



National
Farmers
Federation

Horticulture
Council

New class exemptions for collaborative activities

Submission

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About the NFF Horticulture Council

The Council is the recognised peak body for forming policy and advocating on behalf of the national horticulture industry. Established in 2017, it now comprises 19 national commodity and state-based horticulture bodies, who together represent the full breadth of an incredibly diverse industry, including growers of all sizes and products including fruits, vegetables, nuts, ornamental plants and turf.

The Council develops policy positions on common issues of national importance to the horticulture industry such as trade, workforce, biosecurity, farm business, climate change and sustainability, markets and competition, R&D, telecommunications and infrastructure.

In late 2022, the Council stood up its own Competition Taskforce to develop positions and advocate on policy and programs concerning competition law and the efficient, fair and transparent functioning of domestic wholesale and retail horticultural markets.

This Taskforce and the Council have since been heavily involved in a series of reviews and inquiries that have focused in some way on the trading of fresh produce in Australia, starting with the Senate Inquiry into Supermarket Pricing, including the review of the Food and Grocery Code of Conduct, and culminating with the ACCC's own Supermarket Inquiry.

Through these processes, the Council has been gratified by the level of public interest in the welfare of horticultural producers and in seeing that domestic markets function in a way that delivers them a fair return on their investment and hard work. We have also been pleased with the intent of recommendations made by the ACCC as part of its Supermarket Inquiry that deal specifically with the trading of fresh produce, validating our view these markets are still in need of significant reform.

Introduction

The Council welcomes the ACCC's initiative to explore new class exemptions under the Competition and Consumer Act 2010 (Cth). Reducing regulatory burden and enabling low-risk, beneficial collaboration is essential to unlocking productivity and promoting resilience across the horticulture sector.

Horticultural businesses face unique challenges due to market concentration, seasonal labour needs, and perishable supply chains. Many growers operate in highly competitive environments with limited bargaining power, particularly in dealings with major retailers. The current authorisation and notification processes, while valuable, can be complex and costly for small and medium enterprises.

We support the ACCC's efforts to identify collaborative conduct that poses minimal risk to competition and offers net public benefit. This submission outlines candidate activities for class exemptions and offers recommendations to guide the ACCC's consideration.

Recommendations

The NFF Horticulture Council makes the following recommendations to guide the ACCC's consideration of new class exemptions and improvements to existing exemption pathways under the Competition and Consumer Act 2010 (Cth):

- **Retain and amend the small business class exemption:** Maintain the existing exemption for small business collective bargaining but amend it by (1) indexing the \$10 million turnover threshold to inflation and periodically reviewing it to reflect industry growth, and (2) limiting turnover recognition to the relevant horticultural commodity or crop for mixed farming enterprises, ensuring eligibility reflects actual bargaining exposure.
- **Develop a class exemption for fresh produce suppliers of any size:** Investigate a class exemption to allow fresh produce and nursery suppliers of any size to collaborate when dealing with major supermarket chains and big box retailers, including but not limited to collectively negotiating on price and sharing supply information. This would be a proportionate, targeted reform that addresses a well-documented market failure and delivers enduring benefits to industry and the public.
- **Amend authorisation and notification processes to allow anonymity:** Enable horticulture suppliers to remain anonymous in forming a bargaining group under the authorisation and notification pathways. This would reduce the risk of commercial retaliation and encourage greater use of lawful collective bargaining mechanisms.
- **Require supermarkets to engage with recognised bargaining groups:** Introduce a requirement that supermarkets and big box retailers must negotiate with the collective group as a whole, rather than bypassing it to engage individual members. This would protect the integrity of collective bargaining and draw precedent from industrial relations law, where employers are compelled to bargain with registered unions.

These recommendations aim to reduce regulatory burden, support fair and efficient market conduct, and ensure horticulture businesses—regardless of size—can access the protections and opportunities afforded by collective bargaining.

About the horticulture industry and market regulation

Horticulture is Australia's third-largest agricultural industry, now creating over 69,000 full-time equivalent jobs and a \$10 billion value-added contribution to the economy and forecast to reach \$21 billion in farmgate value by 2030. It includes both production horticulture (fruits, vegetables, nuts) and ornamental horticulture (nursery, turf, flowers) and is a cornerstone of regional economies across the country.

Historically, horticultural markets were regulated by state governments to better balance bargaining power between growers and buyers. This included the establishment of statutory marketing authorities, single desks, and mandated marketing pools—mechanisms designed to ensure growers could collectively negotiate prices, monitor supply, and access markets on fair terms.

These arrangements were particularly common in the mid-to-late 20th century and reflected a recognition that horticultural products—due to their perishability, seasonal variability, and fragmented production—required tailored market structures to avoid exploitation and ensure viability. While most of these regulatory frameworks have since been dismantled in favour of deregulated markets, their legacy underscores the enduring need for mechanisms that support collective action and fair-trading conditions.

The Western Australian Potato Marketing Corporation, which operated until its abolition in 2016, was the last remaining example of a state-mandated single desk for horticulture. It regulated supply, quality, and marketing of potatoes in WA, providing growers with a degree of price stability and market access that has since been lost. Its removal marked the end of formalised collective marketing in Australian horticulture, leaving growers to navigate increasingly concentrated and opaque retail markets on their own.

In the absence of these measures, growers now face significant challenges in negotiating fair prices and terms—particularly with major supermarkets and dominant retailers. The Council has documented how market power exercised by Coles, Woolworths, Bunnings and others has led to price suppression, opaque procurement practices, and diminished bargaining power for growers. These dynamics have contributed to declining profitability, reduced investment, and increased exit from the industry.

To address these imbalances, the Federal Government introduced the Horticulture Code of Conduct in 2007, a mandatory industry code regulating trading relationships between growers and wholesalers. More recently, the Food and Grocery Code of Conduct was established in 2015 to regulate supermarket-supplier relationships and has recently been updated to create penalties and more accessible dispute resolution.

These regulatory frameworks reflect a long-standing recognition that collective bargaining and coordinated conduct among growers can be necessary and beneficial in markets where asymmetric power and perishability limit individual negotiating capacity. The Council believes that class exemptions can build on this legacy to unlock further productivity and fairness.

Exemptions from competition law and horticulture

Under the Competition and Consumer Act 2010 (Cth), the ACCC has the authority to grant exemptions from competition law for conduct that might otherwise breach its provisions. These exemptions are designed to allow beneficial collaboration or arrangements that either do not substantially lessen competition or are likely to result in a net public benefit.

The ACCC administers three main exemption pathways: authorisation, notification, and class exemption. Authorisation is typically used for complex or high-risk conduct such as cartel arrangements or joint ventures and requires the applicant to demonstrate that the conduct meets the exemption criteria. Notification is a simpler and faster process, generally used for conduct like exclusive dealing. Class exemptions, introduced in 2017, allow the ACCC to exempt entire categories of conduct that consistently meet the exemption criteria, providing a “safe harbour” for eligible businesses without the need for individual applications.

The Council will recommend the ACCC give consideration to class exemptions that are more fit for the purpose of horticulture businesses and the markets in which they deal. It also recommends consideration be given to making amendments to the other exemption options of Authorisation and Notification to ensure they are more accessible for horticulture.

Class exemptions

Small business suppliers and buyers

The only existing class exemption applies to small business collective bargaining, introduced on 3 June 2021. It allows eligible small businesses to jointly negotiate with customers or suppliers without breaching competition laws. To qualify, individual businesses must have an aggregated turnover of less than \$10 million in the financial year prior to forming or joining a bargaining group. The exemption also applies to franchisees and fuel retailers, regardless of turnover, when negotiating with their franchisor or fuel wholesaler.

There has only been little use of the small business class exemption to date by the horticulture industry. In March 2025, four (4) separate notices were lodged by a state farming body on behalf of pea, potato and bean growers in their jurisdiction for the purpose of collectively bargaining with locally based processors. Prior to that, the only other two (2) notices on the register lodged by small businesses engaged in horticulture were in September 2023 by a group of ginger growers, nationally, for the purpose of negotiating for the supply of ginger to wholesale markets, retail and processors, and in August 2022 by a group of potato growers in Central Victoria, Tasmania, South Australia and New South Wales for the purpose of negotiating with processors.

It is understood the exemptions are utilized by the state farming body and are considered valuable.

The horticultural groups that are using the existing class exemption share several important characteristics that make applying for a class exemption more likely. These groups are typically small in size, often comprising growers within a single

region or supply chain. Their focus is usually on negotiating with a specific buyer, such as a processor, which simplifies coordination and allows the group to concentrate its efforts on improving terms with a known counterpart.

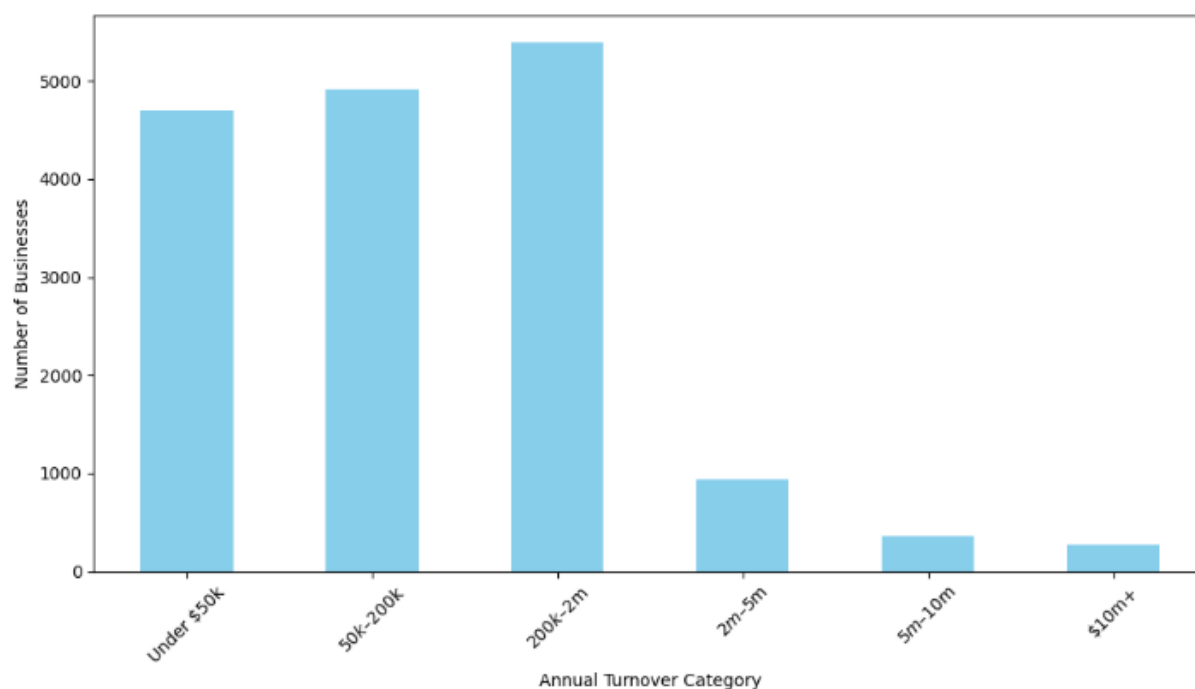
Geographic likely proximity plays a critical role in enabling these groups to form and function. Whether in Tasmania or Central Victoria, growers operating in close physical proximity are more likely to share similar production conditions, market access challenges, and seasonal pressures. This commonality fosters a sense of shared purpose. In smaller industries like ginger, where the number of growers is limited, the potential for collaboration is even greater. These structural features—small group size, a clear target buyer, and regional concentration—create the conditions for effective collective bargaining under the class exemption.

The existing small business class exemption, limited to those businesses with a turnover of less than \$10 million, is however currently excluding a significant proportion of horticultural production and many suppliers of dominant domestic retailers who would benefit from an ability to more easily bargain collectively.

As of June 2023, according to the ABS, there were a total of 16,583 horticulture businesses operating across Australia. The overwhelming majority of these businesses are small-scale operations, falling within the lower turnover brackets defined as micro or small businesses, invariably not employing anyone.

272 businesses (1.6%) reported annual turnover of \$10 million or more. There were only 29 businesses in horticulture with more than 200 employees.

Chart 1: Distribution of horticulture businesses by turnover (2023)



The Council supports the continued availability of the small business collective bargaining class exemption as a valuable mechanism for enabling low-risk collaboration. However, to ensure the exemption remains fit-for-purpose for horticulture, the Council recommends two key amendments:

1. Index the \$10 million turnover threshold to inflation and periodically review it to reflect changes in business costs and industry growth, ensuring the exemption remains accessible to a broader range of horticulture businesses over time.
2. Limit turnover recognition to the relevant horticultural commodity, crop or variety for mixed farming enterprises, for example Cavendish bananas and Fuji apples, so that eligibility is based on the turnover of the specific activity subject to collective bargaining, rather than total business turnover across unrelated operations.

These amendments would better reflect the structure and diversity of horticulture businesses and ensure that growers who are vulnerable to market power imbalances are not excluded from accessing collective bargaining protections.

Large targets

The ACCC's Supermarkets Inquiry Final Report (March 2025) provides compelling evidence of significant power imbalances between major supermarket chains and fresh produce suppliers. The report found that supermarkets such as Coles, Woolworths, Aldi, Metcash, and Costco exert substantial buyer power, often dictating terms that leave suppliers with limited ability to negotiate fair prices, contract conditions, or dispute resolution mechanisms. These dynamics are exacerbated by the perishability of produce, the fragmented nature of supply, and the lack of transparency in supermarket procurement practices.

The same dynamic of power imbalance and poor outcomes exists possibly to a higher degree in the national nursery industry, for those suppliers of Bunnings. The Australian Government Economics References Committee heard as part of their inquiry into 'Big box' retailer price setting that Bunnings controls up to 70 percent of the national nursery retail market and been subjected its suppliers to a range of unfair trading practices.

Fresh produce and nursery suppliers frequently face information asymmetry, unpredictable demand forecasts, and unilateral changes to supply arrangements. These conditions undermine business viability, discourage investment in innovation and sustainability, and contribute to inefficiencies across the supply chain. The ACCC itself acknowledged that these practices can erode trust and confidence in the market, particularly for small and medium-sized growers.

Despite these challenges, the current regulatory framework does not provide a straightforward mechanism for suppliers—especially those above the small business threshold—to collectively negotiate with supermarkets. While the existing class exemption for small business collective bargaining is likely effective in reducing compliance burden and enabling fairer negotiations, it excludes many horticulture suppliers who operate at scale but still lack meaningful bargaining power when dealing with dominant retailers.

The ACCC has already recognised that fuel franchisees of any size should be eligible for collective bargaining protections when negotiating with their franchisor. A similar rationale applies to fresh produce suppliers negotiating with large supermarkets and big box retailers. The risk of anti-competitive conduct

among suppliers is low, given the diversity of produce, regional dispersion, and the competitive pressures they face. Conversely, the public benefits of enabling collective bargaining are substantial: improved market efficiency, enhanced supply chain resilience, better outcomes for consumers, and stronger regional economies.

While it is theoretically possible that a class exemption enabling collective bargaining by fresh produce and nursery suppliers of any size could result in a group with sufficient market power to distort competition or reduce public benefit, several countervailing factors significantly limit this risk.

1. The likelihood of a large-scale collective forming in horticulture for any crop or product is low, given the structural and operational characteristics of the industry. As outlined in the section on small business groups, successful bargaining collectives tend to be small, regionally concentrated, and focused on specific supply chains. The diversity of commodities, geographic dispersion of growers, and seasonal variability all act as natural constraints on the formation of large, coordinated bargaining entities.
2. The prices paid to suppliers are largely decoupled from those charged to consumers. Supermarkets operate with strong incentives to minimise procurement costs while maximising retail margins. This dynamic means that even if suppliers were able to negotiate modest price increases, supermarkets would not necessarily pass these on to consumers, limiting any public benefit impacts and preserving competitive outcomes.
3. Horticultural products are, to varying degrees, substitutable in the eyes of consumers. If prices for certain produce rise beyond acceptable thresholds, consumers can and do switch to alternatives—placing a natural ceiling on price increases and protecting overall market efficiency. This substitutability ensures that any collective bargaining outcomes remain tethered to market realities and consumer preferences.

Taken together, these factors suggest that the proposed class exemption would not result in anti-competitive outcomes but rather address existing power imbalances in a proportionate and targeted manner, delivering net public benefit through fairer trading conditions, improved supply chain resilience, and enhanced sustainability for growers.

As further insurance against these risks, any ‘large target’ class exemption in horticulture could be time bound with a scheduled review to confirm costs and benefits, or limited to individual businesses with a turnover well in excess of the threshold set for the ‘small business’ exemption.

To meet the ACCC’s thresholds for a class exemption, this proposal offers:

- Minimal risk of lessening competition, due to the structural imbalance between suppliers and supermarkets and the safeguards that can be built into the exemption.
- Clear public benefits, including reduced transaction costs, improved supplier sustainability, and more reliable access to fresh produce for consumers.

- Feasible implementation, drawing on the existing framework for fuel franchisee exemptions, with added transparency through public notice lodgement and governance protocols.

The Council recommends that the ACCC investigates a class exemption to allow fresh produce and nursery suppliers of any size to collaborate when dealing with major supermarket chains and big box retailers, including but not limited to collectively negotiating on price and sharing supply information. This would be a proportionate, targeted reform that addresses a well-documented market failure and delivers enduring benefits to industry and the public.

Authorisation and Notification

Many suppliers—particularly larger businesses— are believed to remain reluctant to engage in collective bargaining through the ACCC’s existing authorisation and notification processes. A key deterrent is the perceived need to publicly identify participating businesses at the outset of the process.

In the context of negotiating with dominant supermarket and big box retail buyers, suppliers fear commercial retaliation, reputational damage, or loss of market access if they are seen to be challenging existing arrangements. This is especially acute in horticulture supply chains, where relationships are often informal, highly dependent, and subject to rapid change. The requirement to disclose identities early in the process undermines the utility of the authorisation and notification pathways for those who may benefit most from collective bargaining protections.

To address this barrier, the Council proposes that the ACCC amend its authorisation and notification procedures to allow bargaining groups to remain anonymous. This could include:

- Permitting the lodgement of applications by a representative entity or legal advisor on behalf of unnamed parties.
- Allowing the ACCC to assess the merits of the proposed conduct based on the nature of the arrangement, the target business, and the characteristics of the group, without requiring disclosure of individual participants.
- Introducing confidentiality protections for supplier identities, similar to those used in sensitive merger reviews or enforcement investigations.

Such changes would not increase the risk of anti-competitive conduct. On the contrary, they would encourage greater use of lawful collective bargaining mechanisms by suppliers who currently operate under significant commercial pressure. The public benefits would include improved fairness in negotiations, enhanced supply chain transparency, and greater confidence in regulatory processes.

By enabling anonymity, the ACCC would remove a key procedural barrier and unlock the potential of its existing exemption tools to support more balanced and productive relationships between fresh produce suppliers and major retailers.

The Council recommends that the ACCC consider amending its authorisation and notification processes, as an alternative to a broad class exemption for all supermarket suppliers regardless of size, to allow horticulture suppliers to remain anonymous in forming a collective bargaining group.

Related amendments to competition law

While class exemptions and authorisations offer valuable mechanisms for enabling collective bargaining, they are unlikely to be sufficient on their own to countervail the significant market power held by major supermarkets in fresh produce supply chains. The ACCC's Supermarkets Inquiry Final Report (March 2025) clearly demonstrated that dominant retailers such as Coles, Woolworths, Aldi, Metcash, and Costco exert substantial influence over pricing, contract terms, and supplier relationships. In such concentrated markets, even legally protected bargaining groups may be undermined if supermarkets are permitted to bypass the group and engage directly with individual members.

To ensure the integrity and effectiveness of collective bargaining arrangements, the Council recommends that any exemption or authorisation involving fresh produce suppliers include a requirement that supermarkets must negotiate with the recognised group as a whole. This would prevent fragmentation of the group and protect suppliers from coercion or divide-and-conquer tactics that erode their negotiating position.

This recommendation draws precedent from industrial relations law, where employers are legally required to bargain in good faith with registered unions representing employees. Under the Fair Work Act 2009, employers cannot circumvent union representation during enterprise bargaining processes. Similarly, in franchising contexts, collective bargaining protections are premised on the recognition of the group as the legitimate negotiating entity.

Applying this principle to horticulture supply chains would promote fairer, more transparent negotiations, reduce the risk of supplier exploitation, and enhance the public benefits of collective bargaining—namely, improved market efficiency, supply chain resilience, and consumer access to high-quality produce. It would also align with the ACCC's broader objectives of fostering competition and reducing regulatory burden in sectors where structural imbalances persist.