



**Australian
Newsagents'**
FEDERATION LTD

**Submission by the Australian Newsagents
Federation
(ANF)**

**Resolution of Small Business Disputes
Options Paper – May 2011**

30th of June 2011

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1. About the ANF

The Australian Newsagents' Federation (ANF) is the peak body representing Newsagents in Australia.

Through a recent constructive process of unification of our industry with, the Victorian Association of Newsagents (VANA), the Queensland Newsagents Federation (QNF), the Newsagents Association of NSW and ACT (NANA) and the Western Australian Newsagents Association (WANA) along with our own branches in TAS, SA and NT we now jointly represent over 2,500 small businesses around Australia, who together employ an estimated 10,000+ staff. The majority of Australians shop in a newsagent every week.

Newsagents are subject to a number of pressures that are distinct from those which affect large corporations and even many other small businesses. Whilst newsagents make a significant contribution to Australia's economy and are one of the largest retail channels in the country, they are often characterised by modest profit margins. Newsagents are particularly vulnerable to tough negotiations by powerful suppliers and landlords and costly changes to regulation as their margins are largely set externally and they have a very limited ability to absorb large increases in costs. They also have limited resources to devote to defending their interests through the courts. The impact of oppressive conduct by powerful suppliers and landlords can have dramatic consequences for newsagency owners, their staff, their families and their communities.

The ANF is committed to protecting the interests of our newsagents around Australia, in order to ensure that they continue to make a positive and sustainable contribution to the Australian community, as they have done for generations. We are very keen to work with the government to find solutions for these problems and to make sure that our industry develops an innovative direction for its future.

2. Summary

The ANF welcomes this opportunity to provide its views on the options paper and thanks the Minister for Small Business and his department for its development. The co-ordination and development of cheap and easily accessible small business dispute resolution services through the Federal Government is a worthy aim.

The ANF has considered the information and options provided and are supportive of aspects of options 1, 2 and 4 but do not support the establishment of option 3 for a national small business tribunal.

The ANF recommends that the Federal Government assist all States and Territories to adopt the successful Victorian Small Business Commissioner model for dispute resolution that is being further implemented in SA, WA and NSW.

The Federal Government should encourage and financially support this through the COAG process and urge COAG members to agree on consistent legislative powers to develop a standardised service for small business disputes. In some smaller jurisdictions like the territories and Tasmania this should include facilitating arrangements with other states if necessary to provide these services.

The federal governments role should then be to provide services that co-ordinate contact points that feed in and out of these bodies. Establishing a well-resourced information service and website for small business dispute resolution facilities and processes would be an excellent additional initiative.

The ANF believes that industry associations who already play a central role for small business owners, as a go-to-point for business information and services, should be better utilised in the process of providing alternate cheap business dispute resolution services. Associations can assist with initial inquiries that may not require escalation and mediation.

The Federal Government should invest in the utilisation of industry association's long-standing experience delivering front-line services to small businesses. So their ability to apply knowledge and understanding of typical disputes and solutions to inquiries can best be harnessed. This can be done through triaging of disputes at this level before escalation where necessary as part of a broader service. This could also provide significant cost savings to the overall system.

The ANF would welcome the opportunity to consult with the Minister and his Department again on this information and to be involved in further developing these services.

3. Dispute Resolution for Newsagents

It is the experience of the ANF and our partner associations that there is a relatively high level of disputes in our industry. Particularly pertinent to the situation of newsagents are the reasons for not regularly using existing dispute resolution services or avoiding disputes:

- Newsagents do not want to damage valuable relationships with powerful key suppliers or larger businesses like landlords and fear that dealing with a dispute will do so.
- Newsagents lack the resources (time and money) to invest in pursuing the resolution of these disputes.

The range of disputes effecting newsagents in no particular order include the following:

- Supply and distribution arrangement disputes
- Employment and industrial relations disputes

- Leasing and landlord disputes
- Franchisee/Franchisor disputes
- Contractual disputes
- Debt recovery disputes
- Service disruption disputes
- Competition related disputes
- Government disputes
- Partnership disputes and shareholder disputes

Newsagents are strongly supported by their associations in dealing with many of these types of disputes. Generally though, the imbalance in negotiation is what leads newsagents to accepting poorer outcomes. Newsagents, who are mum and dad run community based small businesses do not have the time and resources to take on the powerful large businesses that they often have the most common disputes with.

Quality dispute resolution through a system that has the backing of legislative powers would result in much better and fairer outcomes for our member newsagents.

4. Function of Federal and State Governments and Industry Associations in Dispute Resolution

Until recently, the ANF has been of the view that a federal small business ombudsman type role would be successful as a model for providing greater support to our members in their negotiations and disputes with other businesses. Given the success however of the Victorian Small Business Commissioner model and the intention of SA, WA and NSW to also establish and further develop this model. It is now our view that it is most sensible to support the continuation of this direction in the most consistent way possible. We would recommend this include even more targeted powers to achieve fairer outcomes for small businesses in their negotiations and disputes, especially with big businesses. Also, as most of the dispute resolution services currently, reside at State and Territory Government level, these services to support small businesses should be maintained and expanded by the Federal Governments program. The expansion of the Victorian model would work to compliment this.

To achieve this the Federal Government should encourage the states and territories through the COAG process to adopt the Victorian model of a Small Business Commissioner.

The Federal Government should financially support this rather than creating new dispute resolution services. Encouraging COAG members to agree on consistent legislative powers through small business commissioners to develop a standardised service for small business disputes is essential. There should also be protocols developed for cross border disputes and in some smaller jurisdictions like the territories and Tasmania, this may include facilitating arrangements where other states if necessary through their commissioner provide the overall services.

The Federal Government's role should then be to provide services that co-ordinate contact points and triaging that feed in and out of these bodies. This function can be achieved through providing a well-resourced information service and website that could provide information on the types of services available and processes of dispute resolution. It could then direct small business inquiries to the most appropriate entry point.

Industry Associations should provide entry points for front-line advice and triaging of issues

We think the Federal Government should consider the value of industry associations as the go-to-point for business information and services for small business owners in each industry sector. Associations provide an experienced network of entry points for small businesses for advice and could equally provide front-line small business dispute resolution processes in each state and territory as well. We believe the Federal Government should be working in partnership with us as the best placed people to understand the nature of the disputes in our industry and to be able to provide front-line advice and triaging of issues.

Through targeted investment in industry associations to deliver these front-line services and through the ability of industry associations to apply knowledge and understanding to typical disputes and solutions to inquiries in our industry, significant cost savings to the overall system could be made. This solution would also have the added benefit of taking away complaints that are currently being placed with the ACCC and that do not relate to them. This can be done through triage of disputes at this level before escalation where necessary as part of a broader service.

5. Option One – National Information and Referral Service

“Establish a dedicated national small business referral service that provides information and guidance on dispute resolution”

The ANF supports this option.

Newsagents shouldn't need to go trawling through multiple sites looking for information on how to handle disputes or if necessary for the most affordable place to seek dispute resolution services. They need a “one stop shop”

Ideally, a future services details and website could be linked from the ANF's own site and those of our association partners. Newsagents looking for information to make themselves more informed on handling disputes could then easily access this. This service could refer newsagents who require front-line advice to resolve existing disputes, to the relevant personnel in an industry association who can assist and decide if the situation needs to be further escalated.

Newsagents are time poor and a "one stop shop" that links with their current associations provision of services and information is the best approach.

The service should provide the following elements:

A "one stop shop" where newsagents can source a range of small business dispute resolution information and tools including training, information on avoiding disputes, information on processes for dispute resolution and directions on entering the dispute resolution process. A well-staffed, well-resourced and multi-lingual service that can direct small businesses to entry points for dispute resolution services is also required.

As a deterrent, it should also include a publicly available register of businesses and government bodies who have refused to participate in small business dispute resolution when requested. This would act as a resource to assist in better educating businesses about the parties they may be entering into new agreements and supply arrangements with.

It should also provide links to the relevant industry associations who can assist as an advocate or front-line facilitator of resolution services and it would need to be marketed and promoted extensively through a broad range of industry groups and externally.

6. Option Two – National Dispute Resolution Service

"Establish a national small business dispute resolution referral service that provides information and guidance on dispute resolution. Where there is a service gap for small businesses the Australian government will establish a mediation service."

The ANF supports the option of the Federal Government filling service gaps and providing referral services. However, our support of this option is on the basis it is linked to the expansion of the Victorian Small Business Commissioner model that is already being proposed in SA, WA and NSW. We encourage the Federal Government to urge through the COAG process remaining States and Territories to establish similar services with the Federal Governments assistance, as we have already articulated. The Federal Government should then support this network through a centralised referral and information service.

7. Option Three – National Small Business Tribunal

“Create a National Small Business Tribunal, which will deal exclusively with small business disputes, offering conciliation and reviews of conciliation outcomes. The Tribunal will be backed by Commonwealth legislation.”

The ANF does not support the establishment of a national small business tribunal, as we believe this to be a very expensive model to set up and that while difficult for small businesses to utilise, courts can provide this role. The investment required would also provide better services to newsagents through the other options for alternative dispute resolution.

8. Option Four – Small Business Advocate

“Establish a Commonwealth Small Business Advocate which incorporates a dispute resolution function for education, early intervention and mediation for small business (business-to-business) disputes.”

The ANF is supportive of the notion of an independent advocate for small business issues in the Federal Government and its agencies. However, we would hope that while not independent of the government the Small Business Minister and his staff would be fulfilling this role anyway. Likewise, it is the role of associations to provide independent advocacy and representation for their members to government.

As we have clearly articulated already, the ANF supports the adoption of the Victorian model of a Small Business Commissioner as an impartial independent officer in each state & territory to investigate and arrange mediation, education and early intervention for small business disputes.