

By email: smallbusiness@innovation.gov.au

The General Manager
Small Business and Deregulation Branch
Department of Innovation, Industry, Science and Research

Dear Sir/Madam

Resolution of Small Business Disputes Options Paper

1. I have been in small business as employee or owner since 1997.
2. I would support the introduction of a National Small Business Tribunal (Option Three) as a step in the right direction.
3. Based on my personal recent experience, I do have concern with the following phrase in Option Three:

‘The majority of small business disputes relate to retail tenancy and franchising matters. Consultation has suggested that these disputes are best dealt with by existing state mechanisms, such as the Office of Franchising Mediation Adviser or the Retail Tenancy Unit of News South Wales Fair Trading.’

- 3.1 Office of Franchising Mediation Adviser – Used as a tick box by bully franchisors and a complete waste of money for franchisees. Useless without ‘good faith’ conduct provisions in legislation. Currently, sufficient ‘good faith’ conduct criteria described by actual mediator as being ‘attend, not leave early and make **an** offer’. Nothing more is required to tick this box. A threat to terminate within 48hrs of mediation ending is not considered. Other misleading and deceptive conduct during mediation is typically protected by mediation confidentiality agreements signed at start. Imbalance of power makes true and fair mediation impossible.
- 3.2 Retail Tenancy Unit – Many if not most retail franchisees operate under a ‘Licence to Occupy’. The provisions of which typically suggest that the franchisee and actual occupant has no actual legal standing under the lease and therefore unable to make an application to the Administrative Decisions Tribunal Retail Leases Division. The payer of rent, guarantor of lease (between franchisor and landlord) and provider of rental guarantee is effectively circumvented from the current dispute mechanism.
4. GOOD FAITH needs to be legislated. Without good faith conduct requirements it doesn’t matter what dispute resolution forum is used or called. Imbalance of power must be rectified **before** any forum is considered as a possible solution.
5. ‘The world is a dangerous place, not because of the people who do evil but because of the good people who do nothing’ Albert Einstein.

Yours Faithfully

Isaac Chalik