

Regulating Collective Rights in Bargaining: Employees, Self-Employed Persons and Small Businesses

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Introduction

[M]any groups of small businesses, either of their own initiative or through industry associations, seek immunity from the TPA [*Trade Practices Act 1974 (Cth)*] to collectively bargain in order to redress imbalances in bargaining power and achieve what they would consider to be, more appropriate commercial outcomes in their dealings with larger businesses.¹

Absent the words “small business” and “immunity from the TPA” and this quote could come from any industrial relations or labour law treatise examining the processes of collective bargaining through the prism of power imbalance. However, the statement is from an Australian Competition and Consumer Commission (ACCC) issues paper examining the processes that small businesses can use to engage in collective bargaining and collective boycotts (a parallel with strike action) in order to “redress imbalances in bargaining power”. While the power imbalance referred to within the discussion paper is not constructed as “inherent”, the quote employs concepts that are standard within labour law discourse, applied in a different context. The similarities between the availability of collective bargaining for employee actors and for small business actors raises general questions over the availability of collective bargaining for all labour market participants and the regulatory justifications for the existence of different legal structures and different access requirements to collective bargaining processes.

¹ Australian Competition and Consumer Commission, *Authorising and Notifying Collective Bargaining and Collective Boycott Issues Paper*, July 2004 (hereafter *ACCC Issues Paper*), p1.

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