



QUEENSLAND FARMERS' FEDERATION

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Submission

21 September 2018

Mr Mick Keogh
Deputy Chair
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
MELBOURNE VIC 3000

Via email: adjudication@acc.gov.au

Dear Mr Keogh

Re: Collective bargaining class exemption

The Queensland Farmers' Federation (QFF) is the united voice of intensive agriculture in Queensland. It is a federation that represents the interests of peak state and national agriculture industry organisations, which in turn collectively represent more than 13,000 primary producers across the state. QFF engages in a broad range of economic, social, environmental and regional issues of strategic importance to the productivity, sustainability and growth of the agricultural sector. QFF's mission is to secure a strong and sustainable future for Queensland farmers by representing the common interests of our member organisations:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland (NGIQ)
- Queensland Chicken Growers Association (QCGA)
- Queensland Dairyfarmers' Organisation (QDO)
- Australian Cane Farmers Association (ACFA)
- Flower Association
- Pork Queensland Inc.
- Queensland United Egg Producers (QUEP)
- Bundaberg Regional Irrigators Group (BRIG)
- Burdekin River Irrigation Area Irrigators Ltd (BRIA)
- Central Downs Irrigators Ltd (CDIL)
- Pioneer Valley Water Cooperative Ltd (PV Water)
- Queensland Chicken Meat Council (QCMC).

QFF welcomes the opportunity to provide comment on the ACCC's 'Collective bargaining class exemption' discussion paper. QFF provides this submission without prejudice to any additional submission provided by our members or individual farmers.

The united voice of intensive agriculture



Background

Over the past 30 years, there has been an enormous degree of change to the environment farmers and the broader agribusiness sector operate in. The deregulation of markets, privatisation of infrastructure and services, and the concentration and globalisation of the sectors at both ends of the farm business (i.e. input suppliers and commodity markets) have made running a farming enterprise much more complex.

In some agricultural industries, the trend of greater consolidation in pre- and post-farm gate markets has negated some of the benefits expected from the years of competition reforms. While it has delivered lower prices for consumers (in real terms), it has also challenged the long-term profitability and competitiveness for some farm businesses. Australian consumer laws therefore have an important role to play to ensure market power and/or manipulation does not add to profitability and international competitiveness challenges faced by the sector.

QFF understands that the ACCC is considering making a 'class exemption' that would provide eligible small businesses, agribusinesses and franchisees with legal protection to collectively bargain with customers or suppliers, without having to apply to the ACCC. This ruling would provide businesses an exemption from consumer law for conduct that would otherwise risk breaching it, effectively providing them a 'safe harbour'. This new power would be in addition to the ACCC's existing 'authorisation' and 'notification' processes.

General Comments

QFF broadly supports the proposal to introduce a class exemption for farm businesses to collectively bargain. Principally, QFF considers this is a good concept and supports the continued development of this class of conduct provided there is a full exploration of the settings, boundaries and transparency that would be required to ensure there aren't any unintended consequences and perverse outcomes. Effectively structured, a class exemption could help farm businesses negotiate better terms with infrastructure and services providers (e.g. electricity pricing and the ability to export surplus on-farm energy generation), input suppliers (e.g. seed, fertiliser, fuel), machinery suppliers and product purchasers (e.g. processors, mills, retailers).

Types of businesses that should be covered under this class exemption

QFF notes that the ACCC's starting position is that a class exemption for collective bargaining should only be available to businesses below a certain size, and that larger businesses would still be able to seek authorisation through existing channels on a case-by-case basis.

Given the diversity of farm businesses within and across different industries, determining which businesses should be eligible for the class exemption must be a thorough process. A 'combination of factors' approach is likely to be the best option. QFF recommends that the ACCC consult extensively with each industry to understand what is required, be open to other factors besides those listed in the discussion paper, consider whether an industry-specific eligibility ruling is appropriate, and note that these settings will need to be adjusted over time with changing business profiles.

Other issues

Several of our members have collective bargaining authorisations in place. In the short term, there is likely to be limited benefit from the introduction of a class exemption for them. However, over the longer term, they may benefit from a streamlined application process in the future. If effective, a class exemption may also reduce the need for small member-based organisations to pursue a collective bargaining authorisation.

Potential impacts to existing authorisation arrangements should also be explored. For example, while QCGA holds an authorisation to collectively bargain on behalf of Queensland chicken growers with the state's three processors, the processors are not required to solely negotiate with QCGA. Therefore,



during negotiations, processors have exploited their market power by negotiating separate agreements with individual farm businesses when contract negotiations become difficult. This undermines the strength of a united negotiation position and reduces the effectiveness of the collective bargaining authorisation. Besides looking at ways to rectify this situation, which should include the addition of an effective mediation process, the ACCC should ensure that a class exemption does not embolden this approach.

Conclusion

The brevity of this submission is not an indication of the importance of this issue. In some industries, power imbalances mean getting a 'fair price' for agricultural products at the farm gate is becoming increasingly challenging, as evidenced by increased calls for industry codes of conduct to overcome unfair contract terms and unconscionable conduct.

QFF notes that this is only an initial public consultation and a lot more work is needed to ensure the right boundaries and settings around a class exemptions framework is realised, but in principle supports this class of conduct. A deeper analysis of how this collective bargaining arrangement will accommodate farm business demographics across different industries and impact any current bargaining arrangements must be fully explored. The ACCC Agriculture Consultative Committee would be a logical forum for this work.

Yours sincerely

Travis Tobin
Chief Executive Officer