



Hon Jan Jarratt MP
Member for Whitsunday



**Minister for Tourism, Manufacturing
and Small Business**

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Senator the Honourable Nick Sherry MP
Minister for Small Business, Minister assisting on
Deregulation and Public Sector Superannuation and
Minister assisting on Tourism
PO Box 6022
Parliament House
CANBERRA ACT 2600

Nick

Dear Minister

Thank you for your letter dated 12 May 2011 enclosing the Resolution of Small Business Disputes Options Paper (Options Paper).

I have consulted with the Honourable Anna Bligh MP, Premier and Minister for Reconstruction and my ministerial colleagues in preparing the attached Queensland Government response. (Attachment 1).

In summary, Queensland supports some elements of Option 1 including an awareness and education campaign to improve decision making skills as well as knowledge of dispute resolution skills and services. Nevertheless, further discussion could be undertaken by Commonwealth and State/Territory officials to identify a workable option which does not duplicate existing mechanisms.

Thank you for the opportunity to consider and comment on the Options Paper.

Yours sincerely

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Minister for Tourism, Manufacturing
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Encl

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Queensland Government Response

Australian Government Resolution of Small Business Disputes

Options Paper – May 2011

Introduction

The Resolution of Small Business Disputes Options Paper (Options Paper) of May 2011 identifies that a range of dispute resolution mechanisms already exist for small businesses to resolve business-to-business disputes.

It also notes that some of the most accessible mechanisms in the jurisdictions are either free, or very low cost.

The Options Paper (Appendix 1) identified the current range of small business dispute resolution services delivered by the Queensland Government that focus on alternative dispute resolution (ADR).

Dispute Resolution Centre mediation program available throughout Queensland; and

Queensland Civil and Administrative Tribunal (QCAT) mediation and hearing process for minor civil disputes (less than \$25,000) available throughout Queensland.

These well developed dispute resolution services include mediation of commercial disputes and extend to regional centres.

In addition, Queensland has announced the establishment of the Queensland Business Commissioner to identify systemic regulatory issues that impact on business productivity and provide recommendations to Government for reduced regulatory burden.

The Options Paper identifies that despite the availability of information on dispute avoidance and management, small businesses tend to avoid dealing with their disputes until the dispute has reached a 'toxic stage'.

The Options Paper also notes the following reasons for business avoiding or delaying dealing with disputes:

- lack of required dispute management skills
- lack of resources (time and money) to invest in pursuing the resolution of disputes
- desire not to damage valuable relationships with key suppliers, clients or larger business, and fear that dealing with a dispute will do so
- lack of awareness of the dispute resolution options available, particularly those such as assisted negotiation that can be used before a dispute has escalated.

The Options Paper has not provided any information on the costs and merits of its proposals for businesses and the Government.

Queensland Government Response

Australian Government Resolution of Small Business Disputes

Options Paper – May 2011

Discussion

Option 1 - Summary

The National Information and Referral Service would provide a telephone hotline and website to direct small businesses to relevant existing dispute resolution services. This national, centralised referral service would provide information on what services are currently available in the relevant state or territory. Callers to the hotline would be guided through dispute resolution options and then referred to the appropriate existing service in their state or territory. This option could build on the services already offered by the Small Business Support Line and Advisor Finder.

Queensland Government Comments

The Options Paper found that small businesses generally have a low awareness of ADR, including existing services, costs involved and the suitability of each mechanism for different types of disputes.

This option could provide a single access point for information and guidance on dealing with disputes and bring together existing government services, rather than creating a new entity.

However, many dispute resolution service providers already provide information and a referral service, therefore this option has the potential to duplicate the services already available in Queensland.

Any proposal should utilise existing services as what is required is a single point of contact for small business. Additional points of contact would only serve to complicate and confuse.

Advertising ADR as an alternative to legal action through an awareness programme can inform and assist small business owners to resolve their conflicts in a quick and a less expensive way whilst providing the opportunity to maintain business relationships.

In summary, Option 1 has the potential to duplicate services being delivered at a State level. However, Queensland supports elements of the proposal subject to further discussions. Elements supported by Queensland incorporate an awareness and education campaign to improve decision making skills as well as knowledge of dispute resolution skills and services.

Queensland Government Response

Australian Government Resolution of Small Business Disputes

Options Paper – May 2011

Option 2 - Summary

The National Dispute Resolution Service would provide information and referral service similar to option one, but would also offer a mediation service where no appropriate low cost dispute resolution service exists. This option would provide dispute resolution information through a website and telephone hotline. Operators would discuss dispute resolution with callers and direct them to appropriate existing services in their state or territory. If no appropriate service exists, a mediator drawn from a standing panel would assist small businesses with their dispute. This option would also offer an awareness and education campaign, which would target specific sectors with a high incidence of disputes.

Queensland Government Comments

Although this awareness campaign is more active and targeted to vulnerable small businesses than the general awareness raising program of Option 1, it will duplicate services provided by the Department of Justice and Attorney-General in Queensland.

To support this option further analysis would need to be provided by the Commonwealth to identify gaps in mediation and low cost dispute resolution services.

Therefore at this time Option 2 is not supported.

Queensland Government Response

Australian Government Resolution of Small Business Disputes

Options Paper – May 2011

Option 3 - Summary

A new Commonwealth tribunal, the National Small Business Tribunal, would be established specifically to resolve small business disputes. The tribunal would have the powers of investigation, conciliation and review, which would be backed by new Commonwealth legislation. Whilst it would provide coverage for a wide range of disputes, it would not deal with code of conduct matters or retail tenancy disputes. This option would provide a national network and a one stop shop approach for small businesses with disputes. The tribunal would be based in a capital city and could potentially use existing federal court infrastructure.

Queensland Government Comments

Queensland is opposed to the establishment of the National Small Business Tribunal. Rather than achieving the aim of a one stop shop approach, the establishment of a national tribunal would splinter existing state based services and could potentially result in parties pursuing disputes in more than one jurisdiction.

Queensland already has a tribunal (QCAT) which deals with small business disputes.

Creating a new small business tribunal would create potentially two problems. Firstly, there would be a duplication of dispute resolution services. Secondly, splitting the resolution of small business disputes into business-to-business disputes and consumer-to-business disputes could create confusion regarding jurisdictions.

This option is considered to be a duplication of the current Queensland service. In addition, the proposal to establish a National Tribunal does not seem to respond directly to any of the issues raised in relation to small business reluctance to deal with disputes in a timely or cost effective way.

This option is not supported.

Queensland Government Response

Australian Government Resolution of Small Business Disputes

Options Paper – May 2011

Option 4 - Summary

The Small Business Advocate would provide independent representation of small business interests and concerns within the Australian Government. The 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 Two).

Queensland Government Comments

There are a number of existing mediation bodies in Queensland who provide dispute resolution services for small businesses. Establishing a Small Business Advocate could therefore cause an overlap in provision and potentially confuse small business.

As with the Tribunal (option 3), this option does not appear to address a problem that is outlined in the Options Paper.

This option is not supported.

Queensland Government Response

Australian Government Resolution of Small Business Disputes

Options Paper – May 2011

Conclusion

The Queensland Department of Justice and Attorney-General through the Queensland Civil and Administrative Tribunal (QCAT) currently delivers low cost dispute resolution services to small businesses throughout Queensland.

None of the options presented appear to address matters relating to small businesses avoiding dealing with their disputes directly and the Options Paper has not demonstrated any obvious need to establish a national system.

In those circumstances it would be beneficial to focus on reviewing and consolidating existing dispute resolution processes rather than commence new initiatives.

The Options Paper highlights the lack of awareness in the small business community of dispute resolution services. Clearly small business must be educated about these services as a way of reducing the costs incurred by disputes. As previously mentioned, Option 1 provides the capacity for an awareness and education campaign to increase small business skills and knowledge of dispute resolution mechanisms.

It is important that any proposal does not increase the regulatory burden. The new scheme should not be unnecessarily burdensome, complex, make redundant or duplicate regulations or services already available in Queensland.

The Queensland Government is not supportive of any scheme that will impose additional costs for businesses and the Government in the current tight fiscal circumstances.

Closer scrutiny is required of the need for, and benefit of, any national level action before implementing any of the proposed options. In addition, none of the proposed options are costed and in the current fiscal environment a stronger case for any Government action or investment would need to be presented.

Further discussion could be undertaken by Commonwealth and State/Territory officials to identify a workable option which does not duplicate existing mechanisms. Elements of Option 1 supported by Queensland for further discussion include an awareness and education campaign to improve decision making skills as well as knowledge of dispute resolution skills and services.