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**From:** Nearly Perfect  
**Sent:** Tuesday, 28 August 2018 4:42 PM  
**To:** Adjudication  
**Subject:** Collective bargaining class exemption – submission  
  
**Categories:** Submission

Dear Ms Kolacz & Mr Jones,

Thank you for the opportunity to comment on this discussion paper.

A little background first. I am a franchisee of Koalakrane Pty Ltd, a national Claw Machine/Skill-tester Franchise. The main relationship between the franchisor and the franchisee is the provision of stock. Their standard franchise agreement contractually obliges the franchisee to purchase from the franchisor (however not in my case as I had added "at fair and reasonable cost" to my franchise agreement four years ago much to the now regret of the Franchisor).

**1. What types of businesses should be covered under this class exemption?**

Option D "The class exemption could be limited using a combination of these factors" would be the clearest way to define the participants and would negate the need for each application to be assessed case by case basis. I would recommend that the parameters be based on a turnover of less than \$1 million per franchisee with less than the equivalent of 10 full time employees e.g. 20 part time employees working 19 hours a week each.

If the business(es) didn't pass this test, then an exemption would need to be applied for by the ACCC.

**2. Other issues:**

**a. Should the class exemption only be available to collective bargaining groups below a certain size?**

Yes, based on 1. above.

**b. Should the class exemption apply only where there is not common representation across collective bargaining groups?**

Yes. Businesses that are represented by peak body groups, cooperatives or any other representative organisation should continue to bargain on behalf of its members as per status quo. Only unrepresented collectives should be entitled to rely by this legislation.

**c. Should the class exemption allow the bargaining group to negotiate with both customers they sell to (joint supply) and with suppliers they buy from (joint procurement)?**

Only suppliers in my case however I would argue that where there is a monopoly or duopoly customer e.g. Vegetable suppliers selling to Coles and/or Woolworths, then this option should be available.

**d. Should the class exemption exclude sharing of information or arrangements between members of the group that are not necessary to collectively bargain with a target?**

No. For this process to work, all information needs to be made available to all parties to be meaningful e.g. a 10% drop in price means nothing if the collective is being charged at different rates. In my experience, franchisors hide using opaque pricing and favourable terms to their favorite franchisees, and in my case, sell stock to Franchisors at a high rate whilst providing themselves with highly discounted stock for their company owned sites, perhaps even below their actual wholesale cost i.e. franchisees subsidising the franchisor.

**e. Should other obligations apply? For example, should a class exemption only apply where the bargaining group does one or more of the following:**

- keeps written records of the composition of the group?
- notifies the ACCC when the group is formed?
- notifies the target when the group is formed?

Yes to all, and be publicly available on a website with all relevant parties to be notified: the target, the bargaining group and others not currently part of the bargaining group e.g. other franchisees who may not be aware of the bargaining group's existence. The Target would also be obliged to notify the non-participants.

**f. What would be the effect of a collective bargaining class exemption on businesses which fall outside it?**

They would apply for an exemption from the ACCC.

**g. What would be the effect of a collective bargaining class exemption on the operational business decisions for potential group members?**

As above, apply for an exemption.

**3. Should a class exemption allow collective bargaining by all franchisees with their franchisor, regardless of their size or other factors?**

**a. Should all groups of franchisees be eligible for a class exemption in relation to negotiations with their franchisor, including group mediation, regardless of franchisee size and without any other limitations on membership of the bargaining group?**

Yes, every franchisee should have the right to be represented if they choose to.

**b. If not, what characteristics should determine whether a group of franchisees is able to use the collective bargaining class exemption to negotiate with their franchisor?**

NA, see a. above.

**c. What other issues specific to collective bargaining by franchisees with their franchisor should be considered in developing the class exemption?**

- The election of the franchisee representative(s).
- The exact terms of reference for the collective
- The time frames for responses to/from the Target/Collective.
- The courses of action available if the collective bargaining fails to reach agreement within those time frames e.g. Administrative Tribunal.

Not discussed is the conflict between existing Franchisee Agreements that specifically bans collective bargaining and cooperative behavior. I would like to see the law changed to make it illegal for a franchisor to impose this on franchisees.

Please feel free to contact me if clarification is required or I can be of further assistance.

Yours Sincerely,

Patrick Imbert

Sole Director

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