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 — 4 March 2008

Members

Mr C. Brooks
Mr R. Clark
Mr L. Donnellan
Mr M. Foley
Mrs J. Kronberg
Mr E. O'Donohue
Mr J. Scheffer

Chair: Mr J. Scheffer
Deputy Chair: Mr R. Clark

Staff

Executive Officer: Ms K. Riseley
Research Officers: Ms K. Buchanan and Ms S. Brent
Administration Officer: Ms H. Ross-Soden

Witnesses

Ms F. McLeod, Energy and Water Ombudsman Victoria,

Ms F. Wood, Policy and Research Officer, and

Mr S. Gatford, Manager, Public Affairs and Policy, Energy and Water Ombudsman (Victoria).

The CHAIR — Welcome to the hearing of our inquiry into alternative dispute resolution. There is just one formality that I need to advise you of that you are probably aware of. This committee operates under the Parliamentary Committees Act of the Victorian Parliament. That affords you parliamentary privilege for anything that you say within the confines of this hearing, but it does not extend beyond it. As well, Hansard staff are recording the discussion this morning and you will be sent a transcript later on to make some minor changes to it; obviously you will not be able to make substantial changes to it. Then that will subsequently appear on our website. Thank you very much for an interesting tour around the premises here and for giving us an indication of some of the things you do. Perhaps before we hand over to you, Fiona, I might just ask whether anyone has any further questions about what we just saw.

As there are no further questions at this stage, Fiona, we have some questions that we need to go through with the three of you, but we have found it to be useful to hand over to witnesses. So I invite you to set up and tell us about what you do and address the terms of reference. The last thing I forgot to do was to thank you very much for the comprehensive submission that you lodged. That was really very informative and interesting to read, together with the other documents that you have provided. So thank you; they are much appreciated.

Ms McLEOD — We have managed to have a short discussion on the tour about what we do, but basically the Energy and Water Ombudsman (Victoria) is a mechanism by which the electricity, gas and water companies in Victoria comply with either a licence condition, a direct legislative obligation or a voluntary but enforceable code. In regard to LPG, our coverage of bottled gas is through an industry code, which is a voluntary code that the industry signs onto, but it is an enforceable code. Electricity, gas, retail, distribution and transmission all have licences issued by the Essential Services Commission, as do the metropolitan water retailers. The rest of the water sector in Victoria — I think we actually have a sheet in the material we are providing to you which specifies the various mechanisms and how the industries are linked in — the regional–urban, the rural–urban and rural water authorities, or rather companies as they now are, are linked in by direct legislative obligation.

We are a Corporations Law company; we do not report to Parliament. We are like the banking ombudsman, the telecommunications ombudsman, and a number of other ombudsman entities which have a history of around 15 years now in Australia. The structure of my scheme, and of most of the schemes, is a board of directors, with the majority being non-industry, so that the industry which the ombudsman is looking into does not control the board of directors. I have two electricity directors, one gas and one water director, four directors with consumer expertise, and an independent chair. That works very well for us. Perhaps to go just briefly to other schemes, some of them have a council and a board, and that seems to work very well for them. We used to have such an arrangement but find that the current model works much better for us.

All of the industry-based ombudsman schemes have as a fundamental premise, charging for the number of complaints against each company. It is a very important incentive for businesses to make sure they are settling their customer complaints back in the company rather than having the customer finding they need to go to an ombudsman scheme. So the companies that perform poorly pay more than companies that handle their customer complaints well. Most schemes also have a staggered costing model — for example, your first type of case might be your cheapest. Certainly for us, if the case is not settled there it goes to the next level and there is another charge; if it goes to level 2 a third charge is applied; if it goes to a level 3 investigated complaint, then there is a per minute charge — every minute we work on that case is charged back to the member. So again, the fact of having to pay for the cost of our services to investigate complaints and also the fact of having to upgrade it to the next level is a very good incentive, I think, for business to really try to lift its game in relation to customer complaints.

That is a pretty standard model for the industry ombudsman schemes, and one which I think is definitely worth thinking about in other sectors. Of my costs, about 11 per cent are fixed and about 89 per cent are variable — that is, complaints based. The 11 per cent are fixed annual fees based on the size of the company, so a really small water company or authority like First Mildura Irrigation Trust would pay only $2000 each year to cover the cost of our administration, billing, issuing and the value-add that we give to them in terms of materials and advice about what to do with customer complaints. The highest fixed fee per annum is $20 000, and the bigger companies like Origin, AGL and TRUenergy pay that every year. I think we mentioned that we have 61 staff; 39 of them are in the conciliation area, but we also have learning and development, IT, legal, community liaison and administration staff. We do a range of other things which support our primary function, which is investigation and resolution of complaints.

I might just stop there, if there is nothing critical I have left out. I think I will just leave it there as a general overview. I suppose maybe I will just mention that we have handled 125 000 cases to December last year. We started the first year with about 3000 cases and we are up around the 20 000 now, but we have added industries. We started with electricity alone. Then we got the gas industry, then we got the water industry, then we got the bottled gas industry, so that explains some of the increases. But certainly it is true to say that full retail competition in energy has driven up the number of energy retail cases so that the proportion of retail cases is much higher than, say, the supply issues; you know, the quality and reliability of electricity, gas or water.

The CHAIR — Perhaps if I could ask you just about the people who call in. One of our primary concerns is looking at the quality of services that consumers and customers have. You talked about the first point of contact, when people ring in with a particular complaint that they feel has not been satisfactorily addressed by the member organisation. Could you talk to us a bit — paint a picture — of how these people are experiencing things, just what it feels like to be them and what sorts of issues they raise with you?

Ms McLEOD — There are a variety of approaches by consumers. Some consumers come to us and they are very angry, very upset because they might have had several goes at trying to fix their particular problem, and they find out about us. They are generally extremely relieved, because for a start we answered the phone. One of our KPIs is to answer 90 per cent of calls within 20 seconds, and we do. I also mentioned earlier that the first thing that a customer will hear is actually me, as the Ombudsman, welcoming them and hoping that we can help with their problem. I am trying to, at the very first minute that they get through, make the experience a pleasant one for them. So we answer the phone. Ideally the same case officer will handle the case from go to whoa. I think one of the main strengths of our model is that you do not have to write anything to me, because I think you would lose a lot of consumers if you required them to write their complaint. They just think, 'too hard, takes too long'. You just ring up the 1800 number, you get to speak to one of the Enquiry Officers at our office, and I think people palpably relax when they have got someone on the phone who is really relaxed. And, 'I am Bill' or 'I am John', not 'I am Mr Smith', and it is a very informal style. Our culture is to be very helpful and to add value to the call.

We have lots of KPIs around the fact that a certain proportion of our cases have to be closed within 28, 60, 90, 180 and 365 days. We have got very strong requirements from the board of directors to make sure that we are focusing all the time on quick resolution and informal resolution. Our success with our customers is demonstrable. We do customer satisfaction surveys every couple of years. We have just finished one and the survey company ranked EWOV as world's best practice in terms of customer satisfaction. These are people who have had investigated complaints.

We also do regular surveys of the customers who have not been to the company at all, or who have been into the contact centre once and we have sent them to a higher level. Again the results are very good. Customers tell us that the process is very good, very easy, very quick, very informal, and they feel like part of the process. We are able to actually say that that is their experience because we test that. I think it is an important function of any organisation to actually evaluate its services and really be able to demonstrate that it is doing a good job in a meaningful way. One other thing which is very pleasing about our work is one of the things that I have heard said in the past about ombudsman schemes, and it needs to be said that it may be a function of the product or service being monitored, that the demographic around the complainant can be very middle class — a reasonably high annual income, high levels of education. But we know from our regular surveys of our customers that 25 per cent of callers to our scheme have annual household incomes of less than $40 000, 31 per cent of complainants to EWOV are concession cardholders.

In fact one of the main ways that customers come to us after having had a bad experience with a company, especially if they are on low incomes, vulnerable and disadvantaged, is through financial counsellors. We have a very strong, ongoing working relationship with financial counsellors, so another way that a customer might get to us is that they are sitting in their financial counsellor's office, they are upset, a financial counsellor has tried to fix it back at the company and had no luck. The financial counsellor rings us, and sometimes people will say, 'I do not want to talk to them, you do it', and the financial counsellor will say, 'No, you do it, it is fine, trust me, they are really easy to deal with', and as soon as people get on the phone and, again, experience us as very approachable — independent but approachable — they relax and go into the process. We are pleased that we, again, are able to demonstrate that we are getting significant numbers of complainants who are most disadvantaged in Victoria. The other interesting thing is that about 25 per cent of Victorians live in the country, 75 per cent live in metropolitan centres and that is exactly the proportion of complaints for us. Again we are doing a good job of getting information out to the country, not just that we are there, but that people are actually lodging complaints with us.

Mr DONNELLAN — Is there any capacity to complain via email, just out of interest?

Ms McLEOD — Yes.

Mr DONNELLAN — There is. How does that go, because I actually did find that a little bit more frustrating than, as you said, just ringing up.

Ms McLEOD — I do too. I have noticed actually, we just had an Australia and New Zealand Energy and Water Ombudsman Network meeting last week and we were just looking at our increasing levels of email and website complaints. Ours is up to 7 per cent now, and it had been at 1, 2 and 3 per cent for a long time, so it is interesting that it is going up.

Mr DONNELLAN — I find people more likely to abuse you over the email. They will ring you up and talk to you about a complaint and try to get you to solve it, as a Member of Parliament, but when it is on the email it is just like, 'This is stuffed up, it is all your fault', and then they leave it there and you are meant to respond to that, and I just find the phone gets better outcomes personally. I think it is the easy way of writing when people do not want to write a letter. I can understand that, but I do not think email actually achieves as much as the phone calls personally.

Ms McLEOD — Ours are just low proportions at the moment so that is just something that we are looking at. I suppose the main challenge for any organisation in relation to email contact is that people expect an immediate response and so, in the same way that they will get an immediate response from us answering the phone, we need to be quickly onto emails as well, but we are just still keeping an eye on that particular approach. We will take anything: people can visit, they can write, they can ring, they can email.

Mr FOLEY — In regard to the sort of welcoming, non-bureaucratic nature, what is the issue between — or is there an issue between — confusing satisfaction and relief that someone is listening, versus outcomes, and how you deal with things?

Ms McLEOD — That is a very good question, because that is one of the challenges that customer satisfaction surveys always have, and I can tell you that the satisfaction with outcome is about 20 per cent lower than the satisfaction with EWOV's service. They were satisfied in the end, but we ask them questions about whether they got what they wanted and they do not always get what they want. It is very clearly able to be shown in the way the survey is structured that their satisfaction with our service is different from the satisfaction with the outcome. That is really at the heart of it, is it not?

Mr FOLEY — It is. How does that relate to the other networks of ombudsman that you are dealing with? Does that come up as an issue?

Ms McLEOD — Yes, it is something that is often said — that if you get the outcome you want, you will say that you are satisfied with the service. I am not really across all of the other schemes in terms of their satisfaction results and with outcome, but I know that we are all aware of perhaps that bias, so certainly in our survey work, we build the questioning so as to be able to differentiate that, and it is clear that they can tell the difference. They might be less happy with what they got, but happier with how it all went.

Mr FOLEY — Someone listened?

Ms McLEOD — Yes, and it was quick and really informal, and I was part of it — just things like that.

Mr FOLEY — 'I understood it.'?

Ms McLEOD — I did. The person I spoke to seemed knowledgeable. The Ombudsman seemed to have enough clout to get an outcome. There is a range of things that are really important. People want the phone to be answered quickly. They want to speak to a person. They want it to be an easy conversation. They do not want to have to write a letter. They want someone to just take it down over the phone — all of those things.

Mr CLARK — How do you handle complaints about your own officers' performance?

Ms McLEOD — We have quite a comprehensive process. There are stages or ranges of complaint. If there was a complaint about a Conciliator, that would go to their manager. It would keep going up. We actually

have our complaint-handling policy on the web site, but I would be happy to get you copies of that and send that to you, but that is a transparent process. If you had a case with us and you were not happy with what we have decided — maybe we have decided to close your case — you can request an internal review of the decision to close your case.

We have a separate process where people not involved with the case would review the decision, but you would need to meet one of three grounds. You would either have to have new information which would change the outcome of the previous decision; you would need to demonstrate that we had made an error; or you would need to demonstrate bias on the part of the staff member for us to overturn the previous decision. But they are very standard criteria for internal review.

There is also a way of complaining about me, and that would generally be to the board of directors, and also there is the capacity to complain about some aspect of the operation of the scheme. We have had one of those in the 12-year history where one of the member companies ended up making some suggestions for change to the board, and that was dealt with.

Mr CLARK — I have a letter requiring action at the moment. The gravamen of the complaint is that phone calls are not being returned, commitments are not being honoured. So presumably you have got a process that deals with that?

Ms McLEOD — Definitely.

Mr BROOKS — I was just going to ask a question about how you promote the service to a range of different communities that we might describe as marginalised communities or people who do not have English as a strong language or Indigenous communities. How do you go about promoting that sort of service?

Ms McLEOD — I suppose one of the basic things is that one bill every year from every electricity, gas and water company has to have our information on it, so every person who receives an electricity, gas and water bill in Victoria will find out about us once a year. If you get a disconnection warning notice, we are on it as well.

We have an extensive community outreach program that Stephen is responsible for. We travel around regional Victoria and what are considered to be marginal metropolitan areas as well — areas of greatest disadvantage. We publish our brochure in the 14 main languages in Victoria, and that would be pretty standard amongst industry ombudsman schemes. We have brief messages in 14 languages on our web site. Over the years we have done major campaigns through what was the Victorian Ethnic Affairs Commission but is now the Victorian Multicultural Commission.

We have been involved with the Consumer Affairs Victoria Indigenous Consumers Unit for a number of years, travelling out to Indigenous communities. We go on a roadshow with them and a number of other complaint handling agencies like Ombudsman Victoria, Office of the Public Advocate, Guardianship and Administration Board. We travel around Koori communities, and with Koori staff in the Indigenous Consumers Unit, which makes it much easier obviously than just turning up there on your own. We have seen an increase in the number of complaints from Koori customers. We tend to get complaints at the time. I have certainly been on a number of visits where we have had complaints. Disconnection seems endemic in some of those communities, so it is important to get messages out there.

Mr BROOKS — Does that indicate, though, that maybe after you have been out to those communities and you get a lift in the rate of complaints that they drop off?

Ms McLEOD — Yes, but at least people know, and they remember. The feedback we have had through CAV is that if Indigenous communities particularly like how you behaved, they will remember you and they will tell other people that 'that mob is okay. I had a disconnection reversed with them'. It is very much word-of-mouth awareness, and whether you are considered to be a body worth complaining to or not. Stephen is helpfully reminding me we have Indigenous posters that go up around Indigenous agencies, and we are currently working on an Indigenous brochure.

The CHAIR — I was going to lead on from there. Can you talk a bit about your involvement with the Koories *Know Your Rights* program?

Ms McLEOD — That is actually the Consumer Affairs roadshow. That is basically going around visiting Indigenous communities around Victoria on what is called the *Know Your Rights* roadshow, so CAV oversights it and they have invited a number of complaint handling agencies to attend with them.

Just going back to the culturally and linguistically diverse customers, we have done lots of really interesting projects. We did a really interesting project with Springvale Citizens Aid and Advice Bureau for emerging communities from the Horn of Africa. Stephen actually did it, and we did a seminar with Dinka, Arabic and Nuer languages, so we had lots of interpreters in the room with all of the communities, and we know from Springvale that face-to-face and talking is usually more successful than written information. Some communities actually do not have written language. They just have spoken language.

The CHAIR — Who goes from here?

Ms McLEOD — We try and have Conciliators as well as other staff. I go on virtually every trip. I think it is important. I think people like to see the Ombudsman; it gives them comfort. People even say to me, 'I came along here just to look at you and see if you were okay, and now I feel comfortable about complaining to your office'. It is funny but people do need to do that. We have done work with the Victorian Arabic Social Services with Arabic women — lots of really interesting little projects like that. The broad things like your language materials down to targeted projects.

Mr DONNELLAN — You mentioned before — and you may have answered this and I might not have been listening — that 11 per cent are fixed costs and 89 per cent variable, depending on how many complaints there are?

Ms McLEOD — Yes.

Mr DONNELLAN — The style and so forth — in effect 100 per cent of the income of the ombudsman office — it is not state government funded or anything else? It is just wholly and solely from industry?

Ms McLEOD — Yes.

Mr DONNELLAN — That was $6.2 million last year?

Ms McLEOD — Yes.

Mr DONNELLAN — How does that affect your staff realities in the sense that obviously you are not going to know how many complaints are coming in each year? You are not going to know because you have got your fixed ones which are 2 to 20 000, which you charge each level, but then how do you know you are going to get an AGL and you are going to need 10 extras in there?

Ms McLEOD — I think we have a good model, and it is unlike some of the other schemes who are at risk if they get a lot more complaints than they expected or a lot less complaints than they expected. Our budget is actually set so we estimate what we are going to get in terms of complaints the next year. We are very good at that now. We have got a particular case analyst who has done a lot of work on scenario modelling. We have got 12 years history of peaks and troughs and types of things going on, and that feeds into the model. We will work out that we think we are going to get 20 000 cases, for example, and, 'Here is the staffing that we need', and, 'We think that will cost $6.297 million'. The prices of each of the four case types falls out of that fixed budget. It is not a set price per case type every year. We start with a guaranteed funding, and I think it works very well.

Mr DONNELLAN — Would not the energy companies say, 'Why did you charge us $450 for this particular case last year? This year you are going to charge us $600'. Do they not sort of say, 'Jump in the lake'?

Ms McLEOD — No, not really. We have a pretty comprehensive stakeholder relation strategy as well. Part of what we need to keep doing is explain to the companies how the charging might change from year to year. And just think about this: if companies are, as they should be, handling their own simple cases, that means we are left with the complex ones that take a long time — that is going to cost more.

If you see the cost going up per case type, that is actually a good thing, because it means we are seeing less and less simple things and they are going back to the company, or they are being fixed within the company. I am not necessarily unhappy about that, but at this stage at least, we are still seeing quite a number of things which we think

should have been fixed back in the company. We are still seeing a lot of quite straightforward things coming to us. Certainly a fair proportion of consumers who come to us have not been to the company or have been to the call centre once and need to be referred back with their complaint.

The CHAIR — Could I just come back to a point around that? When we were having a tour of the facilities here, you mentioned that you meet with the member organisations around caseload and how that is being handled?

Ms McLEOD — Yes.

The CHAIR — You are probably in the best position to get some general sense of how well they are doing in processing what they have to do. You just said in answer to Mr Donnellan's question that probably they would deal with the simpler ones and you would get the harder ones. Could you talk a bit about how you think the state of the world is from their point of view? They have got different types of challenges to face. The world is probably a lot harder, and it is probably easy to jump to conclusions about what they are doing well and not doing well. Could you reflect on that for us?

Ms McLEOD — The first thing to say, Johan, of course is that EWOV receives about 20 000 cases per year. If you compare that with the number of transactions that are successfully going on in the companies, year to year, it looks like a low number. It needs to be said that on many occasions the electricity, gas and water companies do a very good job.

It depends on which company you talk to at which time. Things happen to the companies that impact their ability to do a good job of their customer complaints, if you have a big IT project going on or you have had a change of owner. There have been several sales, and when the due diligence process hits, everything shuts down because you are not allowed to do anything new or change the way that you operate so that any possible new owners can come in and look at what you do and know that that is what they are buying. When companies get into financial difficulties, that impacts their ability to provide good customer service. We meet with the companies who are generating the most complaints. If you are not generating a lot of complaints, we would not necessarily call you in or go to your company for a case review meeting. But at the moment, as I mentioned in the corridor, we are meeting with one company at the moment two to three times a week because there are some significant issues that we are trying to get on top of whereas we might meet with other companies once a month.

We might go there, they might come to us. Conciliators will go in, talk to the company representatives about the cases that we have got. We find that the face-to-face discussion of the case issues can often lead to a quicker resolution of the case than if we send emails backwards and forwards and continue to talk on the phone. It can be a very efficient way of trying to progress the resolution of a case. We try and do it as much as we can.

Mr FOLEY — Given the areas you cover and the move, increasingly, towards a debate about whether these areas should be regulated at a Commonwealth level, does the federal committee that you chair, ANZOA, have a view on trying to get consistent standards in place — trying to get an approach in place if, for instance, water is regulated through the Murray Darling commission across the basin and that sort of stuff? How do you deal with those inter-jurisdictional issues?

Ms McLEOD — The Australian and New Zealand Ombudsman Association is an association of commonwealth, state, parliamentary ombudsmen and industry-based ombudsmen. Certainly I think it would be fair to say that the members of ANZOA are satisfied with the current levels of regulation of its various entities. Some of them report directly to Parliament, the Parliamentary Commissioners. All of the others have very robust mechanisms holding them accountable and transparent. I think everyone is satisfied with the current regulatory arrangements in relation to the schemes.

Water is really tricky, because Victoria is really the only state that has embarked on significant reform of the water industry. In order to be an ombudsman, say, of water in New South Wales, you would be looking after something like — I cannot tell you this is a correct number — hundreds of small, council-run water entities. It does not make a lot of sense.

When I took the water industry in to EWOV, a lot of reform had already taken place, and it was a very easy structure to take on, even though it was in four sectors — the wholesale drainage, metropolitan, regional-urban, or regional as it then was, and rural. Now we have five variations of that. Even though there were the differences in

the sector, you had a very easy-to-manage and understand discrete water industry. Whereas you do not have that across New South Wales.

We do not do catchments or any of the water efficiency things. We are still at the customer end, where the customer is billed from their water company, or the reliability of the water. That move to 'ombudsman of water industries' is less immediate, less possible, less realistic in the short term.

Certainly there is debate at a national level about the possibility of a national energy ombudsman. My own view is that it does not entirely make sense to have energy ombudsmen — putting water aside — in every state of Australia, costing industry separate amounts of money to join, where there may be some economies of scale from a national arrangement.

There is another organisation called the Australia and New Zealand Energy and Water Ombudsman Network, of which we are a part. Its position is that that is a discussion that needs to be had about a national energy ombudsman. We still do not have national retail. It is now looking like occurring in 2010 or 2011. That is a conversation that cannot be had yet. We want to see what the consumer protection framework looks like, what the final retail framework looks like. Distribution is happening in 2009, so we will have a bit of a sense of that.

I think it is coming, and it certainly makes sense from an ombudsman perspective to very seriously look at whether the benefits of a national ombudsman in whatever model it could be — it could be a single ombudsman in one city like the banking ombudsman, telecommunications; it could be a national ombudsman with some state capacity like the commonwealth ombudsman has offices in every state — and whether those benefits outweigh the costs. Does that answer your question?

Mr FOLEY — It does. If I can just follow up a bit further on the water one, perhaps: do you think the level of markets that you look after for water is such that Victorian water users would be facing an inferior arrangement potentially if we went to a national level? Has there been any attempt to engage the ombudsman on how that might happen?

Ms McLEOD — No, not on water. The water markets in Australia are so fragmented in other states that I think to be a national ombudsman of what is quite a manageable industry in Victoria, but then Queensland is huge, New South Wales is huge — they are all different models, all have different rules; some of them do not have any rules. The reforms need to happen to the water industries in those states I think before an ombudsman makes sense for the customer end.

Mr DONNELLAN — Would not that also apply to energy though?

Ms McLEOD — Yes.

Mr DONNELLAN — Because you have really got different types of markets in every state as well of course, haven't you?

Ms McLEOD — Yes, but there are pretty small numbers of players. There are 12 energy retailers in Victoria. But New South Wales now has three main companies: EnergyAustralia, Integral and Country Energy. As you are probably aware, they are currently looking at whether to sell that industry. So there is a much more manageable number. There have been reforms in all of the energy sectors across Australia, which again make them much more manageable, and there are smaller numbers of players too to get across. Also you have an integrated state framework for water in Victoria that I do not think could be said of other states.

Mr DONNELLAN — Yes. One other quick question relating to Consumer Affairs Victoria. Of the work that you have received how much is referred from CAV through their telephones I guess?

Ms McLEOD — We do have that in the annual report and I will just see if — —

Mr DONNELLAN — I am sorry.

Ms McLEOD — No, that is okay. I cannot remember; it is very low I think.

Mr DONNELLAN — It is low, is it?

Ms McLEOD — Yes. I will just get Frances and Stephen to look at this while we are talking. There are low levels of referral.

Mr DONNELLAN — So they come to you directly more than after ringing CAV and saying, 'I have got a problem with a retailer, what do I do?'.

Ms McLEOD — Yes, definitely. We will check what I am saying so I am not steering you wrongly, but I would think we get a greater level of referral from financial counsellors than Consumer Affairs.

Ms WOOD — We do refer cases to Consumer Affairs though, if they are out of our jurisdiction.

Mr DONNELLAN — Yes, I know what you mean.

Mr CLARK — While you are checking that out, can I just follow on from Martin's question about the move to a national ombudsman for energy. Who would have the final say on the legal right to set that? Is it the AER or the AEMC?

Ms McLEOD — No, it is actually the Ministerial Council on Energy. So the ministers will be signing off on the final forms and each state energy minister will pass legislation through their state Parliament. The South Australian Parliament is the lead Parliament in each of those cases. We already have very good working relationships with the Australian Energy Regulator and the Australian Energy Market Commission. We are helped by the AER being in Melbourne, but they are already transitioning into being the new regulators, so we now give them information and reports about what is going on in the Victorian market, and they are very interested in a lot of things that are going on — interval meters. The interval meter rollout is of great interest to them. So we are starting down that path already.

Mr CLARK — So are they stepping into the shoes of the Essential Services Commission in terms of supervising your operations?

Ms McLEOD — Yes. Unfortunately the actual framework around that is not written yet, but the requirement to be a member of an ombudsman's scheme will move to the national framework once that is written. Just to explain, the ESC actually does what both the AER and the AEMC do. The AEMC writes rules and the AER enforces them, to put it very simply, whereas the ESC writes and enforces rules. So it is a bit of a different model for us in Victoria, but that is fine.

The CHAIR — You touched earlier on ANZOA and also on the unpronounceable acronym, ANZEWON. Could you talk to us a bit about those organisations in themselves and what they do, and then how you link in with them?

Ms McLEOD — ANZEWON started in 1998. It is not a structured organisation; it is a loose coalition of the ombudsmen themselves, the individuals, not their schemes. Being an ombudsman, or I suppose any kind of CEO, can be a very lonely job, and it is fantastic to be able to connect with your peers, so we meet three times a year. We have regular contact with each other to try and make sure that we are operating at the same levels and at best practice. Since 1998 examples of projects that we have embarked on have been a policy and procedure consistency at best practice project, where we identified all of the major policies and procedures, where the variations were, and then schemes were expected to step up to the best practice, and we have done a lot of that work. The scheme in New South Wales and EWOV recently agreed the set of level 2 descriptors to be the same, so if you look at EWON's annual report and EWOV's annual report — —

Mr DONNELLAN — It sounds like Star Wars!

Ms McLEOD — It does. Our intranet is called EWOK. You are not too far wrong. So you will see from 1 July 2007 that the descriptors around the cases are exactly the same. In the absence of a national energy ombudsman — and EWOV was the first one to start in Australia — we put a lot of effort into meeting with each other and doing that kind of work, but it is a really wonderful network.

The CHAIR — Just to get my bearings on it — that is the network with New Zealand, and then there is the association?

Ms McLEOD — Then there is ANZOA, and that is an incorporated association, with membership; and, again, it is the individuals, not the schemes. The individuals are the members of ANZOA, but the association provides opportunities for our staff to work with each other. So, for instance, Stephen is in the public relations and communications (PRAC) group, and all of the staff from ANZOA members have the opportunity to work together on groups. This ANZOA banner is an outcome of the PRAC group's work. There is a learning and development group, so all of the LDOs get together and learn from each other. It has just been wonderful. And there is a new one, an IT group, so all the IT people are working together across Australia and New Zealand, again, for consistency and best practice and trying not to reinvent wheels.

Mr CLARK — Could I ask about the Privacy Act and how that affects your work? We have had some people argue in the course of this inquiry that there needs to be greater protection of personal data of parties to ADR, but on the other hand the Privacy Act can either be used deliberately as an obstacle — an excuse to refuse to deal with people — or imposes red tape that causes problems. I know as MPs we often have difficulties if we contact your office or other officers, and the answer is, 'Well, we cannot deal with you because how do we know you are dealing on behalf of your constituent?'.

Ms McLEOD — We could if your constituent signed an authority for that.

Mr CLARK — Yes, I know, but you have to go through all that rigmarole to do it.

Ms McLEOD — It is one form, Robert!

Mr CLARK — You are more cooperative than most. Many say, 'Sorry, privacy' — clunk. But what I wanted to ask was: how do you deal with the Privacy Act, firstly, to protect data? Do you think there need to be greater protections for client data, and secondly, is the Privacy Act causing you difficulties in doing your job?

Ms McLEOD — We are subject to the Commonwealth Privacy Act. As a corporation or company with an annual turnover of more than $3 million, we have been subject to the Act ever since the Act came in. We, along with other ombudsman schemes, at the time of the Act coming in had several meetings with the Privacy Commissioner to help us understand how we would incorporate our obligations into the operations of our schemes, and once we sorted all that out — for instance, we have got tags on the computer that you saw there; if there is third-party or sensitive information, staff are required to tag that to make sure that that sensitive or third-party information is not released, so we have a range of processes in place. We have not found it onerous at all to deal with.

Mr CLARK — Do you think client data is adequately protected by the current privacy law and by the practices that you have been able to put in place?

Ms McLEOD — Yes, and for water we are not subject to the Victorian information privacy commissioner, but the water companies are. We are covered though. Everything we do across electricity, gas and water is covered by the Commonwealth Privacy Act, so yes, I think it is adequate.

Mr BROOKS — Fiona, my question is around the nuts and bolts of how from when a call first comes in as an inquiry, a judgement is made by each particular person or the persons handling that inquiry, which might become a complaint. How do they determine which party is right and which is wrong? How do they conciliate the matter? How much weight do they give to each of the arguments? I notice in your annual report you talk about what is fair and reasonable industry practice and current law. In a particular circumstance, if a customer or complainant is not satisfied right through the process, how do you determine it? Do you have internal guidelines — —

Ms McLEOD — Yes.

Mr BROOKS — That stipulate when you make a decision, and say, 'No, we think you are being unreasonable'?

Ms McLEOD — Yes, we do. We have a clear Charter and Constitution of Energy and Water Ombudsman (Victoria) Ltd. That sets out my powers, what sorts of complaints I can and cannot take. We have our Charter, so that helps. We do very extensive training. You are not actually allowed near your desk for three weeks until you have had two weeks full-on training, and that is punctuated by sitting at the Enquiries desk and taking

phone calls. So even if you are going to be a Conciliator you have to go through the phones. You get lots of training around how to make those judgements. Even going back before that, we take our selection and recruitment very seriously. We have a clear understanding of the skills set and experience that we need in staff, and we set that and source that. We do not want to put on anyone that does not meet our stringent requirements for good workers. So it really starts right back there.

Then when you are in your job you have a buddy for a number of months. That person's job is to answer questions for you and guide you. You have a manager all the time. We have cultural values that are transparent; they are on everyone's desk. One of our cultural values is to ask questions. There are no prizes for looking like you know what you are doing. Our culture is that you can go and ask anyone any question and you will find them very generous with their time. No-one is going to be sitting there thinking, 'I really do not know how to judge this one, whether I should give that matter that weight or not'. But at this level we are bringing in people who already have experience; they are already dispute handlers; they have done it somewhere, or they have done customer service somewhere. So we are employing people that already have critical, analytical and judgement skills, and we employ them to be able to bring those to the table.

You can do peer reviews. You might invite three of your Conciliators to sit around and discuss the case if you are a bit stuck and you are not sure where to go with it. Having a bit of a brainstorm might help. You can go to your manager or you can case study it in other ways. So all of that goes to ensuring that you are making a reasonable judgement. There is checking at the end of cases to make sure you did do the right things and entered the right data. But if, after all that, your customer just goes 'No, no, I am not happy. No, no, no', we have to make a judgement about whether or not we think the customer's case has merit. If we think through our investigation that the customer's complaint is not sustained — and I have a power under the Charter to do this — we will decide not to continue the investigation. So we will say to the customer that we will not continue the investigation, but we will give them reasons; and your decision not to continue that case has to be cleared with a manager, so you cannot make that decision on your own. And, again, if the people have more information to change our minds, we will take that. I will give you an example. Sometimes the companies actually make what we think is a good offer, what we think is a suitable offer for what has happened to the consumer, but the customer does not think it is. So we will not further investigate that because a fair offer has been made. At other times we do not think the complaint has been sustained at all. So there is a lot of policy and process around all of that as well.

Mr BROOKS — Can I just follow up on that quickly? Because you obviously have the different levels of complaint — I do not know what the figures would be — as an issue progresses, if it is a serious one, as you mentioned before, it would attach a greater cost to the member?

Ms McLEOD — Yes.

Mr BROOKS — Are you finding that the members or the companies prepare, have a system in place or have a systematic approach to maybe settling matters when they are about to reach that complaint level?

Ms McLEOD — Yes.

Mr BROOKS — So that they would splash out the money, and it would be slightly cheaper for them rather than going to the next complaint level? Is that a laissez-faire outcome? If a complainant has an illegitimate complaint do you find sometimes that the companies are willing to make a small payout to get them off the books so they do not have to incur a further cost?

Ms McLEOD — The answer is yes; and, as I mentioned at the beginning, the structure of the funding is deliberately and transparently aimed at getting them to settle early.

So you will find that most of the complaints we get finish at level 1, and a much smaller number go to level 2. I am not sure that we had any at level 3 last time. Yes, that is what happens, but that is deliberate; that is not a bad thing. And the answer is yes, companies do make a commercial judgement about these things: the inquiry costs about $80; Mrs Bloggs wants $100; if I do not settle it now it costs me $800 at level 1. Companies all across Australia make commercial decisions every day, without the intervention of an ombudsman. We are no different from any commercial decision making. We are very transparent with them. If they want to make their decision, that is their prerogative. We do not require that; it is their business. If they want to say, 'All right, I will fix it, I will give her the $100, I do not want to go to the $800, that's fine'.

But, generally speaking, I would have to say we really do not get a lot of what you, Colin, have termed 'illegitimate' complaints. You get a lot of complaints where the company did not quite do the right thing, and maybe the customer did not quite do the right thing or understand something, so it is usually grey; it is never black and white. But honestly it is very rare to get someone who just has no substance at all. Sometimes consumers overestimate what they are due, and we try to bring their expectations down to realistic levels. It is true that occasionally a company might settle something very quickly, even before we have had a chance to investigate whether or not the complaint was legitimate. But they do that every day, regardless of whether or not we are there.

The CHAIR — Can I just follow up a little bit on that? You say in your submission that you are not in favour of regulatory arrangements involving compulsory training and, to be fair, you expand on that to some extent and say that you think having a regulatory framework around it would dampen your flexibility to be creative, I guess, around how you want to train.

Ms McLEOD — Yes.

The CHAIR — Can you just expand on that a bit?

Ms McLEOD — Just going back to the questions about ANZOA, one of the learning and development interest group projects around ANZOA is the possibility of national accreditation of staffing in ombudsman schemes. So we are not looking at the broader ADR industry.

The CHAIR — Sure.

Ms McLEOD — Our view is that there is a lot of different activity in the ADR industry. ANZOA is focused, and I cannot recall if I have put it in here, but we have recently approved the allocation of budget to get a consultant or researcher to do a research project for us on whether this idea we have of creating a qualification and a form of accreditation for staff working in ombudsman schemes is feasible. We would like to create an ombudsman industry where if you have the qualification and you have come from the Commonwealth Ombudsman and you want to work in my office, I know what you can do; because you have that, I know what you have done, I know about that. So we are trying to find a way where the features which are consistent across diverse ombudsman schemes — parliamentary commissioner, health services commissioner, legal ombudsman, banking ombudsman, telecommunications ombudsman and energy and water ombudsman schemes. We are very focused on doing exactly what you are talking about, but the work that I see through NADRAC is about mediation.

There are lots of different forms of alternative dispute resolution. It is a very big space. There is no easy way, I think, to just come up with a national training qualification, because you will inevitably leave something out. Our primary tool is conciliation, which in Australian parlance is a much more interventionist way of dispute resolution than mediation, which, as I understand it, is to facilitate the meeting, but do not push people in directions, whereas we would be going, 'I think they have a good point there, and really the strengths and weaknesses of your case are …'. So it is a much more involved effort to get a resolution. Training around mediation is not of much consequence to us, although there may be some elements of it that would feature in all kinds of ADR roles.

Mr CLARK — Could I come back to the issue of costs, which we have touched on a couple of times? Your total budget came under $6 million; you mentioned 20 000 complaints, so on average that is around $300 per complaint.

Ms McLEOD — Yes.

Mr CLARK — Are you able to give us any more in-depth information about the costs to you of handling inquiries/complaints at different levels?

Ms McLEOD — Yes, sure. Currently the cost of an Enquiry or a referred complaint is $64.54; with investigated complaints level 1 is $812.45; level 2 is $820.70, which is not that much more than level 1; and level 3 is $3.55 per minute. As you correctly say, Robert, it is $310.50 per case.

One of the notes of caution I would sound for the committee in terms of looking at the issue of costing is the importance of comparing apples and apples. You hear 'That costs that much and we cost this much', particularly if you are a government service. It is unlikely that the true cost of rent or the true costs that, say, something in the private sector or of a different model is actually accurately reflected in the cost of a provider of government

services. I think it is very difficult to actually go, 'That costs X and that costs Y and draw an accurate comparison and analysis of that.

The other thing I would say about that is sometimes something costs less because it is not as good. We are regarded, I think — and we are proud of this — as being one of the best ombudsman schemes in Australia. We think this is a very reasonable cost to industry to be paying. We are talking about some of the biggest companies in Australia here which are paying (between 68 members) $6.2 million per annum and it is a cost that is completely — or at least 89 per cent of it — within their control. If they did not have customer complaints it would not cost them anything. It is a great model from that point of view. It is completely within their control.

The CHAIR — Do you think there are other areas where this could expand into?

Ms McLEOD — I do. I think there are lots of features that we have been discussing this morning which would very easily apply in other areas in Victoria. I think housing, real estate and hospitality dispute resolution services that may be provided by government would lend themselves very easily. In fact we have evidence that that works. There is a real estate ombudsman in England. There is a funeral ombudsman in England — the funeral industry has an ombudsman. There is a long history of industry-based ombudsmen in the UK for all sorts of areas of life.

The features are the taxpayer does not fund it. The industry that is having complaints made about it is paying for the cost of that and ultimately that cost goes back to the consumer, but taxpayers are not funding this up-front. You have the financial incentives to settle things early. You have an ombudsman who is focused just on your industry. There is a lot of value in that where big dispute resolution agencies are across lots and lots of different industries whereas if you can focus you can really value add.

One of the things we have not talked a lot about, I suppose — we talked a little bit about the internal dispute resolution. The other thing, Colin, I meant to say to you back there was the internal dispute resolution is in compliance with the Australian Standard on Complaints Handling. If you get companies responsible for their own complaint handling internally and they are required to comply with the Australian Standard I think there are a lot of industries in Australia more broadly that could benefit from this particular model. It has a lot of really good features I think.

Mr CLARK — The cost figures you mentioned earlier, are they your internal costs or are they the charge-out rates to — —

Ms McLEOD — They are the charge-out rates and they all add up to the total budget.

Mr CLARK — Right. So obviously they understandably include an allowance for your overhead costs? Do they or are your overheads paid out of the — —

Ms McLEOD — No, this is everything. It is just really simple. Our charging model is very simple. You have the $6.297m. You go back over the previous 12 months and you work out how many Enquiries and referred complaints you had, how many level 1s, level 2s, level 3s and whatever that proportion is you apply it to the total budget, but we also look at average time spent. We look at average time spent on Enquiries and referred complaints, level 1, level 2, level 3, and our Business Manager magically drops the case charges out of that calculation.

Ms WOOD — It might be worth mentioning they do not always go up.

Ms McLEOD — No.

Ms WOOD — The cost of Enquiries and referred complaints went down between 2005–06 and 2006–07.

Ms McLEOD — By about $20 .

Mr FOLEY — You just do not get to level 3?

Ms McLEOD — No, that is why level 3 costs so much, to try and make people come to the table and negotiate a resolution prior to it getting to level 3. But we have had some very complex cases, either complex case matters or complex complainant behaviour, so sometimes things do get there, but not often.

Mr FOLEY — In your systemic work have any problems resulted in recommendations to the ESC or government for changes and what sort of issues are covered by that and what has been the result?

Ms McLEOD — Yes, we focus very strongly on the identification of systemic issues. We might only get one complaint about something but the staff are trained to think systemically and look at what happened to that person. Maybe it was a billing error and it might have been a system billing error, and I've actually been subject to this. I was a direct debit customer and my direct debit came out on a particular day and that 'day batch' corrupted and I think I ended up getting a disconnection notice because I was a direct debit customer and it was coming out of my bank account on that day.

We would ring the company and say, 'We are just wondering about this particular issue; we have this complaint and that is fine. Mary is handling the complaint over there but I am going to talk to you about your need to go now and find out whether there are other people that this has happened to so you need to redress the issue'. We have two different responsibilities according to the industry. Our responsibility for energy is to identify a potential systemic issue and then tell the ESC about it and then it is their job to follow it up with the company. Alternatively, in water, DSE and the minister and the industry ask us to do that job so we will contact the company and ask them to do work to identify whether any other people have been affected and what outcome needs to be undertaken to redress that. It is not always money. It could just be I have not had a bill for six months and I just want a bill.

Mr FOLEY — So you cannot initiate it in water, you have to be asked? Is that what you are saying?

Ms McLEOD — No, we initiate it but only if we get a complaint. We have to have a complaint first and then we identify a systemic issue from the receipt of one or more. Sometimes you get a lot of complaints about something and then you realise it is a systemic issue. We have identified a number of major systemic issues over the years. Again, some of them I can talk about because they were made public. Some years ago, a system merger at Origin Energy resulted in tens of thousands of customers not getting bills for 6, 12, up to 18 months and that took about two years to fix. We discovered that issue and alerted both the company and the regulator to that and then the regulator managed the redress around that. We had a very interesting case with water — —

Mr DONNELLAN — They would not give you the bill.

Ms McLEOD — The system said the bill had gone but in fact it had not gone so the call centre operators were sitting there and the system was telling them that the bill had gone but it had not. We regularly identify systemic issues that have not yet been identified by the company. Sometimes they identify them and let us know but yes, we will either arrange with the ESC or ourselves redress for the people who have not complained. It often results in a policy or procedure change, or a fix to a system error and sometimes we write to government and suggest legislative change.

Mr CLARK — Could I follow up with that, Chair, in terms of systematic issues?

The CHAIR — Yes, of course.

Mr CLARK — The gas congestion charge issue came up a few months ago — colleagues may have come across it as well. The feedback I got from my office when they contacted you about that was that it was not something within your jurisdiction and/or it was a legitimate charge so they cannot help. That issue ended up with the ESC, I think, and they made a ruling on it at the end of the year.

Ms McLEOD — Yes, we did that. I am surprised by that because we had hundreds of complaints that were in jurisdiction around that gas congestion charge so we did take complaints. I am surprised at that.

Mr CLARK — Yes, certainly when my office referred the first of those complaints that we received we were told basically, 'No, it is a legitimate charge. There is nothing the customer can do about it'.

Ms McLEOD — You might have been one of the really early complaints because it was a legitimate charge but then we got hundreds and hundreds and hundreds of people ringing us up and so then we raised the issue with the ESC. They ended up deciding that it was not legitimate. That is an example of where something appears to be legitimate at the beginning but upon further research by the ESC they ended up deciding to reverse that so all of the charges were reversed. But, no, we did get hundreds of cases about that.

Mr CLARK — That is the sort of thing that you would flag as a systemic issue?

Ms McLEOD — Yes, exactly.

Ms WOOD — Can I just go back and say 4 per cent of cases were referred by government or by MPs so it is not specifically CAV; it is government and MPs, 4 per cent.

Mr CLARK — If I can just add to that: if you can give us a standard form and advice as to how to get clearance for constituents dealing with your office I would find that very helpful.

Ms McLEOD — We will give you the draft, and you can approve it. That is easy to do. By the way, we do run training for parliamentarians. We try to do it once a year. Sometimes they are well attended, sometimes they are not but we try to run a training session not particularly around the authority-to-act issue but around who we are and how you can work with us. I have written on a number of occasions to parliamentarians about our office and provided material, but I would be very happy to do something that was targeted to each of your offices.

Mr CLARK — We do get a good range of material but that can often cause a delay in the process by the time you send it out to your constituent, get it back et cetera.

Ms McLEOD — Sure. We are happy to do that.

The CHAIR — Thank you very much Fiona, Frances and Stephen. It has been a terrifically informative session. As I said earlier, you will get a draft transcript of the discussion held this morning and I hope that you are open to Kerryn and Kate getting in touch with you again around any matters that we might need following up. We will of course send you a copy of the report when it is done.

Ms McLEOD — Thank you. We really appreciate your coming to our office.

Witnesses withdrew.