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General Manager  
Small Business and Deregulation Branch  
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To Whom It May Concern

## **SUBMISSION: RESOLUTION OF SMALL BUSINESS DISPUTES**

The WA Small Enterprise Network (SEN) welcomes the opportunity to provide comment in response to the Department of Innovation, Industry, Science and Research (DIISR) Options Paper, *Resolution of Small Business Disputes*, released in May 2011.

SEN welcomes measures that will provide an operating environment for the small business sector, providing this is achieved in a way that is efficient and effective.

SEN thanks DIISR for engaging with stakeholders at this early stage of deliberations with regard to small business dispute resolution options. Early engagement with the small business community will help to ensure that any system that may be ultimately adopted is a co-operative achievement between business and government. This will help to ensure the best chance for success of any eventual system that is introduced.

This submission has been prepared by SEN and structured to provide comment upon each of the four options presented by DIISR, considering in turn the positive and negative elements of each. Where appropriate, an attempt has been made to link comments to the focus questions asked within the paper. This structure has been chosen in an effort to best provide SEN's thoughts on each of the alternatives, rather than fundamentally supporting or objecting to any or all of the options at this point in time.

However, as the Options Paper is a high-level document, SEN's comments are also by necessity high-level in nature. Should any of the options be developed further in the next phase of the project, SEN would seek to take these developments under consideration and provide further considered commentary in response.

### **About the WA Small Enterprise Network**

The WA Small Enterprise Network is dedicated to providing business support, networking and advocacy for the Western Australian small business community.

An initiative of the Chamber of Commerce and Industry of WA, SEN is focussed on providing services for Western Australian businesses that employ between zero and thirty staff. SEN represents around 3,000 businesses, across all industry sectors.

## **WA Context**

As a Western Australian based organisation, SEN presents its views from the perspective of ensuring the best outcomes for small businesses within this State.

While SEN acknowledges that it is often efficient to ensure nationally consistent approaches to policy development and legislation, we are also conscious of the risks and costs associated with making existing State-based frameworks redundant or, alternatively, establishing duplicative regimes at State and Federal Government levels.

The Western Australian State Government, with bipartisan support from the State Opposition, has over the past year developed plans to establish a WA Small Business Commissioner that will operate on a similar basis as the successful Victorian Small Business Commissioner. Legislation to facilitate the introduction of the WA Commissioner is currently before State Parliament.

The Western Australian Small Business Commissioner would provide mediation and dispute resolution services to small businesses operating in this State. SEN has provided input through this process, and is supportive of the introduction of the Commissioner as a means of assisting our State's small business sector.

Government must be cautious to avoid duplication of service provision, particularly between different levels of government. Policies should not be developed in isolation, but in collaboration. Governments should work with each other, and with key stakeholders, in a spirit of cooperative Federalism, to ensure that systems, processes and bureaucracies that are implemented are done so in a way that is most efficient and cost-effective.

## **Comment on Options Presented**

### ***Option 1 - National Information and Referral Service***

#### *Positive Elements*

This option reflects a relatively 'light touch' approach to the Federal Government providing mediation and dispute resolution services to small business.

It would appear to be a relatively low-cost alternative, as SEN considers that it should operate simply as an extension of the information that is already provided by the existing Small Business Support Line and associated website.

SEN agrees with the premise put forward in the Options Paper, that positive outcomes could be achieved with very little capital outlay, and that there is minimal risk of upsetting existing State-based schemes. From this perspective, SEN is supportive of this additional information and direction being provided at a national level.

It is noted that this option is the easiest to implement of the four, and could therefore deliver results sooner and at a lower cost than the others presented. While a lower cost is welcomed, it must be ensured that any expense delivers value for money. Careful cost-benefit comparisons for each of the options should be undertaken to ensure that the best value option, that maximises the return on investment, is selected, rather than simply choosing the lowest cost option.

#### *Negative Elements*

The risk to this approach proposed in Option 1 is that the Federal Government may be seen to be promoting that it can provide additional assistance for small business, but in actuality may be seen instead to just be 'handballing' issues to other jurisdictions.

State-based schemes may discover that they receive greater take-up of their services as a result of the Federal Government support line directing businesses to them. Increased awareness and promotion of the State-based services may have resourcing implications. This could potentially result in funding

shortfalls that limit the ability for adequate service to be delivered to all small businesses who seek mediation and dispute resolution services. SEN considers that the Federal Government must ensure that it is prepared to underwrite the State-based providers to ensure that if a small business is directed to a State-based provider by a Federal government agency, that the State-based organisation has sufficient resources to ensure the business will receive an appropriate level of service.

One of the stated aims of Option 1 is to raise awareness of services available to small business. While certainly a worthwhile objective, SEN has some reservations as to how effective this could be at a national level. That is, if it is simply referring businesses to local providers of dispute resolution and mediation services, it will be difficult for the Federal service to guarantee a consistent baseline level of service across the range of different service providers in different jurisdictions. Indeed, there is no guarantee that all jurisdictions will offer an appropriate dispute resolution service at all.

The risk, therefore, is that it will be difficult to promote a consistent message from a national level where the business itself will have variable levels of service available to it dependent upon their geographic location.

## ***Option 2 - National Dispute Resolution Service***

### ***Positive Elements***

SEN considers that the stated focus on building awareness of dispute resolution options for small business is a key benefit of Option 2.

Building the awareness of the support services that are available to small businesses that require dispute resolution services will provide a tangible benefit to small businesses that interact with the service.

An awareness campaign underwritten by the Federal Government, but developed in co-operation with State Governments and key industry stakeholders could have the potential to deliver a meaningful benefit for business.

A further benefit of the approach proposed in Option 2 is that it guarantees coverage for all businesses within Australia. SEN can see that this could be of benefit where, for instance, a Western Australian small business is in dispute with a business in another State that does not have an equivalent to the WA Small Business Commissioner.

Federal involvement would help ensure an equivalent level of service was delivered nationally, and it would reduce the risk that might arise from interstate disputes not being able to be remedied in a timely and effective manner.

### ***Negative Elements***

SEN has some concerns that the scheme as proposed in Option 2 creates a risk that the program may deliver an economically perverse outcome, whereby State Governments rationally choose to transfer the cost of running or subsidising dispute resolution services to the Federal Government.

At the most extreme level, this could be achieved by States electing to close down their own successful mediation services so that the Federal Government is compelled to deliver the service. If the Federal Government is not committed to providing a local service that offers at least an equivalent level of service, this is likely to represent an overall negative outcome for local small businesses.

## ***Option 3 - National Small Business Tribunal***

### ***Positive Elements***

Option 3 provides for a comprehensive independent National Small Business Tribunal. A key positive outcome that arises from a singular, national approach is that it eliminates cross-jurisdictional problems in terms of which State laws are relevant, and where businesses should go in order to pursue a dispute resolution process.

A Federal system has the capacity to provide what could essentially be a one-stop shop for small business disputes, irrespective of where each of the parties to the dispute are located in Australia. This could have significant benefits for businesses engaged in interstate trade. A national model would help to ensure that interstate disputes were managed consistently using the national framework. This would provide certainty for businesses that at the moment operate with different small business regulations and remedial processes in each State.

A national system would also help with communicating a clear and consistent message to all small business about their rights and responsibilities with regard to mediation and dispute resolution. National consistency could make it much easier to communicate to the small business sector about the process for resolving disputes.

SEN also welcomes the acknowledgment that participating in this process should be a low-cost option for business, and that the costs of conciliation would therefore be subsidised by the Commonwealth.

The binding nature of the dispute resolution outcome, except where there is a point of law issue, is positive. SEN considers that any dispute resolution process must be binding on the parties involved in order to avoid it being perceived to be a 'toothless tiger'.

### *Negative Elements*

SEN is interpreting this model to provide a single National Small Business Tribunal that would be based in a single capital city location. Given this interpretation, it is realistic to assume that it is unlikely that Perth would be chosen as the base for this Tribunal. For Western Australian businesses, therefore, having to engage with an interstate office by telephone would represent a retrograde step in comparison with the soon to commence local WA Small Business Commissioner.

Having to work through and resolve a dispute with a national authority remotely, without face-to-face contact, is unlikely to be in the best interests of small business. Complaints and disputes are best heard and resolved in an environment which brings the parties together in conjunction with a mediation officer. A local officer would also have a much better understanding of the issues and particular aspects of the operating area of the businesses that can sometimes have an influence in the creation, and resolution, of disputes.

Option 3 would represent the most expensive and time-consuming alternative of the four proposed. It would also result in the duplication of a number of State-based services.

Given the overhead involved in developing this model, SEN considers Option 3 to be the least preferred option from the point of view of delivering value for money outcomes to Western Australian small business.

### **Option 4 - Small Business Advocate**

#### *Positive Elements*

Option 4 proposes a concept that is more far-reaching than simply providing dispute resolution services. The creation of a Small Business Advocate would also aim to deliver other outcomes for the benefit of small business.

Providing the Advocate achieved sufficient weight across other sectors of Government to be able to effectively influence and affect policy development for the benefit of small business, this could deliver real and visible benefits to small business. However, if all arms of government were not to engage effectively with the Advocate, then its work may deliver limited real benefit.

#### *Negative Elements*

SEN considers that the Minister for Small Business should be the key advocate for small business across government.

SEN is concerned that creating an official position of "Small Business Advocate" would represent further growth in bureaucratic structure while delivering limited genuine benefit to the small business

community. Furthermore, the Options Paper states that the Advocate would need to be supported through the creation of a new “Office of Small Business Advocacy”. SEN is concerned that this represents an inefficient allocation of funds towards the creation of more bureaucracy that would deliver uncertain value to small businesses. Given that funding of the Advocate would also come from Government, there is a risk that the true independence of the Advocate may be questioned, and may be difficult to maintain in the long-term.

In terms of advocating on behalf of small business, there are many organisations, including the WA Small Enterprise Network, that provide advocacy and support on behalf of their members and stakeholders. There seems to be little value in utilising public funds to establish a Small Business Advocate role, when it is clear that the private sector is already successfully delivering this service on behalf of the small business community.

## Conclusion

SEN welcomes the release of the DIISR Options Paper to consider the issue of dispute resolution processes for small business. Early engagement with the small business sector will help to ensure the most appropriate options are pursued. This will ensure that further research and development is more likely to be conducted only for the options that are most supported by the business community, and that will deliver the best outcomes.

The greatest risk may arise from the Federal Government acting on mediation and dispute resolution simply through a desire to deliver *something* for small business. The best outcomes for the small business community will be achieved where the Federal Government works co-operatively with the States. Effective, existing State-based systems should not be changed unless it can be shown that a joint Federal/State Government approach will deliver a better outcome for small business.

Involvement by the Federal Government in the area of mediation and dispute resolution for small business must deliver genuine benefits to businesses, while avoiding service duplication, market confusion and inadvertently growing the amount of bureaucracy and red tape that confronts the small business sector.

From a Western Australian perspective, given the investment that has been made in developing a Small Business Commissioner for this State, it would appear that any large-scale involvement of the Federal Government into dispute resolution is unlikely to deliver significant benefit.

Some value may be delivered from Option 1, whereby the services delivered by the WA Commissioner would be promoted. However, a Federal system that either runs in parallel to the State scheme, or that supplants the State scheme, is not favoured by SEN at this point in time.

Of the four options presented in the paper, SEN considers that for the Western Australian small business community, Option 1 - National Information and Referral Service, currently represents the best value for money option for the Federal Government to consider for implementation.

Yours sincerely



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