



Australian
Competition &
Consumer
Commission

Streamlined collective bargaining for small business

More timely decisions/greater certainty of outcomes

The ACCC has for many years authorised small business collective bargaining arrangements—allowing bargaining groups to form in diverse areas ranging from chicken growing, dairy farming and vegetable growing to concrete carting, pay-television services and wagering.

The ACCC offers a simpler and more streamlined process for parties seeking authorisation of collective bargaining arrangements.

The streamlined process provides small business with more timely decisions and helps them to identify the types of proposals that are more likely to be authorised.

WHAT IS COLLECTIVE BARGAINING?

Collective bargaining refers to an arrangement under which two or more competitors in an industry come together to negotiate terms and conditions (which can include price) with a supplier or a customer (often referred to as 'the target').

Behaviour of this type will ordinarily raise concerns under the competition provisions of the *Competition and Consumer Act 2010* (the Act).

WHAT IS AUTHORISATION?

Authorisation allows businesses to obtain protection for arrangements that may breach the competition provisions of the Act, including collective bargaining arrangements. Authorisation is available for arrangements that are demonstrated to be of net benefit to the public.

The assessment process for an authorisation application would ordinarily take about six months to complete.

STREAMLINED AUTHORISATIONS—BENEFITS FOR SMALL BUSINESS

Timely decisions

The streamlined process provides greater certainty to the assessment timetable for collective bargaining applications.

Interim authorisation within 28 days

Applicants may apply for interim authorisation—this allows the parties to begin their collective negotiations while the ACCC conducts its assessment.

In most circumstances the ACCC will provide a response to requests for interim authorisation within 28 days of receiving an application and accompanying information.

Draft determination in 28 days

The authorisation process requires the ACCC to issue a draft determination which sets out its preliminary assessment and proposed decision along with an opportunity for interested parties to provide further comments.

Under the streamlined process, the ACCC will seek to issue its draft determination within 28 days of receiving a collective bargaining application.

In most circumstances the ACCC's draft determination will include its decision on interim authorisation.

Final determination in three months

The ACCC will seek to issue its final determination within three months of receiving the application for authorisation.

Providing greater certainty as to outcomes

It is open for small businesses to seek authorisation for collective bargaining arrangements in whatever terms they wish. However, in the ACCC's experience, certain features will significantly increase the likelihood of a successful application.

Voluntary participation

The most important feature is that participation is voluntary for all parties (i.e. the members of the collective bargaining group and the target). This allows any party to exit the process at any time and, if they choose, to negotiate on an individual basis.

Support of the target

While not necessary, a supportive target is more likely to facilitate productive and mutually beneficial outcomes and improve the likelihood that public benefits will arise.

Limited coverage

Limiting such things as the number of participants in the group, the geographic area over which they trade or the number of targets with whom they can deal collectively is likely to reduce the level of anti-competitive detriment. This will make it more likely that authorisation can be granted by the ACCC.

Absence of collective boycotts

The absence of features such as proposals to collectively withdraw goods or services (often referred to as a collective boycott) is also likely to significantly lower the anti-competitive detriments.

The ACCC will be more likely to grant authorisation when each of these features are present.

HOW TO QUALIFY FOR THE STREAMLINED PROCESS

For applicants to be eligible under the streamlined authorisation process, they must:

- > at the time of lodging their application, nominate that they wish to be considered under the streamlined authorisation process for small business
- > as part of their application, provide the ACCC with sufficient, relevant information such as:
 - how the group will form and function
 - the goods or services affected by the proposal
 - alternate providers of these goods or services
 - possible public benefits of the arrangements
 - possible public detriments of the arrangements
- > work with the ACCC to achieve timely outcomes, for example providing information promptly
- > provide target contact details and the contact details of parties who are likely to be interested in being consulted on the application and, if possible, provide details of their support (for example a letter of endorsement).

Before lodging an application

Before lodging an application under the streamlined process applicants should:

- > establish how the collective bargaining will be arranged, for example:
 - who may be interested in being a member of the group and whether provision should be made to allow future parties to join the group
 - what the group might want to collectively bargain—for example, price or terms of delivery
 - who the group wants to bargain with (i.e. the target)
 - how the group is to be represented in the negotiations
 - how decisions will be made by the members throughout the negotiation process.
- > organise for representatives of the collective bargaining group to discuss the proposed collective bargaining arrangement with the business(es) (i.e. the target(s) with whom they wish to negotiate
- > once they have developed their proposed arrangement and discussed the proposal with the target or targets, contact the ACCC so they can:
 - meet and discuss the proposed arrangements (in person or by telephone)
 - receive guidance on the authorisation process, such as the relevant form, the level of fees which may apply, confidentiality and public register information
 - receive guidance on what may be required to outline public benefits and anti-competitive detriments
 - receive comments on any draft application.

After lodging an application

When the ACCC receives an eligible collective bargaining application, it will contact the applicant, generally within the first five business days, to notify them of any additional information that may be needed to support their application.

During the course of its assessment, the ACCC may contact the applicant for further information.

Applicants will need to work with the ACCC to ensure that information is provided promptly.

FINAL CHECKLIST

- ☐ Have you finalised your proposal?
 - ☐ Outline of the arrangement?
 - ☐ Public benefit claims?
 - ☐ Public detriment claims?
 - ☐ Target contact details?
- ☐ Have you spoken to the target and explained to them what it is you wish to do?
- ☐ Have you used the correct application form and identified the relevant filing fee?
- ☐ Have you spoken to the ACCC?

OTHER IMPORTANT INFORMATION FOR APPLICANTS

Public process

The process for assessing applications for authorisation, including collective bargaining arrangements, is open and transparent. While applicants (and interested parties) may ask that some information provided for a collective bargaining authorisation be kept confidential, the ACCC generally publishes on its website information provided to it for an authorisation application.

As part of its assessment of applications for authorisation the ACCC will seek submissions from interested parties, including targets. Under the streamlined process this will generally begin within five business days of receiving an application.

Further information

More information on collective bargaining and the authorisation process can be found at the ACCC's website **www.accc.gov.au** or by contacting the ACCC's small business helpline on **1300 302 021**.

Other useful publications

- > *Guide to collective bargaining notifications*
- > *Guide to authorisation*
- > *Guide to exclusive dealing notifications*
- > *Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes*
- > *Authorising and notifying cartel conduct*

Important notice

This publication has been updated to refer to the *Competition and Consumer Act 2010* which replaces the *Trade Practices Act 1974* on 1 January 2011. For more information on the Australian Consumer Law changes see www.consumerlaw.gov.au