C O R R E C T E D V E R S I O N

LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Melbourne — 11 February 2008

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Mr G. Brody, director, policy and campaigns, Consumer Action Law Centre.

The CHAIR — I welcome Gerard Brody from the Consumer Action Law Centre. Thank you very much for your time and for lodging a submission. I think you understand from your previous appearances that the remarks you make today are covered by parliamentary privilege, which means you are fairly free to say whatever you wish without fear of litigation, but do not try to say it outside — depending on what you say. You are clear on that? Hansard will produce a transcript of the discussion this morning and you will be sent a copy to make whatever alterations you feel you need to make.

Could I ask you to talk to our terms of reference and also to our discussion paper; we then have some questions we can work through? We have about 45 minutes. Thank you very much, Gerard.

Mr BRODY — I have a statement. Thank you for providing me with an opportunity to speak today. To give you some background, my name is Gerard Brody from Consumer Action Law Centre. Consumer Action is an independent not-for-profit campaign-focused casework and advocacy organisation. It was formed in 2006 by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service. We provide legal advice and representation to vulnerable and disadvantaged consumers across Victoria. It is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, and we pursue a law reform agenda across a range of consumer issues.

I am sure you have read our submission so I will not repeat it in detail, but I would like to make a few points. We were particularly concerned about the issues paper that was released by the committee and its discussion of the industry-based external dispute resolution schemes. We believe there are significant differences between the industry-based EDR schemes and other forms of alternative dispute resolution that are described in the paper, and perhaps it would be a mistake for them to be analysed and regulated in the same way. Our centre regularly deals with industry-based EDR schemes. They include the banking ombudsman, the credit ombudsman, the financial industry complaints service, the telecommunications industry ombudsman, the energy and water ombudsman, and the insurance ombudsman service.

Kerryn asked me to provide details of the number of consumers we refer to EDR schemes and those we assist through the complaints schemes. Unfortunately it has been difficult to get that information from our database. We are able to work out that from 3864 telephone advices and cases that we opened during 2007, 15 per cent of those — around 500 — involved consumers accessing industry EDR schemes; so it is a fair percentage. In general we believe these schemes can be an effective method of resolving consumer business disputes.

Back to my original point: industry schemes are very different to court-based ADR schemes in a number of important ways. First, industry-based EDR can make findings that are binding on member traders but not on a consumer who can reject the finding. Other forms of ADR are generally not binding on either party. Most industry EDR matters are dealt with on the papers, which is often less stressful for vulnerable consumers than having to face an industry member in person. Depending on membership conditions the scheme often has early access to relevant documentation held by the industry member.

An industry-based EDR scheme plays an important role in investigating and reporting on systemic problems in a particular industry. Some of these differences mean that the effectiveness of dispute resolution depends on the structure and operation of the scheme where a number of staff may deal with an individual matter rather than in the cases with court ADR which are based on the expertise and skills of individual mediators. While not all consumers can access industry EDR without some advice and assistance, it is more likely that assistance is not required for industry EDR other than for other forums such as court or tribunal ADR schemes.

Industry-based EDR is funded by industry and is free to consumers. There is no uniform regulatory framework for industry-based EDR schemes, but they all comply with and report on the commonwealth benchmarks for EDR schemes which encompass principles of accessibility, independence, fairness, accountability and efficiency.

Financial services EDR schemes must also comply with benchmarks set by the Australian Securities and Investment Commission. Again, while these benchmarks could probably be strengthened ASIC can refuse to approve a scheme if it does not meet the standards, and it has done that recently in relation to a scheme proposed by the timeshare industry.

I do not wish to say that the industry EDR schemes are perfect; they can always be improved upon. One good thing about the schemes' structures, however, is that they incorporate regular independent reviews. The boards of the schemes usually take the review seriously and develop strategies to implement recommendations that arise from the

reviews. We strongly support those review processes and believe they can be used to improve the schemes' operation and effectiveness.

I know the committee is interested in the level of consumer knowledge of the EDR schemes and the extent to which they address the interests of marginalised consumers. It is difficult to say conclusively the levels of knowledge. I think it varies among different consumers. The schemes themselves would have the best understanding of that, and I know that some of them undertake regular surveys about consumer awareness. One key element here is that in most cases industry codes or other mechanisms place an obligation on the industry member to refer the individual to industry EDR where a complaint or dispute between a consumer and the industry member has not been resolved.

In this way the relevant information is provided to the customer at the time they need it. Failure by some to comply with this obligation is a problem but we believe it is easy to focus on industry conduct and pull up the bank or insurer for breaching their industry code rather than increasing general consumer awareness although obviously there needs to be a mixture of both.

I also note that financial services EDR schemes have done a lot to improve consumer awareness and accessibility. For example, they have established one phone number as a contact point for all the different schemes. The banking ombudsman, the financial industry complaints service and the insurance ombudsman are currently in the process of merging to become the financial services ombudsman. We believe that should improve the consumer awareness of that scheme.

Regarding marginalised consumers I would say the schemes vary in their penetration to such consumers. Some schemes, such as the energy and water ombudsman, have done much to improve their penetration into marginalised communities through their outreach work. Other schemes, such as the banking ombudsman and the telecommunications ombudsman, have undertaken work to improve awareness among particular groups such as youth in schools. I think this work should be supported.

The committee also asked me about mandatory pre-action ADR. As explained in our submission we would not support such a proposal. In consumer trader disputes there is a real and unequal bargaining power, and while it is often assumed that ADR is an advantage for the most vulnerable party we see cases where compulsory mediation, such as exists at VCAT, is of significant benefit to the business, particularly those that engage in systemic unfair practices. Consumers who have been subject to very subtle psychological selling techniques are often at an unfair advantage when face to face with a representative of a business. A vulnerable consumer can perhaps be worn down by a mediation process to a point where the consumer would not proceed to hearing, even if the final offer was not appropriate.

Businesses involved in systemic conduct can ensure that there is no public airing of their conduct that may impact on hundreds or thousands of other consumers. Where businesses are willing to use ADR the threat that the consumer can go directly to litigation disciplines both the trader and any ADR process to resolve complaints quickly and cheaply. Going to court is obviously more expensive and time-consuming for everyone. This is not to say that ADR does not have its advantages, but it can act to keep unfair practices hidden, practices that may contribute or lead many others to disputes.

I just want to give one example here, and this is a particular problem with mandatory ADR that exists in the credit list at VCAT. In the Victorian credit review, which was undertaken in 2006, a solicitor for a large payday lender was one of the few that commended mediation at VCAT for credit disputes. That business stated that mediation reduced costs compared to going to hearing. In fact a hearing involving that company's practices of taking mortgages over basic household furniture, could have determined whether that conduct was unjust or not. We would have liked to have pushed such a complaint to hearing, but our clients would often wish to settle to save time and hassle, and especially the business would push for that as well. The business obviously preferred mediation, as if any finding was found against them, it would have impacted on most of that lenders customers.

The committee is also interested about expansion of industry-based EDR to other areas. We strongly support recent Victorian legislation that would require a credit provider to be a member of EDR schemes. The bill was introduced into Parliament in December.

We currently already have a credit ombudsman, but it is not mandatory and many credit providers are not members.

Finance brokers are another obvious example. It is a defined profession which raises many consumer problems. Draft legislation has also been released that would require finance brokers to be members of an industry-based EDR scheme.

Another category would be motor vehicle traders and repairers. Currently, due to the timing costs involved, many consumers do not pursue complaints against motor car traders and repairers. They would often have to go to VCAT and prepare extensive reports at their own expense to make their case. This means that consumers often give up without a satisfactory outcome. However, we do believe that the effectiveness of industry EDR, perhaps more than some other dispute forums, can be impacted by a lack of industry commitment to the scheme.

While it is clear that there are many scheme members at the moment that do not embrace industry EDR, and that often causes disputes to take longer to resolve, this could be an issue for the schemes to manage. These challenges need to be recognised as it cannot be assumed that industry EDR will be effective for all industries.

Finally, I just want to finish with a few words about the ways in which consumers can be empowered to resolve disputes for themselves. I would agree that education, starting in schools, plays a very important role. But education will not be enough to deliver fair outcomes for all consumers who have complaints. Assistance services, such as financial counsellors and legal aid services, will be required especially to assist low-income and vulnerable consumers. Responsive and effective assistance services can assist empower consumers at the time they need empowerment — that is, when they present to such services with a problem.

The CHAIR — Thank you very much Gerard, you have covered very comprehensively the range of matters we are going to raise, but we might ask you to expand on them in a little bit more detail. If I could just start off in the area of consumer awareness of EDR services; you did cover the proportion of users who access EDR, but I was wondering if you could talk a little bit about the success rate of those cases?

Mr BRODY — Again, it does vary on particular complaints and particular schemes, I think. We see, generally, a fair outcome when consumers use the dispute services; the EDR services. One of the good things that the industry EDR schemes make decisions on is not just the law but also good industry practice and what is fair and reasonable in all the circumstances. So often the outcome is one that for the consumer it might not be everything they wanted, but they might be able to see that there is a bit of give and take and there is fairness in the end. It is difficult to say whether we always get successful outcomes — and we do not always get successful outcomes — but I would say that overall the outcomes that they deliver are fair for consumers.

The CHAIR — This is a bit related to the other point that you mentioned about consumers using these schemes, not being able to do so without requiring expert assistance, and I wonder if you would just talk a bit about the reason for that and then link that back to what you just said about how you evaluate success. Do you get that anecdotally, or do you tabulate that or have a methodology around it?

Mr BRODY — I guess in a lot of our work, because we do work quite extensively with the different schemes, the solicitors in our practice come to an understanding about which schemes are more effective, just by dealing with them, without necessarily having undertaken rigorous work in evaluating effectiveness.

I would agree that some schemes are better than others in not requiring a consumer to have to access expertise to assist them making a complaint. For some schemes we are very prepared to say to the consumer, 'Just call them yourself, they are very helpful, you will be able to deal with them very easily'.

For other schemes we might be less willing to do that, maybe because there are more complex issues involved, or if the consumer is particularly vulnerable or could not prepare their complaint in an appropriate manner, then we would help them and undertake that work for them. I would say that perhaps the first category, EWOV is an example of that. We hardly ever act for consumers with a complaint about EWOV, we get them to do it themselves. Its conciliators there are very good at ensuring that the consumer is able to put their complaint to the best of their ability.

Perhaps some of the more technical ones, such as the insurance ombudsman, or the banking ombudsman, need on occasion, for their complaint to be put forward with help from experts. That is not to say, that that necessarily turns on their effectiveness. I just think it is a different type of scheme, a different type of complaint.

The CHAIR — I guess what I am trying to get a bit of a fix on is that we have talked before in the committee with other witnesses about the difficulty that consumers have in getting satisfaction, and you are describing a system that does that very well, in your estimation. What I would just like to elicit from you is, what is it about the experience of a person that picks up the phone and has a dispute with an industry, and then you say that you form an opinion that the industry 'does that very well'; what is that very well? Is it the way they talk initially to them, how they explain the process, how they bring them in; how does it work on the ground?

Mr BRODY — I guess the particular outcome I mentioned before, the industry codes that would require, if I call a business and I have got a complaint, then there is a certain process that they must deal with my complaint. At one point, the complaint becomes unresolved, they have to refer me to their industry ADR scheme. We see that as an effective way of getting people with disputes to a body that is going to help them, or try to resolve the dispute; so I think that that process really helps and that is why I would say that it is a good process.

And then as far as when the scheme takes over, the schemes are independent of the business, they can often look into things on paper not having to require face-to-face meetings, we think that is effective. We think that often — I think I mentioned this as well — they can get information from the businesses straight away, so they can call in the customer file for example, and not have to rely on perhaps less objective judgements of what has gone on in the complaint or how someone has been treated. All of those things together, I think, contribute to them generally being effective. I am not saying they are effective for everyone. Often people have bad outcomes, and I guess one aspect of the scheme is that if the consumer is not happy with their outcome they can go to a court or a tribunal as well.

Mr BROOKS — I was really interested to hear your case study or the example you gave of the VCAT mediation where I think the moneylender you mentioned seemed to be quite happy with that mediation because, individually they were able to mediate these outcomes and it was not dealt with as an issue. I was interested in your comments as to how that might be overcome, what sort of recommendations you might make in relation to that sort of situation.

Mr BRODY — In that situation we think it would be useful for the credit list to be able to go straight to a hearing and not have to go through mediation if we do not think it is going to be effective or necessary. Going straight to a hearing will raise those issues in a public forum or have it on the public record, and then there will be a determination about whether that conduct is fair or just or lawful. While mediation obviously is good in many circumstances, and for some complaints it is appropriate to go though mediation to deliver an outcome that is agreed to by both parties, when there are particular egregious activities and the business will just keep on going, they will just use mediation to wear down consumers and to ensure that their practices are not highlighted publicly.

Mr FOLEY — And that might particularly be an issue perhaps for disadvantaged or vulnerable communities who are perhaps targeted in this way. Essentially you are saying there should be some flexibility for the agency or external dispute resolver to make that judgement call of, is this an individual case gone bad or is this a systematic rort.

Mr BRODY — Yes, that is right. Perhaps at VCAT an appropriate way would be, for example, a directions hearing up-front for a member to decide whether it should go to mediation or ifit should go to a hearing straightaway, without requiring it to go through that mediation and just going through the processes, taking more time and not necessarily getting to an effective outcome.

Mr FOLEY — A requirement or a judgement made by someone appropriate in the organisation in VCAT or subject to submissions from people such as yourself?

Mr BRODY — That is right. I would say that the tribunal member would be best placed to decide whether mediation should go ahead or not, based on submissions et cetera. We have recently dealt with in our casework over the last 12 to 18 months many consumer complaints about the activities of sellers of educational software. It is usually to sell to parents. They get people's names from a shopping centre — from a competition or something — and they will come to the house and sell them what are very expensive, and I would say not value for money, maths software to help their children. Often psychological techniques are used in the selling, 'If you want to help your child, you will buy this'. When the products are not appropriate for their children or the children just do not use them, they complain. We have been dealing with a number of those complaints, and what we have seen is that each time a consumer complains, perhaps it is dealt with okay and the mediation gives them a reasonable

outcome — they get a percentage of their money back so they are reasonably happy — but we do not get any public hearing about whether this conduct is fair that would affect the industry as a whole.

Mr O'DONOHUE — Just to follow that through, there has been criticism in some quarters that VCAT is becoming more and more like a court with the cost structure and the use of legal representation and formal processes. Would you like to make a comment on that, because often that drives people into mediation as well — the fear of the process and the court-like system?

Mr BRODY — I guess I would agree that it is becoming more court-like. It depends in which area. Most consumer complaints go through the civil list at VCAT. For small claims — that is any claim under $10 000, which probably is the majority of consumer complaints — legal representation is not allowed unless there are particular circumstances that need it. In that environment I would argue it is less legalistic and that is generally a good thing. On the other hand, having an individual consumer perhaps with a representative of a business who might have legal business skills, there still is an unequal bargaining power there.

Mr BROOKS — Following on from that discussion we have had about the VCAT example, I am just wondering why the same sorts of problems might not apply to, say, the industry-based EDRs you have spoken about. There is an inherent interest in resolving those particular concerns that are raised as they go along rather than dealing with the systemic issue.

Mr BRODY — Sure. I think one of the reasons the industry EDRs are able to deal with that is they do take an interest in systemic issues and report on them. The ones that are licensed by ASIC actually have a requirement that they have to deliver reports, I think it is monthly or quarterly, to ASIC about systemic issues that they have seen in their complaints resolution. The other schemes similarly release public reporting on what is going on in the industry. We think that does highlight systemic conduct and then it gets referred to the regulator for action if necessary.

The CHAIR — You mentioned in your remarks going through that the way that each specific industry or area might conduct itself varies but that they conform to some overall principles. Does that expose the process to unequal treatment by consumers?

Mr BRODY — Do you mean between the different schemes?

The CHAIR — Yes, between the different schemes.

Mr BRODY — I guess I would say that yes, they are not all the same and they do treat consumers differently. I did mention the commonwealth benchmarks that were created in about 1996 or 1997 which all the schemes uphold and apply. That does give them some level of standardisation, but within that there is some flexibility. I think that flexibility, depending on the industry, can be a good thing. Different types of industries or sectors might have an appropriate way to deal with problems that is different to a different industry. But I do think also that perhaps those benchmarks could be strengthened and improved upon and more work I guess done on ensuring that they are upheld. That is done through the regular reviews that I talked about.

The CHAIR — Just step out the process of those reviews. Each scheme does its own review; how does it feed into the macro level?

Mr BRODY — I do not think it really feeds that well into the macro level. The schemes, generally every two or three years, undertake an independent review. They get an independent reviewer in to assess how the scheme is going, and it looks at those particular benchmarks in the commonwealth benchmarks and kind of rates it against them. They go out and do consultations, they take submissions, and then they come to any recommendations for improvement. In recent years some of the improvements they have recommended have been things to do with the level of jurisdiction of a particular scheme or the financial limits. Some of them have upper financial limits. I think with the banking ombudsman it is $280 000 — that level actually resulted from a scheme review; previously it was about $110 000. With those sorts of issues about accessibility, the reviews highlight how it could be improved.

The CHAIR — So the review of a particular scheme is then lodged with ASIC?

Mr BRODY — No, it is lodged with the board of the particular scheme and the board then acts on it.

The CHAIR — When you said that there are ASIC benchmarks and you said that you thought there was some room for them to be strengthened, how would ASIC as the setter of the benchmarks be cognisant of what the reviews of the schemes were doing that would inform their assessment of the adequacy of the benchmarks?

Mr BRODY —. ASIC will not necessarily undertake the independent reviews. It will be interested in them. It has to maintain its view that the scheme complies with its standards to be licensed and it will keep a watchful eye over the scheme to make sure it is doing that.

The CHAIR — I guess what my question is, and sorry to keep pursuing it like this, is how does the overall system move forward in the interests of consumers when it is compartmentalised in the way that you describe it? How does it all come together?

Mr BRODY — I think that is a difficult question. I do not necessarily think that there is an overall one way in which all consumer complaints should be dealt with. While they should be given, you know, fairness and due process et cetera, that obviously applies and the commonwealth benchmarks kind of sit at the top, they identify how those complaint processes go forward. Perhaps it is that benchmark being strengthened or that kind of, 'We will ensure that the complaint-handling processes of all the schemes move forward', as you suggest.

Mr FOLEY — I was interested to follow the processes — just given the centre's focus, with some caveats — of the success of the external industry-based ones. So if a consumer is therefore unsatisfied and the centre takes the view that it is a particularly important case, for whatever reason, do you then follow that through to some level of court? If you have done that, have you then run into how the courts themselves, either through engaging in the alternative resolution processes or not, have worked in the consumer's interest?

Mr BRODY — To answer the first part of your question, yes, we have, so if a consumer has not been satisfied with the resolution of the industry-based scheme, on occasion we have taken it to a court or a tribunal. I have not got any specific examples of how that played out in those circumstances where they had to go through mediation again at a tribunal or court, but if, for example, it was the credit list at VCAT, then they would have to; mediation is compulsory there. But it does give, I guess, another forum for the dispute to be resolved for consumers, and that would be in the interest of consumers.

Mr FOLEY — But does the centre have a view as to how the court-based system works or does not work, or is it not really your cup of tea?

Mr BRODY — As I said before with the example about the payday lender and going to mediation, I think that that is a problem and that mediation, in all the circumstances, at the tribunal can actually prevent systemic issues from being raised at a public hearing.

Mr FOLEY — Fair enough.

Mr O'DONOHUE — You said in your opening presentation that your organisation pursues a law reform agenda. Do you want to make any comments about issues on the table at the moment?

Mr BRODY — There are a lot of issues. We are actually putting together our policy plan for 2008. I could give you what we have done during 2007.

The CHAIR — If I could just interrupt you, given the time, it would be useful if it related to the terms of reference, because I am sure you deal with a huge range of issues that are not really relevant to what we are doing, but please proceed.

Mr BRODY — Yes, we are looking at things like bank fees and lending standards. We are doing things particularly around the motor vehicle industry and complaints processes in that industry. That is why I did mention briefly about the motor vehicle industry being an appropriate consideration of whether industry-based EDR would be appropriate. And we are just looking at the regulatory framework and consumer policy generally, I guess.

Mr O'DONOHUE — Do you work with other organisations like PILCH or Legal Aid or those types of organisations?

Mr BRODY — We do. We also work with interstate colleagues, and other consumer centres interstate.

The CHAIR — In your opening remarks and also in your submission you talked about mandatory referral and that you do not believe that ADR should be a mandatory condition prior to seeking litigation. I suppose it would be fair to say that one of the imperatives of the government and the court system, as we have heard through witnesses, is to keep as much out of the courts as possible because of all the difficulties with that, costs and so forth. How do you respond to that, given that you want a greater flexibility that might be construed as running counter to that policy thrust? How do you reconcile that?

Mr BRODY — I guess that with consumer disputes they are mostly, as I mentioned, not in the formal court process but within VCAT. As I mentioned, VCAT is generally a lower cost jurisdiction — for example, for civil small claims there is no legal representation and there is a general presumption that there will be no orders as to costs. We would say that that is a kind of an alternative to going to the Magistrates Court as it is, and having another alternative from that framework to require mediation there, might be appropriate in some circumstances but might not be.

The CHAIR — Like what circumstances might be appropriate?

Mr BRODY — I think that there are some cases where consumers do not want to have to stand up and give evidence; they do not feel comfortable doing that. When they go to VCAT they often have compulsory conferences as mediation where they will be in a different room to the other party, and put their case to an independent mediator and that is just a less stressful way of resolving their dispute. Some consumers would prefer it that way.

The CHAIR — Okay. It has been put to us also that the EDR scheme is, I think the term is, 'gold plated'; that they are very high level and expensive ways of delivering this service. Would you agree with that?

Mr BRODY — Without seeing the particular costs that have been mentioned, I am not entirely convinced or I could not say. There is a cost to the business if a consumer does go to those complaint schemes. But that should actually encourage the businesses to resolve complaints in house, and the more effective and efficient businesses would put up processes within their internal disputes resolution mechanisms to ensure that they did that, and that should be reducing costs for everyone, I would say. In actual fact the incentive there is to reduce costs, not make it more expensive.

Mr FOLEY — To follow up on that, Chair, I think the implication might have been in the evidence that this was in effect another way to raise a non-tariff barrier to access, if you like, but it was not so much the cost to the industry player, but it was essentially almost a deliberate hurdle put in the way to prevent access to consumers — a complaint brake.

Mr BRODY — I am not sure what you mean by 'prevent'.

Mr FOLEY — To prevent aggrieved consumers looking twice at the scheme and therefore not pursuing what they would see as their rights or interests under the guise of an acceptable standard, because it is just high cost and difficult to access.

Mr BRODY — For a consumer it is free to access the industry EDR scheme, so it does not cost them anything. I do not see how, from a consumer's perspective, you would say that it was a high cost way to resolve your dispute.

The CHAIR — You did touch on the issue of increasing consumer awareness and understanding of ADR broadly. What is your sense of consumers' awareness of what is available to them in terms of ADR prior to them contacting your organisation?

Mr BRODY — I think it does vary; the larger schemes are getting more general awareness among the community. The issue is not whether they generally know about them but whether they know about them when they have a complaint. When they have got an issue, that is when they need to know about them. That is why I think that the process is in place that if they complain to the business straightaway and that is not resolved, the business has an obligation to tell them about the industry EDR scheme. We see that as an appropriate way for them to find out about the scheme, when they most need it.

The CHAIR — So, for example, when they contact you, is that because they have already been told from the industry, they already know about that, or do they contact you and then you tell them?

Mr BRODY — It could be either, I guess. We get consumers who contact us at different positions in their complaint-handling processes from right at the start when they have not even contacted the business yet, to when they have but it has not been resolved appropriately, to when they have already lodged a complaint with the particular scheme; so it really depends on the situation.

The CHAIR — Given that there is a level there — I read in what you are saying that you think it is — of a satisfactory level of awareness, do you think there is much room for improvement?

Mr BRODY — Do not get me wrong. I think that general awareness of the schemes can be improved and I would support that starting from, as I said, education in schools. I think that is a really important part. I know that when I went to school I did not hear about these complaint resolution schemes, but I know that the schemes are currently out there trying to improve that. So I think the general consumer complaint issues should be something that is addressed in general education.

The CHAIR — Do you think that the promotion of these schemes should be largely the responsibility of the schemes themselves, or do you think that government could play a role in the promotion?

Mr BRODY — I think that it can be both, yes, considering that the government, through Consumer Affairs Victoria, has a kind of complaints handling role for the majority of consumer complaints that are not part of these schemes. Consumers generally know to call Consumer Affairs Victoria if they have a problem, and if it is an energy-related problem or a banking-related problem Consumer Affairs would refer them to that particular scheme, or we hope they would. So in that context I think the government could have a role to play in ensuring consumers know about the other schemes.

Mr CLARK — I have been interested to hear evidence about the industry-based schemes working well, which is consistent with my impression. The issue of the tracking of cases within various organisations came up this morning. My impression is that the industry-based schemes have quite good systems in place for tracking client complaints through the system, but the claim came up this morning that Consumer Affairs was not so good at tracking complaints through their system. Do you have any observations on how well consumer affairs is performing in providing a sort of generic equivalent to an EDR in sectors that are not covered by an industry-based EDR?

Mr BRODY — I think that consumers' experiences with making complaints to Consumer Affairs can vary. A problem with Consumer Affairs in comparison to the industry-based schemes is that they cannot make findings which are binding on the business. Often we see that means that the business just will not participate. If they have got some concern for their reputation, yes, they will; that is a different case. But perhaps more of the smaller, one-off players in the market, do not have any concern for their reputation, so they just will not participate in that mediation process. I would agree that there is not a general awareness or understanding about that process of mediation at Consumer Affairs, and I think that that could be looked at some more and strengthened.

The CHAIR — I am tempted just to respond to that.

Mr BRODY — Sure.

The CHAIR — Because the conversation in part arose out of an observation that I made, from my own experience, which was not with CAV — in fact it was with one of the schemes, or an organisation that would have been party to one of the schemes — and there I found a huge difficulty in getting any kind of sense of me as one client moving through the system. Every time I would call I would have to do the story again and all the rest of it. What my question this morning — and I will ask it again, but I think I know the answer from what you have said up to this point — was is how typical is that?

Mr BRODY — I would be surprised to hear that, generally, and I would be interested to know which scheme it was.

The CHAIR — You will have to guess!

Mr BRODY — But I would agree that some of the schemes vary on that, and I think that it is up to each scheme to be striving for excellence in making sure that the systems they have in place identify callers when they come in and that the conciliators are trained to be able to — —

The CHAIR — It is not so much identifying the caller. I am sure they do that terrifically; it is the caller identifying who they are speaking to and being able to contact that person again, and that seems to be impossible sometimes.

Mr BRODY — Yes, right.

Mr FOLEY — In regard to both education and access to vulnerable communities to that information, what is your experience of the online resolution of disputes and provision of information?

Mr BRODY — We think that online provision of information plays an important role and we know that the websites of these schemes and Consumer Affairs generally — I think Consumer Affairs is the no. 1 government website from consumer hits — play a very important role. I think that for marginalised communities, in particular, the websites, or online, is not going to be enough. There is still not a full penetration of internet usage in Victoria. Only about 70 per cent of households have access to the internet, and it is perhaps the vulnerable households that are much more the ones that do not have access to the internet. So while the internet does play a role in information provision, I do not think it is going to be enough.

Mr FOLEY — In regard to the actual use of online services to resolve disputes once they have started, is there any experience there, or is it all — —

Mr BRODY — Do you mean a consumer making a complaint via email?

Mr FOLEY — Yes.

Mr BRODY — And then it being done purely on email?

Mr FOLEY — Or through some other interactive form.

Mr BRODY — I think that some complaints are effectively resolved through email. I would say it is the same percentage as those making the telephone call. It is going to be up to the consumer which method they prefer to use to make their complaint.

The CHAIR — There are no more questions. Gerard, thank you very much for your time and for your submission. If there are any matters that we need to follow up later, we will certainly do that.

Mr BRODY — I am happy to help.

The CHAIR — And you will get a copy of the Hansard transcript.

Mr BRODY — Thanks very much.

Witness withdrew.