

21 September 2018

Attention: Miriam Kolacz/Gavin Jones

Australian Competition and Consumer Commission

adjudicaion@accc.gov.au

Dear Sir/Madam

Collective bargaining class exemption - submission

Thank you for the opportunity to provide comment on the circulated (23/8) Discussion Paper on Potential ACCC “class exemption” for collective bargaining.

Rural Business Tasmania specialise in business and financial management support to rural and regional small business, including agribusiness, farmers, fishers and foresters. Our key objective is to help rural families, business and their community to manage the ever-evolving demands and challenges they encounter.

Rural Business Tasmania supports a potential class exemption to enable a more level playing field for individual small business (particularly those in rural and regional areas) in negotiating favourable contract arrangements when dealing with larger organisations who have significant resources (e.g. specialised staff, legal departments), market power and dominance.

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Established & supported by Rural Youth Organisation Tasmania Inc. Supported by Australian and Tasmanian Governments

Providing programs including Rural Financial Counselling Service, Rural Relief Fund of Tasmania, Rural Business Programs

Small independent businesses, including rural small businesses, often are price takers. They do not have the business strength to negotiate on a level playing field and if/when they currently band together, it may be a small under-resourced and under organised group of small business that are limited in time and resource. There may also be cases where limited exemptions have not been sought and requirements not understood, thus opening small business operators to potential legal action.

We have seen evidence of some industry alliance limited exemptions that may already be in place, but these have limited success where a large player may isolate a few key small business operators to negotiate an arrangement that then limits future negotiation options. Further understanding and specific, clear and transparent representative relationships are required to ensure that all small businesses who would be eligible for such a class action are reasonably informed of the opportunity.

Any class exemption would require very specific parameters to ensure it provides support to those needing it and does not further isolate those without market power to be faced with collusive practices. These parameters should include size of business, turnover, industry and number of suppliers normally requiring negotiation.

Any limits should consider the variety of resource an industry may utilise. For example, a small horticulture enterprise may have a larger number of employees (including casual pickers) but be comparable in turnover to another operation that only employs one person. It would therefore be preferable for each individual upper limit to be for example of a more generous limit but that overall 2 of 3 attributes be met, like the current definition of small business by ASIC.

However Rural Business Tasmania does not propose that all small business (as defined by ASIC) would be included in such a class exemption. The example of value of contract of the group may be one of the key indicators but should be based on an annual component to enable accurate comparison. For example, the small rural business group may enter into a longer-term contract over 5 years for supply of power. The annual value of the contract could be specified to not exceed \$5million per annum per member of the group.

To ensure that other small businesses can not be marginalised if they choose not to take part in collective bargaining, any class exemption should ensure that the target business is of a substantial size. This meets the aim of the exemption to champion a more level playing field based on the business strength of parties in negotiation.

Such a class exemption should not exclude any potential small businesses who choose not to be represented by a particularly representative body. There may be external unrelated reasons for such a small business to elect not to be part of one defined representative body but still wish to work together with a selected collective to achieve greater bargaining power.

In looking to the administrative requirements of record keeping and notification, a small business already is overly burdened with legislative requirements and red tape that takes the business away from core business. Any obligations should be reviewed to ensure they are necessary for compliance and do not place a greater burden.

We look forward to hearing of the outcomes from this consultation and encourage the support of ACCC in providing small business (particularly those in rural and regional Australia) to better negotiate equitable trading terms in such a competitive global market.

Please contact me if you wish to discuss further.

Kind regards

Elizabeth

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