

# The Small Business and Family Enterprise Ombudsman

Submission by

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## Small Business and Family Enterprise Ombudsman Submission

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## **1. Introduction**

This submission is from a small business in Victoria. It is very encouraging to see the appointment of a Small Business and Family Enterprise Ombudsman. Our focus in this submission is on a significant cost to small businesses which largely goes unnoticed. This submission deals with the hire of pallets and other like equipment.

## **2. About Us**

Pallet Loss Prevention Pty Ltd is a small business based in Bulleen, Victoria. We provide pallet management services for companies throughout Australia and we have been in business for over 10 years. We are thus well equipped to comment on the needs of small businesses who hire pallets.

## **3. Pallet Hire Overview**

Small businesses hire pallets from Australia's main pallet hire companies, CHEP and/or Loscam. Daily hire charges apply until the small business transfers the pallets off their pallet account on to the business they send their goods to.

Often these small businesses are sending pallets to much larger companies. Where they get into trouble is if the pallet transfer is to Australia's major retailers. Small businesses lose many thousands of pallets every year to major retailers. The major retailer thus gains the use of pallets at no cost whilst the small business is hit with crippling daily hire costs until they compensate the pallets to the pallet hire company.

There a number of reasons why small businesses lose pallets but currently small businesses have to accept the losses as they fear retribution from the major retailers and thus tend to not rock the boat. The impact of these losses has been enough to force some small companies out of business.

Some of the ways that small businesses lose pallets to the major retailers are:

### **3.1 Receiver Declare Accounts**

Some companies have agreements with the pallet hire companies which prevent the small business notifying them of transfers off their accounts. Instead, the receiver takes on the responsibility of the transfer notification.

Major retailers who have been granted “receiver declare” status are:

- Coles
- Target
- Kmart
- Officeworks
- Aldi
- Woolworths (previously had some receiver accounts now are no longer receiver declare)

“Receiver declare” accounts often fail to notify the pallet hire companies, and if the small business does not become aware of this failure within 6 months then the “receiver declare” refuses to accept the transfer of hire. They thus gain pallets at no cost and the small business loses them. If the “receiver declare” does accept the transfer then they do it at a current date and the small business can incur a minimum additional 6 months hire charges. The more incompetent a “receiver declare” account is the more pallets they gain.

### 3.2 Pallet Transfer Authorities

Some major retailers refuse to accept transfers raised by small businesses; instead they issue their own pallet transfer authorities (PTA). These are like blank cheques as they can be used to transfer pallets off any account.

Often they go missing or confusion over which account the pallets should be transferred off leads to them being transferred off the wrong account or not at all.

If the pallet transfer authority is not notified to pallet hire companies within 6 months then the major retailer may not accept the transfer.

Major companies who issue pallet transfer authorities are:

- Metcash
- Big W

### 3.3 Small Transport Companies

Small transport companies are in a difficult situation. Some major retailers stipulate that they will only accept one transfer per load. This then forces their suppliers to transfer pallets to carriers, many of them are small businesses. These carriers are forced to operate pallet accounts and they are charged some of the highest pallet hire rates. They are forced to take on the risk of pallet losses and the additional costs that go with it.

### **3.4 Companies who operate without pallet accounts**

A major problem for small businesses, particularly carriers, are companies who operate without pallet accounts. When the carrier delivers to these companies they either have to exchange full pallets for empty ones or leave the pallets and hope that they can recover them at a later date. Some of these companies who operate without pallet accounts gain the use of pallets at no charge whilst the small business (usually, but not always a carrier) continues to pay for them.

It is possible that the Small Business Ombudsman could work with pallet hire companies to ensure that small businesses are not disadvantaged by the actions of companies who do not operate pallet accounts.

## **4. Dispute Resolution**

Small businesses who deal with major retailers have currently nowhere to take a dispute as the major retailers operate across state boundaries.

### **4.1 Mediation Services**

It would be preferred that the Small Business Ombudsman provide its own mediation services for pallet hire disputes. It is recommended that this service extend beyond small businesses as companies of any size can experience the same problems when dealing with major retailers.

There is currently no code of conduct for pallet hire although the Victorian Small Business Commissioner spent over 3 years working with a group of stakeholders to try and agree on a voluntary code of conduct. This major effort failed when some of the group members decided that the code did not provide national coverage.

Efforts will be made to have the Government prescribe a mandatory code of conduct for pallet hire. When this does occur then it is recommended that the Small Business Ombudsman provide mediation services for it.

### **4.2 Resolving Small Business Disputes**

It is essential that the Small Business Ombudsman has adequate powers otherwise small businesses may see little value in approaching him/her and large companies may opt to continue on with their current practices. There have been very few pallet hire disputes brought before Small Business Commissioners due to the perception that they have limited powers.

It is recommended that the Small Business Ombudsman make administrative decisions. This would ensure that the majority of disputes would be resolved quickly.

Given that the majority of disputes are likely to be between small businesses and major retailers then all disputes would be of an interstate nature and should be referred to the Small Business Ombudsman rather than state Small Business Commissioners.

### **4.3 Dispute Resolution Services**

Due to the specialised nature of pallet hire disputes it is recommended that initially dispute resolution services should be a combination of inhouse and outsourced resources.

The use of a single-entry website is critical to ensuring that the service can be easily and quickly accessed. Another reason that pallet hire disputes have not been brought before Small Business Commissioners is a lack of awareness that the service exists.

## **5. Commonwealth-wide Advocate**

### **5.1 Mandatory Code of Conduct for Pallet Hire**

Government is generally unaware of the problems small business face with pallet hire. Along with the then CEO of the Victorian Transport Association (VTA), Phil Lovel AM, I had met with Dr Craig Emerson who was then the relevant minister. It was decided that no action would be taken until the code of conduct efforts had concluded.

It is now clear that a voluntary code of conduct is unachievable and thus a mandatory code is needed. It is recommended that the Small Business Ombudsman assist small business by advocating for a mandatory code of conduct for pallet hire.

### **5.2 Focus on Pallet Policies**

Major retailers, in particular, apply their pallet policies with no negotiation or discussion. Included in these policies are their determination that they will not accept the pallet transfer of hire on the day of delivery but it will be some time in the future. The following table shows the different delays applied by major retailers for deliveries of dry or ambient temperature goods.

Company	Delay Days
Metcash	45
Coles	33
Target	33
Kmart	33
Officeworks	33
Woolworths	30
Big W	30
Costco	30
Aldi	28

These policies largely remain unchallenged for there is no one to review them to ensure their fairness. There is nothing to stop a company from applying a 100 day delay should they chose.

The delay days applied by major retailers have cascaded down to other companies in the supply chain. Some carriers have little bargaining power and there have been occasions where carriers have been denied the application of delay days by their more powerful customers. This means that the carrier ends up paying the additional costs of the delayed transfer.

It is recommended that the Small Business Ombudsman review pallet policies applied by major companies.

### **5.3 Advocate to Larger Businesses**

Much of the pallet hire disputes revolve around the major retailers. It is recommended that the Small Business Ombudsman meet with the major retailers or any other major corporation and provide feedback on how their pallet policies and behaviours are impacting on small businesses. This would require a comprehensive database of disputes so that information could be extracted in a timely manner.

It is expected that the CEOs of major retailers have little awareness of how their pallet management teams are hurting small businesses.

### **5.4 Investigative Powers**

If the Small Business Ombudsman had investigative powers then this would be a powerful deterrent to those companies who use their size to take advantage of small businesses.

It would also provide the opportunity for small businesses to raise an issue affecting multiple businesses without going through the dispute resolution process.