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Dispute Resolution

Q. What should the scope of the Ombudsman's own mediation service include? For example, small business disputes with Australian Government agencies or disputes under industry codes of conduct?

- Any dispute that can't be referred to an existing Ombudsman services.

Q. What powers should be conferred to the Ombudsman to resolve small business disputes?

- Power to investigate dispute submissions 'on the papers' from Applicant and Respondent (similar to Financial Ombudsman Service).

- Power to request documents (similar to discovery stage in court).

- Power to order mediation prior to a determination but after submission and discovery stages so both parties know where they stand in terms of issues and potential determination. Both parties are then forced to mediate in good faith if aware that a failed mediation could lead to an unfavorable publicly available determination soon after.

Currently, franchisors attending an OFMA mediation against a small franchisee do so to merely tick the box when it is aware that the franchisee doesn't have cost capacity to run a litigation matter after failed mediation. Franchisee is also aware of own cost incapacity to litigate and is forced to accept any inequitable and petty offer made available. Therefore there is no real incentive for big business to settle the dispute equitably by mediation.

- Power to make binding determinations that can be enforced by Federal Court.

- Power to stop big business court action if taken without Ombudsman dispute resolution determination certificate (similar to Financial Ombudsman Service).

- IT IS CRITICAL that there be some mechanism to stop the big business party from simply ignoring any unfavorable determination with the knowledge that the small business can't sustain the legal costs of court litigation. Otherwise, the whole purpose of the Ombudsman would be negated. The costs of legal system has become a massive barrier to fair and equitable conduct between small and big business. David v Goliath litigation should be heavily discouraged by any and all means. Possible mechanisms need further and deeper discussion.

Q. Which types of dispute resolution services should the Ombudsman provide and what should be the model for providing these services? For example, should these services be outsourced or provided in-house?

- Services should consist of investigation, mediation and determinations.

- Services should be delivered by way of a resolution process consisting of investigation mediation and determination.

- Services can be outsourced for complaint types that are a small financial value or mediation only or unfair conduct only or generally disputes that are unlikely to require compensation.

More serious disputes that have a significant compensation issue should be retained in-house in case a determination is required.

Investigation Powers

Q. How can the Ombudsman be a strong advocate to the Government? Are there particular practices that the Ombudsman should focus on?

- Affordable and timely dispute resolution so small business can concentrate on small business.

Q. How can the Ombudsman be a strong advocate to larger businesses on the needs of small businesses?

- No comment at this stage.

Q. Should the Ombudsman be conferred powers to investigate allegations of practices in the public and private sectors that are negatively affecting small businesses?

- ABSOLUTELY

Regulatory Burdens

Q. How should the Ombudsman engage with small businesses and family enterprises to identify the regulatory burdens most affecting them?

- Online surveys sent to email subscribers.
- Surveys promoted with ATO and ASIC correspondence.
- Focus groups of small business advocates and associations.

Q. What activities should the Ombudsman be tasked with in order to make Commonwealth laws and regulations more small business and family enterprise friendly?

- Activities as per above.

Entry Point

Q. What delivery channels should be used to provide the single entry-point? For example, a website, hotline or social media.

- Website and hotline.

Q. What key information should the single entry-point provide?

- Dispute resolution options and procedures.

Q. In relation to the Ombudsman website, what is the best way to link with existing authoritative sources of information for small business? For example, would links to existing websites be sufficient?

- Links to existing sites.

Q. In addition to providing information and initial support to small businesses, what other forms of small business engagement could the single entry-point offer?

- No comment at this stage.

Appointment

Q. How should the Ombudsman be appointed?

- **Statutory**

Q. What is the appropriate length of appointment of the Ombudsman, and should there be an option for re-appointment?

- **3yr max term.**

Q. How should dismissal of the Ombudsman be managed?

- **No comment at this stage.**

Overall, I think the Ombudsman plan is great but only if the body has teeth and can deliver dispute resolution solutions.

Kind Regards

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