairs, acts or could reasonably be expected to act according to your directions or wishes, or in concert with you.⁷

5 Australian Taxation Office, '[Aggregation](#)' (15 September 2017). See section 328-120(5) *Income Tax Assessment Act 1997* (Cth).

6 Australian Taxation Office, '[Connected with you](#)' (22 May 2017). See section 328-125 *Income Tax Assessment Act 1997* (Cth).

7 Australian Taxation Office, '[Affiliates](#)' (22 May 2017). See section 328-130 *Income Tax Assessment Act 1997* (Cth).

Which financial year must I calculate my aggregated turnover for?

You should assess your aggregated turnover for the financial year *prior* to you joining the group. For example, if a group was formed on 14 August 2021, founding members of the group will be protected by the class exemption if they reasonably believed that they had an aggregated turnover of less than \$10 million in the 2020-21 financial year. Any business that subsequently joins the group must reasonably believe that they had aggregated turnover of less than \$10 million in the financial year prior to them joining the group in order to rely on the class exemption.

A corporation which has not yet confirmed its annual turnover and/or aggregated turnover for the purposes of its tax return for the previous financial year is still eligible to rely on the class exemption provided it has a reasonable belief that its turnover in the financial year *prior* to it joining the group was less than \$10 million.

What happens if my business' aggregated turnover goes above \$10 million in the financial year after negotiations begin, or in subsequent financial years?

Provided you had a reasonable belief that your aggregated turnover was below \$10 million in the financial year before you joined the bargaining group, the legal protection provided under the class exemption will apply to your ongoing participation in the bargaining group even if, in subsequent years, your aggregated turnover exceeds \$10 million.

However, if you wish to join a new group, you must reasonably believe your aggregated turnover to be below \$10 million in the financial year prior to joining the new group.

Similarly, if the members of your group or the target businesses change from those described in the *Collective bargaining class exemption notice form* provided to the ACCC when the group was formed, the group must lodge a new *Collective bargaining class exemption notice form* and at this time you must reasonably believe your aggregated turnover to be below \$10 million in the financial year prior to the new *Collective bargaining class exemption notice form* being provided. To reduce the need to lodge a new *Collective bargaining class exemption notice form* whenever a new business joins your group, or your group proposes to negotiate with a new target business, you should describe your bargaining group, and proposed target businesses, in broad enough terms to cover future expansion.

If one or more members of the group are ineligible, how is the rest of the group affected?

If one or more members of a collective bargaining group are *ineligible* because they did not have a reasonable belief of an aggregated turnover of less than \$10 million in the financial year prior to them joining the group, the ineligible member is not covered by the class exemption and it is at risk of breaching the CCA by engaging in collective bargaining conduct.

Each member of a bargaining group who meets the requirements of the class exemption will be protected by the class exemption. This is the case, even if some group members do not meet the requirements (and are not, themselves, protected). However, group members who continue to bargain alongside a member that they know or have reason to suspect is ineligible, may be at risk under competition laws.

For this reason, at the time the group is formed, members who have any doubts or concerns about the eligibility of other members of the bargaining group should actively ask those members whether they have undertaken the necessary self-assessment and, where appropriate, ask for substantiation or verification of eligibility.

Further, if the group becomes aware that one or more members are ineligible, the group should immediately stop including that member in their discussions and collective negotiations. Similarly, if the target becomes aware that one or more members of a group that they are bargaining with are ineligible, they should immediately stop including that member in their negotiations.

If a proposed bargaining group wishes to include members who are likely to be ineligible to rely on the class exemption the group can seek legal protection to collectively bargain using the authorisation or notification processes.

Other relevant features of the class exemption

Are there any limits on the size of bargaining groups that can be formed?

No. As long as a business meets the eligibility criteria, it will be protected when collectively bargaining, regardless of the size of the bargaining group it is part of.

Who can businesses collectively bargain with?

An eligible business will have the protection of the class exemption to collectively bargain with any target business, regardless of the size of the target business, as long as the required *Collective bargaining class exemption notice form* has been given to the ACCC and, when negotiations commence, to the target(s), and the collective bargaining is consistent with the scope of that notice form.

However, no business can be compelled to join the group and the group cannot compel a target business to negotiate with the group, for example by way of a collective boycott.

Joint tendering arrangements are covered by the class exemption

Businesses conducting their procurement jointly rather than individually, for example by running a joint tender process, risk breaching competition laws. This is because businesses are usually expected to conduct tenders independently.

The class exemption provides protection for eligible businesses to conduct joint tender processes. For example, a group of exporters agreeing to run a collective tender process to acquire freight services to transport their produce to customers.

The class exemption also provides protection for eligible businesses when jointly responding to a tender.

The group can appoint a representative to negotiate on their behalf

The class exemption will provide protection for businesses wishing to collectively bargain to appoint a representative or representatives to negotiate on their behalf. Such representatives might be:

- from within their group, or
- a person who is not a member of the group—such as an industry association, cooperative or professional body.

The class exemption does not allow trade unions to give notice on behalf of a collective bargaining group. Trade unions can, however, represent groups in their negotiations.⁸

Different bargaining groups may be represented by the same representative.

Requirements for representatives

The class exemption applies to protect members of a bargaining group. It does not apply to bargaining representatives. Accordingly, a bargaining representative does not need to meet the eligibility criteria unless it is a member of the bargaining group. For example, an industry association or cooperative could be a group's bargaining representative even if its aggregated turnover exceeds \$10 million.

If an individual or body acts as a representative for multiple collective bargaining groups, they must take care to ensure that they do not facilitate the exchange of commercially sensitive information, or other information that prevents, restricts or distorts competition between bargaining groups. The representative must also take care to ensure that each group acts and makes decisions independently from other groups. More information is available in the [ACCC's Guidelines on concerted practices](#).

Members must have a 'reasonable expectation' of contracting with target business (as the target is described on the notice form)

To gain legal protection under the class exemption, each member of the bargaining group must reasonably expect to make at least one contract with the target business in relation to the goods or services in question.

This does not mean the business must expect the contract will be the result of collective negotiation. It is sufficient if the business reasonably expects to make a relevant contract for supply to, or acquisition from, the target business, whether through collective or individual negotiation.

Bargaining groups should also be aware that how they describe the target business(es) on the notice form matters in this context.

For example, a *Collective bargaining class exemption notice form* for a group of dairy farmers may state that they are proposing to bargain about the 'supply of raw milk' and describe the targets as 'dairy processing companies'. In this case, each dairy farmer business must have a reasonable expectation that it will enter into an agreement with a dairy processing company regarding the supply of raw milk, but they need not expect to reach agreements with any particular processor(s).

On the other hand, if the notice form describes the target as 'dairy processing company A', each business must have a reasonable expectation that it will enter into a contract with that specific dairy processing company regarding the supply of raw milk.

⁸ This is consistent with the provisions in the CCA relating to notifications for collective bargaining.

Members of the bargaining group can use details of past dealings with the target business(es) or with other customers or suppliers of similar goods or services to determine whether they have a reasonable expectation

No exemption if the ACCC has previously denied authorisation or notification

The class exemption does not apply where the ACCC has previously denied or revoked authorisation for the same collective bargaining arrangements⁹, nor where the ACCC has previously considered a notification about the same collective bargaining arrangements and has revoked the notification or the applicants have withdrawn the notification.

What information can bargaining group members share?

Businesses need to share information to facilitate the collective bargaining process. For example, businesses in an electricity buying group may need to share information about their energy demand in order to seek the best offers. However, sharing of commercially sensitive information beyond that which is needed to collectively bargain can reduce competition and breach competition law.

The class exemption will not protect businesses sharing commercially sensitive information beyond that reasonably necessary to facilitate the collective bargaining process. This also applies to any preliminary discussions the businesses engage in. What is 'necessary' will vary depending on the nature of the group and the bargaining proposed and will be informed by the details provided in the *Collective bargaining class exemption notice form*.

For example the class exemption would not provide legal protection for an energy buying group to share information or make arrangements with each other about the prices they intend to charge their customers for the goods they sell. Nor would the class exemption provide legal protection for members of a bargaining group to exchange other competitively sensitive information (such as planned future output or capacity) unless sharing this information is necessary to facilitate the collective bargaining process.

These types of arrangements risk breaching the competition provisions of the CCA, including the provisions that prohibit businesses from engaging in cartel conduct and those that prohibit businesses from engaging in concerted practices that have the purpose or effects of substantially lessening competition. Businesses doing so could potentially face civil penalties, and in some cases, criminal sanctions.

The ACCC recommends that collective bargaining groups relying on the legal protection provided by the class exemption keep records of their internal group discussions and their negotiations with target businesses. This will assist in establishing the type of information that has been shared by the group, should it be necessary to do so.

Businesses proposing to engage in information sharing beyond that necessary to facilitate collective bargaining can apply for authorisation for that conduct where there is likely to be a net public benefit.

Further, the class exemption does not override any contractual obligation that places limits on the sharing of information, such as confidentiality provisions in contracts.

If you are concerned that a collective bargaining group that you are a part of, or that is seeking to negotiate with you, is sharing commercially sensitive information beyond that necessary to facilitate the collective bargaining process, you can report the group to [the ACCC](#) (including anonymously).

⁹ Or the applicants have withdrawn the application for authorisation after the ACCC issued a draft determination proposing to deny authorisation.

How long is the class exemption in place?

The class exemption will remain in place until 30 June 2030, unless revoked by the ACCC before that date.

In 2029 (or earlier) the ACCC will conduct a review to determine whether to extend the operation of the class exemption beyond 30 June 2030.

ACCC power to withdraw the benefit of the class exemption

The ACCC can withdraw the benefit of the class exemption from particular businesses (but not retrospectively) if the ACCC is satisfied that the business, or businesses, is engaging in collective bargaining conduct that substantially lessens competition *and* is not likely to result in overall public benefits.¹⁰

Before doing so, the ACCC would consult with the business or businesses concerned and provide them with an opportunity to respond to the concern about the effect of their particular collective bargaining.

The ACCC can also vary or revoke the class exemption as a whole if it is concerned that it is not operating as intended. Before doing so the ACCC would consult with all collective bargaining groups (using the contact information they have provided with the *Collective bargaining class exemption notice form*) and inform each group of any implications that are relevant to them.

Contacting the ACCC

You can seek guidance from us if you want to discuss the options and processes before deciding to rely on the class exemption, or lodge a notification or an application for authorisation.

Inquiries should be directed to the General Manager, Competition Exemptions at exemptions@acc.gov.au.

Related publications

[Collective Bargaining Class Exemption Notice Form](#)

[Small Business Collective Bargaining Guidelines](#)

[Guidelines for Authorisation of Conduct \(non-merger\)](#)

ACCC contacts

Infocentre: 1300 302 502

Website: www.accc.gov.au

¹⁰ *Competition and Consumer Act 2010* (Cth) section 95AB(1).

Attachment A: Class exemption, notification and authorisation—quick comparison

More information about the notification and authorisation processes is provided in the [Small business collective bargaining guidelines](#).

Table 1: Quick comparison between the class exemption, notification and authorisation

	Class exemption	Notification	Authorisation
Are there limits on who can apply or be covered?	<p>Yes. Each member must reasonably believe that they had less than \$10 million turnover in previous financial year.</p> <p>No turnover limit applies to franchisees or fuel retailers negotiating with franchisor/fuel wholesaler.</p> <p>Trade unions cannot give a <i>collective bargaining class exemption notice</i>.</p>	<p>Yes. Each member of the group must reasonably expect to have less than \$3 million (unless varied by regulations¹¹) a year in total transactions with the target business.</p> <p>Trade unions cannot lodge notification.</p>	<p>No. Any business, industry association or trade union is able to apply for authorisation on behalf of itself and the group.</p> <p>Monetary thresholds do not apply.</p>
When does the legal protection commence?	<p>Immediately, once the group gives notice, provided each member meets the eligibility criteria.</p>	<p>Commences automatically 14 days after the notification is validly lodged (60 days if notification includes a collective boycott), unless the ACCC objects within this period.</p>	<p>When the ACCC grants authorisation. A final determination must be made within 6 months (unless extended), and often faster than this.¹²</p>
How long does the legal protection last?	<p>Until 30 June 2030, unless the ACCC withdraws the benefit of the class exemption for a particular business or revokes the class exemption.</p>	<p>Three years, beginning on the day the notification was lodged, unless the ACCC determines that another period (up to 10 years) is appropriate, or issues a stop notice, or the notification is withdrawn or revoked.</p>	<p>The ACCC can grant authorisation for any period considered appropriate in the circumstances. Most authorisations for collective bargaining are granted for between 5 and 10 years.</p>
Can the ACCC's approval be subject to conditions?	<p>No – the ACCC does not 'approve' the arrangements. Businesses that meet the eligibility criteria get automatic legal protection.</p>	<p>Yes, but only if the notification involves a collective boycott.</p>	<p>Yes</p>
Can the arrangements include a collective boycott?	<p>No</p>	<p>Yes. However, the ACCC can issue a 'stop notice' if it believes that the boycott has or will result in serious detriment to the public.</p>	<p>Yes</p>

11 Higher thresholds apply in certain industries, see page 12 of the ACCC's [Small business collective bargaining guidelines](#).

12 Interim authorisation can allow bargaining to commence sooner and is normally be considered within 28 days. For further information see the ACCC's [Guidelines for Authorisation of Conduct \(non-merger\)](#).

	Class exemption	Notification	Authorisation
Can the target be compelled to bargain with the collective bargaining group?	No	No	No
Does the ACCC participate in the process or arbitrate?	No	No	No
Does ACCC approval override confidentiality obligations?	No	No	No
What is the lodgement fee?	No fee applies.	\$1000 – the ACCC is not permitted to waive the notification lodgement fee.	\$7500 – the ACCC can waive the authorisation lodgement fee in whole or part if the fee is unduly onerous.



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