

15 May 2009

Ms Serena Beresford-Wylie
Director NADRAC Secretariat
NADRAC Secretariat
Robert Garran Offices
3-5 National Circuit
Barton ACT 2600

By email: nadrac@ag.gov.au

Dear Ms Beresford-Wylie

Re: NADRAC Enquiry into Alternative Dispute Resolution (ADR) and Civil Proceedings

Thank you for the opportunity to comment on NADRAC's Enquiry into ADR and Civil Proceedings (NADRAC's Enquiry). As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides ADR services to all Victorian energy and water customers by way of receiving, investigating and facilitating resolution of customer complaints. EWOV's processes focus on achieving conciliated outcomes between both parties.

In making comments on NADRAC's Enquiry, the considerations that EWOV raises are drawn from its daily case handling experience as an industry-based Ombudsman scheme. EWOV notes that NADRAC's Enquiry only recognises Industry Ombudsmen as ADR providers in a minimal way rather than to the extent that Ombudsman schemes assist consumers across Australia. In fact, Industry Ombudsmen provide complaint resolution services in various areas such as telecommunications, financial services and utilities. It is an industry that employs around 500 staff handling hundreds of thousands of cases, thus playing an important role in delivering ADR services to the community.

EWOV acknowledges that mediation is the most well-known ADR process with many private mediators as well as courts offering this service. Australian Industry Ombudsmen predominantly offer conciliation and have been a vital part of a dispute resolution service which is alternative to the court system since 1990.

This submission sets out this important contribution as an alternative option for consumers who seek to resolve their matter swiftly and as informally as possible. EWOV provides comments on the following sections of NADRAC's enquiry:

- Section 3: Promoting public awareness of ADR;
- Section 4: Provision of ADR services; and
- Section 9: Data, evaluation and research

EWOV hereby refers to the sections as outlined in the summary paper of NADRAC's Enquiry.

Section 3: Promoting public awareness of ADR

Question 3.1: 'To what extent is there a need to improve the understanding of ADR and its differing processes in the general community? How might this be achieved?'

EWOV understands that there is a continuous need to raise awareness of available ADR services within the general community. In our experience, this can best be achieved by outlining the benefits and promoting awareness of locally available ADR services. Industry Ombudsmen services for example are free to consumers and they can withdraw a case at anytime should they wish to engage legal advice instead.

Through our community outreach work we have learned that general understanding of ADR and its advantages can be best enhanced within the community through close cooperation with community agencies. EWOV's focus has been on delivering presentations, conducting workshops and facilitating metropolitan and regional visits with agency representatives. Regular surveys have shown that at least in part due to these activities, consumers' awareness of EWOV's ADR service has continuously grown over the years.

Question 3.2: 'Which other groups or organisations might benefit from a greater awareness of ADR? How might this be achieved?'

In EWOV's experience, it is crucial to reach out to community agencies particularly those servicing migrants, low-income households, elderly or culturally and linguistically diverse consumers as these vulnerable customers benefit the most from ADR services. This can be achieved through visits, fact sheet development or pamphlets distribution such as Victoria Legal Aid's brochure 'Right a Wrong'¹. This brochure specifically serves a good example outlining the importance of general information about locally available ADR services. It summarises which bodies provide what types of ADR processes and provides direct contact details. EWOV encourages NADRAC to also look at Ombudsmen publications which can serve as a guide when developing information on ADR².

Section 4: Provision of ADR services

Question 4.13: 'What are the advantages and disadvantages of private ADR services and those provided by industry groups?'

Since opening to full service in 1996, and now being Australia's oldest and largest energy Ombudsman scheme, EWOV has handled over 172,000 cases including more than 33,300 cases in this current financial year to date. Through this case work EWOV can demonstrate the various benefits of ADR such as:

¹ For a copy of the brochure refer to http://www.legalaid.vic.gov.au/Publications/cl.right_a_wrong.pdf.

² See for example EWOV's website: <http://www.ewov.com.au/Publications.aspx>

- the application of an informal, rather than legalistic approach;
- the provision of a confidential and flexible process offering creative solutions to issues presented;
- the implementation of speedy and impartial procedures that are easily accessible by phone, mail or email and that are free to consumers;
- the opportunity to create a win-win situation preserving relationships; and
- the facilitation of communication and understanding.

It is EWOV's experience that ADR provides opportunity for parties to proactively resolve their matter with the assistance of a third party, in our case a Conciliator who not only facilitates communication but also adds value to the investigation. Our investigation processes are based on all the requirements of procedural fairness and include consideration of current laws and codes, good industry practice and external technical advice. In fact, all of the Ombudsman schemes that are part of the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON) follow this process. With approximately 500 staff working for Ombudsman offices in Australia and handling hundreds of thousands of cases, these industry-based bodies are important ADR service providers.

In summary, advantages of dispute resolution providers including Industry Ombudsmen are:

- ADR processes are voluntary and expeditious.
- Consumers save in legal costs and time.
- Consumers/clients get to tell their own story by outlining impact as well as issues whilst maintaining control.
- Parties to an ADR process are able to achieve a win-win situation that allows for preserved relationships.
- Conciliation processes provide parties with resolution advice taking into account fair and reasonable assessments, laws and codes, good industry practice, etc.
- In the event a conciliated outcome cannot be reached, the majority of Industry Ombudsmen can make binding decisions which ensures that all complaints are finalised by the scheme. Parties to a dispute can still access the court system where a judge has the opportunity to take into consideration any previously mediated or conciliated outcome.

Section 9: Data, evaluation and research

Question 9.1: 'To what extent is there a need to improve the quality of available national data on ADR? What steps should be taken to identify the data required and improve data collection and research?'

EWOV produces six-monthly and annual reports presenting interested parties with case statistics including outcomes, case studies, systemic issues and trends³. EWOV also conducts regular customer satisfaction surveys which have identified very high levels of consumer satisfaction with our processes and outcomes.

³ These reports are published online (<http://www.ewov.com.au/Publications.aspx>).

Extensive research shows how effectively ADR processes deal with complaints in achieving sustainable outcomes including providing opportunities to continuously improve our services to the community.

Furthermore, ANZEWON reports regularly to the Australian Energy Regulator (an affiliate of the Australian Competition and Consumer Commission) providing an overview of key energy issues raised by consumers across Australia and New Zealand. This mutual effort allows for a comparison of individual schemes operating within various jurisdictions. EWOV notes that our approach to data collection and evaluation may not be suitable to all ADR providers but serves as an example on how details can be gathered, interpreted and presented.

EWOV welcomes any queries NADRAC or any other research body may have in reference to data collection and research about Ombudsman services as an example of ADR information collection and research.

We trust the above comments are of assistance. Should you require clarification or further information, please contact Frances Wood, Acting Manager Public Affairs and Policy, on (03) 9649 7599 or at frances.wood@ewov.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young". The signature is written in a cursive, flowing style.

Janine Young
Deputy Ombudsman
Energy and Water Ombudsman (Victoria)