



LEADR Response to the  
*Options Paper for Resolution of  
Small Business Disputes*  
June 2011

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# Introduction

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## *Preamble*

LEADR is very pleased to respond to the Department of Innovation, Industry, Science and Research, Options Paper for Resolution of Small Business Disputes.

To prepare this response, LEADR:

- created an online survey and via email encouraged its 1800 Australian members to complete it
- advertised the Options Paper and the online survey in its electronic newsletter *Update* which is circulated to members.
- conducted a consultation session with a small group of members in Sydney
- compiled and sorted the responses received to include in this document

The results of this survey show that a majority of respondents favour Option 2, followed by Option 1.

Both these options support the use of existing services, with Option 2 also offering “a mediation service where no appropriate low cost dispute resolution service exists.”

The second option effectively includes a “safety net”. Whether this safety net is needed, may require an analysis first of how comprehensive the coverage is of existing services. As well, where coverage is poor, including in regional and remote areas, consideration could be given to on-line or telephone mediation which can be accessed by using an existing service.

To ensure an affordable service, it may be worth the government offering financial support to small businesses that meet given criteria to indicate financial need. This could be managed through direct payments to business owners in need, or to the organisations that provide the mediation services. Consideration could also be given to developing a low cost model of mediation (eg a restricted number of hours) for businesses that met the financial need criteria. Both these options may be more cost effective than establishing a service to supplement existing services.

If small business owners are to be referred to mediation through the adoption of any one of these options, LEADR strongly urges that there be a requirement that such mediators are accredited under the National Mediator Accreditation Scheme. This will help to ensure the delivery of a quality service.

LEADR has more than 500 nationally accredited mediators and other dispute resolution practitioners (including conciliators, adjudicators and investigators) located in all major cities and many regional areas throughout Australia. Many of these have significant commercial experience. LEADR is able and interested in working with government to establish a panel of suitably qualified and/or experienced practitioners to assist in the delivery of dispute resolution services to small businesses.

### *The survey*

Please find the survey at Appendix 1.

### *About LEADR*

LEADR is a not-for-profit membership organisation that:

- promotes and facilitates the development and use of alternative dispute resolution
- provides member benefits in a vibrant ADR environment to
- promotes and supports best practice in ADR

LEADR currently has more than 2200 members spread across all states and territories of Australia, across New Zealand and in many countries in the Asia-Pacific region, including Indonesia, Malaysia, India, Tonga, Samoa and Micronesia. LEADR members are engaged primarily in mediation. Increasingly, however, they also practise other ADR processes such as adjudication, arbitration, facilitation, conciliation and conflict coaching. Members are drawn from an increasingly wide range of professional backgrounds including law, psychology, human resources, social work, education, finance, accounting, management/business, architecture and engineering.

On a day-to-day basis LEADR:

- delivers training both as public workshops and in-house programs in mediation and associated dispute resolution topics
- accredits mediators under the LEADR Scheme for Accreditation and now to the new Australian National Mediator Standards
- provides services to LEADR members such as a regular newsletter, continuing professional development opportunities and professional networking
- responds to client requests with referrals of suitably qualified dispute resolution practitioners
- responds to inquiries from across the community about ADR

- promotes the practice of ADR in a wide range of settings including for government, business, industry and individuals in commercial, industrial, workplace, community and family matters

### *Contact details*

Fiona Hollier  
Chief Executive Officer  
LEADR – Association of Dispute Resolvers  
Level 1, 13 -15 Bridge St,  
SYDNEY 2000  
T: 02 9251 3366  
E: [fionahollier@leadr.com.au](mailto:fionahollier@leadr.com.au)

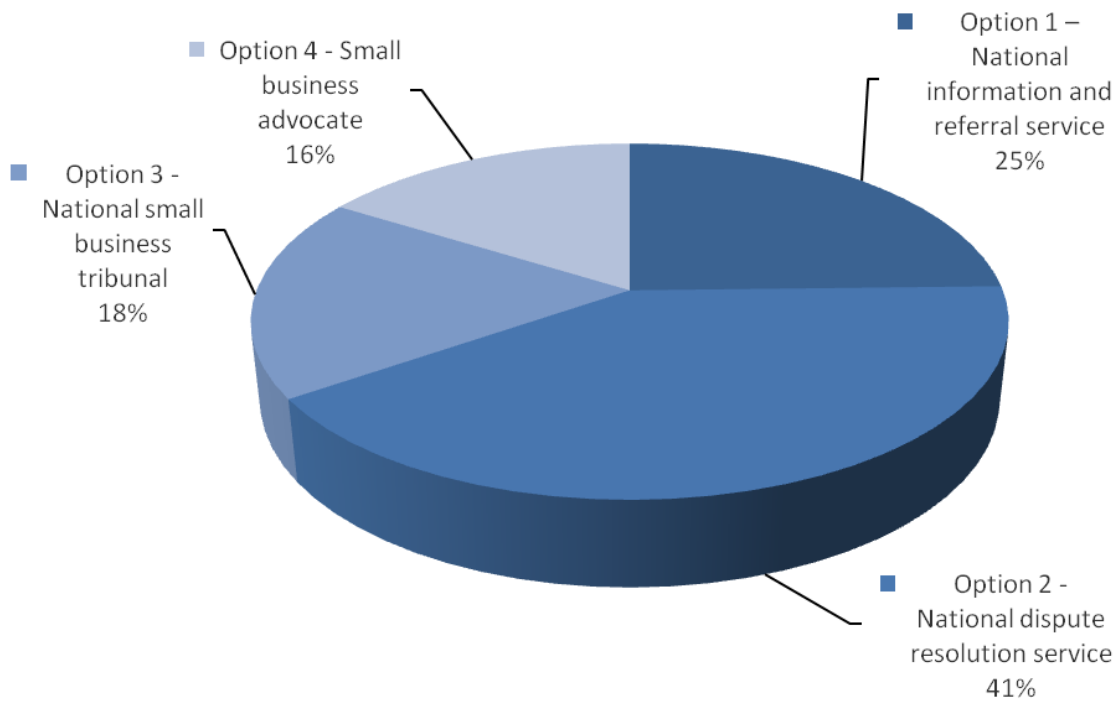
## Response based on the survey

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LEADR received 140 responses. The graph below shows the percentage of respondent who nominated each option as their most preferred.

### Preferred option

% of respondents preferred this option



## *Comments on the various options*

(x) indicates the number of identical responses

### *Option 1 – National information and referral service*

**Q1: Would the service establish a new phone line or website or should it use an existing service that many small businesses are already aware of?**

#### **Use existing service**

- Use an existing service that small businesses are aware of (5)
- Use ASIC contact centre
- Easiest and most efficient way to disseminate info and educate small business would be through existing services such as Consumer Affairs or VCAT
- Existing - equivalent to VECCI in Victoria
- It should use an existing service that is already known such as the relevant state fair trading site.
- Use existing services wherever possible. Potential users are not aware of services until they are in crisis which is not an ideal time to start looking for help.
- Best to use existing service to ensure costs are minimal

#### **Establish new phone line and website**

- I think it should be a new phone line to give it a new image and brand
- Any new process could be conducted by a telephone conciliation model which would be most time and cost efficient for small business
- Create a new phone line and website so as to differentiate and trigger an awareness campaign
- New phone line /website as opposed to existing service - perhaps similar in structure to service for FDR
- Establish a new phone line and website (2)
- New phone line
- A new phone line with an actual person to talk to could be added to an existing service
- Yes, a new phone line widely published in the media
- A new phone line or website is preferable
- New website and existing phone line
- New website and advertising of this website would help to 'get the word out' and people are aware of services available. Phone line perhaps can be incorporated with another dept, agency who have similar function. For example people like unions, ER association etc can help with this. Small business need

access through email and phone where they can access information and look at their options

- Dispute resolution is an underdeveloped service industry in Australia thus I think that a new phone line and website should be established. Studies have shown that most small business have disputes about non-payment of services and these are often not large amount of money owing. Mediation would have to be relatively low cost to small business for this reason (you aren't going to hire a Mediator if the costs outweighs the disputed amount)
- Small business can be contacted and advised by a carefully structured internet advisory site
- The service would establish a new telephone line
- A new phone line with fresh branding for the new service. This will help thwart prejudices formed by use of any existing service. To keep in the loop those satisfied with existing services, the publicity for the new service should take care to declare that it seeks to build on the existing services.

#### New service

- New service with a readily recognisable name, eg. Small Business Dispute Resolution.
- A small business advocacy service by phone would be a useful precursor to any dismissal action for both parties employer/employee, and also for general information at any time regarding DR. A telephone service could address issues along HR, internal business operations, behaviour and ethics.
- New service - use new phone number and website

#### Other

- Time-frames, cost components, variables, options available, flip-sides to each option available, etc would be most welcome information as guiding factors.
- These services already exist - unfortunately the business community is not aware of them

**Q2: What types of general information and guidance would be most useful to small business in their business disputes?**

#### ADR process

- Court options and processes
- Avenues to different ADR's and costs associated
- ADR processes that are currently available with a focus on the benefits of early management of disputes
- Business would benefit from general Alternative Dispute Resolution information and be guided as to which form of Dispute Resolution is beneficial in each case (especially time and costs, in other words what is cheaper and quicker)



- Information on alternatives to courts for dispute resolution would be useful
- Comparison of options, outcomes and costs for ADR
- General guidelines on steps towards dispute resolution (a do it yourself kit?) may help
- Information on the process works and how long it takes, what is expected of the small business person and other party, how to deal with the dispute themselves and the kinds of techniques to support the other party so as to resolve the dispute between themselves
- What issues can this new agency help small businesses with and what it cannot help with, expectations of parties, goals and function of agency, options available for them in order to try and resolve disputes, the services available and help available if required
- General information on what records small businesses should collect about their own business before arranging a dispute resolution process would also be useful
- The most important information would be how businesses could solve their disputes without having to go to court

### Mediation

- To have qualified mediators providing guidance at the end of the phone as to options available for them
- Availability of accredited mediators and dispute resolvers and avenues for contact
- Basic law and guidance on mediation and conciliation
- Provide new employees and businesses the option to attend mediation as part of a 'fair' and 'equitable' package if and when disputes arise within small businesses
- Often small businesses seem to think they need a legal solution to the problem and thus contact lawyers. Referring to a mediation system may reduce the costs overall and many disputes would never reach a court or tribunal
- Where to go for help, how to get help, what kinds of things to take to mediation, pointers on how to prepare ( good examples on DSCV website, Victoria)

### Other

- Overview of legal rights and obligations in layman's terms
- A brochure/website outlining the options and a call centre to answer questions
- Use existing industry bodies and provide seminars or online information for best procedures to be followed
- Clear concise information without a lot of red tape would be most useful
- Provide useful, practical information at an individual level, for example by post or letterbox drop

- Place information online when registering a business that is industry specific or listing first step dispute processes
- They should have a simple how-to guide which is developed not by the commissions and be a clear straightforward process - the last thing business need is something written like the Awards or various Acts. The process needs to be simple, clear and restrict legal involvement (allow unions and advocates)
- Rights and obligations of small businesses
- Flow charts
- A website which is easy to navigate

**Q3: Would a national referral service be used by small businesses? If so, how valuable would it be?**

**Yes**

- A national referral system would offer some value and benefit
- I prefer a national dispute resolution service
- A national approach would be good
- A national service may have the advantage of resolving disputes involving trades in/between different jurisdictions
- Yes, I think so. If Small business knows about the service they would definitely take it up
- Yes, it will be utilized if it is widely advertised
- A referral service would assist small business to locate practitioners
- A national referral service avoids the problems of different rules in each state
- Yes, it would and it would be valuable because it would save money and salvage business relationships
- A national referral service will be used by businesses, provided businesses can choose the referred services from at least two
- National referrals to local resources
- If well publicized, then maybe
- Yes, although the service needs to be well structured and resourced

**No**

- No, national services create monopolies and fewer options for users. As they become government funded, they will be cheaper but this is not necessarily the best option for the dispute or the parties to the dispute
- I do not think a national referral service would be useful unless/until the laws that affect small businesses are uniform across Australia. Until then, state-based services are better

- National referral services may not be used as much as state-based services. The problem may be more in the education of small business owners. Most small businesses are part of a network. Perhaps using the industry groupings and business registration systems would improve awareness
- Not sure if small business will use a national referral service, other referral services have been well subscribed. For example, the nurse on call telephone referral service has relieved ambulance services of some patient loads
- There is sometimes a perception that 'distance delays.' Hence regional services would be preferable (though businesses having a nation-wide footprint may prefer a standardised national service)
- Unqualified advisers who cannot give legal advice would simply give indecisive public servant advice that wastes the small business operator's time. I doubt that they would use another referral service
- They would be more at ease with an 1800 number or the internet

#### Other

- What will the quality of the advice be, the expertise and selection criteria for advisers?
- Any national activity should be based on the principal of delivering services as close to those who will make use of the service. By its very nature small business is widely dispersed. Technology allows there to be a national number that automatically redirects the caller to a local service provider based on the location of the originating call
- Every business sector has different elements thus all referrals need to be considered base on the type of business, associated dispute and referred to those with expertise in the specific area.

#### **Q4: What are the best ways to reach small businesses to improve awareness of dispute resolution?**

#### Advertising

- Advertising campaigns
- Advertising in business media will eventually improve awareness
- Advertisements in business journals
- Through branding and advertising
- Targeted advertising such as local/regional print (community news/magazines)
- Perhaps advertise on other websites or have a link to information from ASIC or the like
- Local area newspapers (the 'local rag') as that is where they typically advertise their own products and services

- The best ways to reach small businesses are by television and radio advertising (Ads in industry-specific journals might also be good but small businesses cover too broad a spectrum for that to be sufficient)
- Advertise in local and national media
- Billboard signs

### Website

- Custom built website with information on management strategies for the prevention of dispute and referral to legal advice from industry body representatives. Industry associates could also promote and liaise
- Establish a website

### Industry associations/unions

- Their own chambers /guilds /associations – for spreading awareness as well as for seeking legitimacy and acceptance  
Through employer association and unions who can advise and refer matters
- Try reaching small businesses via their own industry association

### Government agencies

- Government agency (deferral and state and territory)
- Reach small businesses by state government small business units, local government small business groups or local chamber of commerce groups
- Through business registration/renewal/ATO
- Consider providing information to all business when they complete mandatory returns eg. applying for an ABN, etc
- Through ASIC registration and the ATO
- Maybe links on ATO website

### Other

- Direct mail to small businesses
- An option is to make an arrangement with someone who already has a great distribution to potential customers. Perhaps using an organisation that already reaches and most small businesses already subscribe to, to advertise the service able to be provided and how to contact that service
- New phone line and website advising of dispute resolution practitioners (e.g. mediators) and a list of their names, qualifications, experience etc and contact details
- Community forums

- Seek comments from the small business community in a similar format to this survey via the ASIC company database
- Small businesses are best reached through short and simple education booklets, brief talks from relevant services or brief workshops (time is very precious when you run your own business)
- An online portal that explains the advantages of ADR and refers people to providers such as LEADR and IAMA might have some value

### **Option 2 – National dispute resolution service**

**Q1: Are there any significant areas of small business that are not covered by current dispute resolution services? If so, does the Commonwealth Government have a role in addressing this service gap?**

#### **Increasing awareness and access to ADR**

- Raising awareness is helpful and providing a service which assists small business through s process would be good. A service which offers mediation/dispute resolution or assessment and referral would be great option
- Providing information, raising awareness, referral and addressing service gaps.
- There are plenty of dispute resolution services around in most states; whether they are appropriate and cost effective for users would probably reveal why businesses don't use them. Raising awareness of what is available will improve usage to some extent and appropriate ways of avoiding and/or dealing with issues would also be useful
- Active and ongoing promotion to small businesses to use mediation
- There are still a number of areas of small business which don't have knowledge of Alternative Dispute Resolution Services (e.g. retail shops, hospitality)
- In general, small businesses have little awareness of ADR options
- There is a glaring need for raising awareness. Firm guidelines for establishing and operating the panel should be put in place
- Quick cheap easy access to a fixed-fee service that helps with disputes
- No, but small businesses are probably not aware they can use existing small business dispute resolution options - or other available options
- Businesses already have access to ADR services, and some industries already have dispute clauses included in their operations - they just do not use them. The new Dispute bill may force businesses to consider ADR in the future

#### **Role of Commonwealth Government in addressing service gap**

- Commonwealth should intervene where no existing state or territory DR service/agency applies

- A Commonwealth service to visit small business to act as a facilitator of information and dispute resolution practice would be ideal
- The Commonwealth Government does have a role in addressing service gaps
- I think the government should improve public access to ADR services and have the courts lead people to ADR
- Since the laws that regulate small business differ from state to state, there is not much that a commonwealth service could achieve
- Not a job for the Commonwealth
- It seems there may not be service gaps. Perhaps it is current waiting lists to use existing low cost/free services that require attention. That would mean additional government funding to increase resourcing of existing services
- The Commonwealth Government has the responsibility to address this gap and educate the general business community about what alternatives to litigation exist

#### Other

- Builder/owner builder contract disputes
- A carefully structured memo of understanding targeted at small businesses would assist in providing advice on dealing with business - to - business disputes
- Engagement of mediators would make the system cumbersome, expensive and cause delays
- Many different associations exist but all particular to their industry group. Probably the best way to reach this huge sector would be by national advertising
- I think small businesses generally have sufficient dispute resolution services at their disposal
- Why not utilize existing facilities and just fill gaps
- Jurisdictional problems are present in trying to resolve disputes and have agreements enforced
- There are already a large number of options for dispute resolution available to small businesses

**Q2: Would the government be better served in raising awareness of what's available or how to avoid and/or deal with a business-to-business dispute?**

#### Raising awareness

- The Government should raise awareness of what is currently available (2)
- I think the federal government would be better served in raising awareness of what's available
- The Government should be raising awareness of what's available

- The government would be best placed raising awareness of services as I think the government would be stepping over the line if it's get too involved in small business disputes
- The Government would be better served in raising awareness of the services currently available. Numerous organizations like LEADR already have a panel of experts in commercial alternative dispute resolution
- Such areas do not need to be covered by government but raising awareness is important

#### Dealing with business disputes

- I think that there should be a national dispute resolution service which should deal with all small business disputes and particularly partner disputes, vendor and purchase disputes and customer and supplier disputes
- There may be some restriction imposed by statute, contracts and the like where alternative dispute methods may not be possible. Governments are over regulating and making it difficult for the person in business to keep up to date with changes to statute, regulations, by laws etc pertaining to these businesses
- Government imposed DR may delay steps in the court process
- The idea of government further regulating or imposing "government-type" processes onto small business might be onerous for all concerned and deliver a poor result

#### Other

- Not sure what is now available
- Education will always raise awareness
- The main problem is cost. Not sure how they would effectively go about this. Education on problem solving and taking responsibility for one's actions would be fantastic but the community isn't asking for this, although it should be

#### **Q3: Can it be achieved using a Memorandum of Understanding (MOU) or an Inter-Governmental Agreement (IGA)?**

##### Yes – MOU or IGA

- Could probably be achieved using a MOU or IGA
- In any event, yes to MOU
- Either a MOU or IGA would be important
- Better to have an IGA or MOU that reinforces what is already available. For example many tribunals hearing small business that claim matters will not deal with them unless the parties have made some attempt to reach a resolution

using ADR services provided in the courts. Any Canberra dollars would be better spent on targeted strengthening of the existing services

### No – MOU or IGA

- No. There are more than adequate services currently available. It is awareness of these services that is lacking. Yes awareness must be raised. Yes the Government does have an important role to play but stakeholder consultation & input must be part of the ultimate strategy that the government implements
- No. MOU is not necessary
- To get an MOU is likely to be a long and cumbersome process
- If circumstances change, an MOU or an IGA needs to be re-negotiated. MOU and IGA's do not give the flexibility required to respond to changing circumstances
- No, it should be a State matter
- Most businesses would not know the difference between a MOU and IGA and would not care
- An MOU or IGA is not necessary unless there are significant differences in States, noting that national accreditation system already exists
- No, IGAs are set up and staffed by public servants, who usually have had no personal experience of the challenges of setting up a business for a livelihood on a limited budget
- MOU and IGA don't really achieve and enhance "grass roots" promotion to the business of mediation

### *Option 3 – National small business tribunal*

**Q1: How will the Tribunal define eligible "small business"?**

#### Turnover/number of employees

- By turnover or number of employees
- Perhaps on business turnover rather than employees numbers as some businesses can be quite small with a high turnover, while others that are more labor intensive can have higher employment costs and low turnover
- Number of employees - as in the definitions used for unfair dismissals
- Turnover (less than \$1 million) or number of employees (fewer than five full-time or equivalent)
- Small business definition consistent with other legal and tax related definitions - by staffing size and turnover
- Small business can be defined by reference to the number of employees--fewer than 100 and/or the annual turnover--under \$100,000 million



- A limit of \$1,000,000 turnover
- Turnover might be a useful guide as well as number of employees
- Eligible small business should be those under 100 employees as these are the businesses that often don't have the HR or administrative support services within them - their managers or office staff usually multi-task

### Legislations

- Use the definition at section 1115 of the Corporations Act 2001 or section 10.1 of the Small Business Guide
- Look at other legislation for definition i.e. FW Act is less than 15 FTE or equivalent
- Existing descriptions in various State definitions and Legislation would glean the list of suitable criteria

### Other

- Defining "small business" would be very difficult. There are several standards already in place based on number of staff or annual turnover but there are lots of "gaps and cracks"
- Small business is not an easily identifiable group - most models include business between 2 and 100 or 200 employees. However, a 5-person fish shop is a totally different business structure to a 20-person mini business or a 50 person business which has a HR and management structure

### **Q2: Which Commonwealth agency is best placed to establish and administer the NSBT?**

- ASIC is the best Commonwealth agency to establish & administer NSBT
- DIIRD
- Commonwealth or state government agencies are a "turn off" to most small business proprietors who appear to have an inbuilt reluctance to deal with perceived "government departments"
- Fair Work Australia Fair Work Ombudsman
- ACCC
- The agency which already currently deals and help small businesses

### **Q3: Is this option the most cost effective way of addressing small business dispute resolution?**

#### Yes

- Yes, I would think so since it avoids setting up yet another agency

## No

- No, a better way would be to license and pay existing ADR practitioners to promote and operate the service
- No, it should be an additional avenue of dispute resolution

## Other

- Small business disputes could be managed by consumer affairs department or a specialist area of VCAT
- The government commissioned its own report into small business disputes and found that small business actually have few disputes compared to other organisations etc. Perhaps a phone line and website giving advice would be adequate and less costly
- Copy the VCAT jurisdiction and procedures relevant to small business and apply it nationally. Build in real not illusionary DR procedures and add it to the Federal Magistrates court as a separate division with a DR emphasis

### **Q4: Who will be tribunal members and how will they be recruited?**

#### Tribunal members

- Lawyers or industrial specialists
- Tribunal members would need to be nationally accredited mediators
- Ideally mediators with small business experience/understanding
- Representatives of the legal profession, ADR practitioners, layman, government and small businesses
- Advertise for members with specific skill sets which have been recognized, for example lawyers, accountants, liquidators, business people, financiers, etc
- Members can be nominated by small business representatives. State bodies could be used
- If this option was ever chosen then using members of current Small Business Commissioners and Civil Tribunals in each state would be a cost effective way of recruiting

#### Recruitment

- Should not be recruited from the union or employer groups as they need to make impartial fair decisions and many current conciliators in Fair Work have these skills
- Any recruitment to positions should be through the national media and officers should be located nationally

- Existing state appointments transfer in as per Industrial relations
- Recruit from ADR associations
- Through industry bodies and NADRAC referrals
- Recruit by national advertising campaign
- Recruit from existing dispute resolution organisations

#### Other

- Tribunal members are not essential as these matters could be managed by skilled conciliators
- I do not support the establishment of a national tribunal.
- If the Federal Magistrates Court is struggling, why would anyone contemplate yet another tribunal?
- I don't think the tribunal model with a panel of Mediators is suited to small business disputes -too much bureaucracy
- I do not favour setting up of such tribunal
- I don't agree with this option. A small business tribunal sounds very much like court. Businesses want an alternative to sort out their disputes, effectively and quickly, not through long and costly adjudicatory processes

#### **Q5: How far will this option go to fill existing gaps in small business dispute resolution?**

#### May help

- Give tribunal call in powers from other courts (as in VCAT under 10k disputes) to prevent the abuse of legal costs threats against small business operators

#### Will not help

- Probably not since there are already existing services in every state, and this research says are under utilized
- My experience of tribunals is that they vary little in practice, in terms of formality and paperwork, from small claims courts. Also because most of the laws that regulate small business are state-based, not federal, I don't think a national body should assume such a role. It would not be sufficiently skilled and would not be cost effective
- Tribunals (such as VCAT) have the unfortunate problem of becoming more and more like courts over time until what was meant to be a fast and user friendly system requires legal representation and associated financial costs along with substantial delays
- Why another overlay of courts/tribunals
- Although my preferred option I can see that the legal profession will create barriers to entry for no legal persons wishing to serve on these tribunals

- Do wonder if it is counter-intuitive to the notion and existence of small business. Small business operates in "purely competitive" markets and in the past has been a successful business model as it is quick to respond, uses a low cost base, and often innovates
- Not sure it will get there. This is a big ask because so much that is already in place would need to be undone and this leaves people uncertain as to who, what, when, where. The recent credit law changes are a prime example of changing a working system that gave good results for most users to one that now leaves people uncertain and delayed in outcomes. Most issues in small business seem to be customer related rather than business-to-business related

**Q6: Does the NSBT duplicate existing services? How could the duplication of existing services be avoided?**

**Duplicates services**

- This option duplicates services currently available and will be a waste of resources
- Seems to duplicate some state services
- This may duplicate some State government agencies e.g. Safework SA, Employee Ombudsman
- Most likely duplicates existing services
- Yes. I think so. This function can be incorporated and conducted by other agency already exist

**How duplication can be avoided**

- Duplication can possibly be avoided by legislation, jurisdiction eligibility by inter and/or intra State issues
- Legislation that decision can only be overturned in court

**Q7: Does this option overestimate the demand for small business dispute resolution services?**

**Yes**

- Yes, this option overestimates the demand for small business dispute resolution services. The NSBT may be seen as another way of providing "jobs for the boys." We already have many tribunals in Australia that deal with small business disputes

## No

- Dispute resolution options need to be kept simple and quick.
- No, there is a demand for small business dispute resolution
- A referral service awareness campaign is going to generate demand and may uncover current unmet demand that needs to be quickly fulfilled, to be effective. Unless the payer is a very large business or government with substantial financial backing, then they may consider the effort worth the risk
- I believe there are many matters that don't get resolved because of the time/cost equation for small business when dealing with a larger supplier or receiver of goods and services. Many matters are resolved through the involvement of Small Business Commissioners. Figures from those agencies would provide information as to overestimating the demand along with Civil disputes listing from Tribunals both of which provide low user cost solutions

## *Option 4 – Small business advocate.*

**Q1: Are there any other models, either nationally or internationally that might be more appropriate or effective?**

### National models

- Yes, in Victoria and Northern Territory
- Since, in general, small business seems to enjoy dealing with and working with other small businesses (often in their local area), will a national tribunal or office be considered "too remote" (in terms of reach and accessibility) to be effective to "get things done" for small business? Thus, it could be considered further government interference and the opportunity cost of establishment and operation better utilised on direct assistance to their industry or size of business operation
- 

### International models

- The Hong Kong model (of information and direction on mediation) might be a more suitable fit for the Australian small business environment, and a lower entry cost for the government to begin the awareness development phase

### Other

- I think a conciliation model would be more flexible and cost efficient
- Some modification might be needed to provide a low cost model

**Q2: Initial consultation showed some reluctance to use the Advocate title. Is there a more suitable title?**

- Advisor or Dispute Resolution Consultant
- Perhaps consultants rather than advocates
- Not sure an advocate is appropriate. What is the role is it a regulator leader or a spokesperson? Maybe small business ombudsperson
- Counselor
- Small Business Commissioner, as in Victoria
- Mediation Adviser or ADR Adviser- similar titles have been used for the Franchise dispute system which works well
- Definitely avoid use of title "Advocate"
- Advocate connotes adversarial approach – advisor is more neutral
- Words like commissioner/ombudsmen are less likely to appeal due to impression of rules/regulations (or barriers) rather than to provide assistance and development. Perhaps, clearly define the role first, and then develop a job title to fit the role.

**Q3: Should the proposed mediation services provided by the Advocate for small business be subsidised by the Government and if so, to what extent?**

**Yes**

- Yes, as a start-off point
- Yes, fully
- Yes. The body would, of course, need to be subsidized by the government

**No**

- Small business would expect subsidization by Government -since that model is in place now in most states. Given that Australia is a strong small business economy relative to some other countries, this will be a costly exercise for the Government to perform effectively

**Q4: With the large number of low-cost dispute resolution services already available for small business, should the function offered by the Advocate focus on education and referral as outlined in option one?**

**Yes**

- Yes, the Advocate should focus on education & referral as outlined in option one

- If focused on education and referral, then the name Advisor is much more appropriate
- Alternative Dispute Resolution Services already exist, the only function that an Advocate for small business should have is to educate
- As lack of awareness appears to be a key issue, it would make more sense for the Advocate's function to focus on education and referral as part of Option 1
- The commissioner should be able to provide both mediation and determination functions
- Education and referral would be a valuable service to small business
- Yes, education and referral are good options

**Q5: The method of establishing the OSBA may be important in determining how it operates. What would be the optimal method for establishing the OSBA?**

- Get business representatives involved in establishing it from the outset at grass-roots level
- An OSBA based in each State/Territory would be ideal. Centralised systems can be too far away for appropriate referral
- Less formal advice seeking on needs of small business from business and industry groupings would be useful then sharing this information with local Commissioners or regulatory bodies

**Q6: What is the most favourable process for national collaboration on small business dispute resolution?**

- Follow an existing model that has been proven
- Interactive forums
- Small business might warm to a role that will help them get things done faster, reduce bureaucracy, help them grow, increase their wealth, help them to be sustainable
- Mediation, always preferable
- Federal initiatives and by promoting mediation availability through current agencies/ bodies existing & active nationally, eg, LEADR
- Local meetings by interest based groups in each State
- More use could be made of existing community justice centres services which are cheap/free and fast for parties
- Most low cost small business DR procedures and services are ineffective (as are the courts for small and medium claims)

**Q7: Should the Advocate seek advice less formally from the small business community and be able to selectively act on the issue within Government?**

**Yes**

- Yes, the Advocate should seek advice less formally

**No**

- No, I think the Advocate should confine his/her role to research and advising government
- Would not recommend it
- This all sounds too confusing and not user friendly
- It would be better for the Advocate to be the focus for national collaboration around ADR for small business, providing referrals, education, strategy development for collaboration, coordination of action and reporting. If the Advocate were to take on the provision of ADR services it would soon become bureaucratic and unlikely to truly garner the support that could flow from a genuinely collaborative model with leadership by the Advocate

**Both**

- The Advocate should focus equally on the advantages and disadvantages of the available options

**Other**

- I do believe that the advocate should be able to seek advice and assist in an outcome in any lawful way that they can is a good idea. Providing someone with an avenue to have their say, listen to the circumstances of the other party and go away to make a reasoned decision - without the interference of legal actions - is a good outcome for everyone
- Perhaps the Advocate should be encouraged to have some business skills and should the parties not want to mediate then the advocate could adopt a more conciliation approach to resolving the dispute
- The Small Business Advocate must be seen to be a function accessible by employers and employees. The advocacy should be a standalone function funded by C/W and remain impartial for service delivery with accent on information, mediation/conciliation, referral and support for legal and HR practice



## Conclusion

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LEADR is pleased to have had the opportunity to respond to the Options Paper on Resolution of Small Business Disputes.

As already indicated, LEADR believes that:

- Analysis needs to be done of the extent of coverage of existing services
- Consideration could be given to ways of offering financial support to small business that meet a set of criteria that indicates financial need
- Mediators who provide mediation services under whatever option is chosen, should be accredited under the National Mediator Accreditation Scheme

LEADR affirms its continued willingness to engage in discussions and to respond to future papers and proposals. LEADR is also keen to work with government to establish a national panel of suitably qualified dispute resolution practitioners available to provide dispute resolution services to small businesses.

## Resolution of small business disputes

The Federal Government is seeking feedback and comments on four options for a national dispute resolution service for small business.

LEADR will submit your collated feedback and comments.

Please complete the survey by end of Monday 27 June.

Which option would you prefer? Rank them 1-4.

**\* 1=Most preferred; 4=Least preferred**

Option 1 – national information and referral service. A national centralised telephone hotline and website to direct small businesses to relevant existing dispute resolution services. Callers to the hotline would be guided through DR options and referred to relevant service in their state/territory. Could build on services already offered by the Small Business Support Line and Advisor Finder.

1	2	3	4
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Option 2 - national dispute resolution service. An information and referral service similar to option 1, plus mediation service where no appropriate low cost dispute resolution service exists. DR information provided through website and telephone hotline. Callers to the hotline would be guided through DR options and referred to relevant service in their state/territory. If no appropriate service exists, a mediator would be drawn from a standing panel. As well, option 2 would offer awareness and education campaign, targeting specific sectors with a high incidence of disputes.

<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Option 3 - national small business tribunal. A new Commonwealth National Small Business Tribunal would be established to resolve small business disputes. Powers would include investigation, conciliation and review, backed by new Commonwealth legislation. Would cover a wide range of disputes, but not code of conduct matters or retail tenancy disputes. This option gives national network and a one stop shop approach. The tribunal would be based in a capital city and could potentially use existing federal court infrastructure.

<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Option 4 - small business advocate. The Small Business Advocate would have the capacity for investigating and advising the Australian Government on small business issues, including dispute resolution. An initial referral service will utilise existing low cost state or territory dispute resolution mechanisms. Where a gap in existing services is identified, a suitable mediation service would be established (incorporating aspects of Option 2).

<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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## Resolution of small business disputes

If you wish, provide succinct comments on your most preferred option using the focus questions as a stimulus for your thinking.

If possible, start each new idea on a new line. (There's no limit to the number of lines.)

### **Option 1 – National information and referral service**

- **Would the service establish a new phone line or website or should it use an existing service that many small businesses are already aware of?**
- **What types of general information and guidance would be most useful to small business in their business disputes?**
- **Would a national referral service be used by small businesses? If so, how valuable would it be?**
- **What are the best ways to reach small businesses to improve awareness of dispute resolution?**

### **Option 2 – National dispute resolution service**

- **Are there any significant areas of small business that are not covered by current dispute resolution services? If so, does the Commonwealth Government have a role in addressing this service gap?**
- **Would the government be better served in raising awareness of what's available or how to avoid and/or deal with a business-to-business dispute?**
- **Can it be achieved using a Memorandum of Understanding (MOU) or an Inter-Governmental Agreement (IGA)?**

## Resolution of small business disputes

### Option 3 – National small business tribunal

- **How will the Tribunal define eligible “small business”?**
- **Which Commonwealth agency is best placed to establish and administer the NSBT?**
- **Is this option the most cost effective way of addressing small business dispute resolution?**
- **Who will be tribunal members and how will they be recruited?**
- **How far will this option go to fill existing gaps in small business dispute resolution?**
- **Does the NSBT duplicate existing services? How could the duplication of existing services be avoided?**
- **Does this option overestimate the demand for small business dispute resolution services?**

## Resolution of small business disputes

### Option 4 – Small business advocate.

- **Are there any other models, either nationally or internationally that might be more appropriate or effective?**
- **Initial consultation showed some reluctance to use the Advocate title. Is there a more suitable title?**
- **Should the proposed mediation services provided by the Advocate for small business be subsidised by the Government and if so, to what extent?**
- **With the large number of low-cost dispute resolution services already available for small business, should the function offered by the Advocate focus on education and referral as outlined in option one?**
- **The method of establishing the OSBA may be important in determining how it operates. What would be the optimal method for establishing the OSBA?**
- **What is the most favourable process for national collaboration on small business dispute resolution?**
- **Should the Advocate seek advice less formally from the small business community and be able to selectively act on the issue within Government?**