



**Small
Business
Commissioner**

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OUT19/8653

Gavin Jones
Director, Adjudication
Australian Competition and Consumer Commission
By email: adjudication@acc.gov.au

Dear Mr Jones,

POTENTIAL 'CLASS EXEMPTION' FOR COLLECTIVE BARGAINING – PRELIMINARY DECISION

The NSW Small Business Commission ('NSWSBC'; formerly the Office of the NSW Small Business Commissioner) is focused on supporting and improving the operating environment for small businesses throughout NSW. The NSWSBC advocates on behalf of small businesses, provides mediation and dispute resolution services, speaks up for small business in government, and makes it easier to do business through policy harmonisation and reform.

The NSWSBC welcomes the publication of the draft collective bargaining class exemption ('the draft exemption') as well-timed. The economic and social costs of exploitative, unfair, and abusive conduct, arising out of the power imbalance between large businesses and many small businesses,¹ are matters of ongoing concern. Most notably, the Parliamentary Inquiry into the Franchising Code of Conduct and Oil Code of Conduct has laid bare exploitation and despair experienced by thousands of small franchisees²; the gravity of misconduct likened to that exposed by the Financial Services Royal Commission.³ The Inquiry explicitly supported implementation of the proposed exemption.⁴ In addition, the Commonwealth has acknowledged that the unfair contract terms regime requires amendments to afford adequate protection to many small businesses.⁵

While the draft exemption alone cannot serve to address this malaise, the NSWSBC strongly supports the proposal as an instrument to empower eligible collective bargaining groups ('collectives') to bargain more effectively with larger target businesses ('targets'). Beyond redress of this systemic power imbalance, we also endorse the ACCC's view that collective bargaining can support efficiencies for collectives and targets alike⁶, without substantially reducing competition or resulting in net detriment.⁷

The NSWSBC is also pleased to note that the particular design features of the draft exemption closely align with those supported in our submission to the initial consultation concerning the proposal.⁸

Accordingly, the NSW SBC supports the draft exemption. We offer the following recommendations chiefly to ensure the final exemption protects collectives from retribution, and improve the definitions used in the legislative instrument – including to explicitly support group mediation. To these ends, we hope to assist the ACCC to deliver a final exemption that is sufficiently robust as to ensure the effective implementation of our shared vision in this space.

Summary of recommendations

Recommendation 1: The final exemption should include provisions affording members of a collective protection against retributive action undertaken by a target.

Recommendation 2: The provisions affording protection against retributive action should take the form of a penalty provision. The regulator should be tasked with responsibility for oversight and enforcement of the provision.

Recommendation 3: The final legislative instrument should provide separate, explicit definitions for the terms '*initial contract*', '*contracting parties*', and '*target*'.

Recommendation 4: The final legislative instrument should explicitly provide that a collective may seek to undertake group mediation with a target.

Recommendation 5: The final legislative instrument should provide that the right of a collective to share information between its members does not override any contractual obligation restricting information sharing.

Recommendation 6: The final guidance note should explicitly provide that all collectives may engage a target for the purpose of undertaking collective mediation.

Recommendation 7: The final guidance note should explain the term 'class exemption', and its application to collective bargaining, at the commencement of the document.

Recommendation 8: The final form should provide that a collective that does not list or describe all members of the group may complete and submit a new form.

Recommendation 9: The final explanation material attached to the class exemption notice should:

- Briefly explain the term 'class exemption';
- Delineate and clearly number the steps that a collective is required to follow in order to attain the protection of the class exemption;
- Provide that a collective may engage in group mediation; and
- Briefly explain the purpose of the public register of collectives.

Recommendation 10: The ACCC should deliver additional resources for small businesses regarding the final exemption, including a resource that allows small businesses to engage with the ACCC directly.

Recommendation 11: The ACCC should investigate the manner in which dependent contractors may be empowered to take coercive action against the businesses with which they contract. This should include consideration of:

- The role of digital service platforms in driving an increase in dependent contractors;
- The bargaining power that such contractors possess, and the macroeconomic impacts of such contractual arrangements;
- Whether such contractors should be empowered to undertake collective boycott; and
- Whether such arrangements could be affected by way of a separate class exemption.

Recommendation 12: The ACCC, in collaboration with relevant government agencies, should examine the need for a whole of government response to regulation of contractual arrangements involving dependent contractors.

Policy design and implementation

In large part, the NSW SBC is highly supportive of the design of the draft exemption. We are satisfied it will effectively enshrine the right of small businesses to form a collective. However, we are somewhat concerned by its silence on the matter of retribution undertaken by a target, against the members of a collective, in response to a move to collectivise.

The principal benefit of the proposed exemption is that it will support collectives to bargain more effectively with targets that hold superior bargaining power. However, any such target is also likely to possess the capacity and resources to take retributive action against the members of a collective. This may subvert the collective bargaining process; indeed, the spectre of retribution may disincentive a potential collective from forming at all.

In our view, the need for protection of collectives against retribution is further demonstrated by industrial relations regulation. As with many relationships between small business and larger businesses, most employment relationships are defined by a power imbalance. Employees often seek collective action, in order to bargain effectively with their more powerful employer, as well as to drive efficiencies in the bargaining process.⁹ Protections against employer retribution for employees that take collective action are a core tenet of industrial relations law - both in Australia¹⁰ and internationally.¹¹

As such, we suggest it is appropriate that the class exemption include provisions that afford the membership of a collective some measure of protection against retributive action undertaken by a target.

The NSW SBC acknowledges the possibility that retributive conduct may fall foul of general legal protections afforded to small businesses, franchisees, and/or franchisees – for example, the prohibition of unconscionable conduct.¹² However, a

collective is unlikely to possess access to either the expertise or the resources necessary to make use of such protections.

Recommendation 1: The final exemption should include provisions affording members of a collective protection against retributive action undertaken by a target.

As regards the form that these provisions should take, we note that most small businesses possess only limited time and resources.¹³ Further, a plurality of small businesses state that the cost and time required to resolve legal disputes is a major concern.¹⁴

As such, the protection should take the form of a penalty provision, with the regulator tasked with principal responsibility for oversight and enforcement of this provision. Nonetheless, the final exemption could also allow for members of a collective to take private action to this end, wherever it was disposed and resourced to do so.

Recommendation 2: The provisions affording protection against retributive action should take the form of a penalty provision. The regulator should be tasked with responsibility for oversight and enforcement of the provision.

Legislative instrument

The NSW SBC suggests the draft legislative instrument is, in large part, a faithful reflection of the draft exemption detailed by the ACCC.¹⁵ Nevertheless, we suggest a series of minor amendments may assist in clarifying matters of potential uncertainty arising out of the instrument in its current form.

Definition of 'initial contract', 'contracting parties', and 'target'

Section 6 of the draft legislative instrument defines '*initial contract*', '*contracting parties*', and '*target*'; key terms for any party seeking to make use of the class exemption. However, it does not define these terms separately, but in a single, integrated subsection.¹⁶ Thus, while the section is not unusable, it is certainly confusing, and is unlikely to assist a user to understand the meaning of these important concepts. We note also that the ACCC has provided clear, separate definitions for all other key terms utilised in the draft instrument.¹⁷

Accordingly, the ACCC should amend the instrument, such that it provides explicit and separate definitions of '*initial contract*', '*contracting parties*', and '*target*'.

Recommendation 3: The final legislative instrument should provide separate, explicit definitions for the terms '*initial contract*', '*contracting parties*', and '*target*'.

Omissions

It appears to be the ACCC's intention that the class exemption should allow collectives to pursue mediation with a target. The draft guidance does explicitly provide that franchisees and fuel retailers may use the class exemption for this purpose.¹⁸ Moreover, the draft legislative instrument defines 'collective bargaining' -

as undertaken by franchisees, fuel retailers, and other collectives alike - using identical terms.¹⁹ This suggests that all collectives should be equally empowered as franchisee or fuel retailer collectives to pursue group mediation.²⁰

However, in our submission, the definitions of '*collective bargaining conduct*' provided in the draft legislative instrument are highly contractual²¹ (notwithstanding the very broad definition of contract used in the instrument²²). It is not clear that these definitions would extend to all legitimate matters that a collective may wish to mediate with a target. For example, a franchisee collective may seek negotiation with a franchisor in relation to an issue concerning the franchisor's corporate strategy.²³ While such a matter would plainly impact the collective, it is unlikely to form part of the relevant franchise agreement. More generally, many important facets of a business relationship may be relational rather than explicitly provided for in contract.²⁴

Thus, given the form of the draft legislative instrument, both a collective and a target might conclude that they cannot engage in group mediation – thereby undermining the intent of the class exemption. The NSW SBC suggests that the final instrument should address this potentially significant uncertainty. This could be achieved by simple means: The final instrument should provide explicitly that a collective may seek to undertake group mediation.

Recommendation 4: The final legislative instrument should explicitly provide that a collective may seek to undertake group mediation with a target.

Likewise, the interim and draft guidance materials published by the ACCC unequivocally state that the right to share information afforded to a collective by the class exemption will not override any contractual restriction on information sharing.²⁵ However, the draft legislative instrument, as the mechanism intended to give force to this decision, is silent on this matter. Any party engaging with the legislative instrument directly may not conclude that the exemption does not negate a collective's contractual obligations in this space.

In order to ensure the legislative instrument does give effect to the clear policy intent of the ACCC, the final instrument should address this matter. That is, it should provide that information sharing rights conferred by the class exemption do not override any contractual restriction of the same.

Recommendation 5: The final legislative instrument should provide that the right of a collective to share information between its members does not override any contractual obligation restricting information sharing.

Guidance note

The NSW SBC is of the view that the draft guidance note is largely fit for purpose; a faithful recital of the key principals of the proposed exemption, explained in a style that balances accessibility with detail and nuance. We suggest the following amendments could address minor shortcomings to the document in its present form.

Collective mediation

As noted, the materials published by the ACCC strongly suggest that the Commission intends to extend the right to seek group mediation to all collectives. However, the draft guidance note only addresses the right of a collective to engage with a target for this purpose in a subsection concerning the rights of franchisees and fuel retailers specifically.²⁶

The fact that the guidance note only makes reference to collective mediation in this limited context is likely to cause confusion. The final guidance note should address this issue, by explicitly providing that all collectives may seek to engage a target for the purpose of undertaking group mediation.

Recommendation 6: The final guidance note should explicitly provide that all collectives may engage a target for the purpose of undertaking collective mediation.

Structure

Plainly, small businesses are the principal intended beneficiaries of the proposed class exemption. However, as most small operators experience difficulty understanding information about regulations,²⁷ they are highly unlikely to be familiar with the concept of a 'class exemption'. We suggest the term's meaning is far from self-evident. Likewise, the scheme's proposed design is not straightforward. It is therefore unclear why the draft guidance note should only explain the meaning and application of the term in its fourth section.²⁸

In order to avoid confusion and disengagement with the guidance note, the final note should explain the concept of a 'class exemption', and its application to collective bargaining, at the commencement of the document.

Recommendation 7: The final guidance note should explain the term 'class exemption', and its application to collective bargaining, at the commencement of the document.

Notice

The design of the notice used by businesses to form a collective should not be understated as a factor influencing the success of the reform. The NSW SBC strongly supports the view, echoed by other stakeholders,²⁹ that small businesses may be dissuaded from utilising the class exemption by any requirement to engage with complex materials. In particular, many small businesses experience difficulty completing forms.³⁰

Accordingly, unless the class exemption is accessible at every step, the risk that small businesses will continue not to make use of collective bargaining will subsist.³¹ With this objective in mind, we propose the following amendments to both the form itself, and the attached explanation material³².

Form

The draft form effectively explains that most collectives will benefit from providing a complete list of the intended members of the group, as well as a general description of members. However, it does not address the consequences of failing to do so – that is, that the collective will only be required to complete and submit an additional, complete form. This may engender some uncertainty and perceived risk among users, and should be remedied in the final form.

Recommendation 8: The final form should provide that a collective that does not list or describe all members of the group may complete and submit a new form.

Explanation material

A series of minor edits and additions to the copy utilised in the explanation material would assist to provide a clear, precise, and complete explanation of the purpose of the class exemption, and the effect of completing the notice:

Recommendation 9: The final explanation material attached to the class exemption notice should:

- Briefly explain the term 'class exemption';
- Delineate and clearly number the steps that a collective is required to follow in order to attain the protection of the class exemption;
- Provide that a collective may engage in group mediation; and
- Briefly explain the purpose of the public register of collectives.

Additional comments concerning proposal

The NSW SBC suggests the ACCC has been successful in designing a class exemption that is broad enough to be available for use by most small businesses³³ - and largely simple enough to afford operators a reasonable opportunity to do so. However, we share concerns raised by both industry stakeholders and researchers that many small businesses may still lack confidence in their understanding of the exemption, particularly in relation to assessing their own eligibility to join a collective.³⁴

For this reason, it is imperative that the ACCC make resources available, in addition to the final guidance note and the explanation material attached to the class exemption notice. Most importantly, the ACCC should deliver a helpline or similar resource allowing small businesses to engage with it directly in relation to the final exemption - including in relation to issues of self-assessment. This service could be provided through the competition regulator's existing Small Business Helpline.

Recommendation 10: The ACCC should deliver additional resources for small businesses regarding the final exemption, including a resource that allows small businesses to engage with the ACCC directly.

Digital service platforms and dependent contractors

As this submission has provided, the NSW SBC is generally satisfied that the proposed class exemption will advance the interests of small business, as well as meet its broader policy objectives. It follows that we seek only minor amendments to the draft exemption that is the subject of this consultation.

However, we are concerned that an instrument to support collective bargaining by the general small business community will not adequately support a growing cohort of that community. We note the increasing popularity of digital service delivery platforms (which we label 'principals') within the 'gig economy' – both in Australia and globally.³⁵ These platforms support 'triangular' dealings between a principal, a pool of contractors ('microbusinesses'), and customers - with microbusinesses providing labour traditionally performed by employees.³⁶ While such operations are popularly observed in app-based transport and food delivery services, the business model can be applied to near-any service.³⁷ It should, however, be distinguished from 'gig economy' businesses trading in goods rather than labour.³⁸

We recognise that this transference of labour from employees to microbusinesses is not attributable solely to digital platforms, and not all relevant arrangements utilise these technologies.³⁹ Nonetheless, the unique characteristics of these platforms are driving the phenomenon. Most notably, they reduce transaction costs between a principal and microbusiness to near-zero,⁴⁰ afford principals rapid access to a large pool of microbusinesses,⁴¹ and allow principals to reduce their wage bill.⁴²

Though incomplete data makes it difficult to precisely count such microbusinesses,⁴³ the number is both significant and growing rapidly. A 2016 study assessed that 80,000 Australians performed work using such platforms more than once a month.⁴⁴ A 2017 report found that 43,000 NSW microbusinesses trade through just three platforms.⁴⁵ That report also estimates the NSW gig economy experienced revenue growth of 68% in just one year⁴⁶ - a result that correlates with international findings.⁴⁷

Relationship of dependency

Our concerns around this phenomenon stem from the de facto status of many of these microbusinesses as dependent contractors.⁴⁸ At law, the cohort is classified as part of the general business community.⁴⁹ However, key facets of their dealings with principals mark the relationship as dependent. Most notably, principals retain a very high level of control over the microbusinesses with which they trade. This extends to immense inequality of bargaining power in favour of the principal,⁵⁰ and control over how a microbusiness performs work.⁵¹ Thus, principals deal with microbusinesses on a 'take it or leave it' basis, and contractors are forced to bear most or all risk.⁵²

The consequences of this relationship of "*economic supremacy*"⁵³ are significant. The contractual conditions imposed on microbusinesses leave them highly vulnerable,⁵⁴ in particular, the price of their labour is low and trending toward zero.⁵⁵ The phenomenon also drives unfair competition between principals and their competitors,⁵⁶ and reduced consumer demand across economies.⁵⁷

Consequences for class exemption

The NSW SBC is concerned that the proposed class exemption, while suitable for the wider small business community, is likely to be ineffective in assisting these

microbusinesses to address the bargaining power disparity that they face. A core attribute of the draft exemption is that it would not compel a target to engage with a collective.⁵⁸ Given the totality of bargaining power held by a principal, it is most unlikely to have any incentive to engage with any contractors' collective.⁵⁹ It is thus doubtful that such collectives will be able to make effective use of the exemption.

Need for additional reform

We note that the power imbalance and vulnerability faced by these microbusinesses is similar, in many respects, to that commonly experienced by employees in dealings with employers.⁶⁰ That is, the microbusiness-principal relationship assumes characteristics of both the employee-employer relationship, and dealings between genuinely independent businesses. The literature commonly suggests that legislators should thus confer on these contractors rights equivalent to those afforded to employees in industrial relations law. This includes the prominent suggestion that microbusinesses should be empowered to take coercive action in collective bargaining with a principal.⁶¹

The NSW SBC suggests the ACCC should consider the manner in which such microbusiness might be empowered to take coercive action. This should include consideration of how they might be empowered to undertake collective boycott - and whether a dedicated class exemption might serve this end.

Plainly, any such reforms would require careful consideration of potential risks;⁶² there is an "*inherent tension*" between competition law and the conferral of coercive rights.⁶³ But this 'triangular' contracting gives rise to distinct issues, including detriments to both small business and the wider economy. Such outcomes represent the antithesis of those that have driven development of the class exemption presently under consideration. The matter thus necessitates a distinct response. In addition, international case studies concerning digital service platforms that have voluntarily abandoned the business model suggest that the decision has not threatened the viability of these platforms.⁶⁴

We also accept that businesses may seek approval for collective boycott under the ACCC's existing authorisation process. However, this is manifestly insufficient to adequately empower contractor microbusinesses. Small businesses have made very little use of the process, likely due to its cost and complexity.⁶⁵ Further, both the literature and the ACCC itself state that it is highly unlikely that any application will meet the regulator's test for authorisation for collective boycott specifically.⁶⁶

Accordingly, the initiative to empower dependent contractor collectives should constitute a new body of work - drawing from but separate to that of the class exemption under consideration.

Recommendation 11: The ACCC should investigate the manner in which dependent contractors may be empowered to take coercive action against the businesses with which they contract. This should include consideration of:

- The role of digital service platforms in driving an increase in dependent contractors;
- The bargaining power that such contractors possess, and the macroeconomic impacts of such contractual arrangements;

- Whether such contractors should be empowered to undertake collective boycott; and
- Whether such arrangements could be affected by way of a separate class exemption.

Whole of government response

However, the NSW SBC recognises further that, as competition regulator, the ACCC's remit in this space may be limited. The reforms we suggest warrant investigation are unlikely to be a panacea for the microbusinesses we highlight.⁶⁷

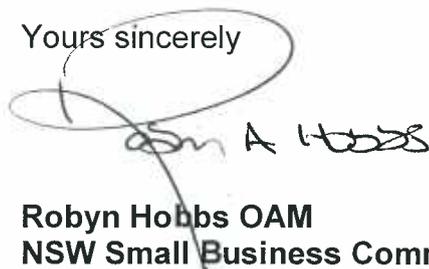
Indeed, they may represent but a first step.⁶⁸ There exists a wide body of work suggesting that an appropriate policy response requires the development of a dedicated body of regulation. Given the 'hybrid' business-employee status of such microbusinesses, this would likely draw from both industrial relations law and that governing independent business contracting.⁶⁹

Plainly, any such reform would represent a major, long-term endeavour. It would require input from authorities including but by no means limited to the ACCC, the Fair Work Ombudsman, and the Department of Employment, Skills, Small and Family Business. Nonetheless, these contracting arrangements are already common, and only likely to grow more prominent with the continued rise of digital service platforms. We therefore submit that the ACCC, in collaboration with relevant government agencies, should consider the need for a holistic policy response - as well as the manner in which development of such reforms might occur.

Recommendation 12: The ACCC, in collaboration with relevant government agencies, should examine the need for a whole of government response to regulation of contractual arrangements involving dependent contractors.

The NSW SBC welcomes further engagement with the ACCC concerning the proposed class exemption. To discuss the submission, please contact Thomas Mortimer, Senior Advisor, Advocacy and Strategic Projects, on _____ or _____

Yours sincerely



A handwritten signature in black ink, appearing to read 'Robyn A Hobbs', is written over the typed name below.

**Robyn Hobbs OAM
NSW Small Business Commissioner**

2 July 2019

- ¹ Meehan, J. & Wright, G. (2012), *'The origins of power in buyer-seller relationships'*, Industrial Marketing Management, vol 41, no 4, p. 14; Parliamentary Joint Committee on Corporations and Financial Services (2019), *'Report: Fairness in franchising'* p. 51 ; Beaton-Wells, C. & Paul-Taylor, J. (2017), *'Codifying supermarket-supplier relations: A report on Australia's Food and Grocery Code of Conduct'*, University of Melbourne Law School
- ² Parliamentary Joint Committee on Corporations and Financial Services (2019), *'Report: Fairness in franchising'*
- ³ Sydney Morning Herald (14 March 2019) *'Manifestly failed: Damning report calls for franchise sector overhaul'*; Australian Financial Review (14 March 2019), *'Franchise industry faces tougher enforcements'*; Smart Company (14 March 2019), *'Systemic failure: Franchising report advises massie overhaul of \$180 billion industry'*
- ⁴ Parliamentary Joint Committee on Corporations and Financial Services (2019), *'Report: Fairness in franchising'*, Recommendation 14.39
- ⁵ Treasury (2019), *'Media release – Further strengthening the unfair contract terms protections for small businesses'*
- ⁶ Draft guidance note, pp. 1-2
- ⁷ Noting the test for declaration of a class exemption prescribed in *Competition and Consumer Act 2010* (Cth), s95AA(1)
- ⁸ Office of the NSW Small Business Commissioner (2018), *'Potential 'class exemption' for collective bargaining – discussion paper'*, pp. 1-2
- ⁹ McCrystal, S. (2015), *'Collective bargaining beyond the boundaries of employment: A comparative analysis'*, Melbourne University Law Review, vol 37, no 3, pp. 664-665
- ¹⁰ See, principally, *Fair Work Act 2009* (Cth), ss340-345
- ¹¹ See, for example, New Zealand: *Employment Relations Act 2000* (NZ), ss104, 107; United States of America: National Labor Relations Board n.d., *'Discriminating against employees because of their union activities of sympathies (Section 8(a)(3))'*;
- ¹² *Competition and Consumer Act 2010* (Cth), ss21-22
- ¹³ Productivity Commission (2014), *'Inquiry report – access to justice arrangements – volume 1'*, p. 2; Australian Small Business and Family Enterprise Ombudsman (2018), *'Access to Justice: Where do small businesses go?'*, pp. 10-12.
- ¹⁴ Australian Small Business and Family Enterprise Ombudsman (2018), *'Access to Justice: Where do small businesses go?'*, pp. 10-12
- ¹⁵ Draft guidance note; ACCC (2018), *'ACCC class exemption for collective bargaining – update'*
- ¹⁶ Draft legislative instrument, s6(1)
- ¹⁷ Draft legislative instrument, ss5, 7(2)-(4), 8(2)
- ¹⁸ Draft guidance note, pp. 4-5
- ¹⁹ Draft legislative instrument, s7(2)-(4)
- ²⁰ Save for restrictions on the identity of the target applied to franchisee and fuel retailer collectives; Draft legislative instrument, s7(3)-(4)
- ²¹ Draft legislative instrument, s7(2)-(4)
- ²² Draft legislative instrument, s5
- ²³ Hardy, T. & McCrystal, S. (2018), *'Submission on potential ACCC class exemption for collective bargaining'*, pp. 2-3
- ²⁴ Yean Yng Ling et al (2014), *'Drivers and barriers to adopting rational contracting practices in public projects: comparative study of Beijing and Sydney'*, Integrated Journal of Project Management, vol 32, no 2, pp. 275-276
- ²⁵ Draft guidance note, p. 7; ACCC (2018), *'ACCC class exemption for collective bargaining – update'*, p. 7
- ²⁶ Draft guidance note, pp. 4-5
- ²⁷ NSW Business Chamber (2016), *'Red tape survey - report'*, p. 5
- ²⁸ Draft guidance note, pp. 3-4
- ²⁹ Hardy, T. & McCrystal, S. (2018), *'Submission on potential ACCC class exemption for collective bargaining'*, p.5
- ³⁰ Office of the NSW Small Business Commissioner (2018), *'Potential 'class exemption' for collective bargaining – discussion paper'*, p. 4
- ³¹ Office of the NSW Small Business Commissioner (2018), *'Potential 'class exemption' for collective bargaining – discussion paper'*, p. 4
- ³² That is, the materials comprising pp. 1-2 of the Draft Notice.
- ³³ ACCC (2018), *'ACCC class exemption for collective bargaining – update'*, pp. 3-4
- ³⁴ Australian Newsagents' Federation (2018), *'ALNA submission on ACCC proposal for 'class exemption' for collective bargaining'*, p. 1; National Farmers' Federation (2018), *'Potential 'class exemption' for collective bargaining'*, p. 2; Law Council of Australia Competition and Consumer Law Committee (2018), *'ACCC discussion paper – potential class exemption for collective bargaining'*, p. 2 ; IPA-Deakin SME research centre (2018), *'Response to ACCC discussion paper for potential 'class exemption' for collective bargaining'*, p. 10
- ³⁵ McCrystal, S. (2015), *'Collective bargaining beyond the boundaries of employment: A comparative analysis'*, Melbourne University Law Review, vol 37, no 3, p. 666; Stewart, A. & Stanford, J. (2017), *'Regulating work in the gig economy: what are the options?'*, Economic and Labour Relations Review, vol 28, no 3, pp. 1-2; Todoli-

Signes, A. (2017), 'The end of the subordinate worker? Collaborative economy, on-demand economy, gig economy, and the crowdworkers' need for protection', *International Journal of Comparative Labour Law and Industrial Relations*, vol 33, no 2, pp. 3, 30

³⁶ Stewart, A. & Stanford, J. (2017), 'Regulating work in the gig economy: what are the options?', *Economic and Labour Relations Review*, vol 28, no 3, pp. 5-6

³⁷ Todoli-Signes, A. (2017), 'The end of the subordinate worker? Collaborative economy, on-demand economy, gig economy, and the crowdworkers' need for protection', *International Journal of Comparative Labour Law and Industrial Relations*, vol 33, no 2, p. 8

³⁸ Stewart, A. & Stanford, J. (2017), 'Regulating work in the gig economy: what are the options?', *Economic and Labour Relations Review*, vol 28, no 3, p. 3; Todoli-Signes, A. (2017), 'The end of the subordinate worker? Collaborative economy, on-demand economy, gig economy, and the crowdworkers' need for protection', *International Journal of Comparative Labour Law and Industrial Relations*, vol 33, no 2, p. 7

³⁹ Horn, P. (2005), 'New forms of collective bargaining: Adapting to the informal economy and new forms of work', *Labour, Capital and Society*, vol 30, no 1-2; Cherry, M.A. & Aloisi, A. (2017), 'Dependent contracts' in the gig economy: A comparative approach', *American University Law Review*, vol 66, no 3, pp. 651-653; Kennedy, E. (2005), 'Freedom from independence: Collective bargaining rights for 'dependent contractors'', *Berkeley Journal of Employment and Labour Law*, vol 26, no 1, pp. 144-145

⁴⁰ Todoli-Signes, A. (2017), 'The end of the subordinate worker? Collaborative economy, on-demand economy, gig economy, and the crowdworkers' need for protection', *International Journal of Comparative Labour Law and Industrial Relations*, vol 33, no 2, pp. 3-4; Todoli-Signes, A. (2017), 'The 'gig economy': employee, self-employed or the need for a special employment regulation?', *European Review of Labour and Research*, vol 23, no 2, pp. 2-3

⁴¹ Todoli-Signes, A. (2017), 'The end of the subordinate worker? Collaborative economy, on-demand economy, gig economy, and the crowdworkers' need for protection', *International Journal of Comparative Labour Law and Industrial Relations*, vol 33, no 2, p. 5

⁴² McCrystal, S. (2015), 'Collective bargaining beyond the boundaries of employment: A comparative analysis', *Melbourne University Law Review*, vol 37, no 3, p. 666; Todoli-Signes, A. (2017), 'The 'gig economy': employee, self-employed or the need for a special employment regulation?', *European Review of Labour and Research*, vol 23, no 2, p. 3

⁴³ Deloitte Access Economics (2017), 'Developments in the collaborative economy in NSW', NSW Department of Finance, Services & Innovation, p. 5; NSW Business Chamber (2015), 'The sharing economy – Issues, impacts, and regulatory responses in the context of the NSW visitor economy', p. 12

⁴⁴ Minifie, J. (2016), 'Peer-to-peer pressure: Policy for the shared economy', The Grattan Institute, p. 33

⁴⁵ Deloitte Access Economics (2017), 'Developments in the collaborative economy in NSW', NSW Department of Finance, Services & Innovation, p. 4

⁴⁶ Deloitte Access Economics (2017), 'Developments in the collaborative economy in NSW', NSW Department of Finance, Services & Innovation, p. 4

⁴⁷ See, for example, Steinmetz, K. (2016), 'See how big the gig economy really is', *Time Magazine*; Stewart, A. & Stanford, J. (2017), 'Regulating work in the gig economy: what are the options?', *Economic and Labour Relations Review*, vol 28, no 3, pp. 3-4

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