

28 September 2018



Australian Competition and Consumer Commission

Via email: adjudication@acc.gov.au

RE: Potential ACCC “class exemption” for collective bargaining

The National Farmers’ Federation (NFF) welcomes the opportunity to make a submission to the *Potential ACCC “class exemption” for collective bargaining – discussion paper*. The NFF supports the ACCC in developing a proposal that would allow collective bargaining for eligible businesses.

The NFF is the peak national body representing farmers and, more broadly, agriculture across Australia. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF. The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers, including policies that improve competition in concentrated markets.

Collective bargaining

While the NFF considers markets to be the primary arbiter of agricultural supply and demand, government regulation is needed to enable competition in parts of the agricultural supply chain where competition did not previously exist. Consequently, the NFF considers a “class exemption” for collective bargaining a potential way to address the structural inequalities in bargaining power between farmers and buyers. With a relatively high number of farmers compared to an increasingly concentrated number of buyers, there are frequently only one, two or three realistic buyers of food and fibre, particularly for perishable goods.¹ This leads to an imbalance in market power, with buyers having more alternative sources of produce than there are target buyers for growers. In addition, the interests of farmers as consumers of farm inputs such as genetic material or agricultural and veterinary chemicals can be damaged through monopolistic or oligopolistic conduct.

The strong bargaining power imbalance between farmers and larger target businesses has so far been addressed through the ACCC’s existing authorisation and notification processes that work on a case-by-case basis. The NFF encourages the ACCC to continue to develop a class exemption that could remove the need to seek authorisation or lodge a notification to collectively bargain should business meet eligibility criteria.

Recommendation 1: NFF recommends that the ACCC continues to develop a proposal for a “class exemption” for collective bargaining.

¹ See *Collective Bargaining in the Agricultural Sector* (2015) by William van Caenegem, Madeline Taylor, Jen Cleary and Brenda Marshall, RIRDC. Accessed on 21 September 2018 at: <https://rirdc.infoservices.com.au/downloads/15-055>

Barriers to collective bargaining

The ACCC discussion paper identifies the “class exemption” for collective bargaining as a meaningful instrument to reduce barriers to collective bargaining by eligible businesses. While the NFF agrees in principle that the class exemption could prove a valuable instrument in removing the red tape associated with setting up a collective bargaining group, we would note that other barriers to collective bargaining exist. These include the following barriers identified in the 2015 research report *Collective Bargaining in the Agricultural Sector* by RIRDC:

- 1) The need to develop a collective bargaining factorial matrix for farmers self-evaluation of realistic opportunities for sustained success in collective bargaining;
- 2) The need to develop a set of a priori conditions for supporting protocols to govern or influence collective bargaining processes in agriculture;
- 3) The need to provide training in leadership, bargaining and negotiation skills for farmers who will represent farmer groups; and
- 4) The need to develop an information dissemination strategy involving industry groups.

In addition, the RIRDC research report also emphasised the need for safeguards around collective bargaining. This includes “good faith” provisions to avoid undermining the collective exercise and the need for transparency around the formation of collective bargaining groups, including ensuring that farmers are fully informed about the opportunities and costs involved when joining a collective bargaining group.

To avoid unintended consequences through the proposed “class exemption” such as weakening collective bargaining groups through splintering, the NFF recommends that ACCC compile a list of potential unintended consequences with a view to address these through, for example, “good faith” provisions.

Recommendation 2: NFF recommends that ACCC compile a list of potential unintended consequences of a class exemption for collective bargaining including splintering of collective bargaining groups. Consequently, the NFF recommends addressing these unintended consequences through “good faith” provisions or other appropriate means.

Farmers as buyers of goods

The broad geographic spread of the agricultural industry means the market for a range of farm inputs often does not support more than one supplier in an area, particularly for farm products with relatively low margins and high volume such as fertilizer. This market characteristic is an issue in limiting grower access to a competitive market prices for these inputs. Moreover, suppliers are often bound by agency agreements that prevent reseller price flexibility. Given these agreements are between manufacturers and resellers, they are one step removed from the on-farm users of inputs. The NFF Economic Policy and Farm Business Committee discussed the root of the problem with agency agreements and identified:

- Increasing lack of competition between resellers supplying farm inputs;
- Potentially overinflated supply chain costs; and
- Low margins for farm input sellers.

NFF would note that the Australian market for agvet chemicals represents only 1.5 per cent of the world market. It is important to ensure that chemical companies continue to make new agvet chemicals available to Australian farmers. While new, more efficacious agvet products

can be expensive, and should be priced according to market requirements, it is possible that the small size of the Australian market for these products will impact on pricing. NFF considers farmers should be able to enter a collective bargaining relationship to facilitate negotiation of volume-based discounts when purchasing farm inputs.

In addition, access to affordable and reliable electricity supplies for all users is paramount to maintaining the international competitiveness of Australian agriculture. Electricity use is variable across agriculture depending on industry, intensification of operations, location and structure of the business. Farms that require heating, cooling or irrigation have higher levels of electricity use.

At present, retail electricity prices are rising almost twice as fast as the rate of inflation. Where farmers previously had access to agricultural electricity tariffs in recognition of lower cost demand profiles, these tariffs have been largely replaced with small business electricity tariffs, leading to farmers being confronted with both general retail price rises and the phasing out of agriculture specific tariffs.² The potential to have collective bargaining between farmers and energy retailers would help farmers to negotiate agriculture specific electricity tariffs.

Farmers as sellers of goods

Agricultural markets are frequently characterised by imperfect competition, with Australia having high concentrations at the processor, wholesaler and retailer level that leads to significant market power imbalances between buyers and sellers. Most farm businesses in Australia are still small to medium in size, with only 4.34 per cent of the roughly 86,000 farm businesses having more than \$2 million turn-over per annum³. Monopsonistic or oligopsonistic conduct by buyers can damage farmers by squeezing their margins and preventing or dissuading the entry of alternative customers. Ultimately, this monopsonistic behaviour may lead to reduced consumer choice at the retail level, meaning that collective bargaining for farmers is likely to result in overall public benefit by increasing consumer choice.

Farmers are usually not able to pass on increased production costs to retailers, making farm-to-retail price transmission imperfect and highlighting that the bargaining power lies with buyers. Collective bargaining could improve this price transmission up the value chain.⁴ It is crucial to note that the farm gate value of food and fibre is a relatively small element of the final consumer price.

Feedback request 1: Types of business covered under a class exemption

The core idea of collective bargaining is to address market power imbalances when small businesses sell goods to or buy goods from a larger corporation in a concentrated market with limited competition. Consequently, the NFF is supportive of limiting eligibility criteria under the class exemption to small businesses while noting that larger businesses will still be able to apply for permission to collectively bargain by seeking case-by-case authorisation.

Limiting access to collective bargaining groups to businesses with certain characteristics

Farm businesses are very heterogenous, with horticulture businesses, for example, often employing more than 20 staff during harvest and chicken meat farmers frequently entering into

² See *Empowering irrigation consumers electricity purchase arrangements – Research reporting* (2018) by Simon Orme and Dr James Swansson, Sapere Research Group. Accessed on 20 September 2018 at: https://www.irrigators.org.au/wp-content/uploads/2018/07/Empowerment_NIC_20180716_final_report_918.pdf

³ See Australian Bureau of Statistics, 2016, Counts of Australian Businesses, including Entries and Exits, Jun 2012 to Jun 2016, cat. no. 8165.0.

⁴ See *Collective Bargaining in the Agricultural Sector* (2015).

contracts with processors that have a value higher than \$3 million per annum. Meanwhile, large irrigators commonly have turn-over higher than \$10 million per annum. Consequently, the NFF recommends that the eligibility criteria for members of a collective bargaining group should be a combination of factors characterising small businesses, acknowledging the large variety of production systems.

Recommendation 3: NFF recommends that the eligibility criteria for members of a collective bargaining group should be a combination of different characteristics such as meeting at least 2 out of the following three criteria:

- 1) Less than 20 employees;***
- 2) Annual turnover of less than \$25 million; and/or***
- 3) Value of contract between the member and the target business of less than \$3 million per annum.***

Applying the class exemption to businesses that are ineligible where target business(es) support a collective bargaining proposal

The NFF is supportive of allowing for collective bargaining for groups in which not all members meet the eligibility criteria should the target business(es) agree to this.

Recommendation 4: NFF recommends allowing businesses that do not meet the eligibility criteria for collective bargaining to establish a collective bargaining arrangement whenever the target business(es) support(s) this proposal.

Limiting class exemptions to target businesses with certain characteristics

Target businesses for collective bargaining under the class exemption should have certain characteristics to ensure that collective bargaining only occurs in highly concentrated markets with limited competition. To this end, the NFF recommends looking at the proportionate size of the target business compared to the overall market in Australia and local competition, especially when farmers sell perishable goods that they cannot meaningfully sell to competitors that are physically further away, instead of purely looking at metrics such as turnover and employee numbers.

Thank you for the opportunity to comment on the ACCC proposal to establish a ‘class exemption’ for collective bargaining. Please do not hesitate to contact Pru Gordon, General Manager for Trade and Economics, on _____ or _____, should you have any questions.


PRUDENCE GORDON
General Manager, Trade and Economics