



Council of Small Business
of Australia

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Submission: Small Business Disputes Options Paper

COSBOA congratulates the Minister on this options paper which recognises the need of small business people to access the type of support provided to other individuals in larger workplaces.

Our response is based on the facts that:

A small business is a person who should not be assumed to have all the skills and knowledge necessary to deal with every situation which may present itself in a business;

Small business is the integral part of our economy and must be a healthy sector and for the business to be healthy the person running that business must also be healthy;

The complexity of modern commercial law is normally beyond the understanding of an individual;

The cost of seeking professional legal advice is often beyond the reach of a business owner.

Of the four options presented we have assessed them all and have a response based on a combination of various parts of the options.

We believe that the best outcome is a Small Business Advocate, although we prefer the name to be 'Small Business Commissioner', with support through the formation of a National Dispute Resolution Service

In the end we believe we need a Small Business Commissioner (option four) to provide independent representation of small business interests and concerns to government agencies and departments. This Commissioner would need to have a

formal and enforceable capacity for investigating issues and directing agencies on small business matters, including dispute resolution between agencies and small business clients who are providers of goods and services.

The Small Business Commissioner would also be tasked with providing advice and direction when government policies and processes are developed to ensure that small business people are not expected to complete unachievable tasks and activities and that no new red tape or compliance is imposed without compensation to a small business operator. This person would require the necessary resources needed to complete these activities as well as, where necessary, a legislative base to support the role and ensure that the position does not become ineffectual due to lack of ability to enforce advice or findings.

This position would by its nature also require a National Dispute Resolution Service (option two) to be established to resolve small business disputes. As outlined in the options paper the tribunal would have the powers of investigation, conciliation and review, which should be backed by new Commonwealth legislation. We understand that it would provide coverage for a wide range of disputes but it would not deal with code of conduct matters or retail tenancy disputes as these are state based matters. The tribunal should, however, have the capacity to refer to state based mechanisms and force businesses into dispute resolution on state matters using the processes that currently exist. Where a jurisdiction does not currently have a capacity to provide resolution on tenancy matters then the tribunal should use existing federal legislation to force resolution. Given that tenancy issues is one of the biggest concerns for small business this option should be made available.

We understand that the Victorian Small Business Commission (SBC) model is being used as a template for other states. In Victoria the Small Business Commission administers the Retail Leases Act as well as the Small Business Commissioner Act. Although the tribunal allows for low cost mediation they can only make recommendations to Victorian Civil and Administrative Tribunal (VCAT). Decisions at VCAT are binding on both parties and each person is responsible for their own legal costs. We believe that the SBC focus should include any B2B disputes whether they are contract or Trade Practices Act (now Consumer Goods Act) disputes.

Although the Victorian SBC is for mediation only it is an inexpensive step that small business people will try as the cost of submitting a claim is only \$195. The problem is that the SBC does not have all the legislative power it needs. For example if one of the parties does not attend, as can be the case as the legal profession often derides the power of the SBC, the Mediator has no power to enforce costs. We would propose that the mediator can recommend that all costs for legal council (by both parties) when attending VCAT is borne by the person who fails to attend mediation as they have not acted in good faith. This would strengthen the influence of the SBC and the mediation process and many more small businesses would access the service.

Larger companies who use law firms to represent them would then be incur a much higher cost to defend a claim against them and would be more likely to settle small claims before mediation. We believe that this is what is needed in the Victorian system to make it work as effective as possible and this should also be considered for any federal Small Business Tribunal or Commission.

Thank you for the opportunity to comment on this important issue and we are available for consultation and further comment as necessary. Please contact me on 0433 644 097 or ceo@cosboa.org.au.

Your sincerely

A handwritten signature in black ink, appearing to read 'Peter Strong', with a stylized flourish at the end.

Peter Strong
Executive Director