



**Small Business  
Development Corporation**

Our ref: D19/4183

General Manager, Adjudication  
Australian Competition and Consumer Commission  
GPO Box 520  
MELBOURNE VIC 3001

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Dear Sir/Madam

## **COLLECTIVE BARGAINING CLASS EXEMPTION**

The Western Australian Small Business Development Corporation (SBDC) welcomes the opportunity to provide feedback in support of the Australian Competition and Consumer Commission's (ACCC) proposed collective bargaining class exemption.

The SBDC is an independent statutory authority of the Government of Western Australia established to support and facilitate the growth and development of small businesses in the State<sup>1</sup>.

One of the agency's key strategic objectives is to influence the policy and regulatory environment affecting the small business sector in Western Australia. In this regard, the SBDC regularly contributes to policy and legislative reviews and inquiries undertaken across all tiers of government, including proposals by governments to reduce the burden on small business operators.

### **Collective bargaining and small business**

The SBDC supports the ACCC's proposed class exemption for collective bargaining, providing a 'safe harbour' for eligible small businesses (and other eligible businesses), with an aggregated annual turnover of up to \$10 million, to collectively bargain without the risk of breaching competition laws.

Small businesses often operate in isolation and can face power imbalances in dealing with larger suppliers or other larger businesses. They often do not have the financial

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<sup>1</sup> This submission outlines the views of the SBDC and does not necessarily represent the views of the Western Australian Government.

capacity or resources to effectively negotiate on their own. Prior to the proposed changes, the considerable costs associated with collective bargaining, namely the \$1,000 application fee and \$7,500 authorisation form, represented a significant barrier for the average small business. In addition to this, the complex forms and lack of plain English guidance material made the process of applying to collectively bargain very onerous.

The ACCC's proposed class exemption for small businesses, as well as the newly drafted guidance material and simple exemption notice form, removes the financial barriers and complexities previously associated with the collective bargaining process.

For small businesses, the ability to utilise the proposed class exemption to collectively bargain, without having to navigate the ACCC's complex notification and authorisation procedure and pay the associated fees, may encourage more of them to take advantage of the process. By levelling the playing field through collective bargaining in negotiations, small businesses are given the opportunity to achieve better terms and conditions, as well as save money and time.

### **Collective bargaining by franchisees**

The SBDC also supports the proposed class exemption allowing collective bargaining by all franchisees with their franchisor, regardless of size. It is well documented that a franchisor typically holds an unusually broad power over its franchisees. With this in mind, the SBDC agrees that this class exemption is unlikely to cause substantial harm to competition from collective bargaining by franchisees.

The SBDC further agrees that this exemption should only apply to negotiations between franchisees and their franchisors, and should the group of franchisees wish to collectively bargain with some other party (i.e. a supplier) the class exemption \$10 million aggregated annual turnover threshold would apply.

### **Collective bargaining in retail tenancy**

As a general observation, while collective bargaining has its place for certain business types, with regards to retail tenancy collective bargaining provisions are unlikely to be utilised because of the practical challenges in its uptake. To the best of the SBDC's knowledge, there has not been substantial use of collective bargaining by small business tenants in Western Australia, despite encouragement from the ACCC as far back as 2007.

For retail tenants, rents vary from centre to centre, often depending on a range of factors such as the demand for retail space, development costs and competition for the leasing space. In addition to this, lease terms and conditions vary widely from not only different types of businesses but also within similar businesses such as hairdressers and pharmacies.

With this in mind, it is unlikely that landlords would reach an agreement on rents for a collection of small business tenants to apply in the future without knowing what the nature of the market is going to be at that time. Further, it is unrealistic to expect shopping centre owners to reopen negotiations on leases already entered into when

those leases may have years to run, thus making collective bargaining in this space even more difficult.

Any attempt to negotiate on broader conditions in leases such as permitted use for certain groups (e.g. newsagents) would also be faced with difficulties as each shopping centre has their own individual considerations, particularly around tenancy mix and the specific lease provisions of other tenants.

### **Concluding comments**

The SBDC congratulates the ACCC on proposing this important initiative and its focus on streamlined processes and reduced compliance costs. It is hoped that as a result, more small businesses will avail themselves of the exemption in order to strengthen their negotiating position.

If you would like to discuss this submission in more detail, please don't hesitate to contact Nikki Forrest, Policy and Advocacy on [redacted] or email [redacted]

Yours sincerely



David Eaton  
**SMALL BUSINESS COMMISSIONER**

2 July 2019