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MTAA Submission to the ACCC regarding the proposed *Collective Bargaining Class Exemption*

Executive Summary

The [Motor Trades Association of Australia Limited](#) (MTAA) appreciates the opportunity to make this submission to the Merger and Authorisation Review of the Australian Competition and Consumer Commission (ACCC) regarding the proposed *Collective Bargaining Class Exemption*.

1. **MTA SA** advised MTAA that: “[We have] consulted members on the [documents] noted in the collective bargaining class exemption consultation: There has been no negative feedback on [these]. [We] support the [documents] in their entirety.”
2. **MTAA** suggests that the ACCC extend the consultation period (say until mid-July sometime) in order to provide a separate document of some sort to stakeholders on the “eligibility criteria” itself, that includes more detail on: what is exactly meant by “a \$10 million aggregated annual turnover threshold”; as well as what exactly are the “other features of the class exemption”. The final version should then be reflected in both the *notification form* and *legislative instrument*.

This point is best illustrated when MTAA Member, **MTA WA** advised MTAA that the ACCC has in a separate email of 18 June 2019 to an inquiry on the same topic clarified the “\$10 million aggregated annual turnover threshold” as follows: “To be eligible for the class exemption, an individual business would have to [be] less than \$10 million aggregated annual turnover. There would not be a limit on the combined aggregated turnover of all businesses making up the bargaining group.” MTAA respectfully suggests if clarification is required within one sector there are likely to be similar concerns by other industries.



3. **MTAA** welcomes the inclusion by the ACCC of an automotive sector specific reference to “fuel retailers”. We would also welcome further reference to other specific automobile sector industries including motor body repairers in both the *notification form* and *legislative instrument*.
4. **MTAA** suggests that the ACCC clarify the following regarding the *notification form* process: A) two separately filled-in versions of this form to each of the “ACCC” plus the “target business” or one to the “ACCC” and copied-in to the “target business”; and B) sent simultaneously to both or firstly to one and secondly to the other within some specified time frame.
5. **MTAA** supports the inclusion of “industry association[s]” as a possible “representative” “to act on...behalf in negotiations” of “[a] group of businesses”. We suggest that wording to this effect be reflected in both the *notification form* and *legislative instrument*.
6. **MTAA** suggests that wording should be added to the “terms of supply” statement, not only in the *notification form* but also in the *legislative instrument*, to the effect of “prices that better reflect both supply-costs and customer-demand”.
7. **MTAA** supports the concept of “mutual benefits”. Thus, in this spirit, we suggest that words to the following effect be added at the end of “does not oblige target businesses to negotiate with any bargaining group”, not only in the *notification form* but also in the *legislative instrument*, “nor oblige any bargaining group to continue with or complete negotiations with any target businesses”.
8. **MTAA** supports the “\$10 million turnover threshold” not applying to both: A) “any franchisees...governed by the *Franchising Code of Conduct*, who wish to collectively bargain with their franchisor”; and B) “any fuel retailers who have a fuel re-selling agreement as defined by the *Oil Code of Conduct*...who wish to collectively bargain with their wholesaler”.
9. As first stated above in terms of eligibility criteria, **MTAA** suggests that the ACCC extend the consultation period (say until mid-July sometime) in order to provide a separate document of some sort to stakeholders on the “eligibility criteria” itself, that includes more detail on: what is exactly meant by “a \$10 million aggregated annual turnover threshold”; as well as what exactly are the “other features of the class exemption”. The final version should then be reflected in both the *notification form* and *legislative instrument*.
10. **MTAA** suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “If the bargaining representative is not a member of the collective bargaining group, they do not need to meet the eligibility criteria. For example, groups can seek to be represented by industry associations with over \$10 million in aggregated turnover.”



11. **MTAA** suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “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* provided to the ACCC.”
12. **MTAA** suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “The class exemption does not oblige businesses to join a collective bargaining group.”
13. **MTAA** suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “The class exemption will not protect businesses sharing commercially sensitive information beyond that necessary to facilitate the collective bargaining process.”
14. **MTAA** suggests that some of the key details regarding “calculating turnover” should be reflected in both the *notification form* and *legislative instrument*.
15. **MTAA** supports “[t]he class exemption...remain[ing] in place until 30 June 2029, unless revoked by the ACCC before that date” however “the nominated contact person” is highly unlikely to remain the same over an extended period of time like 10 years or even 5 or 3 years.
16. **MTAA** supports ACCC withdrawal after appropriate consultation. However, there should also be an opportunity for appeal on the merits and/or the law. In addition, the question of “not likely to result in overall public benefits” should be one for an independent third party like the *Treasury*, *Productivity Commission (PC)*, *Office of Best Practice Regulation (OBPR)* or *Parliamentary Budget Office (PBO)* using sound cost benefit analysis (CBA). Better still, a new *Cost Benefit Analysis Authority (CBAA)* should be proposed, planned and established as soon as practicable.
17. **MTAA** suggests that both “9 Collective bargaining class exemption notice must be given to the Commission within 14 days” and “10 Copy of collective bargaining class exemption notice must be given to target” should also be reflected in the *notification form*. In addition, “10” should include a time frame and otherwise be made more consistent, and in accordance, with “9”.

Please accept this **MTAA** submission to the Merger and Authorisation Review of the **ACCC** regarding the proposed *Collective Bargaining Class Exemption*. MTAA very much looks forward to being fully engaged for the remainder of this consultation process on this important new instrument. Any questions or comments may, at first instance, be directed to Mr Darren Nelson on [redacted] or [redacted]. He is MTAA’s Director of Policy and Industry Relations.



Introduction

The [Motor Trades Association of Australia Limited \(MTAA\)](#) appreciates the opportunity to make this submission to the Merger and Authorisation Review of the Australian Competition and Consumer Commission (ACCC) regarding the proposed *Collective Bargaining Class Exemption*.

MTAA is a federation of various state and territory motor trades associations (i.e. four MTAs) and automobile chambers of commerce (i.e. two ACCs). MTAA represents, and is the national voice of, the 69,365 automobile sector businesses which employ over 379,000 Australians and contribute around \$37.1 billion to the Australian economy equating to about 2.2% of GDP. MTAA member constituents include automotive retail, service, maintenance, repair, dismantling recycling and associated businesses that provide essential services to a growing Australian fleet of motor vehicles fast approaching 20 million by 2020. Most members are small businesses, many are in franchises and a significant number are fuel retailers.

The **ACCC**, in an email to MTAA and others on 12 June 2019, requested “feedback on the following documents”:

1. “the eligibility criteria”;
2. “the one-page notice that groups must provide to the ACCC and the target”;
3. “the plain English guidance note for using the class exemption”; and
4. “the draft legislative instrument, which is the legal document that will create the class exemption.”

MTA SA advised MTAA that: “[We have] consulted members on the [documents] noted in the collective bargaining class exemption consultation: There has been no negative feedback on [these]. [We] support the [documents] in their entirety.”

MTAA also supports these, subject to the comments made in this submission and noting that there are three not four ACCC documents. Please see [Appendix A](#) for a *Case Study*, [Appendix B](#) for *VACC’s Input* and [Appendix C](#) for some of the possible *Pros & Cons* regarding collective bargaining.

In this regard, note that **MTAA** has previously investigated the application of collective bargaining as a process for assisting automotive sector participants in order for them to have improved negotiating ability with powerful and sometimes dominant market participants. For example, MTAA and members have identified the potential of collective bargaining to increase transparency in the motor body repair industry and the relationships and contracted arrangements between motor body repairers and car insurers. One of the inhibitors cited by these businesses in embracing collective bargaining has been the notification and authorisation process and concerns about elements of the requirements. The proposed class exemption would significantly contribute to addressing these concerns.



1. Eligibility Criteria

The **ACCC** did not provide the “eligibility criteria” itself in the 12 June email nor on the relevant ACCC website. The former only says: “the eligibility criteria”. The latter says a bit more as follows: “the eligibility criteria, including whether a \$10 million aggregated annual turnover threshold, and other features of the class exemption, are appropriate” This is in the context of: three references to “eligibility” and one to “eligible” in the *notification form*; ten references to “eligibility” and sixteen to “eligible” in the *guidance note*; and six references to “eligible” in the draft *legislative instrument*.

MTAA suggests that the ACCC extend the consultation period (say until mid-July sometime) in order to provide a separate document of some sort to stakeholders on the “eligibility criteria” itself, that includes more detail on: what is exactly meant by “a \$10 million aggregated annual turnover threshold”; as well as what exactly are the “other features of the class exemption”. The final version should then be reflected in both the *notification form* and *legislative instrument*.

This point is best illustrated when MTAA Member, **MTA WA** advised MTAA that the ACCC has in a separate email of 18 June 2019 to an inquiry on the same topic clarified the “\$10 million aggregated annual turnover threshold” as follows: “To be eligible for the class exemption, an individual business would have to [be] less than \$10 million aggregated annual turnover. There would not be a limit on the combined aggregated turnover of all businesses making up the bargaining group.” MTAA respectfully suggests if clarification is required within one sector there are likely to be similar concerns by other industries.

2. Notification Form

The **ACCC** states on page 1 of this notification form that: “The ACCC has developed a class exemption that provides a ‘safe harbour’ for eligible businesses to collectively bargain without the risk of breaching the *Competition and Consumer Act 2010* (Cth). Businesses that meet the eligibility criteria of the class exemption get automatic protection to collectively bargain. The class exemption allows:

- 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, and
- 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.”

MTAA welcomes the inclusion by the ACCC of an automotive sector specific reference to “fuel retailers”. We would also welcome further reference to other specific automobile sector industries including motor body repairers in both the *notification form* and *legislative instrument*. Please see **Appendix A** for a *case study* on such repairers.

The **ACCC** also states on page 1 that: “In addition to these requirements, the proposed collective bargaining group must provide this notice providing details about the formation of the group:

- to the ACCC when the bargaining group is formed, and
- to any target business the group proposes to collectively bargain with, when the group or their representative first approaches the target business.

The legal protection afforded by the class exemption only applies to businesses if the bargaining group they are forming or joining has complied with these steps.”

MTAA suggests that the ACCC clarify the following regarding the *notification form* process: A) two separately filled-in versions of this form to each of the “ACCC” plus the “target business” or one to the “ACCC” and copied-in to the “target business”; and B) sent simultaneously to both or firstly to one and secondly to the other within some specified time frame.

3. Guidance Note

The **ACCC** states on page 2 of this guidance note that: “A group of businesses may sometimes appoint a representative, such as an industry association, to act on their behalf in negotiations.”

MTAA supports the inclusion of “industry association[s]” as a possible “representative” “to act on...behalf in negotiations” of “[a] group of businesses”. We suggest that wording to this effect be reflected in both the *notification form* and *legislative instrument*.

The **ACCC** also states on page 2 that: “There can be many benefits from negotiating as a group with the target business rather than individually, including:

- 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[.]



MTAA suggests that wording should be added to the “terms of supply” statement, not only in the *notification form* but also in the *legislative instrument*, to the effect of “prices that better reflect both supply-costs and customer-demand”.

The **ACCC** furthermore states on page 2 that: “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.”

MTAA supports the concept of “mutual benefits”. Thus, in this spirit, we suggest that words to the following effect be added at the end of “does not oblige target businesses to negotiate with any bargaining group”, not only in the *notification form* but also in the *legislative instrument*, “nor oblige any bargaining group to continue with or complete negotiations with any target businesses”.

The **ACCC** states on pages 4 to 5 that: “The \$10 million turnover threshold does not apply to franchisees and fuel retailers negotiating with their franchisor or fuel wholesaler[.] ... This is regardless of the size of individual franchisees or fuel retailers. ... 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.”

MTAA supports the “\$10 million turnover threshold” not applying to both: A) “any franchisees...governed by the *Franchising Code of Conduct*, who wish to collectively bargain with their franchisor”; and B) “any fuel retailers who have a fuel re-selling agreement as defined by the *Oil Code of Conduct*...who wish to collectively bargain with their wholesaler”.

The **ACCC** states on page 5 that: “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.”

As first stated above in terms of eligibility criteria, **MTAA** suggests that the ACCC extend the consultation period (say until mid-July sometime) in order to provide a separate document of some sort to stakeholders on the “eligibility criteria” itself, that includes more detail on: what is exactly meant by “a \$10 million aggregated annual turnover threshold”; as well as what exactly are the “other features of the class exemption”. The final version should then be reflected in both the *notification form* and *legislative instrument*.



The **ACCC** states on page 6 that: “If the bargaining representative is not a member of the collective bargaining group, they do not need to meet the eligibility criteria. For example, groups can seek to be represented by industry associations, cooperatives and professional bodies with over \$10 million in aggregated turnover.”

MTAA suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “If the bargaining representative is not a member of the collective bargaining group, they do not need to meet the eligibility criteria. For example, groups can seek to be represented by industry associations with over \$10 million in aggregated turnover.”

The **ACCC** also states on page 6 that: “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* provided to the ACCC.”

MTAA suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “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* provided to the ACCC.”

The **ACCC** furthermore states on page 6 that: “The class exemption does not oblige businesses to join a collective bargaining group[.]”

MTAA suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “The class exemption does not oblige businesses to join a collective bargaining group.”

The **ACCC** states on page 7 that: “The class exemption will not protect businesses sharing commercially sensitive information beyond that necessary to facilitate the collective bargaining process.”

MTAA suggests that wording to the following effect be reflected in both the *notification form* and *legislative instrument*: “The class exemption will not protect businesses sharing commercially sensitive information beyond that necessary to facilitate the collective bargaining process.”



The **ACCC** provides more detail on pages 9 to 10 regarding “Calculating turnover”.

MTAA suggests that some of the key details regarding “calculating turnover” should be reflected in both the *notification form* and *legislative instrument*.

The **ACCC** states on page 10 that: “The class exemption will remain in place until 30 June 2029, unless revoked by the ACCC before that date. In 2028 (or earlier) the ACCC will conduct a review to determine whether to extend the operation of the class exemption beyond 30 June 2029. As part of this review we will contact the nominated contact person of each collective bargaining group that has provided a *Collective bargaining class exemption notice* and provide them with an opportunity to provide a submission about whether the class exemption should continue.”

MTAA supports “[t]he class exemption...remain[ing] in place until 30 June 2029, unless revoked by the ACCC before that date” however “the nominated contact person” is highly unlikely to remain the same over an extended period of time like 10 years or even 5 or 3 years.

The **ACCC** states on page 11 that: “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. 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.”

MTAA supports ACCC withdrawal after appropriate consultation. However, there should also be an opportunity for appeal on the merits and/or the law. In addition, the question of “not likely to result in overall public benefits” should be one for an independent third party like the *Treasury*, *Productivity Commission (PC)*, *Office of Best Practice Regulation (OBPR)* or *Parliamentary Budget Office (PBO)* using sound cost benefit analysis (CBA). Better still, a new *Cost Benefit Analysis Authority (CBAA)* should be proposed, planned and established as soon as practicable.



4. Legislative Instrument

The ACCC's Exposure Draft addresses both "9 Collective bargaining class exemption notice must be given to the Commission within 14 days" and "10 Copy of collective bargaining class exemption notice must be given to target".

MTAA suggests that both "9 Collective bargaining class exemption notice must be given to the Commission within 14 days" and "10 Copy of collective bargaining class exemption notice must be given to target" should also be reflected in the *notification form*. In addition, "10" should include a time frame and otherwise be made more consistent, and in accordance, with "9".

Conclusion

Please accept this MTAA submission to the Merger and Authorisation Review of the ACCC regarding the proposed *Collective Bargaining Class Exemption*. MTAA very much looks forward to being fully engaged for the remainder of this consultation process on this important new instrument. Any questions or comments may, at first instance, be directed to Mr Darren Nelson on [REDACTED] or [REDACTED]. He is MTAA's Director of Policy and Industry Relations.

MTAA Limited

5 July 2019



Appendix A. Case Study (of the motor body repair industry)

In one of many such cases in recent years, several motor body repair businesses were individually approached by a large car insurance company to 'sign up' to new repairer arrangements, which essentially were mooted as an extension of the existing arrangements.

Due to its geographic location halfway between two capital cities, the characteristics of a regional city where knowledge and community are paramount in terms of business, while these are all standalone businesses and competitors in a market, they are acutely concerned with the provision of professional quality services to the community they serve and understand only too well that in such communities word of mouth, goodwill and good faith are critical foundations to sustainable business.

Key Points:

- All repairers individually said they were not prepared to enter into an extension of the existing contract repairer arrangements because:
 - almost all had reported behaviours of 'bullying, intimidation, difficulties with getting quotes approved, disputation with assessors, binding rates on common repair jobs (like quarter panel replacement), use of proprietary quotation systems;
 - inflexibility to consider the geographic and demographic matters unique to the geographic region; and
 - general terms and conditions contained in the proposed extension did not consider the above matters and a general feeling of a lack of transparency, fairness, and equity in the proposed contract.
- All repairers individually said they were happy to continue to undertake work for car insurers but refused to sign up to new contracts.
- Another large car insurance company wanted a 'preferred' or contracted repairer for the region and approached a selected number of individual repairers to do this, but all refused for the same reasons provided by the original large car insurance company.
- The original large insurance company confirmed more than once to one of the state MTAs/ACCs that they only want to deal one on one with repairers and could not see the benefit of discussing their intentions in a group situation as the discussions include 'future relationships and commercial opportunities'. That MTA/ACC had offered on more than one occasion to arrange a meeting to work through the issues with refusal the result.



- Since then one repairer has advised that he/she has been informed (by an assessor off the record) that his/her and another repair business quotes on work are now being handled by management rather than the normal assessors.
- The large car insurance company has also been harsh with assessments since then – putting a lot on report, asking for second-hand parts and culling time on repairs considerably.
- The repairers would be prepared to sign a contract if there was an opportunity for input, and genuine negotiations in good faith regarding terms, conditions and requirement. If there was greater transparency and genuine consultation on the content of the contract rather than a ‘take it or leave it approach’. A collective bargaining class exemption is such a case may be of benefit.

At meetings organised by the relevant MTA/ACCC, affected motor body repair members were advised to seek independent advice, but should not feel obliged to sign any contract they were uncomfortable with. They were also advised of the nature of collective bargaining and what broadly this entailed and a high-level overview of what it might mean, if authorised, in terms of seeking an equitable transparent and meaningful outcome. It was also explained that if authorised then the negotiations for a new contract / agreement would be for all participants and any outcome would be binding on those participants.

It is believed the motor body repairers connected with this case were ‘uncomfortable’ with the formality and process of applying for authorisation for Collective Bargaining due to the perceived or real threats to business. A class exemption and its inherent ‘safe harbour’ attributes will be viewed as a positive step in addressing these concerns.



Appendix B. VACC's Input

“This may make the journey easier should SME body repairers seek to raise a collective bargaining position. It may also be useful for smaller franchise dealers if they want to bargain collectively. In both Body Repair and dealership space we are seeing a distinct dichotomy of small and very big businesses and this may create, and probably already has to some degree, two distinct types of businesses, big and small. When this occurs these groups have different interests and consequently are unlikely to bargain as a grouped up collective, and some already have a contracted arrangement with the supplier.”

“VADA and MID support a class exemption that would allow all franchisees to collectively bargain with their franchisor regardless of their size or other characteristics. It is the view of VADA that all franchisees should be able to bargain collectively with their franchisor, regardless of the size or corporate structure. Collective bargaining will assist in overcoming a significant roadblock in communication between dealer and factory. An exemption will allow for a more balanced approach in future franchise relationships. The sheer size of the OEMs in comparison to an Australian Dealer is glaring. That power imbalance in what many overseas based management teams see as a backwater market is significant. Any tool that would assist dealers strike a fairer starting and ongoing operating position in an agreement could only help. Too often dealers are left to negotiate when things are seemingly beyond repair. A collective bargaining group within the confines of the dealership sector is that parties to any collective bargaining process must be a franchisee of the same franchisor i.e. same brand. This would allow for consistency in approach to future contract terms and agreed outcomes, not allowing for the size of one dealer over the size of another (e.g. Waverley Toyota AP Eagers v Kerang Toyota) . Competing dealers within the same brand, quite often bordering each other's PMAs will now enjoy the opportunity to with collaboratively negotiate for improved outcomes (e.g. targets, marketing fund contributions, tenure, shifting boundaries, etc.). VADA and VACC have suggested in previous franchising submissions that any collective bargaining arrangements should be conducted by that brands National Dealer Council and the OEMs local representative.”

“The goodwill of franchisors to transparently collectively bargain with dealer groups is an exciting prospect. The flow on benefits to the independent market could be substantial as many dealer groups are not in support of factory campaigns regarding fixed price servicing and other extended factory warranty promotions.”



Appendix C. Pros & Cons (for the motor body repair industry)

Some of the possible **pros** for auto sector participants regarding collective bargaining include:

- **Improved negotiating power:** Individual motor body repairers currently receive contracts on a "take it or leave it" basis. By working together, the repairers are likely to have a stronger negotiating position with car insurers. This would hopefully lead to a more balanced and fairer outcome across the terms and conditions of the repair services contract.
- **Improved transparency:** Car Insurers have been approaching repairers on an individual basis, meaning that the terms of any given arrangement remain confidential as between the insurer and individual repairer. By engaging in collective bargaining, the repairers will have visibility of the terms offered to the bargaining group and will be able to more effectively and consistently negotiate on those terms.
- **Improved smash repairer input into terms and conditions:** The collective bargaining conduct is likely to result in public benefits in the form of improved input by smash repairers into terms and conditions. This can provide a mechanism through which the negotiating parties can identify and achieve greater efficiencies in their businesses and ensure terms that better reflect the circumstances of smash repairers and car insurers.
- **Transaction cost savings:** There are likely to be transaction cost savings realised from the collective bargaining process, due to a single negotiation process rather than a series of individual negotiations. This may particularly be the case where individual smash repairers require professional or legal advice prior to entering into the contract to assist in their decision.
- **Better informed markets:** The collective bargaining conduct may increase the facilitation of information flow to its smash repairer members. This may help to improve the transparency and availability of information about market conditions. As such, the collective bargaining conduct is likely to result in better informed markets and can provide greater certainty to individual smash repairers thus encouraging industry investment.

Some of the possible **cons** for auto sector participants regarding collective bargaining include:

- **Car Insurers refuse to engage:** It is possible that the relevant insurers will refuse to engage with the collective bargaining process and/or refuse to meet with industry association representatives or the members of the bargaining group.
- **Low participation rate:** If many motor body repairers in a market do not sign up to the collective bargaining process, there may be a minority of smash repairers that car insurers can



engage with directly. In these circumstances, the threat of losing business from car insurers, or being played off against one another, is likely to reduce the incentive for a smash repairer to participate in a collective bargaining process.

- **Retribution from insurers:** There is the likelihood that car insurers will "pull work" or refuse to deal with repairers that participate in the collective bargaining process. In such circumstances, repairers should be encouraged to record any evidence of a refusal (or threatened refusal) by the car insurers to engage repairers on the basis that they are proposing a collective bargaining process.

Some *other* points for auto sector participants regarding collective bargaining include:

- **Increased bargaining power:** Naturally, if a larger group of repairers have a common interest in resolving particular issues with car insurers, then it should follow that the strength of the group's bargaining power would be increased. However, as noted below, this benefit will only be realised if the individual repairer's interests are aligned.
- **Diverse region = diverse interests:** Following the above point, if additional geographic regions are introduced into the collective bargaining process, it may become increasingly difficult to reach a consensus in relation to the terms and conditions under negotiation with the car insurer/s; and/or ensure that issues unique to (or important to) the regional repairers are adequately and appropriately addressed in the negotiations.
- **Increased effect on competition:** The assessment by the ACCC on the public benefits and public detriments of the collective bargaining process proposed will be very different if the repairers are located in one region, one state or nationwide. These matters would need to be taken into account when preparing a notification for collective bargaining class exemption.

End of Submission

