

23 February 2010

NADRAC Secretariat
Robert Garran Offices
3-5 National Circuit
Barton ACT 2600

By email: nadrac@ag.gov.au

Dear Sir or Madam

Re: NADRAC Inquiry into the Integrity of ADR Processes

The Energy and Water Ombudsman (Victoria) (EWOV) welcomes the opportunity to provide comment on NADRAC's *Inquiry into the Integrity of ADR Processes*. As an industry-based external dispute resolution scheme, EWOV provides alternative dispute resolution (ADR) services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. We comply with the Benchmarks for Industry-Based Customer Dispute Resolution Schemes¹ in handling complaints in a fair, reasonable, just, informal and expeditious manner to achieve conciliated outcomes.

EWOV notes that the Attorney-General has asked NADRAC to advise him 'on legislative changes required to protect the integrity of different ADR processes including issues of confidentiality, non-admissibility, conduct obligations for participants and ADR practitioners and the need, if any, for ADR practitioners to have the benefit of statutory immunity.'

The following comments on aspects of this Inquiry are based on our case handling experience.

Confidentiality

EWOV agrees that maintaining confidentiality at all times is essential in the provision of ADR services. EWOV's case handling experience shows that maintaining confidentiality ensures open communication to enable the parties in dispute to better understand the (underlying) issues and different points of view. Ensuring confidentiality also increases the likelihood of achieving a conciliated outcome.

¹ See <http://www.anzoa.com.au/National%20Benchmarks.pdf>

EWOV flags sensitive and third party information in its case handling procedures and only keeps such information where it is essential to resolve the complaint. According to clause 5.1 of EWOV's Charter, the scheme is required to comply with accepted privacy principles relating to any information about complaints brought to it. EWOV complies with the *Privacy Amendment (Private Sector) Act 2000* (Cth) and handles personal information in line with the National Privacy Principles contained in the *Privacy Act 1988* (Cth). EWOV's Privacy Policy sets out that the Ombudsman and her staff will not discuss any aspect of a complaint with any person other than the customer unless the customer has authorised EWOV to do so. EWOV staff is further required to treat confidentially any personal information disclosed by all parties to a dispute.

Based on our conciliation experience, we see confidentiality as an essential part of an ADR provider's integrity which needs to be ensured at all times by incorporating appropriate safeguards in daily scheme proceedings.

Conduct Provisions

EWOV specifically notes NADRAC's mention of concerns about the conduct of participants in ADR, including the conduct of some lawyers². To ensure broad scheme accessibility, EWOV's phone-based process is very informal and specifically does not require consumers to rely on legal representation. Consumers are not ordered by a court to contact EWOV, they choose to do so. This choice assumes that consumers are acting in good faith and are prepared to genuinely attempt to resolve their dispute. However, the Ombudsman does have the discretion to decline the investigation of a complaint where a complaint appears to be frivolous or vexatious or is not made in good faith³. EWOV has not, however had to decline the investigation of a complaint for this reason in its 14 years of operation.

EWOV requires customers, as well as its industry scheme participants, to actively participate in the scheme's ADR process. For customers and companies, this means that when asked for further information they are expected to respond within a set timeframe. If customers do not contact EWOV after a set number of written and verbal prompts, EWOV has the discretion to decline further investigation of the complaint by closing the case⁴. If industry scheme participants do not provide a response on time or do not genuinely work towards a fair and reasonable resolution of the complaint, EWOV will escalate the matter in line with its case handling policies.

EWOV concludes that all parties involved in the provision of ADR services must be subject to conduct provisions to ensure the best outcome for the parties in dispute. A strong procedural framework assists in achieving consistency and managing expectations.

² NADRAC Report- Resolve to Resolve- Embracing ADR to improve access to justice in the federal jurisdiction (September 2009) p136.

³ Clause 6.3(a) of the *EWOV Charter*

⁴ Clause 6.3(b) of the *EWOV Charter* sets out that the Ombudsman has the discretionary power to decline to investigate a complaint if in the opinion of the Ombudsman the complainant does not have sufficient interest in the subject matter of the complaint.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Kerrie Milburn-Clark, Manager Public Affairs and Policy, on (03) 9649 7599 or at Kerrie.Milburn-Clark@ewov.com.au.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

Fiona McLeod
Energy and Water Ombudsman (Victoria)