



30 June 2011

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Mr Evan Holley
Small Business and Deregulation Branch
Department of Innovation, Industry, Science and Research
G P O Box 9839
CANBERRA ACT 2601
and via Email: smallbusiness@innovation.gov.au

Dear Sir

Resolution of Small Business Disputes Option Paper May 2011 ("the Options Paper")

Thank you for the opportunity to provide comments on the above Paper, which has been considered by the Society's Commercial Law Committee ("CL Committee") and Alternative Dispute Resolution Committee ("ADR Committee"). We provide the following comments.

Overview

The Society supports any reform which will assist in the cost effective and sensible resolution of small business disputes.

The Options Paper raises some excellent ideas that may assist the small business community in relation to dispute resolution. However, significant ongoing funding and support from the Federal Government will be required if any of these options are to have a long term practical impact.

There are already significant existing services that may fulfil this role, both private and Government, but we believe that there is a lack of community awareness of these services. A focus on advertising, information dissemination and education of the small business community and their advisers is to be encouraged. To date funding restraints and a lack of coordination at a national level may have hampered such information and education.

If this proposal is to move forward it will require appropriate ongoing funding. All staff and contact persons involved in the provision of these dispute resolution services or associated information and referrals should be appropriately trained, supported and resourced.

Response to Option 1 – National Information and Referral Sources

1. In addition to establishing a new phone line or web site the Society supports the use of existing services. Government bodies such as the Australian Tax Office ("ATO"), the Australian Securities and Investments Commission ("ASIC"), the Office of Consumer and Business Affairs ("OCBA") and similar bodies are in regular contact with small businesses. In particular, the ATO and ASIC communicate in writing and electronically with small businesses and their advisers on a regular

basis. It may be useful for existing lines of communication to be used to promote dispute resolution services and alternative dispute resolution options ("ADR") generally.

2. Most small businesses will have regular contact with their accountants, tax agents, BAS agents etc. These advisers could also be used to promote the education and awareness of ADR amongst the small business community.
3. Government funded brochures and information sheets on the topic could be distributed via tax and other advisers including lawyers, conveyancers, financial planners etc. This should occur on a regular basis.
4. Further, communication (whether in writing or electronically) from Government departments to small business clients may also provide an opportunity to include information (brochures, web page addresses etc) that may be useful in informing and educating the small business community.
5. The sort of general information and guidance most useful to small business in relation to business disputes would include information about resolution options, referral to web sites and other sources of information, reference to ADR organisations and practitioners and how to identify sources of assistance.
6. Courts and Judges hold a significant place in our society. Accordingly, information and comments from Courts and Judges supporting ADR may be useful in properly promoting ADR options to the small business community. This could include the use of social media networks such as Facebook, You Tube and the internet generally. Videos of judicial officers presenting material about ADR and options are likely to be persuasive and informative for parties contemplating dispute resolution options.
7. A national referral service may be useful for small business. It would need to be well advertised on a regular basis.
8. Some of the ways to best reach small businesses include those options set out above.
9. Consideration should be given to the United Kingdom model of a private organisation, with Government funding, providing some or all of the above education and referral.

RESPONSE TO OPTION 2 – National Dispute Resolution Service

10. Many of the considerations set out above will apply to this Option.
11. Any resources the Government can apply to raising business awareness as to ADR options would be welcomed.
12. A national approach which supports but does not compete with established ADR services is desirable. This should be done in collaboration with States and Territories via ministerial councils, memorandums of understanding or inter-Governmental agreement.
13. Ideally there should be a consistency of approach between the States and Territories.

RESPONSE TO OPTION 3 – National Small Business Tribunal

14. The need for a National Small Business Tribunal is questioned. It appears likely to duplicate existing services.
15. If a National Small Business Tribunal is to be created, then this should be done in consultation with the States and Territories.
16. Consideration should be given to the creation of a small claims jurisdiction as part of the Federal Magistrates Court. Ideally this will involve simplified rules and procedures. Significantly reduced application and hearing fees should apply.
17. Any definition of "small business" should avoid likely jurisdictional arguments.

RESPONSE TO OPTION 4 – Small Business Advocate

18. This Option appears to duplicate existing similar models.
19. There may be some advantage in having a Small Business Advocate at a Federal level working in consultation with State and Territorial equivalents. However, it would probably be better if this role is left to the Minister for Small Business and other peak SME bodies.
20. Any mediation or other ADR services provided should be on a cost effective basis. This is likely to require subsidy from Government funds.
21. The "title" of such office is not likely to impact on community acceptance of any service provided.

Conclusion

Once again thank you for the opportunity to provide comments and submissions regarding the above. The Society (through its Commercial Law Committee and ADR Committee) would be more than happy to address further any matters raised in this communication.

Please do not hesitate to contact me, should you require any further information.

Yours sincerely



Ralph Bönig
PRESIDENT