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Thank you for the opportunity to comment on the NADRAC's *Issues Paper: Alternative Dispute Resolution in the Civil Justice System*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. The following comments are provided from the perspective of EWON's experience as the approved independent dispute resolution mechanism for all NSW energy customers and many NSW water customers. While EWON is not involved in alternative dispute resolution (ADR) in the civil justice system, our experience in providing alternative dispute resolution as an industry ombudsman may be useful for NADRAC's purposes.

Specific comments are provided in relation to *Section 3 - Promoting public awareness of ADR*, *Section 4 – ADR Services* and *Section 9 – Data, Evaluation and Research*.

### *About EWON*

EWON was established in 1998 and has now received over 70,000 customer complaints. EWON's aim is to provide fair, equitable and independent investigation and resolution of customer complaints.

Consumers can approach EWON about a range of issues related to:

- provision or failure to provide energy or water services
- disconnection or restriction of supply
- billing and credit
- quality of supply
- actions by a provider that impact on land or other property
- customer transfers between energy providers
- electricity and gas marketing

A large part of EWON's success has been our ability to resolve complaints in a fair, reasonable and expeditious way, with the large majority of matters being finalised within one to two weeks. We provide significant reporting to industry and other stakeholders as a means of

highlighting systemic and topical issues and assisting industry to improve standards of service delivery to customers. We also work closely with regulators and policy makers to this end.

EWON operates within an ADR framework and applies techniques to investigate and resolve customer complaints along the lines of those outlined in the Issues Paper: facilitative, advisory, determinative or a combination<sup>1</sup>. In reaching an outcome we consider the law, industry best practice, and what is fair and reasonable in the circumstances of each case. EWON continually sees the benefits of this ADR approach, as it is flexible and informal for complainants and utility companies.

Through its ADR approach EWON is able to achieve a range of outcomes for complainants (and utility providers) including:

- identification and redress of errors
- negotiation of affordable and realistic payment arrangements for customers in financial hardship to prevent disconnection/restriction of supply or to enable reconnection of supply
- apologies for poor customer service
- customer service payments to acknowledge poor service, delay, inconvenience
- compensation for damage
- other financial remedies, eg reduction in arrears because of delays or other problems in billing
- information for customers, eg about reducing energy or water consumption
- remedies in kind, eg restoration of a customer's property damaged by a utility
- referral to other appropriate agencies for assistance, eg emergency relief, financial counselling, tenancy or legal advice
- restoration of the ongoing relationship between customers and their utility providers.

While there is a limit of \$20,000 on the amount of a binding decision the Ombudsman can make, we note that the need for binding decisions has been rare<sup>2</sup>. Instead, EWON is able to negotiate a resolution in the vast majority of customer complaints, often involving resolutions to the value of thousands and sometimes tens of thousands of dollars.

Under its Constitution, EWON has two clear primary roles – to investigate and resolve customer complaints and disputes, and to assist in the prevention of complaints and disputes. The latter role is significant, as it is not in the interest of customers, utilities or the broader community for EWON to continuously deal with similar types of complaints without trying to identify and redress the underlying causes.

EWON plans its activities and measures its success against the six industry-standard benchmarks<sup>3</sup>, which form the framework for our ADR approach:

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<sup>1</sup> Issues Paper – Summary, page 1

<sup>2</sup> The Energy & Water Ombudsman NSW has made 62 Binding decisions since 1998.

<sup>3</sup> Benchmarks for Industry-Based Customer Dispute Resolution Schemes, Department of Industry, Science and Tourism, 1997

- **Accessibility:** EWON consistently works to ensure consumers have access to our services. Accessibility is achieved by the phone-based nature of the service, the informality of our processes and the fact that the service is free to consumers<sup>4</sup>. We actively promote EWON through publications, outreach activities, directories and targeted media campaigns. We monitor and evaluate the response to this work and the results show that our promotions continue to attract consumers who most need our help.
- **Independence:** EWON is not an advocate for the consumer or a representative of the providers. We assess each complaint individually and focus on reaching a fair and reasonable outcome based on the circumstances of each complaint. Where negotiations with an energy or water provider are unsuccessful, the Ombudsman has the authority to make a binding decision to resolve a complaint.
- **Fairness:** EWON applies the principles of procedural fairness when making decisions. We provide opportunities for all parties to have input into our investigations and we explain the reasons for our decisions in writing. If customers are not satisfied with the outcome of our investigation, they can request a review of our decision if they can establish grounds for this request.
- **Accountability:** EWON publicly accounts for our operations in various publications which are distributed to a range of industry, government and community stakeholders. We produce regular reports for our Council and Board as well as utility companies, regulators and government stakeholders. These reports highlight current customer complaints, complaint trends and systemic issues.
- **Efficiency:** We ensure complaints are dealt with appropriately by regularly reviewing our performance in areas such as the time taken to answer calls and the success of our referral arrangements with providers. We monitor case turnover and duration so that we continue to resolve cases in a timely and cost-effective manner.
- **Effectiveness:** We commission independent reviews of our performance on a periodic basis. We are committed to continuous improvement, and so we conduct surveys of customers and members of the scheme.

### *Section 3 - Promoting public awareness of ADR*

The Issues Paper highlights low awareness of ADR as a potential barrier to accessing ADR services, noting that there may be different ways to enhance public awareness of ADR and that it may be necessary to consider things such as the need for specialised information for disadvantaged or marginalised communities<sup>5</sup>.

Given the nature of the jurisdiction, EWON has put a premium on raising public awareness of our Ombudsman service and processes through targeted community outreach and educative marketing and promotional resources. This has been important particularly as a sizeable

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<sup>4</sup> Customers can contact EWON through a freecall or freefax number, freepost, email, or online.

<sup>5</sup> Issues Paper, page 9

proportion of those who contact an energy or water ombudsman are low-income or disadvantaged consumers.

EWON would agree that there is low awareness in the community of concepts such as ADR and ombudsman schemes. Early on we identified the need to conduct targeted projects to ensure consumers and their advocates know where to go for assistance if they cannot resolve their energy or water complaint.

To increase public awareness EWON:

- conducts targeted outreach to vulnerable and disadvantaged groups such as culturally and linguistically diverse (CALD) communities including newly arrived and refugee groups; NSW Aboriginal communities; prisoners and their families as well as those recently released from prison
- regularly attends and presents to interagency meetings and has stalls at community information events/festivals where we distribute our resources
- hosts information forums and workshops for community welfare agencies such as emergency relief services. These forums have fostered direct and positive relationships between stakeholders, so that community advocates can deal directly with utility providers instead of having to contact EWON to assist their clients. We also produce a newsletter for community workers that we also send to other stakeholders.
- develops plain English resources for example fact sheets, post cards, brochures and promotional items such as fridge magnets, stress balls and show bags.
- produces and disseminates information in 29 different languages via fact sheets and brochures and our website has information in 17 languages. Consumers and advocates can make an online complaint via our website in English or their community language. EWON has found that it is essential to provide translated materials in community languages and offer free interpreting services to ensure barriers to CALD groups accessing ADR services are minimised.
- works with frontline government agencies such as Dept of Corrective Services, Housing NSW, Office of Fair Trading and electorate officers for NSW Members of Parliament.

EWON has a dedicated team who conduct our promotional awareness raising activities, as well as a budget allocation for this community engagement and community outreach work.

EWON's public awareness raising work and profile has grown considerably over the years, and we now work in partnership with other agencies and industry ombudsmen. EWON was a founding member of the Good Service Committee, a group of Indigenous staff from NSW complaint handling agencies who run community information forums and visit Indigenous communities in NSW to raise awareness of the assistance available.

Another example of the success of partnership projects in this area is with the Australian and New Zealand Ombudsman Association (ANZOA). EWON coordinated a successful ANZOA public awareness raising campaign targeting young people to raise awareness of the concept of

“ombudsman”. A free post card about the right to complain for young people was distributed via the “avant card” postcard stands across Australia.

For the purposes of NADRAC’s current project, it could be beneficial for NADRAC to consult with industry ombudsman and their networks about how we have approached community engagement and public awareness raising and promotion.

#### *Section 4 - Provision of ADR services*

Section four of the Issues Paper lists the range of ADR service providers, lastly noting “industry/ombudsman schemes”<sup>6</sup> and this is followed by some detail about court provided ADR services and private, community based and government ADR services<sup>7</sup>. I note however that there is no further detail and reference to parliamentary and industry ombudsman schemes in the Issues Paper.

EWON would encourage NADRAC to consider the ways in which industry and parliamentary schemes approach ADR, as well as the considerable expertise EWON and other ombudsman, have developed in public awareness raising strategies as well as evaluation and reporting on service provision.

EWON is one of a number of industry ombudsman schemes in Australia that provide free, independent, and confidential alternative dispute resolution services for Australian consumers. Specialist energy ombudsmen exist in all Australian states (and, for New South Wales and Victoria, water) and are successful because they adhere to the established benchmarks for industry-based customer dispute resolution: accessibility, independence, fairness, accountability, efficiency and effectiveness<sup>8</sup>. These schemes provide high level ADR services and give consumers and industry an avenue to resolve complaints about essential services, at no cost to the consumer.

As noted above, EWON is an active member of the Australian and New Zealand Ombudsman Association (ANZOA) and the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON). These groups exchange information and ideas about best practice ADR models and continuous improvement. Ombudsman staff from the various national and state based schemes work together across a range of similar issues including policy, public relations, learning and development, and public awareness raising.

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<sup>6</sup> Issues Paper page 11

<sup>7</sup> Issues Paper, page 12-17

<sup>8</sup> Benchmarks for Industry-Based Customer Dispute Resolution Schemes, Department of Industry, Science and Tourism, 1997

### *Section 9 - Data, evaluation and research*

The Issues Paper notes that there is a lack of comparable data and research in this area and that there is minimal funding to undertake independent service and program evaluations, and there has not been available data across services to allow for comparison<sup>9</sup>.

EWON supports evaluation processes, and has generally engaged independent third parties to conduct the evaluations of our service. This has enabled us to measure our performance against Key Performance Indicators and benchmark results from previous surveys, and focus on areas for improvement. While engaging third parties to conduct independent evaluations does incur a financial cost, we feel it is part of our commitment to independence, accountability, effectiveness and accessibility.

There are a number of ways ADR services can be evaluated. As part of EWON's commitment to continuous improvement we evaluate our services through:

- Customer satisfaction surveys
- Member surveys
- Omni bus consumer awareness surveys
- Staff surveys
- Reporting to members, government and regulators
- Public reporting via regular newsletters, the annual report, and the website

Thank you for the opportunity to contribute to this process and we look forward to being able to contribute our knowledge and experience of alternative dispute resolution in this area.

If you would like to discuss this matter further, please contact me, or Emma Keene, Manager Policy & Projects on 02 8218 5225.

Yours sincerely



**Clare Petre**  
**Energy & Water Ombudsman NSW**

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<sup>9</sup> Issues Paper, page 52