

BENCHMARKS

for

INDUSTRY-BASED

CUSTOMER DISPUTE RESOLUTION SCHEMES

August 1997

THE BENCHMARKS AND THEIR UNDERLYING PRINCIPLES

1. ACCESSIBILITY

The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.

2. INDEPENDENCE

The decision-making process and administration of the scheme are independent from scheme members.

3. FAIRNESS

The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

4. ACCOUNTABILITY

The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.

5. EFFICIENCY

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

6. EFFECTIVENESS

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

BENCHMARK 1 - ACCESSIBILITY

Principle

The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.

Purpose

To promote customer access to the scheme on an equitable basis.

Key Practices

Awareness/Promotion

- 1.1. The scheme¹ seeks to ensure that all customers of the relevant industry are aware of its existence.
- 1.2. The scheme promotes its existence in the media or by other means.
- 1.3. The scheme produces readily available material in simple terms explaining:
 - (a) how to access the scheme;
 - (b) how the scheme works;
 - (c) the major areas with which the scheme deals; and
 - (d) any restrictions on the scheme's powers.
- 1.4. The scheme requires scheme members² to inform their customers³ about the scheme.⁴
- 1.5. The scheme ensures that information about its existence, procedures and scope is available to customers through scheme members:
 - (a) when a scheme member responds to a customer's complaint; and
 - (b) when customers are not satisfied in whole or in part with the outcome of the internal complaints mechanism of a scheme member, when the scheme

¹ The 'scheme' refers to a dispute resolution scheme run by an industry to resolve complaints by customers about businesses within that industry. The type of scheme which is set up will differ according to the size and nature of the relevant industry.

² 'Scheme members' refers to those businesses which participate in a customer dispute resolution scheme.

³ The term 'customer' is used to refer to consumers who purchase goods or services from scheme members.

⁴ This key practice relates to general promotion of the existence of the scheme by scheme members. The circumstances in which individual customers are required to be informed about the scheme is dealt with in key practice 1.5.

member refuses to deal with a complaint, or when the time period within which the internal complaints mechanism⁵ is expected to produce an outcome has expired, whichever first occurs.

- 1.6. The scheme promotes its existence in such a way as to be sensitive to disadvantaged customers or customers with special needs.

Access

- 1.7. The scheme seeks to ensure nation-wide access to it by customers.⁶
- 1.8. The scheme provides appropriate facilities and assistance for disadvantaged complainants or those with special needs.
- 1.9. Complainants can make initial contact with the scheme orally or in writing but the complaint must ultimately be reduced to writing.⁷
- 1.10. The terms of reference of the scheme are expressed clearly.

Cost

- 1.11. Customers do not pay any application or other fee or charge before a complaint is dealt with by the scheme, or at any stage in the process.

Staff Assistance

- 1.12. The scheme's staff have the ability to handle customer complaints and are provided with adequate training in complaints handling.
- 1.13. The scheme's staff explain to complainants in simple terms:
- (a) how the scheme works;
 - (b) the major areas it deals with;
 - (c) any restrictions on its powers; and
 - (d) the timelines applicable to each of the processes in the scheme.
- 1.14. The scheme's staff assist complainants to subsequently reduce a complaint to writing, where complainants need assistance to do so.

⁵ An 'internal complaints mechanism' refers to the system set up within a business to handle complaints by its customers.

⁶ Maximising access to the scheme could include measures such as providing toll free telephone access for consumers/complainants.

⁷ In most cases the staff of a scheme will help a complainant reduce a complaint to writing where the complainant requires assistance to do so.

Use

- 1.15. The scheme's processes are simple for complainants to understand and easy to use.
- 1.16. The scheme provides for a complainant's case to be presented orally or in writing at the determination stage, at the discretion of the decision-maker.
- 1.17. The scheme provides for complainants to be supported by another person at any stage in the scheme's processes.

Non-adversarial Approach

- 1.18. The scheme uses appropriate techniques including conciliation, mediation and negotiation in attempting to settle complaints.⁸
- 1.19. The scheme provides for informal proceedings which discourage a legalistic, adversarial approach at all stages in the scheme's processes.

Legal Representation

- 1.20. The scheme discourages the use of legal representatives before the decision-maker⁹ except in special circumstances.
- 1.21. The scheme provides the opportunity for both parties to be legally represented where one party is so allowed.
- 1.22. The scheme provides for the scheme member to pay the legal costs of complainants where the scheme member is the first party to request to be legally represented and the decision-maker agrees to that request.

⁸ While the focus of the scheme is mainly on alternative dispute resolution, it also has the function of arbitrating disputes which cannot be resolved by alternative means. The alternative dispute resolution techniques listed here are used before arbitration is considered. Initially, customers are encouraged to discuss their complaint with the scheme member and use any internal complaints mechanism that is available. Schemes are then encouraged to attempt to settle complaints before they get to the decision-maker. The scheme does not have to use all of the listed alternative dispute resolution techniques nor in this particular order, but the ones cited in this key practice are recognised techniques.

⁹ The 'decision-maker' refers to the individual, panel of individuals or other entity which is responsible for the final determination of complaints under a scheme.

BENCHMARK 2 - INDEPENDENCE

Principle

The decision-making process and administration of the scheme are independent from scheme members.

Purpose

To ensure that the processes and decisions of the scheme are objective and unbiased and are seen to be objective and unbiased.

Key Practices

The Decision-maker

- 2.1. The scheme has a decision-maker who is responsible for the determination of complaints.
- 2.2. The decision-maker is appointed to the scheme for a fixed term.
- 2.3. The decision-maker is not selected directly by scheme members, and is not answerable to scheme members for determinations.¹⁰
- 2.4. The decision-maker has no relationship with the scheme members that fund or administer the scheme which would give rise to a perceived or actual conflict of interest.

Staff

- 2.5. The scheme's staff are not selected directly by scheme members, and are not answerable to scheme members for the operation of the scheme.

Overseeing Entity

- 2.6. There is a separate entity set up formally to oversee the independence of the scheme's operation.¹¹ The entity has a balance of consumer, industry and, where relevant, other key stakeholder interests.

¹⁰ Where the decision-maker consists, for example, of a panel of individuals, only the chair, or the individual who controls the decision-making process, is required to be independent of industry or consumer interests and be appointed by the entity which oversees the independence of a scheme's operation. Where the decision-maker consists of more than one individual, the chair ensures the independence of the decision-making. This allows for the relevant industry to be represented on the decision-making entity, as long as a balance between consumers and industry is maintained.

¹¹ An example of an entity which formally oversees the independence of a scheme could be a council or other body usually consisting of an independent chair, consumer member or members, industry member or members

2.7. Representatives of consumer interests on the overseeing entity¹² are:

- (a) capable of reflecting the viewpoints and concerns of consumers; and
- (b) persons in whom consumers and consumer organisations have confidence.

2.8. As a minimum the functions of the overseeing entity comprise:

- (a) appointing or dismissing the decision-maker;
- (b) recommending or approving the scheme's budget;
- (c) receiving complaints about the operation of the scheme;¹³
- (d) recommending and being consulted about any changes to the scheme's terms of reference;
- (e) receiving regular reports about the operation of the scheme; and
- (f) receiving information about, and taking appropriate action in relation to, systemic industry problems referred to it by the scheme.

Funding

2.9. The scheme has sufficient funding to enable its caseload and other relevant functions necessary to fulfil its terms of reference to be handled in accordance with these benchmarks.

Terms of Reference

2.10. Changes to the terms of reference are made in consultation with relevant stakeholders, including scheme members, industry and consumer organisations and government.

and, where relevant, other stakeholder member or members. Smaller industry sectors or those with few complaints may not have the ability or need to devote large resources to setting up such an entity. Other types of overseeing entities are not precluded as long as they allow for the relevant independence or a balance of competing interests.

¹² Suitable consumer representatives can be ascertained by a number of methods, including the relevant consumer organisation providing a nominee, advertising for representatives, or the relevant consumer affairs agency or Minister responsible for consumer affairs nominating a representative. Suitable industry and other stakeholder representatives can be sought from the relevant industry association or stakeholder respectively.

¹³ The receipt of complaints about the scheme's operation (by the entity which oversees the independence of a scheme's operation) does not extend to receiving appeals against the determinations of the decision-maker.

BENCHMARK 3 - FAIRNESS

Principle

The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

Purpose

To ensure that the decisions of the scheme are fair and are seen to be fair.

Key Practices

Determinations

- 3.1. The decision-maker bases determinations¹⁴ on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.

Procedural Fairness

- 3.2. The scheme's staff advise complainants of their right to access the legal system or other redress mechanisms at any stage if they are dissatisfied with any of the scheme's decisions or with the decision-maker's determination.
- 3.3. Both parties can put their case to the decision-maker.
- 3.4. Both parties are told the arguments, and sufficient information to know the case, of the other party.
- 3.5. Both parties have the opportunity to rebut the arguments of, and information provided by, the other party.
- 3.6. Both parties are told of the reasons for any determination.
- 3.7. Complainants are advised of the reasons why a complaint is outside jurisdiction or is otherwise excluded.

¹⁴ The term 'determinations' is used to refer to the final decision made by the decision-maker when determining a complaint. The term 'decisions' is used to refer to the decisions made by the scheme's staff.

Provision of Information to the Decision-Maker

- 3.8. The decision-maker encourages but cannot compel complainants to provide information relevant to a complaint.
- 3.9. The decision-maker can demand that scheme members provide all information which, in the decision-maker's view, is relevant to a complaint, unless that information identifies a third party to whom a duty of confidentiality or privacy is owed¹⁵, or unless it contains information which the scheme member is prohibited by law from disclosing.

Confidentiality

- 3.10. Where a scheme member provides information which identifies a third party, the information may be provided to the other party with deletions, where appropriate, at the discretion of the decision-maker.
- 3.11. The scheme ensures that information provided to it for the purposes of resolving complaints is kept confidential, unless disclosure is required by law or for any other purpose specified in these benchmarks.
- 3.12. Parties to a complaint agree not to disclose information gained during the course of any mediation, conciliation or negotiation to any third party, unless required by law to disclose such information.

¹⁵ Where a duty of confidentiality or privacy is owed to a third party in relation to information sought by the decision-maker, the scheme member can seek the permission of the third party to release that information to the decision-maker in full or with deletions as appropriate.

BENCHMARK 4 - ACCOUNTABILITY

Principle

The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.¹⁶

Purpose

To ensure public confidence in the scheme and allow assessment and improvement of its performance and that of scheme members.

Key Practices

Determinations

- 4.1. The scheme regularly provides written reports of determinations¹⁷ to scheme members and any interested bodies for the purposes of:
 - (a) educating scheme members and consumers; and
 - (b) demonstrating consistency and fairness in decision-making.
- 4.2. Written reports of determinations do not name the parties involved.

Reporting

- 4.3. The scheme publishes a detailed and informative annual report containing specific statistical and other data about the performance of the scheme, including:
 - (a) information about how the scheme works;
 - (b) the number and types of complaints it receives and their outcome;
 - (c) the time taken to resolve complaints;
 - (d) any systemic problems arising from complaints;
 - (e) examples of representative case studies;

¹⁶ Systemic industry problems can refer to issues or trends arising either out of many complaints about one scheme member or out of many complaints (which are essentially similar) about more than one scheme member.

¹⁷ Written reports of determinations can consist of a concise summary of a decision-maker's determination and reasons for so determining. They do not necessarily need to include all of the evidence, arguments and reasoning of each complaint. It is not envisaged that written reports would be provided of all determinations made by the decision-maker. The determinations which are reported should be left to the decision-maker's discretion. It is not envisaged that written reports would necessarily be provided of other decisions (apart from determinations) made by the scheme.

- (f) information about how the scheme ensures equitable access;
- (g) a list of scheme members supporting the scheme, together with any changes to the list during the year;
- (h) where the scheme's terms of reference permit, the names of those scheme members which do not meet their obligations as members of the scheme;¹⁸ and
- (i) information about new developments or key areas in which policy or education initiatives are required.

4.4. The annual report is distributed to relevant stakeholders and otherwise made available upon request.

¹⁸ The scheme should state in its terms of reference whether it will disclose the names of scheme members which do not meet their obligations under the scheme. Examples of where a scheme member does not meet its obligations under the scheme will include where it does not provide information as and when requested, or where it does not comply with a determination made under the scheme.

BENCHMARK 5 - EFFICIENCY

Principle

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

Purpose

To give customers and scheme members confidence in the scheme and to ensure the scheme provides value for its funding.

Key Practices

Appropriate Process or Forum

- 5.1. The scheme deals only with complaints which are within its terms of reference and have not been dealt with, or are not being dealt with, by another dispute resolution forum¹⁹ and:
 - (a) which have been considered, and not resolved to the customer's satisfaction, by a scheme member's internal complaints resolution mechanism; or
 - (b) where a scheme member has refused, or failed within a reasonable time, to deal with a complaint under its internal complaints resolution mechanism.
- 5.2. The scheme has mechanisms and procedures for referring relevant complaints to other, more appropriate, fora.
- 5.3. The scheme has mechanisms and procedures for referring systemic industry problems, that become apparent from complaints, to relevant scheme members.
- 5.4. The scheme excludes vexatious and frivolous complaints, at the discretion of the decision-maker.

Tracking of Complaints

- 5.5. The scheme has reasonable time limits set for each of its processes which facilitate speedy resolution without compromising quality decision-making.
- 5.6. The scheme has mechanisms to ensure that the time limits are complied with as far as possible.

¹⁹ Complaints which have been made to one scheme but are found to be more appropriately dealt with by another scheme can be dealt with by the latter scheme. It is where a complaint has been substantially considered by one scheme that a complainant is discouraged from forum-shopping.

- 5.7. The scheme has a system for tracking the progress of complaints.
- 5.8. The scheme's staff keep the parties informed about the progress of their complaint.

Monitoring

- 5.9. The scheme sets objective targets against which it can assess its performance.
- 5.10. The scheme keeps systematic records of all complaints and enquiries, their progress and their outcome.
- 5.11. The scheme conducts regular reviews of its performance.
- 5.12. The scheme's staff seek periodic feedback from the parties about the parties' perceptions of the performance of the scheme.
- 5.13. The scheme reports regularly to the overseeing entity on the results of its monitoring and review.

BENCHMARK 6 - EFFECTIVENESS

Principle

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Purpose

To promote customer confidence in the scheme and ensure that the scheme fulfils its role.

Key Practices

Coverage

- 6.1. The scope of the scheme and the powers of the decision-maker are clear.
- 6.2. The scope of the scheme (including the decision-maker's powers) is sufficient to deal with:
 - (a) the vast majority of customer complaints in the relevant industry and the whole of each such complaint; and
 - (b) customer complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry.²⁰
- 6.3. The decision-maker has the power to make monetary awards of sufficient size and other awards (but not punitive damages) as appropriate.

Systemic Problems

- 6.4. The scheme has mechanisms for referring systemic industry problems to the overseeing entity (where referral to the scheme member or members under key practice 5.3 does not result in the systemic problem being adequately addressed) for appropriate action.

²⁰ Because the loss arising from the determination of a complaint may vary according to the industry concerned, the benchmarks do not specify a monetary limit above which complaints are excluded from the scheme.

Scheme Performance

- 6.5. The scheme has procedures in place for:
- (a) receiving complaints about the scheme; and
 - (b) referring complaints about the scheme to the overseeing entity for appropriate action.
- 6.6. The scheme responds to any recommendations of the overseeing entity in a timely and appropriate manner.

Internal Complaints Mechanisms

- 6.7. The scheme requires scheme members to set up internal complaints mechanisms.²¹
- 6.8. The scheme has the capacity to advise scheme members about their internal complaints mechanisms.

Compliance

- 6.9. The scheme has mechanisms to encourage scheme members to abide by the rules of the scheme.²²
- 6.10. The determinations of the decision-maker are binding on the scheme member if complainants accept the determination.

Independent Review

- 6.11. The operation of the scheme is reviewed within three years of its establishment, and regularly thereafter, by an independent party commissioned by the overseeing entity.
- 6.12. The review, undertaken in consultation with relevant stakeholders, includes:
- (a) the scheme's progress towards meeting these benchmarks;
 - (b) whether the scope of the scheme is appropriate;
 - (c) scheme member and complainant satisfaction with the scheme;
 - (d) assessing whether the dispute resolution processes used by the scheme are just and reasonable;
 - (e) the degree of equitable access to the scheme; and
 - (f) the effectiveness of the terms of reference.
- 6.13. The results of the review are made available to relevant stakeholders.

²¹ The Standards Australia Standard on Complaints Handling AS 4269-1995 can assist scheme members to set up appropriate internal complaints mechanisms.

²² Mechanisms for encouraging scheme members to abide by the rules of the scheme could include contractual obligations which a scheme member enters into when joining the scheme or naming in annual reports or otherwise those scheme members which do not abide by the rules of the scheme.