



**Australian Lottery
and Newsagents
Association**

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Mr Gavin Jones
ACCC Adjudication Branch
By email: adjudication@acc.gov.au

ALNA Submission on the ACCC Collective Bargaining Class Exemption

The Australian Lottery and Newsagents Association welcomes any move to make compliance with competition law less onerous for small businesses, but we are uncertain if the proposed Class exemption does that.

The Australian Lottery & Newsagents Association (ALNA) has a strong interest in collective bargaining arrangements, as authorised collective bargaining has been utilised and undertaken by Newsagents and Lottery Agents through their associations for many years due to a power imbalance between individual agents and their large suppliers in negotiations.

This is a recognised feature of our industry, and a number of associations in our industry have successfully used the authorisation and notification process for many years including; ALNA (ANF) nationally, The Lottery Retailers Association (LRA) and the Victorian Authorised Newsagents Association (VANA) in Victoria, and the Lottery Agents Association of Tasmania (LAAT).

Collective bargaining is readily available through a range of associations in our industry and so access to collective bargaining has not been difficult for individual or small groups of businesses, so in our circumstances the need for a class exemption has been less relevant as the existing processes are well used and understood. This availability has given small businesses and their suppliers in our industry certainty in negotiations and lowered the risk of legal breaches.

We remain concerned that the proposed class exemption may be a backward step and may undermine the role of trade associations in collective bargaining, which have been well recognised as important to successful collective action.

Collective bargaining regimes are currently transparent, yet under the proposed class exemption model it will move to an underground regime involving self-assessments. Targets want transparency and so this underground arrangement may lead to unnecessary complications that could stall and in fact harm important authorised collective bargaining that is presently underway and ongoing and that our members are relying on.

Targets are already concerned about how practical the model is and that it may weaken trade associations and efficient collective bargaining. They are likely to ultimately be negative towards other formats that don't involve transparency and the efficient use of trade associations to represent large numbers of interested parties. There are over 3800 lottery retailers with franchise agreements for example, so practically a suppliers' cost to engage with many small individual groups under a class exemption may increase substantially, and they may choose not to engage at all as a result. Consequently, the industry's strong collective bargaining history may fragment. A class exemption will not assist in such circumstances and in fact will not assist outcomes for these small businesses.

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We note that the exemption would operate alongside the ACCC's existing 'authorisation' and 'notification' processes and that existing authorisations will continue until they expire. It is however not completely clear that if a trade association representing businesses who like ours are eligible for the class exemption and who want to continue to utilise these instruments as they provide greater certainty to our targets and are less administratively cumbersome, if this will be supported by the ACCC up until expiry and ongoing if we sought further re-authorisation? It is very important that existing authorisation arrangements can still be utilised and are supported by the ACCC into the future.

Specific comments

The Guidance notes

- It states on page 3 that collective bargaining often raises concerns under competition law- this puts the issue at a higher level than warranted. Much collective bargaining does not breach the CCA and if it did the Class exemption would not be proposed.
- It says on page 4 that Businesses must self-assess the threshold. Will the ACCC assist in that regard? There will be a concern that small business may make a mistake. Under the authorisation process small business did not need to make such assessments.
- On the same page it says that the target or targets must be given notice when the group first approaches the target business. What is the sanction if that is not done? Also, it is suggested that such notice should be given whenever a notice is lodged, not only when the group approaches a target.
- In relation to the situation when a group changes. Is a new notice needed when a member drops off or only when they are added or become ineligible?
- It seems that the process is somewhat more onerous on small business than authorisations as there will be a constant need for the group to update and keep accurate records. The ACCC might be swamped with new notices.
- The Class exemption will remain in place until 2029, we would suggest that there should be a thorough review after 2 years to see how it is going.
- What is the situation in relation to existing authorisations? We note that the guidance says they will continue until expiry but are they deemed notice under the Class exemption or does the group need to lodge a separate notice or notices?
- The guidance note says that the ACCC can withdraw the exemption but not retrospectively- why not? What if the Notice was wrong from the start?
- What if a target objects to the Notice? Should it be made clearer in the guidance notes that a target can refuse to bargain, or bargain on aspects of what the group wants. The ACCC has in the past

limited what can be part of the collective bargaining regime and targets may want to limit the scope, no matter what the group puts in the notice?

- What will be the ACCC attitude be if a target says they will only co-operate if the group seeks authorisation or notification?

The Draft Notice

- Item 1- When are names to be listed or not? There is a transparency issue.
- Item 2- Should targets not be named and a new notice submitted when new ones are added?
- Item 3- This should give sufficient details to aid targets.
- Item 4- Should this Notice be signed by the convenor of the group and not just a 'Contact'?

Final comment.

The Australian Lottery & Newsagents Association (ALNA) has a concern on how the groups are to be managed. Authorisations usually involve trade associations and they are in control of the process and the groups. The Exemption moves away from that. The ACCC will lose control of what happens in the market and as such it might be worthwhile for the first 3 years for group exemptions to apply only to groups sponsored or lodged by trade associations or other groups or organisations approved by the ACCC.

We appreciate the ACCC taking on board our concerns in relation to this issue. We do not want to see the many positive attributes of the work of trade associations, for both their small business members, their suppliers and regulators, unnecessarily weakened by not fully determining the implications and impacts of this reform.

We thank you for your time and consideration.

Kind regards
Ben

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