

21 September 2018

Mr Mick Keogh
Deputy Chairman
ACCC
Collective bargaining class exemption – submission
Email: adjudication@acc.gov.au

Dear Mr Keogh

Re: Potential ACCC “class exemption” for collective bargaining

Thank you for the opportunity to make a submission in relation to the ACCC discussion paper on a potential ACCC “class exemption” for collective bargaining.

CANEGROWERS is the peak representative body for Australian sugarcane growers and represents around 73% of cane growers in Queensland. Membership ensures that growers’ needs are represented at the highest possible levels of industry and government decision-making.

As you would be aware CANEGROWERS made application on 23 September 2016 for ACCC authorisation for collective bargaining in the sugar industry. The ACCC subsequently made a determination in favour of CANEGROWERS as per authorisation number A91558 dated 13 April 2017.

The ACCC authorisation enables CANEGROWERS (and current and future members of CANEGROWERS) to collectively bargain cane supply and related contracts with mill owners and sugar marketers in relation to certain Cane Supply Terms and Conditions. This authorisation covers collective bargaining in respect of the supply of cane to the same mill and any mill that has the same owner. Authorisation also extends to information sharing across and within districts to facilitate the adoption of best practice terms and conditions, subject to any confidentiality agreement implemented by the relevant parties. The authorisation is for a period of 10 years to 5 May 2027.

In view of CANEGROWERS current collective bargaining authorisation, there is likely to be limited immediate benefit to any class exemption relating to sugarcane growers. However, we note that class exemptions may streamline future application processes. In light of this, the following brief points are made.

1. Types of businesses

Class authorisations should cover all farm businesses in their dealings with processors, marketers and others in their supply chain. The purpose of collective bargaining is to allow a group of businesses to negotiate more efficiently and

effectively with larger businesses without breaching competition laws to reach a better outcome than might otherwise be achieved. Placing restrictions on the size of farm businesses may reduce the efficiency and effectiveness of the exemption.

i) Number of employees

The majority of sugarcane farms are owned and operated as family businesses, employing few full-time people. However, at certain times of the year additional employees may be engaged for field preparation, planting or harvesting and related activities. It is important that the authorisation criteria is set sufficiently wide to cover the range of employment circumstances.

ii) Production, turnover and value of contract

In the sugarcane industry, the size of farms, output and turnover can vary significantly between growers. Some small farms may produce a few thousand tonnes of sugarcane. The largest farms will have output measured in the hundreds of thousands of tonnes. Farm turnover can correspondingly range from less than \$35,000 to more than \$1 million per year. Cane supply agreements are generally standard form contracts between a regional monopoly mill owner and its supplying growers settled independently from the level of farm production and turnover.

2. Other issues

i) Number of businesses in a group

It is important that a class exemption framework takes account of industry structures. For example, in the sugarcane industry, the number of growers supplying a monopoly mill owner can range from 80 growers in say the Rocky Point and Tableland mill areas to more than 800 growers in the Burdekin, where growers supply one or more of four mills owned by the Singapore owned Wilmar Sugar Australia.

Given this, limiting the size of bargaining groups could lead to an outcome that does not optimise the efficiency and effectiveness of the bargaining outcomes.

3. Conclusion

CANEGROWERS members value the current collective bargaining authorisation and the ability of their organisation under that authorisation to represent its members (current and future) in collective cane supply negotiations with the mill they supply, as an offset to regional mill monopoly power. CANEGROWERS would welcome an ACCC 'Class Exemption' process for collective bargaining if it streamlines and simplifies the present authorisation process.

Yours faithfully



Dan Galligan
Chief Executive Officer