

# Regoverning Markets

Small-scale producers in modern agrifood markets

## Innovative Policy

**Australia**

**Farmer collective bargaining, Australia's revised Trade Practices Act**

Charles McElhone  
National Farmers' Federation

**Farmer collective bargaining:  
Australia's revised trade practices act**

**McElhone C  
April 2007**

**National Farmers' Federation**

## **Regoverning Markets**

Regoverning Markets is a multi-partner collaborative research programme analysing the growing concentration in the processing and retail sectors of national and regional agrifood systems and its impacts on rural livelihoods and communities in middle- and low-income countries. The aim of the programme is to provide strategic advice and guidance to the public sector, agrifood chain actors, civil society organizations and development agencies on approaches that can anticipate and manage the impacts of the dynamic changes in local and regional markets.

## **Innovative Policy series**

Innovative Policy is a series of short studies from the Regoverning Markets programme addressing a specific policy innovation in the public or private sector that improves the conditions for small-scale producers to access dynamic markets at national, regional and global level.

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## **Innovative Practice**

Innovative Practice is a series of country case studies providing examples of specific innovation in connecting small-scale producers with dynamic markets at local or regional level. Based on significant fieldwork activities, the studies focus on four drivers of innovation: public policy principles, private business models, collective action strategies by small-scale farmers, and intervention strategies and methods of development agencies. The studies highlight policy lessons and working methods to guide public and private actors.

## **Agrifood Sector Studies**

These studies look at specific agrifood sectors within a country or region. Research studies have been carried out in China, India, Indonesia, Mexico, South Africa, Turkey, Poland and Zambia covering the horticulture, dairy and meat sectors. Part A of the studies describe the observed market restructuring along the chains. Part B explores the determinants of small-scale farmer inclusion in emerging modern markets. Using quantitative survey techniques, they explore the impacts on marketing choices of farmers, and implications for rural development.

## **Country Studies**

These provide a summary of market changes taking place at national level within key high- value agrifood commodity chains.

Further information and publications from the Regoverning Markets programme are available at: [www.regoverningmarkets.org](http://www.regoverningmarkets.org).

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## **1. Introduction**

Australia's 130,000 farmers are predominantly small businesses, 99 per cent of which are family-owned and operated. This business composition has both advantages and disadvantages. On the one hand it ensures great strength and flexibility, enabling small-scale farmers to specialise in commodities, adapt to emerging markets, identify and fill niche market opportunities, and add value along the production chain. But it can also make these farmers weak negotiators when selling to much larger, more powerful buyers.

Collective bargaining is a way of overcoming this weakness in the marketplace, and involves two or more similar competing businesses joining together to negotiate the sale or purchase of products or services with a common customer or supplier.

The National Farmers' Federation (NFF, see Box 1.1) has successfully lobbied for a new collective bargaining 'notification process', making it easier and quicker for farmers to negotiate collectively with large businesses. This facility is administered through Australia's Trade Practices Act (TPA).

This report shows how collective bargaining has helped level out the power imbalance often inherent in farmer contract negotiations, ensuring that Australian farmers attain the rewards they are entitled to in producing the highest quality goods. It also shows how the recent amendments are an important example of a policy change that has enhanced market participation by small-scale agricultural producers.

### **Box 1.1 The National Farmers' Federation**

The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers and, more broadly, agriculture, across Australia. It is one of Australia's leading and most respected lobbying and advocacy organisations.

The NFF is made up of state farm organisations, commodity councils, and friends of NFF. NFF does not have individual farmer members, but through its members represents the interests of almost 100,000 farmers. By joining a state farm organisation or commodity organisation and participating in branch meetings around the country, farmers contribute to and support NFF.

NFF priorities comprise broad national issues —the economy, industrial relations, trade, business investment and costs, and the environment. Rural community interests such as rural services, telecommunications, education and animal welfare are also represented.

NFF is responsible for the national issues which affect more than one state or more than one commodity. In their turn, state farm organisations represent the interests of the agricultural sector in their respective states, and national commodity councils represent individual commodities at national level.

Federal governments of all political persuasions continue to look to NFF for leadership on these issues. It is through NFF that many of the most important policy decisions affecting the rural and farm sector have been made. These have included expanding our markets through trade, reforming industrial relations and improving water security.

'Friends of NFF' status can also be extended to recognised state and national bodies whose aims and objectives are similar to those of the NFF.

## **2. A history of collective bargaining in Australia**

In Australia, collective bargaining between businesses is subject to the Trade Practices Act 1974 (TPA) administered by the Australian Competition and Consumer Commission (ACCC). Under the TPA, farm businesses have always been able to apply to the ACCC for approval to bargain collectively with larger businesses. This approval is known as 'authorisation', and protects the business from legal action under the competition provisions of the Trade Practices Act.

Small businesses can join together in approved circumstances — i.e. when the ACCC determines that there is sufficient public benefit in allowing the arrangement — to bargain collectively with another business.

### **2.1 Why was reform needed?**

Many Australian farm businesses believed the collective bargaining authorisation process was costly and time consuming, especially considering the relatively simple nature of the transactions involved.

The cost for farmers to lodge an application fee for collective bargaining authorisation was AUD\$7,500. In addition to this, farmers also had to bear the cost of ensuring that the application demonstrated that the public benefit from the arrangement outweighed any detriment. It could also take up to five months to get an interim approval and up to nine months for a final determination from the ACCC.

These problems meant that few farm businesses actually applied for collective bargaining, perpetuating Australian farmers' lack of control over the pricing and contract terms for their produce, and leaving them vulnerable to the 'price taker' culture that has characterised the sector for too long.

Therefore the NFF, in conjunction with other major small business representative groups, lobbied the Australian Government to amend the TPA to make it simpler, quicker and cheaper for small businesses to engage in collective bargaining. This lobbying effort followed a series of recommendations that emerged from a Review of the Competition Provisions of the Trade Practices Act (Dawson Review) in 2003.

### **2.2 The TPA amendments: simplifying the process**

The Trade Practices Act has now been changed to further encourage and support farm businesses to get involved in collective bargaining.



These changes came into effect on 1 January 2007 and introduced a new process for small businesses seeking to undertake collective bargaining.

This process is known as 'notification' and is a simpler, quicker and cheaper process than authorisation.

Notification involves fewer steps and procedures than authorisation because it only applies to simple transactions with a single target. Therefore, farm businesses now need to provide less detailed information to the ACCC than for authorisation applications. Furthermore, for notifications, the onus is on the ACCC to show that the public benefit from the arrangement outweighs any detriment.

The new notification process has also reduced the cost of lodging a collective bargaining application by 85 per cent, to AUD\$1,000. The cost to farm businesses of preparing an application is also lower than for authorisations because the transactions are simpler.

Notification can also significantly reduce the waiting time for businesses to collectively bargain, down to 28 days. This will be further reduced to 14 days after the first 12 months of operation.

In addition to the new notification process, the Trade Practices Act was also changed to include a six month time limit for the ACCC to consider authorisation applications. The ACCC has also been given the discretion to waive or reduce the fee for such applications.

### 3. How do farmers benefit from collective bargaining?

Collective bargaining provisions allow a group of primary producers to form a collective bargaining group to negotiate a purchase price with a company which processes their products. The group pools their negotiating resources to save time and money, and obtains the ACCC's approval to come together and strike a deal. The customer benefits from the security and efficiencies created by a single pricing arrangement. The community benefits from improved products and services.

Collective bargaining enables Australian farm businesses to work together more collaboratively. Benefits to farmers include:

- **more buying and selling power**, without compromising the individuality or integrity of their business;
- **greater equality**, the ability to be on a more equal footing with larger business when it comes to negotiating terms, conditions and prices;
- **flexibility**: to identify and negotiate the trading terms and conditions which suit their business;
- **greater control** and support when it comes to making the deal; and
- **greater efficiencies** through time and cost sharing, including legal and accounting fees, with other small businesses in their collective bargaining group.

#### 3.1 Australian dairy farmer example

Here we use the example of the Australian wholesale milk producers (dairy farmers) to show how collective bargaining can improve terms and conditions for small business owners.

Through their industry body, the Australian Dairy Farmers Limited (ADF), dairy farmers have formed groups around Australia to collectively negotiate price and supply arrangements with the dairy processing companies they supply to.

The dairy industry has many collective bargaining groups working to improve conditions for producers, suppliers and consumers. Collective bargaining made it easier for the dairy farmers to do business with big business.

Allan Burgess, a dairy farmer from the Australian town of Bunbatha in Victoria, made the following comments about what collective bargaining has brought to his business, as well as the advantages of the new TPA amendments:

*'Collective bargaining has offered real benefits to our dairy business. It has ensured that the conditions and prices that we receive for our produce more accurately reflect its true market value while allowing us to concentrate on the business of running our farming operation. The new collective bargaining notification system, making the process quicker, easier and cheaper to participate in will extend the opportunity for farmers like ourselves to see how collective bargaining can deliver mutually beneficial outcomes to willing buyers and sellers.'*



## 4. Can the TPA amendments be improved?

Although Australian farmers have welcomed the new collective bargaining notification process, the new legislation does still have a few shortfalls that may deter some farm businesses from participating:

1. The collective bargaining notification process was originally assigned a transaction limit threshold of AUD\$3 million. This excludes a small, but growing number of Australian farm businesses from the new facility. However, the Australian Government has recognised that because the farm sector is uniquely characterised by high turnover and small profit margins. The transaction turnover threshold was therefore raised to AUD\$5 million for agricultural businesses through regulation, although this higher threshold continues to exclude a small number of Australian farmers from the notification facility.
2. The old collective bargaining authorisation process was more flexible than the new notification process. For example:
  - Authorisations generally last for five years, while notifications generally last only three years.
  - Under authorisations the parties getting together to negotiate and the target parties do not need to be identified.
  - There can be multiple targets under an authorisation, whereas notifications can only be directed at one target.

There are other 'flexibility' problems with the notification process. If a group wants to lodge a second application in fewer than 28 days from a previous application they will incur another AUD\$1,000 charge. If they want to add new members to the collective bargaining group this also requires an additional lodgement and an additional fee.

## **5. Replicating the Australian TPA amendments elsewhere**

Australian farmers are not alone in suffering from power imbalances in markets. All over the world, farmers continue to face a 'price taker' mentality that is exacerbated by the ability of big business to use their market power advantage to drive agricultural prices down.

Collective bargaining is one tool that can help to rectify this market power imbalance and ensure that farmers are fairly rewarded for their efforts. A similar system to the ACCC could be administered through bodies such as the Office of Fair Trading or the Competition Commission in the United Kingdom, and the Federal Trade Commission and Department of Justice in the United States.

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