



Small business collective bargaining notifications and the Competition and Consumer Act

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Australian Competition and Consumer Commission

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Small business collective bargaining notifications and the Competition and Consumer Act

From 6 November 2017, changes to the law will make it easier for small businesses to obtain legal protection from competition laws to collectively bargain with a customer or supplier.

What is small business collective bargaining?

'Collective bargaining' occurs where two or more small businesses come together to negotiate with a supplier or a customer¹ about terms, conditions and/or prices. The group may choose to appoint a representative, such as an industry association, to negotiate on their behalf.

What is a collective boycott?

Collective bargaining groups sometimes want to be able to refuse to supply to, or buy from, a particular customer or supplier, unless or until they reach agreement on terms and conditions. This is called a 'collective boycott'.

Are collective bargaining and boycotts legal?

Collective bargaining and collective boycotts involve agreements between businesses that would otherwise be competitors. This means that, without legal protection in place, they may breach competition laws. The simplest way for small businesses to collectively bargain or boycott without risk of breaching competition laws is to lodge a 'notification' with the ACCC.²

How do I lodge a notification?

To lodge a notification you must provide the information specified in the form <https://www.accc.gov.au/business/applying-for-exemptions/fees-forms> and pay the lodgement fee of \$1000 per notification unless a concessional fee applies. Check the ACCC website to see if you are eligible for a concession <https://www.accc.gov.au/business/applying-for-exemptions/fees-forms>.

The ACCC prefers notifications to be lodged by email to the General Manager, Adjudication, at adjudication@accc.gov.au, but they can also be lodged by mail or in person at an ACCC office (see www.accc.gov.au/contact-us).

Who can notify?

Subject to certain limitations, a business that is part of the collective bargaining group or an industry association or other representative can lodge a notification. A trade union or an officer of a trade union cannot lodge a notification. A notification can be lodged on behalf of other members in the group, including future members.

A monetary threshold applies. A collective bargaining notification can only be lodged if each member of the group reasonably expects that it will make a contract with the target or targets, and that the value of its transactions with the target or targets under the collective bargaining arrangement will not exceed \$3 million in any 12-month period. Higher thresholds apply for the following industries:

¹ Collective bargaining in the context of competition law does not include employee/employer collective bargaining.

² Authorisation is the alternate process for seeking legal protection for collective bargaining. Authorisation is not limited to small business arrangements. See ACCC's [Guidelines for Authorisation of Conduct \(non-merger\)](#).

- Petrol retailing - \$15 million
- New motor vehicle retailing - \$20 million
- Farm machinery retailing - \$10 million
- Primary production - \$5 million³

How long does a notification take to come into force?

The legal protection provided by a *collective bargaining* notification commences 14 days after the notification is validly lodged, unless the ACCC objects within this period.

The legal protection provided by a notification for *collective boycott* conduct commences 60 days after the notification is validly lodged, unless the ACCC objects within this period.

ACCC assessment

Broadly the ACCC will assess whether the likely public benefit from the proposed collective bargaining conduct will outweigh the likely public detriment.

When does a notification expire?

The legal protection will continue for three years beginning on the day the notification was lodged, unless the ACCC determines that another period (up to 10 years) is appropriate, or the notification is withdrawn or revoked.

How is the law different after 6 November 2017?

Collective bargaining notifications have been available since 2007. Amendments to the law coming into force on 6 November 2017 mean that notifications can:

- be lodged to cover future members of the collective bargaining group, not just current members, and
- cover multiple targets, so that a single notification can give protection for collective bargaining with more than one target business

Other changes only relate to notifications that involve a collective boycott and mean that:

- the ACCC can impose conditions on a collective boycott notification, if required. If the conditions are not complied with, the ACCC can issue an objection notice to revoke the notification
- for collective boycott notifications, legal protection will commence 60 days after the notification is validly lodged, and
- the ACCC can issue an urgent 'stop notice' to require notified collective boycott conduct to immediately cease for a period of time. It can do this where there has been a material change of circumstances since the ACCC last considered the notification and the ACCC reasonably believes that the collective boycott has resulted in serious detriment to the public or that serious detriment to the public is imminent.

The ACCC will release detailed guidelines relating to collective bargaining and boycott notifications and authorisations shortly.

For more information please contact: adjudication@acc.gov.au

³ *Competition and Consumer Regulations 2010* (Cth), r 71A-71D.