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COLLECTIVE BARGAINING CLASS EXEMPTION

Thank you for the opportunity to provide comments on the potential class exemption for collective bargaining.

I will provide some general comments regarding the benefits for small business of the proposed exemption and some brief comments in response to the issues on which you are seeking feedback.

General Comments

The Victorian Small Business Commission (VSBC) aims to create a fair and competitive operating environment for Victorian businesses to operate, grow and prosper through its four functions – advocacy, dispute resolution, monitoring and engagement. Therefore, this response is informed by both the work of the VSBC in resolving disputes for small businesses, and by stakeholder engagement on the primary issues affecting small businesses.

Overall, the Victorian Small Business Commission (VSBC) is supportive of the proposal to introduce a class exemption for small businesses to bargain collectively with a supplier or customer.

Small businesses often operate in isolation and may face serious power imbalances in their dealings with larger suppliers or customers. The ability to collectively bargain, without the requirement to notify or receive authorisation from the ACCC, will help level the playing field for small businesses in these negotiations, as well as saving considerable time and money.

The Victorian Small Business Commission (VSBC) facilitates the resolution of business disputes through alternative dispute resolution including facilitated meetings and mediation.

Several requests received by the VSBC raise possible issues regarding collective bargaining. These might include:

- a group of retail tenants, such as those in a local market, wanting to arrange a mediation with their landlord to discuss issues which they have in common
- operators of separate hire car businesses at a regional airport wishing to arrange a joint mediation to negotiate charges for leasing car spaces
- a group of franchisees wishing to mediate together with a franchisor over common issues.

The VSBC's priority is to attempt to resolve disputes efficiently for small businesses in a timely and low-cost manner, so that they avoid costly and protracted litigation. The proposed class exemption would only help to ensure the most effective outcomes for small businesses, through the efficiencies involved in collectively mediating.

What type of businesses should be covered under this class exemption?

The VSBC supports that the proposed class exemption be limited to small business and that a broad definition of small business be adopted. This could be best achieved by using a combination of factors (i.e. employees numbers, turnover, or contract value) as described in the discussion paper and requiring at least two out of the three factors be met for the exemption to apply.

It would not seem necessary to limit the exemption to bargaining with target businesses above a certain size, as the target business has the option of choosing not to deal collectively with the bargaining group.

Other Issues

The VSBC agrees with the ACCC's starting position that the class exemption should cover bargaining with both customer and suppliers, and that information sharing beyond that necessary to engage in collective bargaining should not be allowed under the class exemption.

Potential effects on businesses which might fall outside of a potential bargaining group because of their size, and the potential disincentive to grow for business approaching size thresholds are raised in the discussion paper. The effects of these examples are uncertain and it is recommended that these issues be monitored before considering actions to address.

Collective bargaining by franchisees

The VSBC supports the class exemption allowing collective bargaining by all franchisees with their franchisor, regardless of their size. It is agreed that the exemption should apply only to negotiations between franchisees and their franchisors.

As discussed above, this would also allow for more efficient mediation processes where multiple franchisees are in dispute with their franchisor regarding common issues.

Please contact _____ of this Office on _____ or on _____ if you have any queries about this submission.

Yours sincerely



Judy O'Connell

Victorian Small Business Commissioner