

17 November 2021

Our ref: LP-MC

Committee Secretary
Education, Employment and Training Committee
Parliament House
BRISBANE QLD 4000

By email: [REDACTED]

Dear Committee Secretary

Small Business Commissioner Bill 2021

Thank you for the invitation to appear at the public hearing for the inquiry into the Small Business Commissioner Bill 2021. The Queensland Law Society (QLS) has appreciated the opportunity to provide feedback on the bill.

At the hearing, QLS was asked about the process for lodging a matter for mediation and what happens if those matters do not proceed to mediation.

We consider that information about the current process for dispute resolution is something that the Small Business Commissioner or Department is best placed to provide advice on.

The process for dispute resolution under the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* differs slightly from the process proposed under the bill.

We have spoken to some of our members who mediate matters on behalf of the Small Business Commissioner. These members advise that the Commission receives the dispute from one of the parties. Officers within the Commission process the matter, including undertaking a form of 'intake' with each party. They also seek the provision of certain information to help them ascertain whether it is a dispute that falls within its jurisdiction.

The Commission then contacts a mediator from the panel, seeking availability. Currently this is the QCAT panel of mediators.

Once a date is set, the Commission issues a Notice of Mediation to both the Parties. The mediator arranges venue (or phone/online).

Once the mediation is complete, the mediator completes a notice of mediation outcome and provides that to each party and to the Commission.

Our mediators were not able to provide information about when a mediation does not proceed. Under the regulation, section 30 requires the parties to attend the mediation conference. There is no such requirement in the bill. However, like the bill, the regulation does provide an avenue

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to withdraw a dispute under section 35. Under both the bill and the regulation, the Commissioner will advise the parties and the mediator, if one has already been appointed.

The process is intended to be voluntary and one option for the resolution of a small business dispute. There are no consequences for failure to participate.

Related to this issue is that there is no obligation in the bill for the parties to act in good faith. We have previously recommended a "good faith" clause should be considered.

However, even under the regulation, which does require a party to act in good faith, section 33, relating to the mediator notifying about the outcome of the mediation states that they "must not state anything about the extent to which a party acted in good faith in the mediation",

In our view, a good faith clause would be of benefit. However, the bill has been drafted to create a voluntary dispute resolution process (notwithstanding the particular requirements for a franchise dispute) which enables a party to withdraw, seemingly at any time after the application to the Commissioner has been made. It may be unfortunate that a party withdraws before or during the mediation process, however, there may be a number of factors for this decision.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President