



SUBMISSION  
**RESOLUTION OF SMALL BUSINESS DISPUTES**  
OPTIONS PAPER MAY 2011

30 June 2011

General Manager  
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Department of Innovation, Industry, Science and Research  
GPO Box 9839  
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## INTRODUCTION

This submission is in relation to the Resolution of Small Business Disputes Options Paper May 2011 (Options Paper”).

We have considered the options paper in light of our experiences with small business and small business disputes.

## WHO IS VINCENTS

Firstly, we would like to briefly detail who Vincents is.

Vincents Chartered Accountants (“Vincents”) was established in 1989 offering forensic accounting and litigation support services. Now Vincents boasts:

- 25 directors;
- 130 staff;
- Offices in Brisbane, Gold Coast, Sydney and Canberra; and
- Specialist services include:
  - Forensic Accounting and Litigation Support;
  - Taxation and Business Solutions;
  - Insolvency and Reconstruction;
  - Taxation Consultancy;
  - Superannuation;
  - Forensic Technology; and
  - Executive Search and Selection.

Our Forensic Accounting and Litigation Support division has expanded to include 10 directors and 23 staff. The division provides independent accounting expert evidence in a range of services including:

- Business valuations;
- Economic loss quantification;
- Financial investigations;
- Independent accountants reports;
- Solvency reviews; and
- Structuring commercial settlements, including taxation considerations.

Over the past five (5) years we have expanded our focus to include servicing a void that we perceive in the alternative dispute resolution arena.

## SMALL BUSINESS DISPUTES - OUR EXPERIENCE

Vincents has significant experience in small business disputes, not only from providing services through the Forensic Accounting and Litigation Support division, but also the excess of 600 small businesses we service in our Taxation and Business Solutions division.

In our experience, the cost to small business of disputes often includes:

- (i) Monetary outlays on solicitors, barristers and expert evidence such as forensic accountants;
- (ii) Deterioration in business performance due to business principals “taking their eye of the ball” as they concentrate on the dispute;
- (iii) Deterioration in the relationship with the party to the dispute which may have ongoing affects on the business if that party is a key customer / supplier of the business;
- (iv) The emotional cost of the dispute and resulting ongoing morale and motivation issues.

As these costs accumulate as the dispute continues, the expedient resolution of the dispute is advantageous. In addition, if the parties have a level of control over the outcome, they may be able to maintain a business relationship.

In our experience, adopting some form of ADR process is advantageous in every business dispute.

## DISCUSSION REGARDING OPTIONS PAPER

The options paper details the following options:

1. National Information and Referral Service
2. National Dispute Resolution Service
3. National Small Business Tribunal
4. Small Business Advocate

We have detailed our comments in relation to each of the options below.

### Option One - National Information and Referral Service

One of the primary issues with small business is that their principal(s) usually need to be “jack of all trades” in that they often do not have the resources to seek external advice when issues arise. As a result, when disputes arise they either try to resolve the matter themselves, which they often are not equipped to do so, or alternatively they seek legal advice which results in legal action commencing.

This option provides a conduit for small business to the existing dispute resolution services which is clearly advantageous. Accordingly it is our view that the implementation of this option would be a positive result for small business resolution.

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

This option is a step up from option one and again advantageous for small business resolution, particularly where limited existing dispute resolution services exist. The awareness and education campaign is an excellent concept. However the target of the education process needs to be carefully considered. In addition to the small business community and relevant industry associations, it is our view that regular advisors to the small businesses, e.g., the businesses accountants, need to be educated.

Option Two is superior to Option One.

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

The establishment of a National Small Business Tribunal has both significant positive and negative aspects.

From a positive viewpoint, such a tribunal would have the ability to be a flexible low-cost means of resolving a dispute in a manner that should be more expeditious than the existing court processes.

From a negative viewpoint, this tribunal would represent another form of court process and as a result the parties to the dispute essentially transfer any control over the decision regarding the dispute over to the tribunal. The process would also be reasonably drawn out exacerbating the various costs to the businesses.

Our conclusion is that although there would be disputes that this tribunal would be advantageous, it is our view that Alternative Dispute Resolution mechanisms collectively would be more advantageous. Accordingly it is our view that Option Two is superior.

#### **Option Four - Small Business Advocate**

The adoption of a small business advocate approach would be an excellent mechanism to assist the small business community to face its many difficulties, not only from a dispute resolution viewpoint but also relating to the difficulties that are faced in the general business environment.

The structure, scope, size and powers of this advocate mechanism would need to be carefully structured and in this regard examining the achievements and errors of similar systems in other countries such as the United State of America would be beneficial. The focus questions on page 26 of the Options paper are extremely relevant.

This Option would appear to incorporate Option Two above.

This Option would be extremely advantageous for small business and superior to Options One to Three.

## VINCENTS ALTERNATIVE DISPUTE RESOLUTION (“ADR”) SERVICES

Our ADR services are headed up by:

- John Thynne, Chartered Accountant, nationally accredited mediator
- Paul Green, Chartered Accountant, nationally accredited mediator
- Paul Vincent, Chartered Accountant (fellow), mediator

Each of the curriculum vitas are attached at **Annexure 1**.

Our ADR team acts as either mediators or arbitrators in addition to providing traditional independent accounting expert advice. However approximately five (5) years ago we identified that in many small business disputes, primarily where there is a business loss being claimed or business value being disputed, there are limitations in the traditional ADR mediums, for example:

- In a mediation, the mediator is limited to acting as a facilitator. The mediator is not able to provide advice or assistance to the parties. As such, the mediator is not able to provide advice regarding any of the issues that come up at the mediation.
- In an arbitration, the arbitrator will use their expertise to rule on the dispute. However the parties lose control over the outcome.

Given the expertise and experience that we have, together with the limitations with the traditional ADR mediums, when dealing with small business disputes, we have developed a hybrid of the existing approaches. We have titled this hybrid “CDR” being Commercial Dispute Resolution. Essentially the process followed is similar to a mediation however the “CDR leader” (Vincent’s) will provide indicative expert advice to assist in the resolution from a financial and commercial perspective. Whilst we do not provide legal advice, our knowledge of the legal system and aspects of the law as it relates to the matters in the disputes in which we assist in resolving is also significant and that together with our financial and commercial expertise it certainly makes for an efficient and effective process.

This process is customised to each individual case however generally follows the following steps:

### Steps 1. to 4.

Steps 1. to 4. follow the same opening process as a mediation.

1. Parties provide outlines of the dispute together with relevant financial data;
2. This data is reviewed and brief discussions with the parties occur;
3. The CDR conference is then held with the parties.
4. The issues are canvassed and agreed upon.

### Step 5.

Step 5. is where the CDR process departs from the mediation process.

This step entails the CDR leader explaining the methodology behind determining the business loss or business value. We find that a large part of a dispute is often either one (1) or both of the parties not understanding the correct quantification process and therefore are arguing from a non-commercial position. Placing both parties in a position of knowledge is usually highly beneficial to the process.

### Step 6.

This step involves the CDR leader undertaking an indicative quantification based on their experience and input from both of the parties. The advantages of this step include:

- The gap between the parties position is usually significantly narrowed;
- The parties concentrate on the micro issues associated with the process as opposed to purely focussing on a number that often has no real foundation;
- The parties narrow there issues down to a small number of variables;
- The parties become aware of the issues associated with their previous quantification.

### Step 7.

At step 7. the parties enter the negotiation phase that again would be traditionally followed in a mediation. The CDR leader facilitates this process.

The primary differences with this approach are as follows:

- (i) The parties understand the process of determining any loss or valuation;
- (ii) The parties participate in the determination of the loss; and
- (iii) As the parties have been involved in the determination, they are not solely focused on a number or a predetermined outcome but rather the correct inputs into the process.

The majority of the CDR disputes that we have dealt with are commercial in nature. However, in several instances we have identified legal issues as being part of the issue at hand. In these instances we have found that holding the session with a solicitor as a joint CDR leader, either for part or all of the session, may be beneficial.

We have had considerable success with this CDR approach. It is our strong view that access by small business to a panel of approved CDR specialists across Australia in conjunction to existing alternative dispute resolution mechanisms would be would be extremely beneficial to small business dispute resolution. The referral to this process would become part of any proposed government referral service, i.e. Options One, Two and Four.

## HOW HAVE WE ATTAINED THE DISPUTE MATTERS?

Our experience has been that the earlier that we get involved in the process, the more likely that the parties will be pre-disposed to the CDR process. If the matter has commenced litigation we find that there are competing interests to having the matter settle commercially or expediently.

In order to be introduced to the dispute early, we have found that accessing the small business' accountants network has been most successful. We have accessed the accounting network primarily as follows:

- Existing client base;
- Our network of referring accountants;
- Our VIN-Link Network; and
- Reputation / word of mouth regarding the CDR process.

In addition to being proactive for their clients, we find that one of the selling points for the CDR process when it comes to accountants is that they are able to step away from the dispute, being a discipline they are usually not comfortable with. However they can still be involved in any structuring or tax advice.

In December 2010, we launched our VIN-Link program. This program is essentially a big brother program to small to medium accountants and lawyers. The network offers:

- Free helpline to answer specialist questions in relation to tax, superannuation, forensics, or insolvency;
- Educational events; and
- Networking opportunities.

We started the program by concentrating on the Gold Coast and we are now starting to move north to the Brisbane / Gold Coast corridor. As of June 2011, we have had in excess of 300 member firms join the network. As we move north, we expect to have in excess of 1,000 member firms by 30 June 2012.

This VIN-Link network provides us with an excellent conduit to promote our CDR services to the Vin-link members' client base.

Should a Government referral mechanism be established, an education to the accountants community would be beneficial.

## OPPORTUNITY TO BE A STAKEHOLDER

Vincents is passionate about changing what is offered to small business in relation to the Alternative Dispute Resolution.

We would be very appreciative to be involved in the designing of a program for alternative dispute resolution opportunities with respect to small business disputes. We hope to be able to meet with your department in this regard.

In the meantime if you would like to discuss any matter further, please do not hesitate to contact:

Contact

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