

SOUTH AUSTRALIAN GOVERNMENT

SUBMISSION TO THE

AUSTRALIAN GOVERNMENT'S

RESOLUTION OF SMALL BUSINESS DISPUTES

Options Paper

July 2011



**Government
of South Australia**

Context of the South Australian Government Response

The Government of South Australia welcomes the opportunity to comment on the *Resolution of Small Business Disputes – Options Paper May 2011*.

The contribution of small business to the economy is significant. In South Australia there are approximately 135,000 small businesses, accounting for 96 per cent of all private-sector businesses.

The South Australian Government acknowledges the essential role played by small business in a sustainable, prosperous economy and a vibrant community. The government is committed to helping build the best possible environment in which small business can flourish, now and in the future.

The South Australian Government is committed to:

- nurturing and encouraging well-planned start-up businesses
- supporting the growth, employment and export capabilities of small businesses
- integrating small businesses in the digital economy, and
- monitoring and reacting positively to the circumstances in which small businesses operate.

Through South Australia's Strategic Plan (SASP), we have set a high-level vision and a practical action plan for the state's future. SASP has been embraced by government, business and the community and it has set targets touching on almost every facet of life in South Australia, from economic growth to sustainability, to well being to social justice and innovation.¹

While SASP seeks to collectively coordinate government, industry and community efforts at addressing challenges facing South Australia, much of this effort would be considerably easier were there to be greater synergy of policies and strategies to bind national and state action. The challenges include: competing with overseas competition from low cost, low wage countries; matching skill needs to employment opportunities; an ageing population and resultant costs; and environmental concerns such as water security and carbon emissions.

South Australia's economy is currently undergoing a period of transformation, directed by strategic government investment, coupled with the advice of the State's Economic Development Board and others. Minerals exploration and defence industries/electronics lead the State's economic resurgence; agribusiness (for example wine, grains, aquaculture, livestock and food processing) remains a major contributor to GSP, as does traditional manufacturing (for example automotive), though this is clearly challenged by a range of factors. Educational services, particularly at tertiary level, are a major export, and other fields such as environmental services including water-related and renewable energy products and services, are growth opportunities.

¹ See <http://www.stateplan.sa.gov.au/>

The potential for growth in some of these industries is challenged by environmental concerns, specifically access to water and meeting carbon emission standards as part of Australia's global obligations. These tensions are recognised across the targets of SASP.

As a smaller regional economy, SA has a prevalence of small to medium enterprises, (with 96% of businesses being small businesses), fewer local headquarters of multinational enterprises that serve as connectors to global innovation and markets, and higher costs per capita of infrastructure due to its smaller population and industry base.

The opportunities inherent in being a smaller regional economy has driven impressive collaboration and examples of cooperation between firm, industry, government (state and local), educational and community sectors in order to achieve the critical mass needed to be competitive internationally. Currently there is over \$80 billion of projects in the pipeline to assist the further development of the State.

The SA Government's feedback on the options regarding improvements to the Resolution of Small Business Disputes is predicated on the factors above.

The South Australian Government regards this as a preliminary submission containing feedback, ideas and suggestions, to assist the Australian Government determine its position with regard to future small business dispute resolution mechanisms. The South Australian Government makes no commitments in this submission and reserves its right to review its position subject to the content of any future papers, and upon which the South Australian Government may make a further submission.

The South Australian Government has undertaken significant work in the last eight months to implement its policy position of investing in a Small Business Commissioner model, which is anticipated to significantly strengthen South Australia's capacity to deal with business to business disputes.

What South Australia is seeking from an improved small business dispute resolution model/system.

South Australia would support the following general principles and features of a Small Business Dispute Resolution System:

1. *An expanded and better coordinated system.* South Australia notes the stated view by the Commonwealth Minister for Small Business as to the context to ensure 'it does not duplicate or overlap existing mechanisms' and supports the need for improved system coordination and carefully considered supplementation of existing (and proposed) dispute resolution mechanisms at state level.
2. *A nationally connected dispute resolution system that caters for strong regional differentiation and 'point of action' support.* This should encourage a collaborative approach by both commonwealth and state

governments in building the most effective small business dispute resolution models which accurately reflect local circumstances.

3. *Programs that specifically target small businesses to minimise disputes in the first instance.* An 'end-to-end' suite of support is needed, simple in design and of no cost (or low cost) to small businesses.
4. *Far greater investment in alternative dispute resolution* support by the Commonwealth – spanning improved performance in alternative dispute resolution rather than traditional litigation approaches, which are normally not timely, increasingly costly and unpredictable in outcomes.

The content that follows expands on the key issues above and also provides summary comments and feedback on the four options presented in the Options Paper.

There are *multiple layers* that need to be considered in designing a better coordinated national dispute resolution system that is more effective and efficient than present arrangements.

Comments on Option 1 – National Information and Referral Service

The Commonwealth's Small Business Support Line and Advisory Finder has been a success from indications that South Australia has witnessed. The option of improving the current service by expanding its scope to include dispute resolution information services would be welcomed. Properly constructed it would add to the services available to assist small businesses around that nation. South Australia would welcome discussions concerning the best ways and methodology to support and achieve the aims of such an improved service.

Comments on Option 2 – National Dispute Resolution Service

The notion of having a mediation service where no appropriate low cost similar service exists is obviously desirable. However, as the Options Paper outlines, there is no definitive evidence that establishes the need given that there is a significant variety of Alternative Dispute Resolution (ADR) mechanisms already in place. Appendix 1 of the Options Paper outlines many of these. In addition there are planned developments in a number of states for Small Business Commissioners to be established. Increasingly there also appears to be a growing interest (and investment) by the private sector in ADR services and facilities.

South Australia's view is that it would be prudent for the Commonwealth to undertake additional research to evidence whether there are identifiable gaps in existing services before embarking on a national service. One the issues that may arise with a Commonwealth panel of mediators is the ability to link effectively into state based tribunal or judicial structures. An alternative approach may be a Commonwealth sponsored arrangement via an Intergovernmental Agreement (IGA) or Memorandum of Understanding (MoU)

to extend and enhance existing services to the current or proposed state and territory arrangements. The form of the IGA/MoU could be tailored to meet Commonwealth requirements and take into account individual jurisdictions environments.

Comments on option 3 – National Small Business Tribunal (NSBT)

The Options Paper is unclear regarding enforcement powers for such a tribunal apart from identifying that this would need 'further clarification'. There is also effectively an arbitration role for the tribunal, by being able to determine a dispute that has not been resolved by conciliation. It is not clear why this process was chosen or whether the NSBT should be a 'determination only' body for disputes which have failed to settle via, for example, a state based Small Business Commissioner, then coming to the tribunal. Appeal provisions would also have to be determined.

It is suggested that, given the complexity of developing such a tribunal system (some of the complexity has been outlined in the Paper), the Commonwealth establishes a representative, cross-jurisdictions working party to consider further the implications prior to any final proposal being developed. A detailed business case would need to be developed and the scope clearly articulated for the tribunal. The comments within the paper about potential duplication with current services, legislative complexity and the likely timeline to implement such a system are of some concern.

Comments on Option 4 – Small Business Advocate

The proposed Small Business Advocate's scope of activities has been presented in the Options Paper. These all appear to be worthwhile in their current form although it could be argued that an Advocate should not be undertaking dispute resolution roles given the nature and scope of most advocate roles as they currently exist in various places.

The ability for a Commonwealth officer (whether it be titled Advocate or Commissioner) to assist with business to Commonwealth government complaints would be useful, provided that the scope of activities and parameters are clearly defined. The link between the various state developed and based Small Business Commissioners and any Commonwealth role would be critical over time so the national collaboration aspect outlined in the paper would be supported by South Australia. Given the sometimes fragmented nature of the small business sector, the need for a considered approach to small business issues, support structures, regulatory framework and reform and other matters that may arise, will assist in overall productivity of the sector. The Small Business Advocate could provide an evidence base to assist in the ongoing development of the sector.

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