Consultation on Identifying Potential New Class Exemptions

BCCM – Monash Business School
Joint-Submission to The Australian Competition and Consumer Commission

7 November 2025

THIS IS SOCIAL BUSINESS

Business Council of Co-operatives and Mutuals

Introduction

We thank the ACCC for the opportunity to make a submission to this consultation. We strongly support policies promoting competition and productivity making markets fairer and more able to work in the interests of Australian consumers, and we commend the ACCC's objective to pursue 'right-sized regulation' for that objective.

The BCCM is the national peak body for co-operative and mutual businesses across all sectors of the Australian economy. Collectively these businesses contribute more than $47b into the Australian economy, directly employ more than 94,000 Australians and serve more than 76,500 small and medium enterprises that are members of more than 1800 co-ops and mutuals (National Mutual Economy Report 2025).

The Monash Business School (MBS) develops close collaboration and engagement with industry through the Impact Labs platform which enables academics to carry out research that has scholarly and practical impacts such as the collaboration to research and evaluate *Care Together*, Australia's first co-operative business innovation program to deliver care in remote, regional and rural 'thin markets', funded by the Department of Health and Aged Care and delivered by the BCCM. The MBS Digital Lab and the Mutual Value Lab have collaborated with the BCCM to prepare this joint submission.

Co-operatives and mutuals exist for the economic and social development of their members, who can be customers, producers (small businesses) or employees. Research supports the competition benefits of co-ops and mutuals in retail markets.[1] Co-ops and mutuals are motivated to provide services at lower profit rates than investor-owned businesses.[2] Employee-owned businesses are 8-12% more productive than investor-owned businesses.[3]

The BCCM welcomes recent progress in competition policy reform to enable productive forms of business collaboration, including the introduction of the Small Business Collective Bargaining Class Exemption and the express exemption of co-operatives from the Franchising Code. The Harper Review (2015) recommended more flexible approaches to collective bargaining, and recent government statements have emphasised support for co-operatives as competitive alternatives.[4]

Our submission proposes a class exemption for co-operatives that would augment the existing Small Business Collective Bargaining class exemption.

Building from the insights of Professor Mike Cook, of the University of Missouri, we provide evidence on how enabling business collaboration in a co-operative institutional form can achieve market efficiencies, counter market concentration, encourage long-term investment and deliver a range of public benefits including in relation to regional employment, food security and export earnings. Our focus is on the role of co-operatives in countering monopsony, though similar benefits to co-operatives exist on the purchasing side of supply chains.

> *"Theoretically, it can be shown that clauses and conditions such as those institutionalized in Capper-Volstead provide an organizational design of agricultural cooperatives that promotes competition and inhibits market imperfection. Constraints such as democratic control, limited return on equity capital, and narrowly defined membership create a set of ownership and control rights that are less than completely defined. These constraints act as incentives for producers to act collectively when they face hold-up or market imperfection conditions but these constraints curb rent extracting behavior due to the emergence of free rider, horizon, portfolio, influence cost, and agency problems if cooperatives veer from their original intent and purpose."*
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> ***Professor Mike Cook, Department of Agricultural Economics, University of Missouri***

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[1] Monash University and BCCM, Joint submission to the ACCC Supermarkets inquiry
[2] Per Capita, Co-operative Employment Economics
[3] Employee Ownership Association, People-powered Growth Report
[4] House of Representatives Standing Committee on Economics, Better Competition, Better Prices. March 2024

We recommend that any class exemption for co-operatives be for incorporated entities where the entity is committed constitutionally to the core principles of co-operatives (mutuality, democratic governance and open membership) and could initially be targeted at highly concentrated sectors.

The BCCM would welcome the opportunity to explore a co-operative class exemption further with the ACCC, including whether it should be targeted at sectors like food production and retail.

What are co-operatives and mutuals

Co-operatives and mutuals are businesses that are owned and democratically controlled by members, who may be consumers, producers, workers or a combination of these stakeholders. Rather than seeking to maximise profits, the purpose of a co-op or mutual is to benefit members and their communities through equitable access to goods and services. To achieve this corporate purpose, they are guided by seven internationally-agreed principles:[5]

1. Voluntary and open membership
2. Democratic member control
3. Member economic participation
4. Autonomy and independence
5. Education, training and information
6. Co-operation among co-operatives
7. Concern for community

Australian co-operatives use a variety of legal forms. The most common forms are incorporation under Co-operatives National Law (and the consistent Co-operatives Act 2009 (WA)) or incorporation as a mutual company under the Corporations Act.

Where co-operatives are incorporated under Co-operatives National Law, they subscribe to these principles by registration, while under other legal forms they will achieve this commitment through the provisions of their governing document.

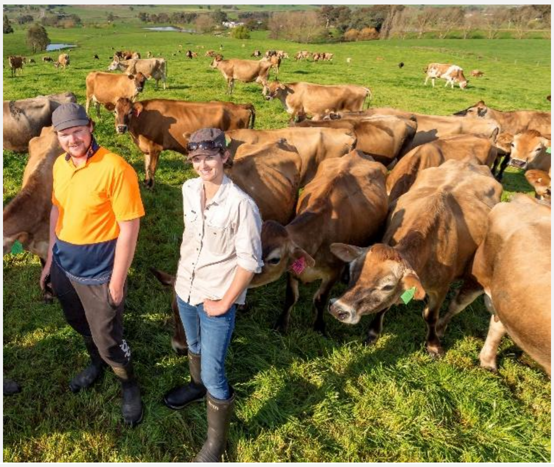
Monopsony power, producer co-operatives, and collective bargaining[6]

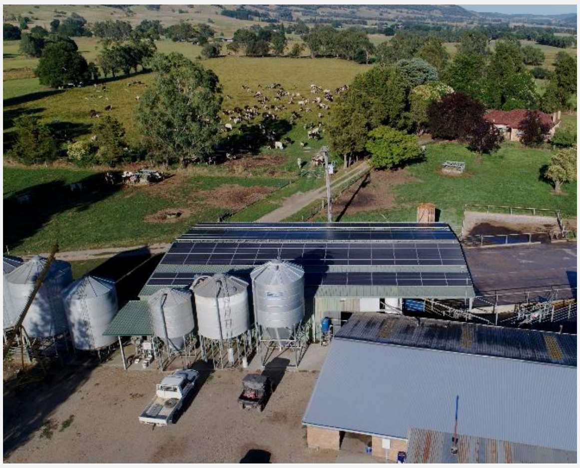
In Australia, several key supply chains exhibit strong downstream buyer power over upstream suppliers. In the retail sector, for instance, Coles and Woolworths together command substantial national market power in purchasing goods from farmers, food processors, and manufacturers. In dairy and livestock supply chains, large processors, such as Saputo and JBS, can often dictate contract terms and payment schedules to farmers. Similar bargaining power imbalances can be observed in the markets for grains, horticulture, and seafood, as well as in other sectors such as healthcare procurement, insurance, and parts of the energy market, where a small number of large buyers negotiate with numerous small suppliers. These structural asymmetries often result in pricing and trading conditions that are tilted in favour of the downstream firms.

Economists describe markets like these as monopsonies, where a single buyer controls most of the purchasing power, or oligopsonies, where only a small number of buyers control most of the purchasing power. The concept traces back to Joan Robinson's seminal work *The Economics of Imperfect Competition* (1933). For simplicity, we will refer to both situations as monopsony markets, since the economic logic of oligopsony is a straightforward extension of the monopsony case. Just as a monopolist sets prices for consumers by facing the entire market demand curve, a monopsonist sets the terms of trade for suppliers by facing the entire market supply curve. Because this supply curve is upward sloping, namely, higher prices draw more suppliers into the market, a monopsonist recognises that purchasing more inputs requires offering a higher price.

[5] Cooperative identity, values & principles | ICA
[6] We thank Professor Arghya Ghosh at UNSW Sydney for his very helpful discussion with us about the monopsony theory.

Crucially, the monopsony firm understands its strategic influence on the input price, just as a monopolist understands its impact on the output price. When a monopsony firm seeks to expand purchases by raising the supply price, that higher supply price must be paid not only to attract the marginal supplier but also to all inframarginal suppliers whom it can already sell to at the initial supply price. As a result, the monopsonist's marginal expenditure on inputs exceeds the market's marginal cost of supply. If the firm attempted to raise prices selectively only for marginal suppliers, inframarginal suppliers would quickly demand the same terms, making such price discrimination unsustainable. As a result, the monopsonist's marginal cost of purchasing inputs is inflated, even though the price paid to suppliers remains below the competitive level.





Mountain Milk Co-operative

This wedge between the monopsonist's private incentives and social efficiency leads to under-purchasing of inputs. The monopsony firm buys less from upstream suppliers than would occur in a competitive market, and the price it pays is lower than the efficient, competitive input price. Consequently, upstream producers earn too little to sustain investment and/or innovation in production, and thin profit margins can also trigger a range of moral hazard behaviours, including compromised labour conditions, reduced product quality, and weakened environmental management. At the same time, because too few goods reach the retail market, the resulting supply shortage in the retail market will ultimately push up final consumer prices. This creates a paradoxical but well-documented outcome: in monopsony markets, low supply prices coexist with low supply volumes, harming both producers and consumers.

The monopsony result described above challenges the standard intuition in antitrust economics that a lower supply price should lead to lower final prices and higher output. This paradox highlights why monopsony power was long treated as a niche topic in labour economics and only recently began to attract serious attention from industrial economists and competition regulators. When designing policy tools to correct market failures, a simple but important principle applies: if a market is already distorted, then a conduct that appears distortive in isolation may, in fact, improve efficiency. The type of "distortive" conduct examined here is the collective bargaining or joint marketing and pricing behaviour of upstream suppliers. Under current competition law, such behaviour would normally be prohibited as a form of price fixing, supply restriction, or bid rigging.

These prohibitions are based on the economic premise that firms hold market power over their buyers. However, in monopsonistic markets, market power toward buyers is precisely what upstream suppliers lack. It is therefore worth reconsidering how the "collusive" behaviour of upstream producers affects efficiency and consumer welfare when the downstream market is characterized by monopsony or oligopsony power. Sound competition policy should rest on an accurate understanding of market structure, particularly the distribution of bargaining power between upstream and downstream firms, and a logical analysis of the economic consequences that follow. The standard arguments for prohibiting joint marketing and pricing do not apply to the monopsonistic market.

What happens if upstream suppliers are permitted to jointly determine their marketing and pricing strategies and bargain collectively with a dominant downstream buyer? Focusing on the monopsony case, though the reasoning extends naturally to oligopsony, consolidation among upstream firms effectively reallocates bargaining power between the upstream and downstream firms. The downstream firm now faces fewer alternatives if negotiations break down, and upstream suppliers gain greater leverage in setting terms of trade.

With the bargaining power brought back into balance, the downstream buyer can no longer dictate purchases along the upward-sloping supply curve. Instead, both parties must negotiate an agreement that divides the surplus according to their relative bargaining strengths. When these interactions are repeated over time, it is reasonable to expect the parties to converge on a joint profit-maximizing supply level and share the resulting surplus. At a minimum, upstream suppliers are likely to secure higher returns than they would when negotiating with the dominant buyer independently, encouraging them to expand production. The resulting increase in aggregate supply raises overall supply chain efficiency and benefits consumers through improved output and more sustainable trading conditions.

Producer co-operatives improve collective bargaining

Rather than competing as individual sellers, co-op members pool their products and resources so that a co-op can undertake activities like bargaining, marketing, processing, storage or distribution on their behalf. The profits earned by the co-op are typically returned to members in proportion to their contribution or sales, rather than distributed to external investors. Well-known examples include agricultural co-ops like Norco in Australia or Fonterra in New Zealand, which enable farmers to participate more effectively in processing and marketing chains that would otherwise be dominated by large downstream buyers.

By acting collectively, small producers can often generate substantial efficiency gains. These may arise from collective bargaining with processors, shared infrastructure and equipment, reduced transaction costs, and improved access to finance and insurance. Co-ops also help members build and sustain trusted brands that individual producers would struggle to establish on their own, thereby enhancing their ability to market their products and achieve more sustainable economic benefits.[7] However, one of the most significant, and often overlooked, sources of efficiency improvement stems from enhanced bargaining power vis-à-vis dominant downstream buyers. In this sense, producer co-ops can serve as a natural upstream counterpart to, and a potential corrective for, the monopsony problem outlined in the previous section.

Under the current legal framework, some forms of joint bargaining, pricing or marketing by independent producers may be interpreted as cartel-like behaviour, even when such coordination occurs within a separate co-operative structure. Yet, the economic rationale behind cartel prohibition does not apply in monopsonistic settings. Cartels are harmful when firms with market power collude to extract rents from consumers by raising prices and restricting output. Producer co-ops, by contrast, typically consist of small suppliers with negligible market power who face a small number of powerful buyers. In such cases, allowing producers to jointly determine prices and market conditions can restore a more balanced bargaining relationship, raise upstream prices toward competitive levels, and ultimately benefit consumers through greater supply chain efficiency and more stable supply, fully consistent with the antitrust principle.

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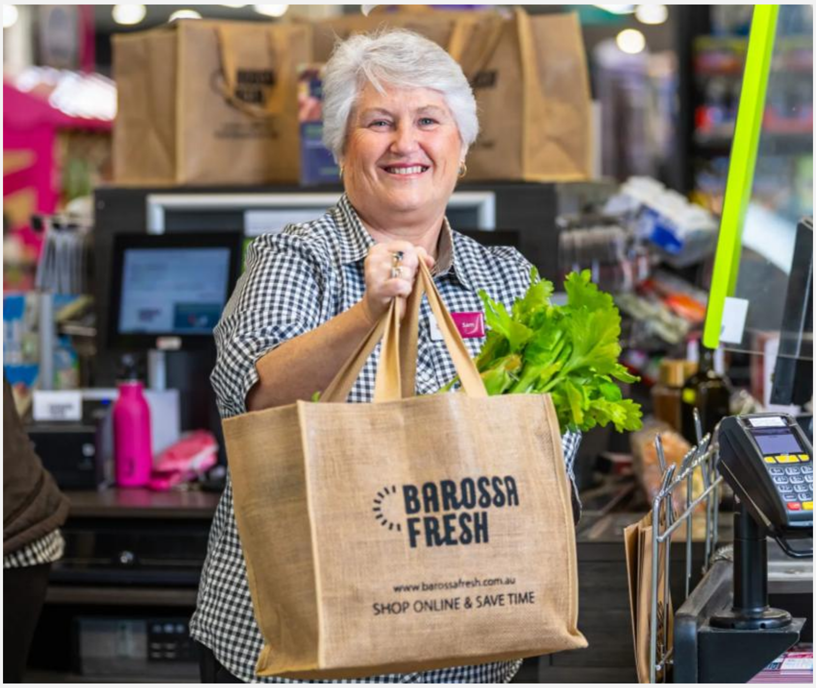
[7] See more details from Beverland, M., 2007. Can cooperatives brand? Exploring the interplay between cooperative structure and sustained brand marketing success. *Food Policy*, *32*(4), pp.480-495.

There are also important long-term benefits from enabling collective bargaining among upstream producers Even in sectors where downstream buyer power is moderate, stronger collective bargaining can increase upstream profitability and stimulate new investment. Higher and more stable producer returns encourage productivity-enhancing investments, such as technology adoption, product innovation, and quality improvements, and attract new entrants into the sector. Over time, these dynamic effects lead to greater product variety, higher quality, and potentially lower prices for consumers.[8]

Beyond competition benefits, co-operatives also deliver public benefits, including supporting regional employment, promoting supply chain resilience and food security for Australia. They play a role in the development of new export markets and earnings for the nation.[9].



The Barossa Co-op

[8] See more details from Antelo, M. and Bru, L., 2006. The welfare effects of upstream mergers in the presence of downstream entry barriers. *International Economic Review*, *47*(4), pp.1269-1294.

[9] For example, Marquis Macadamias, a grower-owned co-op, started with four growers and has led the development of Australia's significant macadamia processing and export industry.

A class exemption for producer co-operatives

In Australia, producer co-operatives play an important role in supporting producers in domestic and international markets increasingly dominated by a few powerful buyers. Yet under the current Competition and Consumer Act (CCA), cartel provision exceptions and class exemptions lack the kind of clear positive provision that the *Capper-Volstead Act (1922)*[10] provides to farmer co-ops to conduct a range of activities in the United States. The Capper–Volstead framework recognises that collective marketing and joint price setting among agricultural producers are not inherently anti-competitive when they serve to counterbalance monopsony power downstream.

Co-ops are open membership organisations, and as such do not always fall under the existing small business collective bargaining exemption. While co-ops, like some other forms of collaboration, could arguably rely on some of the legislated exceptions to the cartel provisions this is often not practical given these provisions would be tested in court where the burden of proof rests upon the defendant. This can add significant cost (e.g. Co-operative Supermarkets Australia authorisation) and ambiguity, ultimately discouraging beneficial business collaboration.

The class exemption mechanism provides the ACCC with a relatively straightforward way to increase certainty and reduce regulatory costs for certain types of low-risk business collaboration.

A co-operative-based exemption addresses the limitations of the small business collective bargaining class exemption, which uses firm size (turnover) of individual businesses as a blunt proxy for identifying and exempting unharmful collaboration. However, a small group of dominant buyers can still exercise monopsony power even when individual producers have high revenues simply because they must sell into a highly consolidated market. This is arguably the case in many of the concentrated sectors ACCC has focused its attention on recently, such as food supply chains.

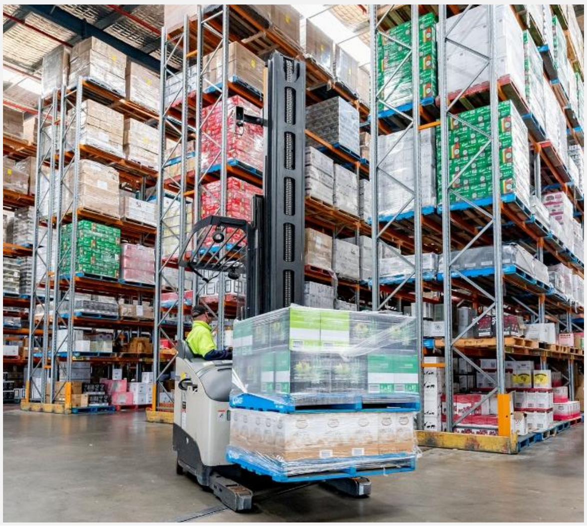
Co-operative Supermarkets Australia (CSA)
CSA is a national co-operative registered under Co-operatives National Law in 2019, representing over 500 independent retail outlets, including supermarkets and liquor stores. It enables members to collectively bargain with suppliers and share procurement information. • **Regulatory challenge**: CSA's model triggered concerns under the *Competition and Consumer Act 2010*, specifically the cartel provisions. To operate legally, CSA had to seek formal authorisation from the ACCC. • **Authorisation outcome**: In April 2020, the ACCC granted CSA a five-year conditional authorisation allowing collective bargaining and information sharing. • **Compliance burden**: The authorisation process was costly and complex, requiring detailed submissions and public consultation. This created a significant time and cost burden for CSA and discourages other producers from adopting similar co-operative models. • **ACCC's 2025 Supermarkets Inquiry finding**:[11] The ACCC acknowledged that major supermarket incumbents, 'likely face limited constraint' from buying groups like CSA reinforcing that CSA's conduct is unlikely to be harmful to competition.

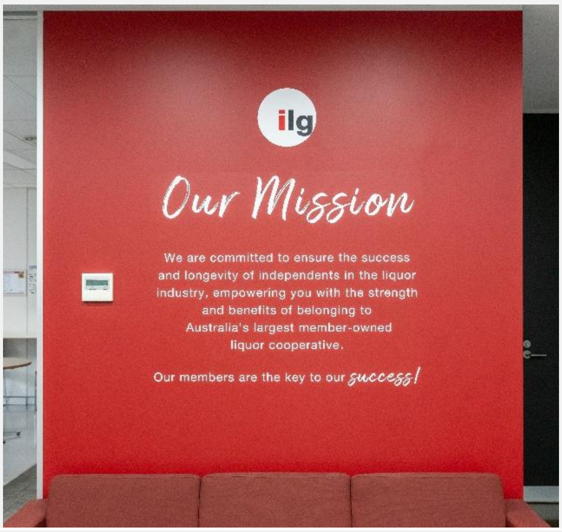
[10] See Appendix

[11] ACCC, Supermarket Inquiry Final Report, February 2025, p 136

As noted by economist Professor Mike Cook[12], requiring collaboration to occur through a co-operative entity imposes other limitations on participants, ensuring they are unlikely to engage in harmful collaboration where the co-op is committed to 'Open Membership' including businesses above $10 million in turnover.

Cook cites, with limited antitrust immunity, "the designers of Capper Volstead employed genius in the powerful but simple construction of the law" through which, the co-operative model emerges as a creative economic development tool fostering competition and mitigating market imperfections, while its unique organisational constraints serve to inhibit monopolistic rent-extracting behaviour.





Independent Liquor Group (ILG) Co-operative

Introducing a Capper–Volstead–style exemption in Australia through the class exemption mechanism would be a low-cost, high-impact reform to cut red tape and enhance productivity in concentrated markets such as food production and retail. It would provide legal certainty to producer co-ops, provide flexibility for a wider range of collaboration than the existing turnover-based small business collective bargaining class exemption, and align Australia's framework with international best practice dealing with co-ops in antitrust.

Proposed Exemption Framework

The BCCM proposes a class exemption with the following criteria for further exploration:

1. **Range of eligibility:**

The exemption would cover incorporated persons who meet a definition of a co-operative for the purposes of the class exemption. This would include having one-member one-vote governance, majority member trading, and limited returns on member share capital.

One-member one-vote and majority member trading ensure that the entity is designed to operate in the interests of all members and majority member trading demonstrates a commitment to open membership – that is, willingness to include any eligible businesses as members rather than operating as a closed club. Limited returns on member share capital is mandated by regulation for co-operatives registered under Co-operatives National Law but could be mirrored by other entities in their governing documents. This demonstrates a focus on generating benefits for members via services rather than capital appreciation and returns.

[12] Mike Cook, https://govinfo.library.unt.edu/amc/public_studies_fr28902/immunities_exemptions_pdf/050715_Cook.pdf

2. **Scope of Exempt Conduct:**

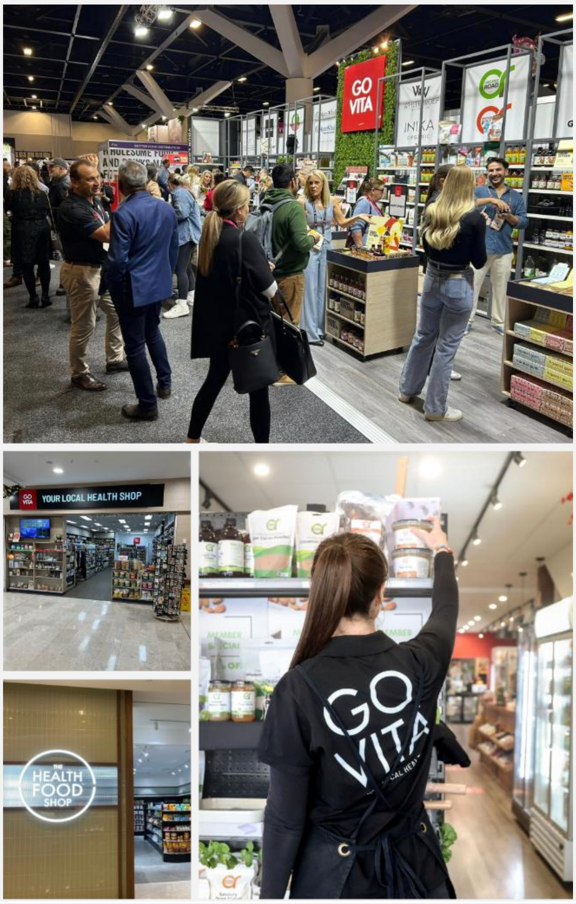
As per the small business collective bargaining class exemption, collective bargaining through a co-operative should be exempt conduct but should also extend to other common co-operative activities to provide certainty:

- Collective bargaining and negotiation
- Collective production, marketing and supply
- Information sharing and benchmarking

The exemption could be limited to co-operatives in highly concentrated sectors such as the food supply chain in the first instance.

3. **Safeguards and oversight:**

The BCCM supports a similar implementation approach as to the small business collective bargaining class exemption, including a simple notification form, register and reviews of the exemption.



Go Vita Distributors

Conclusion

The introduction of a class exemption for co-operatives, would be low-cost, high-impact, and can be swiftly implemented under the ACCC's existing powers. It would significantly reduce compliance burdens and uncertainty for hundreds of small businesses and producers nationwide, providing a clear model for productivity-focused business collaboration that is unlikely to lessen competition and that will deliver public benefits.

The BCCM and its member co-operatives are ready to collaborate with the ACCC to refine the exemption's parameters. We are willing to assist in defining eligibility criteria, data reporting mechanisms, and safeguards to ensure the exemption is effective and trusted.

Appendix: Treatment of co-operatives in United States anti-trust policy

The Capper-Volstead Act is the cornerstone of U.S. policy on agricultural co-operatives. Enacted in 1922, it provides a limited but robust exemption from antitrust liability for associations of agricultural producers.

To qualify under Capper-Volstead, a co-operative must:

- Operate for the mutual benefit of its members.
- Adhere to democratic governance (one-member-one-vote), or if voting is proportional to investment, cap dividends on stock.
- Conduct the majority of its business with members, not external parties.
- Be composed of producers (e.g., farmers, dairymen, fruitgrowers) acting collectively.

These structural safeguards ensure that co-operatives cannot function as closed cartels. Instead, they serve to rebalance market power in sectors where producers are otherwise price-takers under dominant buyers. Oversight is provided by the U.S. Secretary of Agriculture, who may investigate and issue cease-and-desist orders if a co-operative is found to monopolise trade or unduly enhance prices. Notably, this oversight mechanism has been rarely invoked, suggesting that co-operatives generally operate within the bounds of competitive fairness.

Impact and Endurance
Capper-Volstead has enabled the formation of thousands of farmer co-operatives, many of which have become iconic American brands—Ocean Spray, Sunkist, and Land O'Lakes among them. These co-operatives have allowed producers to own and operate processing and marketing infrastructure, negotiate collectively, stabilise their incomes, and protect rural way of life. Importantly, markets dominated by co-operatives have remained competitive, with consumer prices reflecting supply and input costs rather than collusion. The Act's structural conditions have proven effective in preventing abuse, with few co-operatives facing antitrust enforcement and most private lawsuits failing to establish harm.

Relevance to Australia
Australia's current framework requires co-operatives to seek case-by-case authorisation from the ACCC for collective conduct that does not fall with the small business class exemption, a process that is often costly, uncertain, and slow. By contrast, Capper-Volstead provides a standing exemption tied to co-operative institutional design, not firm size. This model offers a compelling precedent for Australia to adopt a class exemption for co-operatives—one that is conditioned on governance features such as democratic control, member-benefit purpose, and limited capital returns. Such an exemption would reduce regulatory burden, empower producers, and enhance competition in markets dominated by powerful buyers.

About the BCCM

The BCCM is the national industry peak body for co-operatives and mutuals, working with governments, regulators, and policymakers to ensure the Australian economic landscape is fully able to benefit from a competitive co-op and mutual movement.

Through its member co-ops and mutuals, the BCCM represents 14.4 million memberships, including 60,000 small and medium businesses.

About the Monash Business School

The Monash Business School (MBS) is ranked in the top 50 business schools globally and in the top 3 in Australia. MBS is also Australia's largest business school. The MBS has a long and successful history of industry engagement and carrying research that has scholarly and practical impacts. The Mutual Value Lab has developed a strong and ongoing research collaboration with BCCM and the co-operative sector in Australia through impactful research including the ground breaking Mutual Value Measurement (MVM) Framework which has provided co-operatives and mutuals with a strategic framework for measuring the value creation including their positive impact on shaping markets in the interests of members and consumers. The Digital Lab has subject matter expertise in competition, markets and economic modelling and analysis of market related issues and collaborates with the Mutual Value Lab and BCCM in economic policy and advocacy matters.

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