



Competition Law Collective Bargaining and Contractors

Policy Background

- Traditionally collective bargaining has only been lawful when exercised by employees in the context of the industrial relations system through unions.
- Collective bargaining by employed workers is not subject to the Competition and Consumer Act (CCA). On the other hand, contractors and other small businesses are subject to the anti-competitive conduct provisions of the legislation. These prohibit price fixing, cartels and other behaviour that would substantially lessen competition.
- In order to be able to use collective bargaining, contractors and small businesses can seek prior approval from the ACCC, which considers the public benefits against public detriment.
- It is argued that collective bargaining allows firms to share these negotiating costs, improving the level of negotiation and achieving outcomes that would not have otherwise been achieved, while also addressing an imbalance in bargaining strength.
- However, this increases the potential for anti-competitive coordination between members of the bargaining group, creating distortions that can harm competitor businesses that are not part of the bargaining group.
- The efficiency created by independent contracting is a key strength of the residential building industry, and if trade contractors were to be able to routinely collectively bargain, there would be an adverse impact on not only contractor independence, but also housing affordability.

HIA's Policy Position on Competition Law Collective Bargaining and Contractors

HIA opposes collective bargaining by independent contractors and small business under competition laws, workplace laws and commercial laws.

Such arrangements:

- can be anticompetitive;
- risk treating contractors as employees;
- risk confusing the independent status of contractors;
- can threaten housing affordability;
- can invite collectivism and interference in commercial and contracting arrangements; and,
- encourage/enable union participation in the residential building industry.