

SUBMISSION OF AUSTRALIA AND NEW ZEALAND OMBUDSMAN ASSOCIATION (NEW ZEALAND MEMBERS) ON PROPOSALS FOR APPROVAL OF A JOINT ELECTRICITY AND GAS COMPLAINTS RESOLUTION SCHEME

Introductory

The Australia New Zealand Ombudsman Association (ANZOA) is an association of independent dispute resolution services operating in New Zealand and Australia. Almost all members are ombudsmen in either the public or the private sector, and membership is limited to those who administer dispute resolution schemes that comply with stringent criteria based on the Australian Benchmarks for Industry-Based Dispute Resolution Schemes.

New Zealand members of ANZOA are the Chief Ombudsman, the Banking Ombudsman, the Insurance & Savings Ombudsman and the Electricity and Gas Complaints Commissioner. The last-named is not a party to these submissions.

Our concern is to ensure that the approval process is likely to result in the approval of a scheme that meets the needs of the New Zealand electricity and gas industries and their customers and is at least of the standard that would make it eligible for ANZOA membership, thus continuing the high standards set by the existing Electricity and Gas Complaints Commissioner. It is noted that one of the key requirements for the approved scheme is that it should meet international standards of best practice.

ANZOA members have very substantial experience in the establishment and administration of dispute resolution schemes and are happy to draw on that experience to assist the Electricity Commission and the Gas Industry Co in establishing the approval process.

Submissions

In general the proposals put forward should ensure a reasonably robust scheme that should meet most of the Australian benchmarks. We do, however, have concerns about the following proposals in the draft document that may result in the scheme falling short of the benchmarks or may be impractical to implement.

Specific questions

In response to specific questions:

Q17: Do you agree that independent reviews of scheme performance should be undertaken every three years and made widely available?

It is certainly appropriate to have an early review of a newly established scheme, though a review after one year leaves little time for the scheme to establish itself and set all necessary procedures and systems in place. However a three year cycle of review for an established scheme may result in reviews that are too frequent. There is a danger that almost as soon as a review has been completed and any recommendations implemented and evaluated, it will be time to start working towards the next review. The special review process noted in paragraph 9.3.5 should provide a "safety net" if major concerns arise between regular reviews.

Q21: *Do you agree that approval should be granted for a period of five years?*

Q22: *Do you agree that a call for applications should be made after four years of service?*

ANZOA members disagree strongly with both these proposals. If they were implemented, there would be a major flaw in the independence of the scheme. It is unlikely that the scheme would be eligible for ANZOA membership or for approval for use of the name Ombudsman.

No other scheme of this kind in Australasia is subject to a similar regime, and it does not represent international best practice.

To meet the independence benchmarks, a scheme must be independent of industry, consumers and government. A limited term of approval would make the scheme particularly vulnerable to lobbying by dissatisfied industry or consumer groups or to attempts at political control.

A limited term will not ensure the development of industry knowledge, nor will it lead to the establishment of case histories and consistency over time and the provision of good guidance for companies and complainants alike.

There are also practical considerations. It is unlikely that a well-run and reasonably resourced dispute resolution scheme would be prepared to take the risk of leasing premises, employing staff, developing processes and systems and building relationships with industry and consumers when approval could be withdrawn at less than 12 months notice.

The proposed regime makes ample provision for review of the scheme and its performance and for the revocation of approval in the event of a failure to perform. This satisfies the need for accountability and should ensure the effective operation of the scheme.

Appendix C: Proposed scheme requirements

We also have some comments on the proposed scheme requirements. Paragraph numbers used are those found in Appendix C to the consultation paper.

3.7 Confidentiality

It is assumed (although this is not entirely clear from the paper) that paragraph 3.7.1 is intended to apply to the scheme and its decision-maker(s) and paragraph 3.7.2 to the parties to a complaint.

Paragraph 3.7.2 could place an undue burden on complainants and participants in the scheme when the referral to the scheme does not result in the resolution of all issues between the parties. Sometimes part of a complaint will fall outside the scheme's jurisdiction and will need to be determined elsewhere, and sometimes the complainant will not accept the scheme's determination. In such circumstances, it seems unnecessarily burdensome to restrict the use of **all** information gained in the

course of the dispute resolution process. It would be sufficient to allow for the conduct of mediations to be in confidence.

It is also the experience of ANZOA members that confidentiality requirements on complainants are difficult, if not impossible, to enforce. Once the investigation of the complaint has been concluded, there is no sanction that can reasonably be brought to bear on the complainant.

3.9 *Tracking complaints*

Paragraph 3.9.3 proposes a time frame of two weeks for advising the complainant of acceptance of the complaint. This seems an unduly long time for a complainant to have to wait for a first contact from the scheme. If it is intended to allow time for the consideration of jurisdictional issues, it may be better to provide for an immediate acknowledgement of receipt of the complaint (say within three days) followed, in cases where there is any doubt about jurisdiction, by advice of acceptance within two weeks.

7.3 *Appointing staff to the scheme*

Security of tenure for the decision-maker is vital to the independence of a dispute resolution scheme. It is suggested that paragraph 7.3.2 provide for the appointment of the decision-maker for a fixed term of no less than five years.

9. *Performance monitoring requirements*

9.1.2: The requirement to determine 90% of complaints within 60 working days of receipt is likely to be impossible to achieve. It is our experience that considerably more than one in nine complaints will legitimately take longer to resolve because they involve one or more of the following:

- complainants with personal difficulties that affect their ability to articulate their concerns or to respond promptly and appropriately to requests for information
- technical or novel issues that require research and possibly external advice
- an unsuccessful attempt to achieve an agreed resolution of the complaint by negotiation or mediation, followed by an investigation and determination
- they are part of a sudden and unexpected influx of complaints on a single issue and there is an inevitable delay before extra resources can be obtained and applied to the increased caseload.

It is also our experience that as a scheme becomes established and the members become more adept at complaint resolution, a greater proportion of the issues coming to the external dispute resolution scheme are complex and difficult to resolve.

General

If it will assist, ANZOA New Zealand members will be happy to provide the Electricity Commission and the Gas Industry Co on request with information about their structure and operations and/or advice on the practical aspects of operating a dispute resolution scheme.

ANZOA New Zealand members

Chief Ombudsman, Beverley Wakem

Insurance & Savings Ombudsman, Karen Stevens

Banking Ombudsman, Liz Brown