



**Energy Retailers
Association of Australia**

**Dispute Resolution
Schemes for the
Australian Energy
Industry**

Policy Position Paper

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Introduction

During the many interactions that take place each year between Energy Retailers and their customers there will, from time to time, be complaints and disputes over certain matters. While the majority of these are generally resolved to the satisfaction of the customer via Retailer's internal dispute resolution processes, there are instances where the outcome is not to the satisfaction of the customer. To facilitate the resolution of disputes in these instances where customers and Retailers cannot come to a mutually agreeable outcome, Retailers participate in energy industry specific dispute resolution schemes – generally referred to as Energy Ombudsman schemes.

The ERAA supports the establishment and operation of such schemes and the assistance they provide customers in resolving disputes. However, ERAA member experiences with these schemes have identified that there are opportunities for such schemes to operate more efficiently and effectively to better serve the needs of customers, Retailers and distributors (where there is a significant direct relationship between distributors and customers).

An Effective Dispute Resolution Scheme for the Energy Industry

The ERAA are of the view that an effective and efficient dispute resolution scheme for energy customers would have the following characteristics:

Charter

An energy industry dispute resolution scheme charter should include:

1. that access to the scheme be limited to those customers designated as “residential customers” as defined in the National Electricity Law (“NEL”), National Gas Law (“NGL”) or equivalent. Larger customers should be excluded from coverage under the scheme as mediation and dispute resolution procedures should be either detailed in their contractual terms and conditions or be subject to common law;
2. that the scheme(s) should operate as a “last resort” for the resolution of customer disputes. As such, the scheme should only accept applications for assistance where it can be established that the customer has not been able to resolve a complaint to their satisfaction after having had the matter addressed by their respective Retailer. Customers who have not contacted their Retailer should be directed to do so and action on their application suspended or dismissed pending an outcome between those parties;
3. that the scheme(s) should not initiate investigations at their own initiative or assist in the development of policy of matters that are not directly related to dispute resolution. The scheme(s) should not act as a consumer advocate. ;
4. that the service be provided free of charge to the customer; and

5. that Retailers agree to be bound by the determinations of the scheme in all instances where the monetary value of any determination does not exceed \$10,000, unless otherwise agreed by the parties prior to the determination being made. This monetary amount will be sufficient to cover the majority of complaints arising between Retailers and customers. Where it is determined that a retailer has not breached the law or regulatory instrument the consumer has the responsibility to pay for the energy consumed.

Governance

A dispute resolution scheme should be structured outside of Government and as a company limited by guarantee. It should be governed by a single Board of Directors comprised of equal numbers of industry and customer representatives with an independent Chair. Industry representatives on the Board would be determined by those Retailers who are members of, and consequently fund, the scheme.

The Chief Officer of the scheme (or Ombudsman) should be appointed for a fixed term by, and be directly accountable to, the Board. The Chief Officer should be responsible for complaint handling and for managing the day-to-day operations of the scheme. Policy parameters should be set by the Board and reflected in the Constitution - these should be implemented by the Chief Officer.

The scheme should be fully funded by industry members and allocated on a “user pays” basis. This will incentivise members to resolve disputes directly with customers in the first instance and ensure that the scheme operates as a “last resort” for the resolution of customer complaints. Funding allocations based on member customer numbers are an inappropriate means for allocation and act as a cross subsidy for those members who have less efficient dispute resolution programs and/or a disproportionate number of complaints arising as a result of the way they conduct their businesses.

As participation in dispute resolution schemes is a regulatory requirement which Retailers are obliged to comply with and fund, it is appropriate that Retailers be required to promote the scheme in a way that is informative, but in no way inhibits them from having the opportunity to resolve disputes with the customer in the first instance.

Principles under which the scheme should operate

The ERAA supports the generally accepted benchmarks for industry-based dispute resolution schemes and their underlying principles. These include:

- **Accountability and Transparency** – the scheme(s) should provide readily accessible information about all aspects of their services and must be accountable to the public, its Board and its members.;

- **Independence** – the scheme(s) must be free to act independently without interference from energy industry or consumer advocacy organisations. The processes and decisions of the scheme(s) must be objective and unbiased, and seen to be objective and unbiased. ;
- **Impartiality** – the scheme(s) must remain impartial when conducting investigations and negotiating resolutions. ;
- **Effectiveness** – the scheme(s) must be effective by having appropriate and comprehensive terms of reference and periodic reviews of its performance;
- **Fairness / Integrity and Consistency** – the scheme(s) should observe due process standards and ensure that each party to a dispute has an equal opportunity to express their point of view when conducting investigations and negotiating resolutions. Each matter should be treated independently of other matters;
- **Accessibility** – the scheme(s) should easily accessible by customers;
- **Affordability** – the scheme(s) should be fee-free to customers;
- **Efficiency** – the scheme(s) should operate efficiently; and
- **Minimum formality** – to enhance the speed of resolution and ensure that parties are not overwhelmed by a process that is designed to assist them in seeking a determination on the issue at hand.

A National Approach

In recognition of the current focus on national energy reform as well as the lack of consistency in the way which energy disputes resolution schemes operate across each of the state jurisdictions, the ERAA believes that there is an opportunity to establish a single national dispute resolution scheme to deal with energy customers complaints. This national scheme would ideally operate in line with the principles, charter and governance arrangements discussed above. However, in the interim of a national scheme being developed, the ERAA supports the continued assistance being provided to customers via the state based schemes; however these state based schemes should operate on nationally consistent principles.

Independent Reviews and Benchmarks

The scheme(s) should have regular independent reviews, such as the financial services ombudsman schemes which have a requirement to undertake a review every 3 years. The scheme(s) should operate under, and be benchmarked against nationally consistent benchmarks such as those developed by the Minister for Customs and Consumer Affairs “*Benchmarks for Industry-based Customer Dispute Resolution Schemes*” should be implemented for the scheme.