

## ARA X NRA SUBMISSION

### ACCC: IDENTIFYING APPROPRIATE NEW CLASS EXEMPTIONS

NOVEMBER 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to contribute to the Australian Competition and Consumer Commission (ACCC) consultation paper on Identifying appropriate new class exemptions.

The ARA and the NRA (The Associations), which propose to amalgamate into the Australian Retail Council (ARC), represent a **\$430 billion sector**, and employs **1.4 million Australians** – making retail the largest private sector employer in the country and a significant contributor to the Australian economy.

Our membership spans the full spectrum of Australian retail, from family-owned small and independent retailers that make up 95% of our membership, through to our largest national and international retailers that employ thousands of Australians and support both metropolitan and regional communities every day.

A strong retail sector delivers widespread benefits to all Australians, with a significant portion of every dollar spent in retail flowing back into employees, suppliers, superannuation funds, and local communities. We are united in advocating for the policy settings, reforms and collaboration that will drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

### EXECUTIVE SUMMARY

The Australian Retailers Association (ARA) and the National Retail Association (NRA) represent Australia's retail sector and work collaboratively with partners across manufacturing and supply chains to address key Environmental, Social and Governance (ESG) challenges, including modern slavery, product stewardship, and product safety. These issues are deeply interconnected with retail operations, and strong collaboration between industry and government is essential to deliver meaningful sustainability outcomes.

Industry collaboration has already demonstrated tangible benefits. Shared intelligence and best-practice approaches have helped businesses manage modern slavery risks, reduce duplication and supplier fatigue, and improve overall accountability. Likewise, successful product stewardship initiatives such as Container Deposit Schemes (CDS) and Soft Plastics Stewardship Australia (SPSA) show how joint efforts can enhance recycling, support a circular economy, and drive local economic investment and employment.

However, the current class exemption framework raises concerns relating to the efficiency and transparency of the process. Only one class exemption has been approved to date, and there is limited, publicly available data on the number of applications, approval outcomes, or timelines. This creates uncertainty for businesses seeking to collaborate on sustainability, product stewardship, or modern slavery initiatives. With approval durations potentially lengthy and statutory timeframes often unmet, legal and administrative uncertainties can delay projects, hinder pilot programs, and discourage proactive collaboration that delivers genuine public benefits.

The ARA and NRA therefore urge the ACCC to provide a clear and transparent framework that supports responsible industry collaboration, clarifies exemption criteria and timelines, and reduces bureaucratic burdens.

## CURRENT LIMITATIONS

While class exemptions may provide legal certainty for joint efforts that deliver public benefits, there is potential for confusion due to unclear processes around how frequently, on what merits industry would need to apply, the duration of the application, the impact of rulings against collaboration efforts and limited publicly available data on applications or approvals. As a result, this can lead to a missed opportunity for industry seeking to work together on sustainability, product stewardship, or modern slavery initiatives, and face uncertainty about whether their joint efforts could risk breaching competition law. The lack of transparency around the number of applications lodged, approved, or rejected makes it difficult for industry to gauge the likelihood of success and to plan collaborative projects effectively.

Additionally, the duration of the approval process further exacerbates the problem. While the statutory timeframe for authorisation is six months, in practice, only around half of applications meet this target, and timelines for class exemptions are undefined and potentially much longer. This unpredictability creates administrative and financial burdens, discourages proactive collaboration, and may delay initiatives that deliver genuine public benefits. For sustainability and modern slavery projects, which often require early coordination, pilot programs, and upfront investment, these delays and uncertainties could significantly hinder progress and innovation.

We, therefore, recommend the ACCC provide clear examples of what constitutes an application, the merits of an application, and the framework of an application, especially for product stewardship and modern slavery industry applications.

Without exemptions, fear of ACCC enforcement for potential anti-competitive conduct hinders industry progress, reduces investment in stewardship schemes, and results in suboptimal outcomes for environmental and social goals. Barriers such as regulatory silos and competition law risks prevent harmonised collaboration across states and territories, leading to inefficiencies, duplicated efforts, and fragmented stewardship outcomes including inconsistent recycling standards.

## THE REQUIREMENT FOR CLASS EXEMPTIONS

Under the ACCC's class exemption framework, exemptions are appropriate where conduct is unlikely to substantially lessen competition but delivers net public benefits. For modern slavery, product stewardship and product safety and design, industry collaboration is both critical, and meets this test:

- Joint efforts on ESG issues reduce societal costs and enhance efficiency. Exemptions encourage business and industry collaboration, enhancing reporting and supply chain tracking and holding businesses accountable to due diligence reporting mechanisms.
- As noted, collaboration on modern slavery has mitigated risks across businesses, avoiding duplication. For sustainability, shared schemes including Container Deposit Schemes (CDS) demonstrate success; exemptions ensure scalability, information sharing, and promoting best practice, circular economy principles.
- Community education and collection processes are onerous without collective action. Exemptions enable industry-wide campaigns and infrastructure, aligning with ACCC goals for innovation and long-term change.
- The Act must evolve to support collaboration, not restrict it. Exemptions ensure the retail sector can innovate on critical issues without legal uncertainty.

Without exemptions, fear of ACCC enforcement may potentially stifle industry progress, impact industry investment and collective action, and consequently, lead to suboptimal outcomes for consumers and businesses.

## **INDUSTRY COLLABORATION**

Industry collaboration fosters shared knowledge, resources, and efficiencies that individual businesses cannot achieve alone, aligning with ACCC principles that exemptions should promote public interest outcomes including environmental protection and social welfare.

### **Modern Slavery Benefits:**

- Collaboration breaks down information silos, allowing businesses to identify and mitigate risks in global supply chains. Joint auditing opportunities, and information, reporting and information tracking can mitigate exploitation, as businesses share information and best practice examples.
- Sharing incident response strategies ensures rapid, effective remediation, protecting vulnerable workers and aligning with ACCC's emphasis on exemptions for conduct that addresses market failures.
- Without collaboration, businesses face duplicated efforts, increasing costs passed to consumers and reducing overall compliance effectiveness.

### **Product Stewardship Benefits:**

- Collaboration enables collective action on product stewardship, including battery recycling schemes, textile stewardship, Container Deposit Schemes (CDS) and Soft Plastics Stewardship. This includes reducing waste and environmental impact. For instance, joint education campaigns address consumer awareness gaps, while shared infrastructure minimises duplication and lowers cost for participants, and ultimately, consumers.
- Harmonisation across states and territories is vital; and industry, peak body and government collaboration ensures consistent standards are encouraged and adopted, as seen in successful models including the Container Deposit Scheme (CDS). Without it, fragmented efforts lead to inefficiencies, higher fees, and reduced participation.
- Examples include retailers sharing best practices on sustainable packaging via Container Deposit Schemes (CDS), Sustainable Packaging Guidelines (SPGs) and the implementation of the Australasian Recycling Label (ARL).

### Product Safety and Standards Benefits:

- Collaboration enables development of tested, and tried standards to addresses gaps in product safety, compliance, and in addressing supply chain shortages. Industry standard collaboration encourages positive standard and product design, promoting safety and accessibility.
- Industry, peak body and government collaboration ensures consistent standards are encouraged and adopted, as seen in successful models including the Toppling Furniture Standard. Without these standards, fragmented efforts lead to inefficiencies, higher fees, and confusion for businesses sourcing, making or designing products supplied to consumers.

Barriers including regulatory silos and competition law risks hinder these efforts. Class exemptions would remove these, enabling greater opportunity for joint initiatives, increasing industry investment and collaboration, and critically, information reporting and sharing to encourage best practice.

## RECOMMENDATIONS

1. **Consider a streamlined approach for new class exemptions:** A simplified, low-burden process for proposing and assessing class exemptions, especially in modern slavery, product stewardship and product design would enable faster industry collaboration on shared supply-chain auditing, stewardship schemes, and uniform safety and technical standards, delivering public benefits without lengthy delays. We note that under the Act, only one approved class exemption is in place (Small Business Collective Bargaining).
2. **Ensure a dedicated timeframe for class exemption applications:** Currently, an application has been under consideration since 2019. Establishing clear, predictable timelines (e.g. 3 months maximum for an application to reviewed) for ACCC review of class exemption proposals ensures businesses can plan and act swiftly on urgent issues, reducing uncertainty and encouraging participation.
3. **Educate businesses on the process of applying for class exemptions:** ACCC guidance, workshops, and easy to understand resources and fact sheets would empower small and large businesses (SMEs) to confidently propose or use class exemptions, driving uptake of collaborative solutions.
4. **Implement a resolution mechanism for class exemption applications:** A structured, transparent decision framework with appeal or review options would build industry trust, ensuring fair outcomes for proposals, particularly where they seek to address market failures.
5. **Encourage industry to collaborate to address shortages and supply chain gaps:** ACCC support for class exemptions explicitly targeting collaboration would enable joint strategies to improve product design resilience and integrate sustainability and modern slavery safeguards into businesses.

## CONCLUSION

On behalf of the Associations and our members, we thank the Australian Competition and Consumer Commission (ACCC) for the opportunity to contribute to the consultation paper on Identifying appropriate new class exemptions.

Any queries in relation to this submission can be directed to our policy team at [policy@retail.org.au](mailto:policy@retail.org.au) and [policy@nationalretail.org.au](mailto:policy@nationalretail.org.au).