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Senator the Hon Nick Sherry
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Dear Senator *Nick*

Thank you for your letter of 12 May 2011 and the opportunity to comment on the *Resolution of Small Business Disputes: Options Paper*.

Providing suitable accessible dispute resolution services to Northern Territory businesses, particularly small and medium enterprises are important from my perspective.

I am pleased to provide the Northern Territory Government's initial response to the options paper. The Northern Territory generally supports option 1 as this will complement the valuable dispute resolution facilities and services already in place in jurisdictions.

I would welcome the opportunity to discuss the development of suitable small business dispute resolution services with you and our ministerial colleagues from other jurisdictions should the opportunity arise.

Yours sincerely



ROB KNIGHT

21 JUL 2011

Australian Government's
Resolution of Small Business Disputes: Options Paper

Northern Territory Government Submission

July 2011

Northern Territory Department of Business and Employment

Introduction

The Northern Territory Government welcomes the opportunity to comment on the *Resolution of Small Business Disputes: Options Paper*.

The Northern Territory is mindful that the Small Business Ministerial Council (SBMC), at its last meeting in August 2010, considered the issue of alternative dispute resolution for small businesses with the aim of identifying a best practice model in Australian jurisdictions to assist small businesses to resolve business-to-business disputes. At that meeting, the SBMC resolved to:

- consider the Victorian Small Business Commissioner and the New South Wales Retail Tenancies Unit as best practice models for governments when developing effective mechanisms to assist small businesses in the resolution of business disputes
- support building the dispute resolution process currently available to small businesses in each jurisdiction and identifying the gaps in assistance for resolving business-to-business disputes.

The Northern Territory also notes that, during early to mid 2010, the Australian Government Department of Innovation, Industry, Science and Research (DIISR) commissioned research and undertook a survey of businesses across Australia to investigate the extent to which there is unmet demand for dispute resolution for small businesses. The outcome of the research, completed by Orima Research, has been helpful in the consideration of the resulting options paper.

The Northern Territory was pleased to be able to contribute information on current business dispute resolution arrangements in the Northern Territory for inclusion in the options paper.

Analysis of the Options

Providing easy-to-access and inexpensive dispute resolution services is important for businesses, particularly small and medium enterprises.

Action to build on existing jurisdictional small business dispute resolution services and improve their availability, scope and effectiveness to meet the needs of businesses is supported.

No clear, reliable data on the incidence of business-to-business disputes resulting in or requiring third party or legal intervention appear to be available. The research report completed by Orima Research notes that sample size in the Northern Territory was small, 13 firms, and that the results for the Northern Territory must be interpreted with caution.

While significant statistical uncertainty applies to the Northern Territory results, the data imply that some 8% of businesses may seek third party intervention or with some 13 000 active businesses in the Northern Territory, up to 1000 disputes. This appears to be a surprisingly high figure and does not appear to be consistent with current Northern Territory experience, which indicates that number of business-to-business disputes resulting in or requiring third party or legal intervention is relatively small and the unmet demand even less.

Reliable corroborating information is not currently available and statistics from the existing dispute resolution services are not disaggregated to identify business-to-business disputes, at present. Additional, reliable information is being sought.

The four principal options set out in the options paper provide a wide range of alternatives for the development of business-to-business dispute resolution services. The options effectively take into account the outcomes of the business survey and research undertaken by DIISR.

Following analysis of the options presented, the Northern Territory's comments are as follows:

Option 1

The timely establishment of an effective and well-resourced national, centralised referral service providing a telephone hotline and website to direct small businesses to relevant existing dispute resolution services across jurisdictions may be valuable in ensuring that unmet demand for such services is connected with the current service providers.

Such a service would need to have access to current service information and should be integrated with relevant services being established through the Seamless National Economy reforms, in particular, the Business Online Service component.

A service of the nature proposed would appear to be consistent with the likely unmet demand requirements in the Northern Territory and may stimulate the development of currently available services to provide a wider range and scope of services to match the small unmet demand.

The Northern Territory broadly supports this option.

Option 2

A new National Dispute Resolution Service offering referral and information services and a mediation service where no appropriate low cost dispute resolution service exists has merit, should the demand be sufficient.

The demand in the Northern Territory is likely to be insufficient to warrant the establishment of a National Dispute Resolution Service in the Northern Territory.

It would be, however, more efficient to build on and extend the existing jurisdictional services to cater for unmet demand, as envisaged by the small business ministers.

Accordingly, the Northern Territory does not support this option.

Option 3

The creation of a new National Small Business Tribunal specifically to resolve small business disputes would appear to overlap with and duplicate the services already available in jurisdictions. In particular, such a tribunal is likely to supplant part or all of current relevant services and may result in the abolition of effective and successful services in jurisdictions. This would be disadvantageous and may result in a diminution of the scope, quality and effectiveness of local services in jurisdictions.

As with a National Dispute Resolution Service, the demand in the Northern Territory is likely to be insufficient to warrant the establishment of a National Small Business Tribunal in the Northern Territory.

The Northern Territory does not support this option.

Option 4

The appointment of a Small Business Advocate to provide independent representation of small business interests and concerns with the capacity to investigate and advise the Australian Government on small business issues including dispute resolution is primarily a matter for the Australian Government, especially if the role was confined to federal government matters.

The provision of services by a Small Business Advocate in relation to state and territory jurisdictional responsibilities would result in significant overlap with and duplication of the services already available in those jurisdictions. As with a National Small Business Tribunal, a Small Business Advocate service may supplant part or all of current relevant services and may result in the abolition of effective and successful services in jurisdictions.

In the Northern Territory context and in view of the wide range of successful small business services already in place, the demand is likely to be insufficient to warrant the establishment of an office of a Small Business Advocate in the Northern Territory.

The Northern Territory does not support the option to establish a Small Business Advocate, unless the role is confined to matters that fall within the Australian Government's areas of responsibility.

Northern Territory Recommendations

In response to the Australian Government's Resolution of Small Business Disputes: Options Paper, May 2011, the Northern Territory Government recommends that:

1. Providing cost effective and easy-to-access dispute resolution services for business and medium sized enterprises is important to the Northern Territory.
2. Action to build on existing jurisdictional small business dispute resolution services and improve their availability, scope and effectiveness to meet the needs of businesses would be beneficial.
3. In relation to the specific options included:
 - Option 1 is generally supported as it is consistent with the agreed SBMC resolution
 - Option 2 is not supported
 - Option 3 is not supported
 - Option 4 is supported if the Small Business Advocate role is confined to Australian Government responsibilities.
4. An opportunity for Ministers and officials to discuss the development of options and services would be welcome.

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