Government of South Australia

Our ref: eA199429
Obj ID: A5907923
Receipt: 17829781

The Hon Clare Scriven MLC

The Hon Nicola Centofanti MLC
Member of the Legislative Council
Parliament House
ADELAIDE SA 5000

Dear Ms Centofanti

Determination under the *Freedom of Information Act 1991*

I refer to your application made under the *Freedom of Information Act 1991* received by the Office of the Minister for Primary Industries and Regional Development / Minister for Forest Industries on 25 May 2023 requesting access to the following:

> *"A copy of all correspondence and meeting documents, including but not limited to hard copy or electronic briefings, minutes, emails, letters, meeting agendas, and any other correspondence, between the Minister, the Minister's Office, and the South Australian Timber Processors Association between 1 April 2022 and today, 25 May 2023."*

Pursuant to Section 14A of the Freedom of Information Act, the legislative timeframe in which to provide a determination was extended until 17 July 2023.

Accordingly, the following determination has been finalised.

I have located eight documents that are captured within the scope of your request.

Determination

I have determined that access to the following documents is **granted in full**:

Doc No.	Description of document	No. of Pages
1	Email from CEO of South Australian Timber Processors Association to the Minister for Forest Industries encl letter dated 03/05/2022 re small processors	3
2	Email from CEO of South Australian Timber Processors Association to the Minister for Forest Industries dated 04/08/2022 re follow-up on response	1

Minister for Primary Industries and Regional Development
Minister for Forest Industries

GPO Box 1671 Adelaide SA 5001
Telephone 08 8226 2931 | Email minister.scriven@sa.gov.au

SOUTH AUSTRALIA

2a	Acknowledgement from PIRSA:Minister Scriven to CEO, David Quill dated 04/08/2022	2
3	Email from Minister for Primary Industries and Regional Development, Minister for Forest Industries to CEO of South Australian Timber Processors Association encl letter dated 22/12/2022 re support on local timber processors	3
3a	Attachment A to Document 3: Guidelines for developing effective voluntary industry codes of conduct	33
3b	Attachment B to Document 3: Collective bargaining class exemption	18
4	Email from CEO of South Australian Timber Processors Association to the Minister for Forest Industries re South Australia's Timber Industry dated 6/2/2023 encl letter re support on local timber processors	3
5	Email from CEO, David Quill to the Office of the Minister for Primary Industries and Regional Development, Minister for Forest Industries dated 1/3/2023 re meeting with the South Australian Timber Processors Association	1

If you are unhappy with this determination you are entitled to exercise your rights of external review with the Ombudsman SA. Alternatively, you can apply to the South Australian Civil and Administrative Tribunal (SACAT). If you wish to seek a review, you must do so within 30 calendar days of receiving this internal review determination.

For more information about seeking a review or appeal, please contact the Ombudsman SA on telephone (08) 8226 8699 or SACAT on 1800 723 767.

Should you require further information or clarification with respect to this matter, please contact Ms Rachael Colegate on 8226 2931 or email: Minister.Scriven@sa.gov.au.

Yours sincerely

C. M. Scriven

Hon Clare Scriven MLC
MINISTER FOR PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT
MINISTER FOR FOREST INDUSTRIES

20 / 7 / 2023

Gonos, Anthea (PIRSA)

From: David Quill <dtquill2@bigpond.com>
Sent: Tuesday, 3 May 2022 2:44 PM
To: PIRSA:Minister Scriven
Subject: FW: Letter regarding small processors
Attachments: MinisterScriven letter.docx

From: David Quill [mailto:dtquill2@bigpond.com]
Sent: Tuesday, 3 May 2022 10:10 AM
To: 'Minister.Scriven@sa.gov.au'
Cc: 'Badenoch, Peter (admin@badenochlogging.com.au)'; 'Colin'; 'darryl@wtsales.com.au'; Justin Jagger | Roundwood Solutions; 'steve telford (stelford@roundwoodsolutions.com.au)'
Subject: Letter regarding small processors

Please see the attached letter

Regards,

David Quill

SOUTH AUSTRALIAN TIMBER PROCESSORS ASSOCIATIONF
Ph: 0408 849 751
Email: dtquill2@bigpond.com
Postal Address: PO Box 2726, Mount Gambier 5290

The Honourable Clare Scriven,

Minister for Primary Industries, Regional Development and Minister for Forest Industries

03/05/2020

Dear Clare,

Re : The Labour Government approach to forestry

Now that the dust has settled, the elections are over and portfolios have been distributed I take this opportunity once again to congratulate you on achieving the position of Minister responsible for forestry in South Australia.

As an organisation we are heartily sick of the cynical approach that many have taken regarding Labour being responsible for selling of the State owned forestry assets.

The sale of the forest is past history. More recent history is the failure of the previous Liberal Government to enforce the conditions of the sale. That government disregarded our pleas for an intensive audit into the actions of OFO who capitalised on the sale through the export of huge volumes of wood fibre originally established and tended by generations for the benefit of South Australia industry. Senior executives of OFO claimed that they had recouped their investment in the first five years since the sale.

In our submission to the Legislative Enquiry we quoted many examples of the bullish commercial behaviour of OFO and specific examples of how they breached many of the conditions of the lease agreement.

One of the promises made by Premier Malinauskas is to be involved in 'Investigating the feasibility of incentives to ensure that arrangements favour local processors who may be locked out of contracts with the larger forest growers."

Our small group, due to the specialty markets that we supply and the high employment numbers necessary to produce these products, employ many more employees per cubic metre processed than the large sawmills. Failure of any minor processor will have significant impact on employment. Although each of our enterprises would use less than 10% of the intake volume of larger sawmills we play a vital role in meeting the demands of the domestic market.

As early as 2017, OFO ceased supply of roundwood to an SATPA member in favour of supplying cut to length material to AKD at Heywood, Victoria. AKD, with its major sawmills located at Colac in

Victoria, purchase significant quantities of sawlog grown in South Australia that could be diverted to South Australian mills, thus easing the pressure on supply, referred to in the next paragraph.

OFO have formally advised some of the small processors that quantum of their supply licenses, never under question when the forests were State owned, will be terminated by the year 2025 and that they should seek arrangements with other forest growers to meet their production requirements.

OFO's actions in pursuit of financial returns have now caught up with them, and the company has reduced the available raw material to South Australian domestic processing through nothing other than raw greed.

We believe that the history of OFO from the time of purchase to present day has been summarised in our presentation to the Legislative Council enquiry and that the new South Australian Labour Government is duty-bound to take whatever action is necessary to ensure that domestic processing and the economic future of the Green Triangle region will not be affected by OFO's proposed action.

If our current Labour Government must carry the blame for selling the forests, the immediate past Liberal Government must surely carry the blame for failing to carry out the conditions which underpinned that sale. By neglecting to appropriately enforce the conditions of the lease agreement, the overall volume of log available to processors has been significantly reduced. OFO have created this problem and they must be forced to find the means of complying with the lease agreement to compensate for the shortfall.

We formally request the Malinauskas Labour Government to correct the blatant abuse of the conditions under which OFO should have operated over the last four years by forcing them to correct the shortfalls of supply in the next 12 months thus ensuring that all established processors have access to the fibre necessary for the long-term economic success of this region.

Yours sincerely

David Quill

CEO

Gonos, Anthea (PIRSA)

From: David Quill <dtquill2@bigpond.com>
Sent: Thursday, 4 August 2022 12:43 PM
To: PIRSA:Minister Scriven
Cc: 'Badenoch, Peter'; 'Colin'; darryl@wtsales.com.au; Justin Jagger | Roundwood Solutions; 'steve telford'
Subject: SATPA
Attachments: MinisterScriven letter.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Clare,

I have attached a letter to you that was sent some months ago and must've been lost in the system.

The issues outlined in that letter become more urgent as time moves on particularly with regard to volume of raw material supply to our members.

Another issue is the findings of the Legislative Council enquiry conducted where you acted as Chair. We appreciate that the activities of this committee would have been suspended with the election and change of Government and wonder when the findings will be published.

We acknowledge the fact that your new role as Minister for Primary Industries is a complex one, involving many issues notwithstanding the impact of Covid on all businesses throughout the world, but respectfully request response to my question above and to the original letter sent on 03/05/2022.

Kindest regards,

David Quill
CEO

Gonos, Anthea (PIRSA)

From: PIRSA:Minister Scriven
Sent: Thursday, 4 August 2022 3:07 PM
To: David Quill
Cc: 'Badenoch, Peter'; 'Colin'; darryl@wtsales.com.au; Justin Jagger | Roundwood Solutions; 'steve telford'
Subject: RE: SATPA

OFFICIAL

eA197202

Dear Mr Quill

Thank you for your email today in relation to your earlier correspondence.

This matter is currently being considered by the Minister, and a response will be provided to you as soon as possible.

Kind regards,
Sharon

Office of the Minister for Primary Industries and Regional Development
Office of the Minister for Forest Industries

Level 10, 1 King William Street, Adelaide | GPO Box 1671 Adelaide SA 5001
P: +61 8 8226 2931 | **E:** minister.scriven@sa.gov.au

Government of South Australia

From: David Quill <dtquill2@bigpond.com>
Sent: Thursday, 4 August 2022 12:43 PM
To: PIRSA:Minister Scriven <Minister.Scriven@sa.gov.au>
Cc: 'Badenoch, Peter' <admin@badenochlogging.com.au>; 'Colin' <colin@wtsales.com.au>; darryl@wtsales.com.au; Justin Jagger | Roundwood Solutions <justin@roundwoodsolutions.com.au>; 'steve telford' <stelford@roundwoodsolutions.com.au>
Subject: SATPA

Dear Clare,

I have attached a letter to you that was sent some months ago and must've been lost in the system.

The issues outlined in that letter become more urgent as time moves on particularly with regard to volume of raw material supply to our members.

Another issue is the findings of the Legislative Council enquiry conducted where you acted as Chair. We appreciate that the activities of this committee would have been suspended with the election and change of Government and wonder when the findings will be published.

We acknowledge the fact that your new role as Minister for Primary Industries is a complex one, involving many issues notwithstanding the impact of Covid on all businesses throughout the world, but respectfully request response to my question above and to the original letter sent on 03/05/2022.

Kindest regards,

David Quill
CEO

Gonos, Anthea (PIRSA)

From: PIRSA:Minister Scriven
Sent: Friday, 23 December 2022 9:33 AM
To: dtquill2@bigpond.com
Subject: eA198177(3) - Minister Scriven Correspondence
Attachments: eA198177 (3) - Mr David Quill -Supporting local timber processors - 22 December 2022.pdf; Attachment A - Developing effective voluntary industry codes of conduct.pdf; Attachment B - Collective bargaining class exemption.pdf

OFFICIAL

Document ID: eA198177(3)

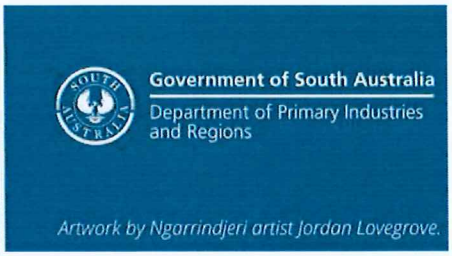
Dear Mr Quill

Please find attached correspondence from Minister Scriven regarding support on local timber processors.

Wishing you a Merry Christmas!

Kind regards

Office of the Hon Clare Scriven MLC
Minister for Primary Industries and Regional Development
Minister for Forest Industries
Government of South Australia | 1 King William Street, Adelaide
GPO Box 1671 Adelaide SA 5001
T: +61 8226 2931 | **E:** Minister.Scriven@sa.gov.au
pir.sa.gov.au



The Department of Primary Industries and Regions respects Aboriginal people as the state's first people and nations. We recognise Aboriginal people as traditional owners and occupants of South Australian land and waters. We pay our respects to Aboriginal cultures and to Elders past, present and emerging.

eA192177(3)

Government of South Australia

The Hon Clare Scriven MLC

Mr David Quill
Chief Executive Officer
South Australian Timber Processors Association
PO Box 2726
MOUNT GAMBIER SA 5290

Email: dtquill2@bigpond.com

Dear Mr ~~Quill~~ David,

I would like to advise that I wrote to the Australian Competition and Consumer Commission (ACCC) and the Hon Stephen Jones MP, Assistant Treasurer and Minister for Financial Services, seeking guidance on ways for local processors and large plantation owners to strengthen their commercial relationships in South Australia.

I have received correspondence from the Hon Dr Andrew Leigh MP, Assistant Minister for Competition, Charities and Treasury as the competition matters fall within his area of responsibility. He advised industry could seek guidance from the ACCC to develop an effective voluntary code of practice which specifically addresses key issues. It should be noted industry would be responsible for approving, implementing, enforcing compliance, and ongoing administration of an industry-led code.

The Assistant Minister also suggested local wood processors may consider collective bargaining, which allows two or more processors to negotiate together with a large plantation owner over terms, conditions, and prices. To do this, processors would need to seek an exemption from the ACCC, by lodging a notification or applying for authorisation, to remove the risk of them breaching competition laws.

I have attached the Guidelines for developing effective industry codes of conduct, and Guidelines for collective bargaining class exemption that were provided to me. I hope this information is of assistance to you.

I will endeavour to keep you informed on work on the government's election commitment to investigate the feasibility of incentives to ensure arrangements favour local processors who may be locked out of contracts with larger forest growers.

Minister for Primary Industries and Regional Development
Minister for Forest Industries

GPO Box 1671 Adelaide SA 5001
Telephone 08 8226 2931 | Email minister.scriven@sa.gov.au

SOUTH AUSTRALIA

Thank you for your valued contribution to industry as CEO of the South Australian Timber Processors Association.

Yours sincerely

Clare Scriven

And best wishes for Christmas. I look forward to catching up in the New Year.

Hon Clare Scriven MLC
MINISTER FOR PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT
MINISTER FOR FOREST INDUSTRIES

22 / 12 / 2022

Attachment A – Developing effective industry codes of conduct
Attachment B – Collective bargaining class exemption

Australian
Competition &
Consumer
Commission

Guidelines for developing effective voluntary industry codes of conduct

July 2011

Guidelines for developing effective voluntary industry codes of conduct

July 2011

Important notice

This guideline is designed to give you basic information; it does not cover the whole of the *Competition and Consumer Act 2010* and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining how the Act applies to that conduct.

ISBN 978 1 921964 22 0

ACCC_08?11_46506_381

CONTENTS

1 INTRODUCTION Introduction

Foreword

The Australian Competition and Consumer Commission's *Guidelines for developing effective voluntary industry codes of conduct* are designed to help industries improve voluntary compliance with the *Competition and Consumer Act 2010*. The ACCC has considerable experience in the use of codes of conduct to regulate market behaviour.

The guidelines are based on this experience coupled with consultations held with industry and consumer organisations.

Various regulatory frameworks may achieve effective compliance with the Act—the choice depends on a number of factors. Some of these factors are identified in these guidelines and should be considered before deciding to proceed with developing a voluntary industry code of conduct.

The ACCC encourages businesses to only develop codes that will deliver effective compliance with the Act. Effective codes potentially deliver increased consumer protection and reduced regulatory burdens for business. To achieve this they must be well designed, effectively implemented and properly enforced. In contrast ineffective codes may place compliance burdens on business without any realisable benefits and potentially making signatories to it less competitive.

What is a voluntary industry code of conduct?

A voluntary industry code of conduct sets out specific standards of conduct for an industry in relation to the manner in which it deals with its members as well as its customers. These standards are voluntarily agreed to by its signatories.

The ACCC's role

The ACCC's role with codes of conduct has developed over the years from providing guidance to industry associations to participating as an observer on code administration committees. That role includes granting authorisation for certain conduct on public benefit grounds and the administration of mandatory industry codes of conduct, for example the Franchising Code of Conduct.

2

WHY COMPLY?

Why develop and comply with effective voluntary industry codes

There are significant benefits in developing and complying with voluntary industry codes.

Some of these benefits include, but are not limited to:

- greater transparency of the industry to which signatories to the code belong
- greater stakeholder or investor confidence in the industry/business
- ensuring compliance with the Act to significantly minimise breaches[1]
- a competitive marketing advantage.

Other reasons for developing a voluntary industry code include:

- it is more flexible than government legislation and can be amended more efficiently to keep abreast of changes in industries' needs
- it is less intrusive than government regulation
- industry participants have a greater sense of ownership of the code leading to a stronger commitment to comply with the Act
- the code acts as a quality control within an industry
- complaint handling procedures under the code are generally more cost effective, time efficient and user friendly in resolving complaints than government bodies.

1. Breaches of the Act may lead to:
   - significant financial penalties and/or legal costs
   - a shift in management focus from growing the business to protecting it and oneself from prosecution
   - a loss of reputation.

When are voluntary industry codes more likely to be effective?

Research conducted on behalf of the ACCC suggests that codes of conduct tend to be more effective when the self-regulatory body:

- has widespread support of industry
- comprises representatives of the key stakeholders, including consumers, consumer associations, the government and other community groups
- operates an effective system of complaints handling.

Choosing the appropriate tool

What factors should be considered in deciding whether a voluntary industry code would be the most appropriate tool to achieve effective compliance with the Act?

To choose the appropriate tool many criteria need to be considered including:

- the issue being addressed
- the nature of the industry (e.g. is it a service industry or product industry? Is it an emerging industry or mature industry?)
- the size and structure of the industry or sector for which the code is proposed
- other industry circumstances such as the geographic spread and cohesiveness of the industry
- the history of the industry in relation to the conduct or objective the code is aiming to address
- an assessment of the current degree of confidence, trust or credibility the industry has with the community and consumers
- an assessment of whether a particular regulatory arrangement could deliver the identified objectives, depending on the likely consumer or community confidence
- identifying those features of a particular regulatory model that will inspire community and consumer confidence in it, and ensuring they are integral to the model's adoption and implementation.

Whichever of the above tools are adopted, they should be the minimum necessary to achieve the identified objectives, in a manner which imposes the least cost of compliance to achieve them.

PRACTICAL STEPS

3 Practical steps to take before drafting and effective code

There are several important steps an industry should take before drafting or reviewing an industry code of conduct.

These include:

- familiarising itself with this entire guideline
- identifying and consulting with the relevant stakeholder groups within the industry, consumer affairs agencies and relevant user, consumer and public interest groups—this will assist in identifying and gaining an understanding of the problems that the code should address
- forming a code development committee to clearly defi ne the objectives that the
- code needs to achieve and identify:
  - the issues the code should address and reach a consensus on those issues
  - the benefits of the code to stakeholders
  - the rules necessary to achieve the objectives
  - the costs of administering the code
  - how this cost is going to be funded
  - the resources available to develop an effective code.

Once the above issues have been settled the next step is drafting the code. It is important that it contains all the essential criteria for effective codes. Once the code development committee has agreed on the initial draft it should be road-tested by the ultimate users of the code, the stakeholders. It may be necessary to have several redrafts after comments from stakeholders are considered.

A high level of involvement of stakeholders will encourage a high level of code ownership and coverage. The greater the involvement of industry stakeholders with the industry code, the greater the likelihood of it achieving its objectives.

4 Drafting an effective voluntary industry code of conduct

When drafting an industry code it is important to consider its structure. The final content of a particular code will depend on the nature of the problem it is designed to address and the industry involved. A drafting checklist outlining the critical steps in drafting the code is attached at appendix 2.
The following outline will provide a useful guide.

Part one—purpose of the code

The code must include:

- **Objectives**—clearly spelled out objectives help explain to stakeholders and any interested party why the code was established and what it intends to achieve.A clear statement of objectives can be written in such a way that it is measurable. This means that when the code is reviewed its success or failure can be accurately assessed.
- Definitions—clearly written definitions help explain technical and legal terms.

While the code should be consistent with the law, it should be easy for stakeholders to understand their rights and obligations. Using plain English will prevent ambiguity and vagueness and will instil confidence and certainty.

Part two—code rules

This part identifies the rules necessary to achieve the objectives. They should be developed keeping in mind the issues that were identified. Below is a hypothetical example.

example

An Australian Diamond code of conduct designed to address the authenticity of Australian diamonds may develop rules addressing the following:

- accuracy of record keeping by all stakeholders
- a means for consumers to check authenticity
- detailed customer receipts
- correction of errors—outlining steps taken by a retailer when an error is identified
- full refund policy
- audit trail—allowing an error to be traced from its origin to when and how it was or was not corrected.

Code rules provide signatories with industry standards that have been set by industry and may establish best practice. Code rules also inform interested parties of their rights and obligations under the code, the quality and service they can expect and how to lodge a complaint when they are dissatisfied with the product or service they received.

Part three—code administration criteria

To ensure the rules are applied effectively in practice it is necessary for the code's promoters to develop and implement an administrative mechanism.

Code administration

A code administration committee needs to be established and its operations written into the code document. That committee should ensure the successful implementation and ongoing effectiveness of the code.

The code administration committee needs to have representatives of all stakeholder groups and, where appropriate, complaints handling strategies in place. Such representation provides transparency to the scheme by providing a 'public window' into its operations.

Typical stakeholders include:

Trade associations

Historically, trade associations as caretakers of industry members have taken an active part in developing and maintaining codes of conduct and generally are able to incorporate into their existing infrastructure a code administration committee.

Consumer representatives

Consumers play an important role in the development of business to consumer codes, code administration and consumer dispute resolution schemes. They will help ensure the code is more robust in terms of consumer protection and more likely to be accepted by stakeholders.

It is therefore important to ensure that consumer representatives possess specific skills that extend beyond an individual's own personal experience as a consumer.

They must be able to demonstrate that they are:

- capable of reflecting the viewpoints and concerns of consumers
- people in whom consumers and consumer organisations have confidence.

In appointing a consumer representative to participate in a code development, administration committee or dispute resolution scheme the following principles should be taken into consideration:[2]

- appointments must be made on merit and demonstrate the following:
  - expertise in consumer affairs
  - links to relevant consumer organisations
  - capacity and willingness to consult with relevant consumer organisations
  - knowledge of, or the ability to acquire knowledge of, the industry/issues involved in the appointment

2 *Principles for the appointment of consumer representatives: a process for government and industry—consultation draft,* Commonwealth Consumer Affairs Council, May 2002.

- appointees must be independent of industry or government
- consumer organisations must be involved in the appointments
- a wide range of candidates should be sought
- the appointment process must be consistent with good corporate governance and, where relevant, good practice in self-regulation
- the appointment process must be transparent, accountable and cost effective.

Regulatory authority and consumer affairs agencies

Regulatory agencies or consumer affairs agencies may sit on code development or administration committees if such expertise is needed.

The ACCC has had an observer role on a number of code administration committees. On other occasions the ACCC has helped code administration committees review the code's effectiveness.

Finally, the appointment of all code administration committee members should be for a prescribed period and those appointments be reviewed regularly to ensure the committee's continued effectiveness.

Coverage

The wider the coverage a code has in an industry, the more effective it will be. The level of coverage should be measured in terms of number of actual code signatories against potential signatories within the industry, as well as in terms of coverage of the issue that the code is attempting to address.

For example, if a code is aiming to correct a market failure issue caused by a minority group and the minority group does not become a signatory to the code, then the code is unlikely to achieve its objective.

Effective complaints handling

An effective code will incorporate the following:

- a definition of complaint that includes any expression of dissatisfaction with a product or service offered or provided
- a procedure whereby complaints should first be considered by signatories to the code

- if the signatories cannot resolve a complaint it should be lodged with the administration committee or an independent decision-maker appointed by the committee
- performance criteria for effective complaints handling—Standards Australia has developed a benchmark standard for effective complaints handling (AS4269) which may be revised from time to time.

Independent review of complaints handling decisions

The code should also provide for a review mechanism when a member of the public or an industry member is dissatisfied with an initial attempt to resolve the complaint.

This internal review mechanism may be offered by the industry association to attempt to conciliate the dispute. If all internal industry efforts fail to resolve the complaint then the industry should sponsor an independent complaint body to review it. This independent review body should:

- be recruited from outside the industry
- hold no preconceived ideas about the industry
- have tenure for a fixed period
- be suitably qualified to hear and resolve complaints.

By recruiting from outside the industry to hear complaints not only is justice being done but it is also being seen to be done. Associations exist for the benefit of their members at the exclusion of others. Therefore, they may not generally be seen as an acceptable independent body to review complaints.

Examples of independent complaints bodies include:

- an independent referee with conciliation powers or
- an industry ombudsman with power to make binding decisions or
- a committee composed of an independent chair, one or more industry members and consumers.

In-house compliance system

The code administration committee needs to ensure that each participant has some form of in-house system to ensure compliance with the code. It can also assist compliance at this level with advice and training. In Australia, code compliance manuals are being developed for codes based on the Australian standard on compliance programs (AS3806) which may be revised from time to time.

Sanctions for non-compliance

Commercially significant sanctions will be necessary to achieve credibility with and compliance by participants, and also engender stakeholder confidence in the industry code.

Examples of commercially significant sanctions may include:

- supplying an item free or any meaningful remedy to the aggrieved party when a code rule is broken
- censures and warnings
- corrective advertising
- fines
- expulsion as a signatory to the code
- expulsion from the industry association.

Sanctions should reflect the nature, seriousness and frequency of the breach.

Consumer awareness

An effective code should incorporate a strategy that will raise consumers' awareness of the code and its contents, including its complaints handling provisions.

A published list of code signatories may help raise code awareness.

Industry awareness

In many cases a code fails to operate effectively, not because its principles and procedures are inadequate, but because employees or industry members are either unaware of the code or fail to follow it in day-to-day dealings. It is therefore essential that the code contain a provision requiring employees and agents to be instructed in its principles and procedures. This is an ongoing task because of staff turnover in firms and should be overseen by the code administration body.

Data collection

Effective codes require collection of data about the origins and causes of complaints, and the identification of systemic and recurring problems which industry members need to address.

The type of data collected should include details of:

- complainant
- business complained about
- the type and frequency of complaint
- how the complaint was resolved
- time taken to deal with complaint
- type of sanction(s) imposed.

The data should be able to be analysed to produce reports that highlight any systemic issues and areas for potential improvement. These reports provide important feedback for management, staff and industry to continually improve compliance with the Act.

Monitoring

The code administration committee should regularly monitor codes for compliance to ensure the desired outcomes for all stakeholders and the community at large.

The committee should have a system for monitoring compliance which may include evaluating data collected regularly to identify and remedy problems as well as to identify ways of increasing compliance.

Accountability

The committee should also produce annual reports on the operation of the code, allowing for periodic assessment of its effectiveness. These reports should be readily available to all stakeholders and interested parties.

Review

The code should provide for regular reviews to ensure that the standards incorporated are meeting identified objectives and current community expectations and that it is working effectively.

Competition implications

Codes should not be written in an anti-competitive way. When a code includes potential anti-competitive provisions, authorisation should be obtained from the ACCC. For more information on authorisation, please refer to the ACCC website www.accc.gov.au.

Performance indicators

Performance indicators should be developed with reference to these criteria and implemented as a means of measuring the code's effectiveness.

The measurements may either be qualitative or quantitative but should be objective so that another person in similar circumstances would obtain the same measurement.

5 GETTING STARTED

Getting started

This chapter summarises the steps taken to develop a voluntary industry code.

The **1st step** is for the code development committee to consult with its stakeholders to assess the level of support for the proposed code.

The **2nd step** is to incorporate any relevant comments from stakeholders.

The **3rd step** is to launch the code within the industry.

The **4th step** is to closely monitor the implementation and operation of the code, including specified data collection and reporting. The committee should ensure that most industry stakeholders have subscribed to it and are abiding by it.

The **5th step** is to conduct the first annual review of the code to ensure that it is achieving its objectives or at the very least is showing clear indicators of achieving its objectives. The first review should take place after the first 12 months of the code's operation.

An example of an annual review report is attached at appendix 3.

The **6th step** is an independent review of codes to be conducted every three years. The code administration committee should budget for the cost of the audits.

The code should clearly set out how such a review is to occur. An example of a three-yearly review report is attached at appendix 4.

Important contact details

ACCC Infocentre 1300 302 502

6

APPENDIXES

Getting started

1. Pre-drafting checklist

Necessary considerations before drafting the code

✓ if considered

Identify and consult with all stakeholder groups in the industry	☐
Form a code development committee	☐
Identify industry issues code needs to address	☐
Identify the benefits of the code to industry stakeholders	☐
Define the code objectives	☐
Identify and articulate the rules necessary to achieve the objectives	☐
Identify the costs of administering the code	☐
Decide how this cost is going to be funded	☐
Identify the resources available to you	☐

2. Drafting checklist—critical steps in drafting the code

✓ if considered	
Objectives of the code need to reflect specific stakeholder/business concerns	☐
Ensure that the framework and language is clear to all stakeholders	☐
Set out the rules in the code that address common complaints and concerns about industry practices	☐
Establish a code administration committee and its functions in the code	☐
Include provisions for a complaints handling scheme in accordance with AS4269	☐
Incorporate in the code commercially significant sanctions for breaches of the code	☐
Provide for an independent review mechanism for when a complainant is dissatisfied with an outcome	☐
Incorporate mechanisms in the code that ensure consumer awareness	☐
Incorporate mechanisms in the code that ensure industry awareness	☐
Include provisions for relevant data collection	☐
Specify a regular review process of the code	☐
Avoid anti-competitive implications in the code	☐
If anti-competitive implications are unavoidable seek ACCC authorisation	☐
Incorporate performance indicators in the code	☐

3. Annual review report summary

(hypothetical example only)

1. **Name of the industry code:** Code of practice for authenticating Australian Diamonds

2. **List the code objectives and respective benchmarks mentioned in the code:**

Objectives	Benchmarks
a Retailer ensures diamonds marketed as Australian are genuinely Australian	**a** Consumer of Australian diamond can trace its origin to an Australian diamond mine
b Clear and uniform labelling of diamond	**b** Country of origin transparency
c Effective dispute resolution	**c1** Accessibility **c2** Independence **c3** Fairness **c4** Accountability **c5** Efficiency **c6** Effectiveness

3. **Using the respective benchmarks in Q2 above, please show evidence of the status of these code objectives:**

Benchmark	Status
a Consumer of Australian diamond can trace its origin to an Australian diamond mine	**a** 250 cases of non traceable diamonds reported
b Country of origin transparency	**b** 99 per cent of all subscribers are complying with the code requirements

3. **Using the respective benchmarks in Q2 above, please show evidence of the status of these code objectives:** ***(continued)***

Benchmark	Status
c5 Efficiency	c5.1 Has the code administration committee kept track of all the complaints? Yes
	c5.2 Have all the complaints been dealt with in accordance with the principles outlined in the code? Yes
	c5.3 Has the complaints handling procedure been reviewed regularly (i.e. at least annually)? Yes
c6 Effectiveness	c6 Is the complaints handling scheme in compliance with AS4269 (Australian Standard—Complaints Handling)? Yes

3. **How many diamond country of origin inquiries were received by diamond retailers?**
   1200
4. **How many complaints were received by the code administration committee during the last 12 months?**
   250
5. **How many complaints were satisfactorily resolved by the code administration committee during the last 12 months?**
   220
6. **Are there procedures for referring relevant complaints to other more appropriate forums?**
   Yes, we referred 15 complaints to more appropriate forums.
7. **Have any systemic issues that have become apparent from complaints been referred to relevant scheme members?**
   Yes

8. **What were those systemic issues?**
   Issue 1: The diamond's origin could not be substantiated.
   Issue 2: The paperwork supplied with the diamonds was not very easy to understand.
9. **Are vexatious and frivolous complaints being excluded at the discretion of the decision-maker?**
   Yes
10. **Are there reasonable time limits set for each process which facilitates speedy resolution without compromising quality decision-making?**
    Yes
11. **Are these time limits adhered to?**
    Yes
12. **Are the parties kept informed of the progress of their complaint?**
    Yes
13. **How many complaints were referred to the National Jewellers Association for appropriate action?**
    10
14. **What were the outcomes of the complaints referred to the National Jewellers Association?**
    1. Eight complaints were resolved with the retailer to the consumers' satisfaction.
    2. Two complaints were withdrawn by the consumers.

4. Three-yearly review report summary

(example only)

To ensure that the code maintains the necessary standard, an independent[3] review will be conducted every three years after it is implemented. This review is comprehensive and designed to retain the integrity of the code, meet consumer and business expectations and keep compliance costs to a minimum while maximising the benefits that flow from effective industry codes.

The three-yearly review will focus primarily on the effectiveness of the code in achieving its stated objectives.

This review is based on the assumption that the development stage and the consultative stage were carried out in accordance with the principles outlined in this guideline and therefore will not be revisited.

The primary criteria that the review should focus on are the agreed performance criteria outlined in the code.

These include but may not be limited to:

Code administration

Is a code administration committee established?

Are the functions of the committee clearly spelled out in the code?

Do the responsibilities of the committee include:

- monitoring and reporting on compliance
- obtaining adequate finance from members for administering the code
- ensuring publicity of the code
- providing for employee awareness of the code
- imposing agreed sanctions on members for breaches of the code
- conducting periodic reviews of the effectiveness of the code
- preparing annual and other reports on the operations of the code.

3 The auditor will qualify as independent on the basis that he or she:

(i) is not a present or past staff member or director of the corporation

(ii) has not acted or does not act for the corporation

(iii) is not retained by the corporation in any other capacity, either currently or in the past

(iv) has not and does not provide consultancy or other services for the corporation

(v) has no shareholding or other interests in the corporation.

Transparency

Are all stakeholders represented on the code administration committee?

Coverage

How many industry stakeholders could potentially subscribe to the code?

How many have subscribed to the code to date?

Complaints handling

Accessibility

Is the complaints handling system easily accessible to stakeholders?

Independence

Is the decision-maker independent from the code members?

Is the decision-maker appointed to the complaints handling scheme for a fixed term?

Does the code administration body have enough funding to fulfil its responsibilities?

Fairness

Does the decision-maker base decisions on what is fair and reasonable, considering good industry practice, relevant industry codes of practice and the law?

Is the complainant advised of the rights to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or the decision-maker's determination?

Can both parties put their case to the decision-maker?

Are both parties informed of the other parties' case/complaint?

Is either party given the opportunity to rebut the arguments or information provided by the other party?

Are both parties told the reason for any determination?

Can the decision-maker compel a complainant to provide information relevant to a complaint?

Is all information supplied by either party kept confidential except where disclosure is required by law?

Accountability

Does the code administration committee provide regular reports of determinations?

Do written reports name the parties involved?

Does the code administration body publish an annual report?

Is the annual report readily available to interested parties?

Efficiency

Does the complaints handling scheme only deal with complaints that are within its terms of reference?

Does the scheme only deal with disputes that have not been dealt with by another dispute resolution forum?

Does the scheme only deal with disputes that were not resolved through the internal dispute resolution mechanism?

Does the scheme allow the decision-maker to exclude vexatious and frivolous complaints?

Does the scheme allow reasonable time limits for each of its processes?

Is there a system in place that traces the progress of complaints?

Are the complainants informed of the progress of their complaints?

Does the scheme keep records of all complaints, inquiries, their progress and outcome?

Does the scheme conduct regular reviews of its performance?

Does the scheme feed back regularly to the code administration committee on its progress?

Effectiveness

Are the scope and power of the decision-maker clear?

Can the decision-maker make monetary awards (not punitive damages)?

Is there a clear mechanism for referring systemic problems to the administration committee?

Does the scheme have a procedure in place for receiving and referring complaints about the scheme?

Does the scheme have a mechanism in place for dealing with these recommendations quickly?

Does the scheme require code signatories to have an internal complaints mechanism in place?

Are the determinations of the decision-maker binding on the code signatory if the complainants accept the determination?

Has the operation of the code been reviewed within three years of its establishment by an independent body?

Is the scheme reviewed regularly thereafter by an independent entity?

Is the scope of the scheme appropriate?

Are complainants and scheme members satisfied with the scheme?

Are the dispute resolution processes used by the scheme just and reasonable?

Is access to the scheme fair and reasonable?

Is the scheme effective in its terms of reference?

Are the results of the review made available to relevant stakeholders?

In-house compliance

Does the code administration body ensure that signatories to the code have an in-house compliance program in place?

Does the in-house compliance program comply with AS3806?

Sanctions for non-compliance

Are the sanctions for non-compliance with the code commercially significant?

How many sanctions were imposed by the committee in the last three years?

What were the sanctions that were imposed?

Independent review of complaints handling

Can a dissatisfied complainant have the decision independently reviewed?

Consumer awareness

What was the initial consumer awareness of the code?

What is the consumer awareness now of the code?

What is the strategy to create ongoing consumer awareness of the code?

Is the level of consumer awareness reported annually?

Industry awareness

What was the initial industry awareness of the code?

What is the industry awareness now of the code?

What is the strategy to create ongoing industry awareness?

Is the level of industry awareness reported annually?

Data collection

How many complaints were received in the last three years?

(Please indicate by years 1, 2 and 3)

Is the data collected analysed and reported?

Is the data used to identify systemic problems?

Monitoring

How frequent is compliance with the code monitored?

Accountability

Was the operation of the code reported in an annual report?

Review

How many reviews were conducted within the last three years?

Are the review mechanisms adequate to assess the code's effectiveness?

Competitive implications

Is the code having a negative impact on competition?

Has the code been checked with the ACCC for possible anti-competitive implications?

Performance indicators

Have all of the following performance indicators been implemented?

- Is there a high level of industry awareness of the code?
- Is there a high level of stakeholder awareness of the code?
- Have stakeholder complaints dropped on issues the code is designed to address?
- Is the code meeting the stated objectives?
- Is the complaints handling mechanism highly visible?

- Is the complaints mechanism highly accessible?
- Are the response times to complaints resolution quick?
- Are the in-house code compliance mechanisms effective?

5. What does it mean to have a code prescribed under the Act?

This means that the government has prescribed an industry code of conduct under s. 51AE of the Act either as mandatory or voluntary and it is therefore enforceable under the Act.

A purpose of prescribing industry codes of conduct is to strengthen a voluntary code that has failed to meet its objectives.

The government has made it clear that the minister will only consider initiating a proposal for prescription of a code of conduct if:

- the code would remedy an identified market failure or promote a social policy objective
- the code would be the most effective means for remedying that market failure or promoting that policy objective
- the benefits of the code to the community as a whole would outweigh any costs
- there are significant and irremediable deficiencies in any existing self-regulatory regime—for example, the code scheme has inadequate industry coverage or the code itself fails to address industry problems
- a systemic enforcement issue exists because there is a history of breaches of any voluntary industry codes
- a range of self-regulatory options and 'light-handed' quasi regulatory options have been examined and demonstrated to be ineffective
- there is a need for national application as state and territory fair trading authorities in Australia also have the options of making codes mandatory in their own jurisdiction.

Furthermore the government will only consider prescribing a code of conduct under the Act if it is not already underpinned in other federal legislation. Examples of this would be the internet and the telecommunications industry. Both of these industries are underpinned by other legislation such as the *Broadcasting Services Act 1992* and the *Telecommunications Act 1997*, which provide for the registration and enforcement of industry codes by the Australian Communications Authority.

Further information on the authorisation process can be accessed from the ACCC's website www.accc.gov.au.

ACCC

Contacting the ACCC

For all business and consumer enquiries:

Infocentre: 1300 302 502

Website: www.accc.gov.au

Adelaide
GPO Box 922
Adelaide SA 5001
Ph: (08) 8213 3444
Fax: (08) 8410 4155

Brisbane
PO Box 12241
George Street Post Shop
Brisbane QLD 4003
Ph: (07) 3835 4666
Fax: (07) 3835 4653

Canberra
GPO Box 3131
Canberra ACT 2601
Ph: (02) 6243 1111
Fax: (02) 6243 1199

Darwin
GPO Box 3056
Darwin NT 0801
Ph: (08) 8946 9666
Fax: (08) 8946 9600

Hobart
GPO Box 1210
Hobart TAS 7001
Ph: (03) 6215 9333
Fax: (03) 6234 7796

Melbourne
GPO Box 520
Melbourne Vic 3001
Ph: (03) 9290 1800
Fax: (03) 9663 3699

Perth
PO Box 6381
East Perth WA 6892
Ph: (08) 9325 0600
Fax: (08) 9325 5976

Sydney
GPO Box 3648
Sydney NSW 2001
Ph: (02) 9230 9133
Fax: (02) 9223 1092

Townsville
PO Box 2016
Townsville Qld 4810
Ph: (07) 4729 2666
Fax: (07) 4721 1538

ACCC
AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Collective bargaining class exemption

Guidelines

June 2021

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

ACCC 02/20_20-61

www.accc.gov.au

Contents

The collective bargaining class exemption

These guidelines provide information about the ACCC's class exemption for collective bargaining.

Smaller businesses, including farmers, can sometimes benefit from negotiating with their customers or suppliers as a group (referred to as **collective bargaining**). Working together, they may be able to negotiate more efficiently with larger businesses, and achieve better terms and conditions, than they can on their own. However, without some form of legal protection, this kind of joint bargaining would be at risk of breaching competition laws.

The ACCC has made a class exemption which allows eligible businesses to collectively bargain without the risk of breaching the competition laws.

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.

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're 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 can be viewed there.

If some members of a proposed bargaining group do not meet the requirements (for example, if their turnover is too high), the group may still be able to seek legal protection to collectively bargain by using the ACCC's 'authorisation' or 'notification' processes.

The ACCC is available to answer questions about the collective bargaining class exemption and the authorisation and notification processes. If you're not sure whether you are eligible for protection under the class exemption, we're always happy to discuss this with you.

Please direct inquiries to the General Manager, Competition Exemptions, ACCC at exemptions@accc.gov.au.

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)[1] about terms, conditions and/or prices. A group of businesses may sometimes appoint a representative, such as an industry association, to act on their behalf in negotiations.

There can be many benefits from negotiating as a group with the target business rather than individually, including:

- reducing and/or sharing the time and the cost of putting supply arrangements in place
- creating more opportunities to negotiate terms of supply that better reflect the group's needs (as compared to just signing a standard form contract)
- gaining better access to information, for example by sharing relevant information, or sharing the costs of engaging a professional advisor
- creating new marketing opportunities when the combined volume becomes more attractive to larger or new buyers or sellers, and
- streamlining and coordinating ordering and delivery, and hence creating supply chain efficiencies.

The target business can also benefit from:

- reduced costs due to negotiating with a single representative, or subset of the group, rather than each member separately
- more supply certainty due to bulk ordering and savings from aligning transport and distribution
- better access to information—more effective and efficient negotiations enable the transfer of more useful information between the parties.

Collective bargaining is most effective when it provides mutual benefits for the group and target business.

The class exemption does not oblige target businesses to negotiate with any bargaining group. Nor does it override any existing legal or contractual obligations between the parties, such as confidentiality clauses in contracts.

The class exemption simply removes the risk that collective bargaining by eligible businesses will breach the competition law.

Collective boycotts not protected by class exemption

Collective bargaining groups sometimes want to be able to refuse to supply to, or to buy from, a particular customer or supplier, unless or until they reach agreement on terms and conditions with that customer or supplier. This is often referred to as a '**collective boycott'**.

In certain circumstances, a collective boycott may help the group achieve some of the benefits of collective bargaining. For example, attempts by small businesses to collectively bargain with a large customer or supplier without the ability to threaten and/or engage in a collective boycott can be ineffective where the target business refuses to negotiate with the group.

However, in some cases collective boycotts can be costly and damage a wide range of market participants, including the group that is engaging in the boycott.

1 Collective bargaining in the context of competition law does not include employee/employer collective bargaining.

The class exemption **does not** provide protection from competition laws for collective boycotts. Businesses can, however, seek legal protection to engage in collective boycotts using the authorisation or notification processes. The ACCC will assess each collective boycott proposal on a case-by-case basis.

Why does collective bargaining risk breaching competition laws?

Collective bargaining by businesses often raises concerns under competition laws because, in broad terms, competition laws require businesses to operate independently of their competitors when making decisions about:

- the prices they charge or are willing to pay
- which businesses they deal with
- the terms and conditions on which they do business.

Without legal protection provided by the class exemption, or a specific notification or authorisation, collective bargaining may breach the *Competition and Consumer Act 2010* (Cth) (the CCA).

What is a class exemption?

A 'class exemption' is a determination by the ACCC that specified provisions in the CCA do not apply to certain kinds of conduct, because the ACCC is satisfied that the conduct either:

- would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or
- would result, or would be likely to result, in a benefit to the public that outweighs its detriment to the public.[2]

A class exemption allows eligible businesses to engage in the kind of conduct specified by the class exemption without risk of breaching the competition law.

The ACCC's existing authorisation and notification processes continue to be available, in addition to any class exemptions made by the ACCC. Businesses can continue to use these processes to obtain protection from competition laws, including for collective bargaining arrangements (for example, if they don't fit within the class exemption eligibility criteria or they are also seeking legal protection for a collective boycott).

The main difference is that businesses within the scope of a class exemption get *automatic* protection for the kind of conduct specified in the class exemption, without having to lodge a formal application and pay a fee under the notification or authorisation process.

We expect that the class exemption will be beneficial for most eligible businesses involved in collective bargaining arrangements.

If a business already had legal protection under an authorisation or notification *before* the class exemption was introduced, their existing protection provided by the authorisation or notification continues to apply until their authorisation or notification expires. Upon expiry, the business can consider whether to:

- rely on the class exemption, provided they meet the eligibility criteria, instead of lodging a new notification or seeking re-authorisation, or

2 *Competition and Consumer Act 2010* (Cth) section 95AA.

- seek re-authorisation of or re-notify their arrangements, if they consider that having an authorisation or notification in place provides benefits over and above the protection afforded by the class exemption.

It would also be open to such a businesses to use the class exemption without waiting for their existing authorisation or notification to expire. To do this they need only lodge the one-page *Collective bargaining class exception notice form* with the ACCC. In these cases, the legal protection provided by the authorisation or notification would also continue to apply until the authorisation or notification expires or is revoked.

A comparison between the features of the collective bargaining class exemption, notification and authorisation, is at **Attachment A** of these guidelines.

What kinds of businesses come within the class exemption?

In broad terms, the class exemption provides legal protection from the CCA for:

- a business or independent contractor to participate in collective bargaining, provided the business or independent contractor had an aggregated turnover of less than $10 million in the most recent financial year prior to joining the group, and
- any franchisee or fuel retailer, regardless of turnover, to participate in collective bargaining with their franchisor or fuel wholesaler.

To obtain the protection provided by the class exemption, businesses within the bargaining group must give the ACCC a *Collective bargaining class exemption notice form* that provides basic details about the group and the proposed collective bargaining. This notice form must also be given to any target business the group proposes to negotiate with when the group first approaches the target business.

Each business must self-assess whether they meet the eligibility criteria and, therefore, whether they can rely on the class exemption. Details about how to make this assessment, including how to calculate aggregated turnover, are provided below.

Businesses under $10 million turnover

The ACCC has generally not had concerns about collective bargaining proposals involving groups of small businesses negotiating with larger target businesses. Collective bargaining by groups of larger businesses has greater potential to raise competition concerns (for example, by reducing competition, leading to consumers paying prices above competitive levels). For this reason, to ensure that the class exemption only applies to collective bargaining arrangements that would be unlikely to substantially lessen competition, or are likely to result in a net public benefit, businesses will only be eligible for the class exemption if they have less than $10 million aggregated turnover in the preceding financial year.

The $10 million turnover threshold is consistent with the threshold used by the Australian Tax Office to determine if a business is a 'small business entity' for tax concession purposes.

The $10 million turnover threshold does not apply to franchisees and fuel retailers negotiating with their franchisor or fuel wholesaler, as discussed below.

Franchisees and fuel retailers

The class exemption applies to:

- any franchisees whose businesses and contracts are governed by the Franchising Code of Conduct (Franchising Code), who wish to collectively bargain with **their franchisor** (including via group mediation)
- any fuel retailers who have a fuel re-selling agreement as defined by the Oil Code of Conduct[3] (Oil Code) 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, who wish to collectively bargain with **their wholesale**r (including via group mediation).

This is regardless of the size of individual franchisees or fuel retailers. This allows all franchisees of the same franchisor, or fuel retailers who have a fuel re-selling agreement with the same fuel wholesaler and operate under the same system determined by the fuel wholesaler, to form a single bargaining group.

This reflects that there is unlikely to be substantial harm to competition from collective bargaining by franchisees, and that franchisees are generally in a weaker bargaining position in negotiating with their franchisor due to the nature of the franchising business model. In order to achieve consistency in branding and product/service offerings across a franchise network, franchisors often require their franchisees to sign agreements whereby the franchisor maintains significant control over day-to-day operations of the franchisee's business.

However, if franchisees or fuel retailers propose to collectively bargain with any supplier or customer that is not their franchisor or fuel wholesaler as defined above (such as a supplier of inputs into their business), the class exemption will only apply if they meet the $10 million turnover threshold.

Participation is voluntary for members of a bargaining group and the target

The class exemption does not oblige businesses to join a collective bargaining group, or force any target business to deal with a bargaining group if it does not wish to. It simply means that a business is able to collectively negotiate with the target without the risk of breaching the competition law.[4] For example, if a group of eligible farmers wishes to negotiate with the processor they supply:

- they cannot force other farmers to join the bargaining group
- the processor is not obliged to deal with them as a collective and may instead elect to negotiate with each farmer individually.

This kind of voluntary collective bargaining is most effective when it provides mutual benefits for the businesses wishing to collectively bargain and the target business.

Requirement to inform the ACCC when a bargaining group is formed

The legal protection provided by the class exemption only applies upon the group giving the ACCC a *Collective bargaining class exemption notice form*. This provides details about the bargaining group they are forming or joining. Therefore it is important that you ensure that the group has taken this step before you commence collective bargaining, at least, or within 14 days of doing so.

The *Collective bargaining class exemption notice form* is available here. The *Collective bargaining class exemption notice form* includes instructions for filling it out, and how to provide it to the ACCC.

---

3 This definition covers paragraph (b) of the definition of 'retailer' in the Oil Code. It does not cover paragraph (a) or paragraph (c) of that definition.

4 This also applies to authorisations and notifications. All three processes are limited to giving exemption from competition laws; they cannot impose obligations on target businesses.

The *Collective bargaining class exemption notice form* must include:

1. details of the collective bargaining group
2. details of the target business(es)
3. what the group proposes to bargain about
4. details for a contact person.

The *Collective bargaining class exemption notice form* is a single page. It does not require technical or complex information, and in most cases the ACCC expects that it should be able to be completed without the need for legal advice or other outside assistance.

Collective bargaining class exemption notice forms will be placed on the ACCC's public register, and can be viewed there.

Upon the bargaining group providing their *Collective bargaining class exemption notice form*, all the businesses in the group will have legal protection to collectively bargain, provided they meet the eligibility criteria. The ACCC will provide bargaining groups with a letter confirming receipt of their *Collective bargaining class exemption notice form*.

The group must also provide the *Collective bargaining class exemption notice form* to any target business the group proposes to collectively bargaining with. This should be done when the group or their representative first approaches the target business about collective bargaining.

There is no fee for providing a *Collective bargaining class exemption notice form* to the ACCC.

If you are unsure whether the group you are forming or joining has provided a *Collective bargaining class exemption notice form* to the ACCC, you should confirm this with other members of the group. You can also check the ACCC's public register to confirm that the group you are forming or joining has provided the notice form.

When do businesses wishing to rely on the class exemption have to inform the target?

In many cases businesses will not have a specific target business in mind when they decide to form a group to collectively bargain. The class exemption will provide protection where an eligible business is contemplating collectively bargaining with a range of targets, including unidentified targets. For example:

- a group of farmers agreeing to sell their produce to any potential purchaser rather than naming a particular target business.
- a group of businesses getting together to run a collective tender process to appoint a supplier of electricity to group members.

Businesses wishing to rely on the class exemption do not have to inform the target when they form a collective bargaining group. However, when a bargaining group or their representative first approaches a target to negotiate, they must tell the target that they are doing so as a group or on behalf of the group and give the target a copy of the *Collective bargaining class exemption notice form* provided to the ACCC.

Does the group need to provide a new Collective bargaining class exemption notice form if members of the group or targets change?

If the members of your group or targets change so that they no longer match the *Collective bargaining class exemption notice form you* provided to the ACCC, you will need to provide a new notice form before the new members of the group, or collective bargaining with new targets, will be covered by the class exemption.

When preparing a *Collective bargaining class exemption notice form*, you should consider describing your bargaining group in broad enough terms to cover those businesses and types of businesses who

are currently members of the group, as well as those who may join in the future. For example, if the group is small and new members will not be added in future, you can name each member of the group. In most cases, though, it will be better to describe your group in general terms, for example: *A group of dairy farmers in the Manning Valley area in New South Wales.* The more general approach offers greater flexibility to allow for future changes.

You should also consider whether the description of the target businesses is broad enough to cover known target businesses and, if relevant, classes of target businesses the group proposes to collectively bargain with in the future. For example, if your bargaining group intends to negotiate with a specific target business or a small number of known target businesses, you can name each target business. Otherwise, it may be preferable to describe the type of target businesses the group intends to collectively bargain with in general terms. For example: *Dairy processing companies*.

How do businesses determine if they are eligible?

Calculating turnover

Each member of a bargaining group or proposed bargaining group must self-assess whether they are eligible to rely on the class exemption. You must each have a 'reasonable belief' that your aggregated turnover was less than $10 million in the financial year prior to you joining the collective bargaining group. You should undertake this assessment yourself, separately to other members of the group or proposed group.

Franchisees and fuel retailers do not need to meet the aggregate turnover threshold when collectively bargaining with a common franchisor or fuel wholesaler. However, if franchisees or fuel retailers want to collectively bargain with any other target business, such as a supplier of inputs into their business, they will only be able to rely on the collective bargaining class exemption if they meet the $10 million turnover eligibility threshold.

How do I calculate my aggregated turnover?

When assessing your turnover you should use the same method that you use to calculate *aggregated turnover* to determine whether you are a 'small business entity' for the purpose of any tax concessions when lodging your tax return. Please refer to the ATO website for a complete description of these requirements.

In broad terms, *aggregated turnover* is the sum of:

- your businesses' annual turnover (all ordinary income earned in the ordinary course of running a business for the income year). If you start or cease a business part way through an income year, you must make a reasonable estimate of what your annual turnover would have been if you had carried on the business for the entire income year[5]
- the annual turnover of any business 'connected' or 'affiliated' with your business, whether based in Australia or overseas. Broadly, an entity is 'connected' with you if either entity controls the other (for example, if you have shares entitling you to 40% of the voting power in a company), or both entities are controlled by the same third entity.[6] An 'affiliate' is any individual or company that, in relation to their business affairs, acts or could reasonably be expected to act according to your directions or wishes, or in concert with you.[7]

5 Australian Taxation Office, 'Aggregation ' (15 September 2017). See section 328-120(5) *Income Tax Assessment Act 1997* (Cth).

6 Australian Taxation Office, 'Connected with you' (22 May 2017). See section 328-125 *Income Tax Assessment Act 1997* (Cth).

7 Australian Taxation Office, 'Affiliates' (22 May 2017). See section 328-130 *Income Tax Assessment Act 1997* (Cth).

Which financial year must I calculate my aggregated turnover for?

You should assess your aggregated turnover for the financial year *prior* to you joining the group. For example, if a group was formed on 14 August 2021, founding members of the group will be protected by the class exemption if they reasonably believed that they had an aggregated turnover of less than $10 million in the 2020–21 financial year. Any business that subsequently joins the group must reasonably believe that they had aggregated turnover of less than $10 million in the financial year prior to them joining the group in order to rely on the class exemption.

A corporation which has not yet confirmed its annual turnover and/or aggregated turnover for the purposes of its tax return for the previous financial year is still eligible to rely on the class exemption provided it has a reasonable belief that its turnover in the financial year *prior* to it joining the group was less than $10 million.

What happens if my business' aggregated turnover goes above $10 million in the financial year after negotiations begin, or in subsequent financial years?

Provided you had a reasonable belief that your aggregated turnover was below $10 million in the financial year before you joined the bargaining group, the legal protection provided under the class exemption will apply to your ongoing participation in the bargaining group even if, in subsequent years, your aggregated turnover exceeds $10 million.

However, if you wish to join a new group, you must reasonably believe your aggregated turnover to be below $10 million in the financial year prior to joining the new group.

Similarly, if the members of your group or the target businesses change from those described in the *Collective bargaining class exemption notice form* provided to the ACCC when the group was formed, the group must lodge a new *Collective bargaining class exemption notice form* and at this time you must reasonably believe your aggregated turnover to be below $10 million in the financial year prior to the new *Collective bargaining class exemption notice form* being provided. To reduce the need to lodge a new *Collective bargaining class exemption notice form* whenever a new business joins your group, or your group proposes to negotiate with a new target business, you should describe your bargaining group, and proposed target businesses, in broad enough terms to cover future expansion.

If one or more members of the group are ineligible, how is the rest of the group affected?

If one or more members of a collective bargaining group are *ineligible* because they did not have a reasonable belief of an aggregated turnover of less than $10 million in the financial year prior to them joining the group, the ineligible member is not covered by the class exemption and it is at risk of breaching the CCA by engaging in collective bargaining conduct.

Each member of a bargaining group who meets the requirements of the class exemption will be protected by the class exemption. This is the case, even if some group members do not meet the requirements (and are not, themselves, protected). However, group members who continue to bargain alongside a member that they know or have reason to suspect is ineligible, may be at risk under competition laws.

For this reason, at the time the group is formed, members who have any doubts or concerns about the eligibility of other members of the bargaining group should actively ask those members whether they have undertaken the necessary self-assessment and, where appropriate, ask for substantiation or verification of eligibility.

Further, if the group becomes aware that one or more members are ineligible, the group should immediately stop including that member in their discussions and collective negotiations. Similarly, if the target becomes aware that one or more members of a group that they are bargaining with are ineligible, they should immediately stop including that member in their negotiations.

If a proposed bargaining group wishes to include members who are likely to be ineligible to rely on the class exemption the group can seek legal protection to collectively bargain using the authorisation or notification processes.

Other relevant features of the class exemption

Are there any limits on the size of bargaining groups that can be formed?

No. As long as a business meets the eligibility criteria, it will be protected when collectively bargaining, regardless of the size of the bargaining group it is part of.

Who can businesses collectively bargain with?

An eligible business will have the protection of the class exemption to collectively bargain with any target business, regardless of the size of the target business, as long as the required *Collective bargaining class exemption notice form* has been given to the ACCC and, when negotiations commence, to the targets(s), and the collective bargaining is consistent with the scope of that notice form.

However, no business can be compelled to join the group and the group cannot compel a target business to negotiate with the group, for example by way of a collective boycott.

Joint tendering arrangements are covered by the class exemption

Businesses conducting their procurement jointly rather than individually, for example by running a joint tender process, risk breaching competition laws. This is because businesses are usually expected to conduct tenders independently.

The class exemption provides protection for eligible businesses to conduct joint tender processes. For example, a group of exporters agreeing to run a collective tender process to acquire freight services to transport their produce to customers.

The class exemption also provides protection for eligible businesses when jointly responding to a tender.

The group can appoint a representative to negotiate on their behalf

The class exemption will provide protection for businesses wishing to collectively bargain to appoint a representative or representatives to negotiate on their behalf. Such representatives might be:

- from within their group, or
- a person who is not a member of the group—such as an industry association, cooperative or professional body.

The class exemption does not allow trade unions to give notice on behalf of a collective bargaining group. Trade unions can, however, represent groups in their negotiations.[8]

Different bargaining groups may be represented by the same representative.

Requirements for representatives

The class exemption applies to protect members of a bargaining group. It does not apply to bargaining representatives. Accordingly, a bargaining representative does not need to meet the eligibility criteria unless it is a member of the bargaining group. For example, an industry association or cooperative could be a group's bargaining representative even if its aggregated turnover exceeds $10 million.

If an individual or body acts as a representative for multiple collective bargaining groups, they must take care to ensure that they do not facilitate the exchange of commercially sensitive information, or other information that prevents, restricts or distorts competition between bargaining groups. The representative must also take care to ensure that each group acts and makes decisions independently from other groups. More information is available in the ACCC's Guidelines on concerted practices.

Members must have a 'reasonable expectation' of contracting with target business (as the target is described on the notice form)

To gain legal protection under the class exemption, each member of the bargaining group must reasonably expect to make at least one contract with the target business in relation to the goods or services in question.

This does not mean the business must expect the contract will be the result of collective negotiation. It is sufficient if the business reasonably expects to make a relevant contract for supply to, or acquisition from, the target business, whether through collective or individual negotiation.

Bargaining groups should also be aware that how they describe the target business(es) on the notice form matters in this context.

For example, a *Collective bargaining class exemption notice form* for a group of dairy farmers may state that they are proposing to bargain about the 'supply of raw milk' and describe the targets as 'dairy processing companies'. In this case, each dairy farmer business must have a reasonable expectation that it will enter into an agreement with a dairy processing company regarding the supply of raw milk, but they need not expect to reach agreements with any particular processor(s).

On the other hand, if the notice form describes the target as 'dairy processing company A', each business must have a reasonable expectation that it will enter into a contract with that specific dairy processing company regarding the supply of raw milk.

8 This is consistent with the provisions in the CCA relating to notifications for collective bargaining.

Members of the bargaining group can use details of past dealings with the target business(es) or with other customers or suppliers of similar goods or services to determine whether they have a reasonable expectation

No exemption if the ACCC has previously denied authorisation or notification

The class exemption does not apply where the ACCC has previously denied or revoked authorisation for the same collective bargaining arrangements[9], nor where the ACCC has previously considered a notification about the same collective bargaining arrangements and has revoked the notification or the applicants have withdrawn the notification.

What information can bargaining group members share?

Businesses need to share information to facilitate the collective bargaining process. For example, businesses in an electricity buying group may need to share information about their energy demand in order to seek the best offers. However, sharing of commercially sensitive information beyond that which is needed to collectively bargain can reduce competition and breach competition law.

The class exemption will not protect businesses sharing commercially sensitive information beyond that reasonably necessary to facilitate the collective bargaining process. This also applies to any preliminary discussions the businesses engage in. What is 'necessary' will vary depending on the nature of the group and the bargaining proposed and will be informed by the details provided in the *Collective bargaining class exemption notice form*.

For example the class exemption would not provide legal protection for an energy buying group to share information or make arrangements with each other about the prices they intend to charge their customers for the goods they sell. Nor would the class exemption provide legal protection for members of a bargaining group to exchange other competitively sensitive information (such as planned future output or capacity) unless sharing this information is necessary to facilitate the collective bargaining process.

These types of arrangements risk breaching the competition provisions of the CCA, including the provisions that prohibit businesses from engaging in cartel conduct and those that prohibit businesses from engaging in concerted practices that have the purpose or effects of substantially lessening competition. Businesses doing so could potentially face civil penalties, and in some cases, criminal sanctions.

The ACCC recommends that collective bargaining groups relying on the legal protection provided by the class exemption keep records of their internal group discussions and their negotiations with target businesses. This will assist in establishing the type of information that has been shared by the group, should it be necessary to do so.

Businesses proposing to engage in information sharing beyond that necessary to facilitate collective bargaining can apply for authorisation for that conduct where there is likely to be a net public benefit.

Further, the class exemption does not override any contractual obligation that places limits on the sharing of information, such as confidentiality provisions in contracts.

If you are concerned that a collective bargaining group that you are a part of, or that is seeking to negotiate with you, is sharing commercially sensitive information beyond that necessary to facilitate the collective bargaining process, you can report the group to the ACCC (including anonymously).

9 Or the applicants have withdrawn the application for authorisation after the ACCC issued a draft determination proposing to deny authorisation.

How long is the class exemption in place?

The class exemption will remain in place until 30 June 2030, unless revoked by the ACCC before that date.

In 2029 (or earlier) the ACCC will conduct a review to determine whether to extend the operation of the class exemption beyond 30 June 2030.

ACCC power to withdraw the benefit of the class exemption

The ACCC can withdraw the benefit of the class exemption from particular businesses (but not retrospectively) if the ACCC is satisfied that the business, or businesses, is engaging in collective bargaining conduct that substantially lessens competition *and* is not likely to result in overall public benefits.[10]

Before doing so, the ACCC would consult with the business or businesses concerned and provide them with an opportunity to respond to the concern about the effect of their particular collective bargaining.

The ACCC can also vary or revoke the class exemption as a whole if it is concerned that it is not operating as intended. Before doing so the ACCC would consult with all collective bargaining groups (using the contact information they have provided with the *Collective bargaining class exemption notice form*) and inform each group of any implications that are relevant to them.

Contacting the ACCC

You can seek guidance from us if you want to discuss the options and processes before deciding to rely on the class exemption, or lodge a notification or an application for authorisation.

Inquiries should be directed to the General Manager, Competition Exemptions at exemptions@accc.gov.au.

Related publications

Collective Bargaining Class Exemption Notice Form

Small Business Collective Bargaining Guidelines

Guidelines for Authorisation of Conduct (non-merger)

ACCC contacts

Infocentre: 1300 302 502

Website: www.accc.gov.au

10 *Competition and Consumer Act 2010* (Cth) section 95AB(1).

Attachment A: Class exemption, notification and authorisation—quick comparison

More information about the notification and authorisation processes is provided in the Small business collective bargaining guidelines.

Table 1: Quick comparison between the class exemption, notification and authorisation

	Class exemption	Notification	Authorisation
Are there limits on who can apply or be covered?	Yes. Each member must reasonably believe that they had less than $10 million turnover in previous financial year. No turnover limit applies to franchisees or fuel retailers negotiating with franchisor/ fuel wholesaler. Trade unions cannot give a *collective bargaining class exemption notice*.	Yes. Each member of the group must reasonably expect to have less than $3 million (unless varied by regulations[11]) a year in total transactions with the target business. Trade unions cannot lodge notification.	No. Any business, industry association or trade union is able to apply for authorisation on behalf of itself and the group. Monetary thresholds do not apply.
When does the legal protection commence?	Immediately, once the group gives notice, provided each member meets the eligibility criteria.	Commences automatically 14 days after the notification is validly lodged (60 days if notification includes a collective boycott), unless the ACCC objects within this period.	When the ACCC grants authorisation. A final determination must be made within 6 months (unless extended), and often faster than this.[12]
How long does the legal protection last?	Until 30 June 2030, unless the ACCC withdraws the benefit of the class exemption for a particular business or revokes the class exemption.	Three years, beginning on the day the notification was lodged, unless the ACCC determines that another period (up to 10 years) is appropriate, or issues a stop notice, or the notification is withdrawn or revoked.	The ACCC can grant authorisation for any period considered appropriate in the circumstances. Most authorisations for collective bargaining are granted for between 5 and 10 years.
Can the ACCC's approval be subject to conditions?	No – the ACCC does not 'approve' the arrangements. Businesses that meet the eligibility criteria get automatic legal protection.	Yes, but only if the notification involves a collective boycott.	Yes
Can the arrangements include a collective boycott?	No	Yes. However, the ACCC can issue a 'stop notice' if it believes that the boycott has or will result in serious detriment to the public.	Yes

11 Higher thresholds apply in certain industries, see page 12 of the ACCC's Small business collective bargaining guidelines.

12 Interim authorisation can allow bargaining to commence sooner and is normally be considered within 28 days. For further information see the ACCC's Guidelines for Authorisation of Conduct (non-merger).

	Class exemption	Notification	Authorisation
Can the target be compelled to bargain with the collective bargaining group?	No	No	No
Does the ACCC participate in the process or arbitrate?	No	No	No
Does ACCC approval override confidentiality obligations?	No	No	No
What is the lodgement fee?	No fee applies.	$1000 – the ACCC is not permitted to waive the notification lodgement fee.	$7500 – the ACCC can waive the authorisation lodgement fee in whole or part if the fee is unduly onerous.


ACCC
AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Gonos, Anthea (PIRSA)

From: David Quill <dtquill2@bigpond.com>
Sent: Monday, 6 February 2023 12:53 PM
To: PIRSA:Minister Scriven
Cc: 'Badenoch, Peter'; 'Colin'; darryl@wtsales.com.au; Justin Jagger | Roundwood Solutions; 'steve telford'
Subject: RE: eA198177(3) - Minister Scriven Correspondence
Attachments: MinisterScriven letter2.docx

Categories: Corro - General

Please see the attached response to the Minister's letter.

From: PIRSA:Minister Scriven [mailto:Minister.Scriven@sa.gov.au]
Sent: Friday, 23 December 2022 9:33 AM
To: dtquill2@bigpond.com
Subject: eA198177(3) - Minister Scriven Correspondence

OFFICIAL

Document ID: eA198177(3)

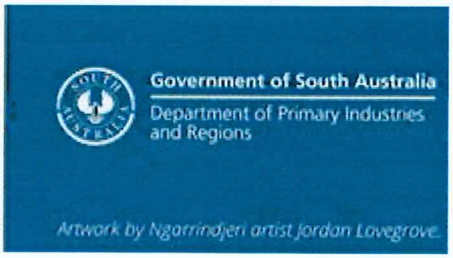
Dear Mr Quill

Please find attached correspondence from Minister Scriven regarding support on local timber processors.

Wishing you a Merry Christmas!

Kind regards

Office of the Hon Clare Scriven MLC
Minister for Primary Industries and Regional Development
Minister for Forest Industries
Government of South Australia | 1 King William Street, Adelaide
GPO Box 1671 Adelaide SA 5001
T: +61 8226 2931 | **E:** Minister.Scriven@sa.gov.au
pir.sa.gov.au



The Department of Primary Industries and Regions respects Aboriginal people as the state's first people and nations. We recognise Aboriginal people as traditional owners and occupants of South Australian land and waters. We pay our respects to Aboriginal cultures and to Elders past, present and emerging.

SOUTH AUSTRALIAN TIMBER PROCESSORS ASSOCIATION
Ph: 0408 849 751
Email: dtquill2@bigpond.com
Postal Address: PO Box 2726, Mount Gambier 5290

The Honourable Clare Scriven,

Minister for Primary Industries, Regional Development and Minister for Forest Industries

6th of February 2023

Dear Clare,

Thank you for your response to my request for assistance in the matter of resource security for the current and future smaller processors in the South Australian Timber Industry. We appreciate the time and effort that you made in preparing that response.

As you are well aware the diversity of products vital to the community needs comes from small and medium enterprises supplying other small and medium enterprises, creating job growth whilst enriching and potentially providing opportunity for other businesses.

Your suggestion that the processors pursue the avenue of collective bargaining has been investigated and determined to be inappropriate. The idea of collective bargaining was first suggested to our members by the small business Commissioner, John Chapman at meeting in late 2017, followed up by correspondence from the Commissioner in 2020, detailing the approach to collective bargaining by ACCC. The main reasons were centred around the relative size of the businesses and the contrasting product lines.

We applaud your recommendation to pursue an industry Code of Conduct. The idea for such a code originated from our Association and a basic outline was formally presented to Minister Whetstone in December 2019. The group subsequently presented the draft to the federal Minister for Forestry, Jonathan Duniam in May 2020. In addition to the above, the code was presented to FIAC by the SATPA representative, Peter Badenoch and it was the discussion of a teleconference between members of the Green Triangle Forest industries Hub and members of SATPA in August 2020.

Support has been given to the concept of a Code of Conduct in the findings of the Federal Inquiry into Supply Chain Restraints in the Australian Plantation Sector where one of the recommendations by this bipartite committee was "……to develop a voluntary code of conduct to facilitate access to timber by Australian softwood processors".

We see that the development of such a code is the best means to remedy the issues that small processors face and suggest that if you are able to lobby your federal counterparts it may accelerate the generation and implementation of the code.

The establishment of such a code will provide the transparency necessary to avoid threats to long-term supply to the processors and the support of the South Australian government as pledged in electoral commitments, WTH URGENCY, is vital to the survival of the small processors I represent.

Yours sincerely

David Quill CEO

Gonos, Anthea (PIRSA)

From: David Quill <dtquill2@bigpond.com>
Sent: Wednesday, 1 March 2023 11:07 AM
To: PIRSA:Minister Scriven
Cc: 'Badenoch, Peter'; 'Colin'; darryl@wtsales.com.au; Justin Jagger | Roundwood Solutions; 'steve telford'
Subject: Meeting with SATPA

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Corro - General

Dear Clare,

I short note to thank you for meeting with members of the South Australian Timber Processors Association yesterday.

We really appreciated the fact that for the first time we had a member of Parliament who understood our issues and was prepared to help resolve some of the problems facing domestic processing.

You gave every member an opportunity to explain how the implementation of a code of conduct will help resolve their issues and you clearly understood the importance of small to medium processing to the regional economy.

I will give you a call following our discussions with the ACCC.

We look forward to continuing dialogue.

Kindest regards,

David Quill
CEO