



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

3 July 2019

General Manager - Adjudication  
Australian Competition and Consumer Commission

**via email:** adjudication@acc.gov.au

Dear Sir/Madam

### **Class Exemption for Collective Bargaining**

We welcome and support the Class Exemption for Collective Bargaining as it will provide the power of a collective to individual small businesses that currently lack bargaining power in negotiations with large businesses.

We would recommend revisiting the section of the Guidance Note *Collective boycotts not protected by class exemption*. This section recognises that without the ability to threaten and/or engage in a collective boycott, collective bargaining can be ineffective. What is not clear is when such a boycott would be considered part of the collective bargaining notice or require an additional, specific, notice to be lodged.

In seeking clarification from your website <https://www.accc.gov.au/business/exemptions/notification> the issue remained unclear as, under the heading Collective bargaining class exemption, there is the following statement:

‘...collective boycott, and there is provision for parties to include this in the notified conduct if they wish to do so.’

Greater clarity on this issue is needed. We would also submit the following changes to the documents for your consideration to assist small businesses to use the class exemption:

- A one page summary to be inserted at the front of the Class Exemption for Collective Bargaining, Guidance Note (Attachment A) ; and
- The separation of different requirements within each item and the broadening of what is required under item 3 on the actual notice (Attachment B).

Finally, we raise awareness that for our small businesses located in regional and remote areas internet access can be intermittent. Therefore, accepting hard copies of notices should be specifically made acceptable and postage time allowed in the notice periods.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Miss Alexandra Hordern on \_\_\_\_\_ or at \_\_\_\_\_

Yours sincerely

**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman

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## **Attachment A: insert for Guidance Note**

### ***Key definitions:***

#### **Initial contract**

Is formed where one or more people discuss the supply to or purchase of goods or services with the intent to collectively bargain with the target business or businesses.

#### **Collective Bargaining group**

The group of two or more competitors that have entered an initial contract.

#### **Collective Bargaining group members**

To be a member, a business or independent contractor must have a turnover of less than \$10 million in the preceding financial year. Franchisees and fuel retailers do not need to meet this turnover threshold if dealing with a common franchisor or fuel wholesaler.

#### **Collective bargaining class exemption notice**

A notice to be completed by the Collective Bargaining Group and submitted to the Australian Competition and Consumer Commission (ACCC) within 14 days of the initial contract. The ACCC will provide the bargaining group with a letter confirming receipt of their Collective bargaining class exemption notice.

#### **Collective bargaining class exemption notice term**

Once the ACCC has confirmed receipt of notice, the Collective bargaining class exemption will remain in place until 30<sup>th</sup> June 2029, unless revoked by the ACCC before that date.

#### **Target business**

The business(es) the group proposes to collectively bargain with.

#### **First Approach**

This is the first contact with target business(es) and the group must provide the target(s) with a copy of its Collective bargaining class exemption notice.

### ***Summary of the process to use the Collective bargaining class exemption***

- 1) Identify potential members for a group and initiate a discussion on negotiating with supplier/s or customer/s (target business/es) about the supply or acquisition of goods or services.
- 2) Following discussion complete a *Collective bargaining class exemption notice* and submit to the ACCC within 14 days (initial contract).
- 3) On first contact with the target business(es) provide a copy of the *Collective Bargaining class exemption notice* before commencing negotiations (first approach).
- 4) If considered necessary to threaten or engage in a collective boycott, complete and submit a notice to the ACCC.

**Attachment B: Collective bargaining class exemption notice**

**Collective bargaining class exemption notice**

**1. Describe or list the current members of the group**

Include current members and those who may join the group in the future. If you have a small group that will not change you can list the names of all members.

If you expect to add new members over time, provide a general description of the members. For example: A group of dairy farmers in the Manning Valley area in New South Wales.

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**2. Describe or list the target business(es)**

Include target businesses or type of target business(es) the group proposes to collectively bargain with. If you intend to negotiate with just one particular target business, or a small number of known target businesses, you can list the names of each target business.

If you expect to add new target businesses over time, provide a general description of the type of target businesses. For example: Dairy processing companies.

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**3. What does the group propose to collectively bargain about?**

Describe the product and or service that the group proposes to bargain about with the target business(es). For example: Supply of raw milk.

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**4. Contact details**

Provide the contact details for a person the ACCC can contact in relation to the collective bargaining arrangements. This can be any member of the group or a nominated representative.

Contact details will be redacted when the ACCC places this notice on its public register.

If the contact person, or their details, change, please advise the ACCC.

Name: \_\_\_\_\_

Relationship to group: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Signature of contact person: \_\_\_\_\_