

Collective bargaining class exemption is available for businesses to use from 3 June 2021

Dear Members

The Victorian Automotive Chamber of Commerce (VACC) advises all members that the Australian Competition and Consumer Commission (ACCC) has made a class exemption, which allows eligible businesses to collectively bargain without breaching the competition laws.

The class exemption is available for businesses to use from **3 June 2021**.

Background

Since 6 November 2017, the ACCC has had the power to make 'class exemptions' for specific types of business conduct.

This new power is in addition to the ACCC's existing authorisation and notification processes that allow businesses to seek legal protection for arrangements or other conduct that risks breaching competition law.

What is collective bargaining?

Collective bargaining occurs where two or more competitors come together as a group to negotiate with a supplier or customer (known as the target business) about terms, conditions and/or prices. A group of businesses may sometimes appoint a representative, to act on their behalf in negotiations.

What is a class exemption?

A class exemption is a way for the ACCC to grant businesses an exemption from competition law for certain types of conduct that may otherwise risk breaching competition laws, but that:

- do not substantially lessen competition, and/or
- are likely to result in overall public benefits.

Negotiating as a group can allow businesses to share the time and cost of negotiating contracts, and potentially give group members more input into contract terms and conditions. There are often time and cost savings for the suppliers or franchisor the group is bargaining with.

Broadly, the class exemption enables:

- a business or independent contractor with aggregated turnover of less than \$10 million in the preceding financial year, to form or join a collective bargaining group to negotiate with suppliers or customers about the supply or acquisition of goods or services
- franchisees who have franchise agreements with the same franchisor to collectively bargain with their franchisor regardless of their size or other characteristics
- fuel retailers who have fuel re-selling agreements with the same fuel wholesaler, and operate under the same system or marketing plan determined, controlled or suggested by the fuel wholesaler or an associate of the fuel wholesaler, to collectively bargain with their fuel wholesaler regardless of their size or other characteristics without the risk of breaching competition laws.

How to obtain the protection of the class exemption?

An eligible business must ensure that a one-page collective bargaining class exemption notice form has been given to the ACCC by the group they are forming or joining and that the notice form is also given to any target business that the group proposes to collectively bargain with.

Provided this notice form has been given, each business in the group that meets the eligibility criteria gets immediate, automatic protection under the competition law when collectively bargaining as part of the group within the terms of the class exemption.

Collective bargaining class exemption notice forms will be placed on the ACCC's public register and an example of the form is attached [here](#).

The class exemption will provide legal protection to eligible businesses who have lodged their one-page notice form until 30 June 2030. The ACCC will conduct a review in 2029 to decide whether to extend the class exemption.

The ACCC's Guidelines (available [here](#)) provide further detail about how this class exemption operates, including the criteria businesses must meet to be eligible for the class exemption.

The class exemption does not force anyone to join a collective bargaining group, nor force a customer, supplier or franchisor to deal with the bargaining group if they do not want to. The target business will be free to continue to negotiate with each member of the group individually. The class exemption simply removes the risk that collective bargaining by eligible businesses will breach the competition law.

Dealers and **dealer councils** may wish to commence collective bargaining with a distributor. FCW Lawyers created a [roadmap](#) that dealers and dealer councils can use to improve their bargaining position.

VACC members should continue to reach out to their Industry Policy Advisors at VACC or their own legal advisors, for any issues relating to the collective bargaining exemption.

Should you have any questions, please contact Kathy Zdravevski: kzdravevski@vacc.com.au or 03 9829 1142.

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