

Dear Senator Sherry,

I was pleased to see that you were inviting views on the proposed Dispute Resolution Service.

I have a keen interest in the area of Access to Justice from a number of angles.

- I have been on the Board or Chairman of small business groups for many years.
- I was a practicing lawyer for 30 years, working with local business in Southern Adelaide.
- I run Australia's largest Access to Justice website - www.foolkit.com.au
- I am on the Law Society's Access to Justice committee.

Finding the law

In my experience, business people want to do the right thing. But knowing what "the right thing" is can be hard to find sometimes. Often it is a question of what law is involved and how it applies to a situation.

You would know how hard it is to find an Act and then the rights sections of an Act and that you then have to consider how previous cases have interpreted this and the guidelines that the Government puts out. So, to know the law involves much more than just finding where to get a copy of an Act.

Sorting out the facts

About half the disputes are about the facts, rather than about the law. Who said or signed what? What is the real identity of the company involved? What did the instruction book say? What is the market value of something? Has work been performed to "industry standard" or not?

Unfortunately there is a real shortage of people to assess the quality of work, and often they are very expensive.

Finding the rules

Nine out of ten disputes over contracts involve home-made documents or bush lawyers. In preparing a good document you thrash through the possible scenarios like "what if something goes wrong?" or "what if we disagree?" and being very precise about what is expected of each side. You can sort that out in the spirit of goodwill that exists when everyone is optimistic at the start, rather than when they are each other's throats blaming each other at the end. So, a good document is a great way at avoiding or resolving disputes that is often overlooked. And at least you then play by your own rule book and not by some statute.

So, assisting people to write a good agreement at the start is part of the process of avoiding disputes.

Finding somebody to help resolve a dispute

Courts are the last resort. It should be a strategic decision as to whether or not to start a court case and then whether to go all the way to trial.

There are some disputes where people are certifiably unreasonable or have learnt how to abuse the legal system. These are pretty intractable. On the whole, it is my experience that if you can sort out the facts and where you are differing in your views of the situation or the law, then most disputes can be resolved. Of course I am talking from the perspective of people engaging a lawyer or other dispute resolver to help them.

My experience is that the industry ombudsmen are helpful. I think that the benefit here is that they have expertise in a narrow field.

At the other end, small claims courts and community mediation, my experience is not so good. People who don't know their rights and what is a fair result are too easily pushed around. Either by the other party or by the Court or Service who score points for the number of "disputes resolved" rather than "disputes resolved well". I saw some really bad results from community mediation where the mediator had no idea of the full range of legal issues involved or the consequences of the decision. As with the industry ombudsmen, if the field of disputes was narrowed and if the focus was on quality and not just numbers, then I am more optimistic.

I think either you need services that stay within a very narrow range – or you need somebody with wide legal knowledge, which means lawyers, and I think you are looking for a lower cost solution than this.

Existing Free Service

www.foolkit.com.au already does much of the information role proposed and does it for free.

I can see a lot of money being diverted and time lost in setting up an alternative. When all that needs to be done is to support Foolkit so that business people can find it more easily.

Foolkit has over 500 pages of information and thousands of resources. It is tailored to each State. It covers both Federal and State. It is available in over 50 languages. It has the most comprehensive collection of assistance services that I know of. You can find answers to common questions, learn how to research more complex issues (lawyers use it a lot), DIY, find and work with a lawyer, find a dispute resolution service or legal assistance service, research the facts etc etc etc. Unlike most websites, it has information for the retailer as well as the consumer, the Landlord as well as the Tenant etc.

It is constantly updated as new information or services become available and I welcome suggestions for content.

If you want to assist small business, and the community to find the information to help them avoid disputes or resolve disputes or to find somebody to help them then I invite you to support Foolkit.

An easy form of assistance is to link to Foolkit.

Let me know if you have any queries.

Regards,

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