INDUSTRY OMBUDSMAN SCHEMES TWENTY YEARS ON

World benchmark or industry captured?

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In July 2009 was the twentieth anniversary of the start of the first industry Ombudsman in Australia. A 'shop front' initiative of the then State Insurance Office of Victoria ('SIO'), the SIO Consumer Appeals Centre ('SIOCAC') offered free information and advice to insurance consumers anywhere in Australia regardless of whether they were SIO customers. For those insured with SIO, it pioneered an alternative to the slow, costly and inaccessible legal system by providing free and prompt access to a dispute resolution or 'Ombudsman' service for disputes up to the value of $400 000. Although consumers were not obliged to accept a determination of the Ombudsman, the SIO was. At the time, it was a radical consumer protection initiative.[1]

Twenty years on, industry Ombudsman schemes proliferate. There is the recently merged Financial Ombudsman Service ('FOS'), embracing Ombudsman services for banking, general insurance, and a myriad of investment products. There is the Telecommunications Industry Ombudsman ('TIO') covering consumers of landlines, mobiles and the internet and there are 'second generation' utilities Ombudsman such as the Public Transport Ombudsman and the Energy and Water Ombudsman in Victoria. These private justice schemes have been embraced by government as a low cost way (for government) to provide consumers with access to dispute resolution outside the state/federal legal systems. They have been accepted by industry that recognised the likely alternative was a rigorous, possibly intrusive, government system. Further, the growing caseloads indicate that they are now part of the 'system' that consumer advisers and consumers now know of, and defer to. But what is the quality of such schemes, how are they funded and supervised, are they impartial and have they improved the quality of decision making within industry sectors? In other words are the schemes delivering on their promise to be free, accessible and an effective alternative to the legal system? Or have they instead, become large unaccountable monopoly businesses that have been captured by their industry sectors? What changes, if any, are necessary? This article will explore these issues by reference to FOS and the TIO with a view to stimulating closer examination of the schemes and their future direction.

The early days

Rather surprisingly, for a sector that prides itself on being innovative, the Australian private sector came late to Alternate Dispute Resolution ('ADR'). Instead, it was the public sector that from the 1970s to 80s had demonstrated the value of initiatives such as Ombudsman, low cost tribunals, freedom of information laws and community based mediation.[2] It was not as if there were no ADR mechanisms successfully operating in the private sector overseas. Sweden's Folksam Insurance had successfully established a Customer Ombudsman in 1968 and Britain, an Insurance Ombudsman Bureau in 1981. However, in Australia, it was not until 1990 when enabling factors that included the floating of the dollar, deregulation of the market, market misbehaviour and a Labour government committed to consumer protection, all converged and the Banking sector yielded to pressure and appointed the first Banking Ombudsman, Graham McDonald. The next year, in 1991, the Insurance sector established a part time Claims Panel. For that sector, the success of SIOCAC had dispelled industry arguments that an Ombudsman system could never work but had cautioned the sector about establishing a fulltime model that could develop a profile and become an alternative voice on matters insurance.[3]

Indeed, the 1990s was a period of considerable innovation on the complaints handling front. The arrival of compulsory superannuation in 1992 saw the establishment of the Superannuation Complaints Tribunal, a statutory ADR mechanism for consumers of that product. In 1993, in order to ward off more formal intervention, the banks released their first self regulatory Code of Practice. It described minimum standards of good practice and service and outlined procedures for dispute resolution. That same year, following the corporatisation of Telecom to Telstra and arrival of competitors, the telecommunications sector established the TIO as a non profit company.[4] In 1995, the Society of Consumer Affairs Professionals in Business ('SOCAP') published *American Express/ SOCAP study of complaint handling in Australia.* This benchmark study and consequent workshops made the business case for the establishment of an effective complaint handling unit within a business. It led, that same year, to the world's first complaint handling standard AS 4269. That provided 'the how'. 1996 saw the commencement of the first self-regulatory general insurance Code of Practice that set out minimum standards for the sector, mainly in claims handling. This sector too had warded off a mandatory code proposed by a Labour government spurred to action following sales misbehaviour of life insurance agents. In

REFERENCES

1. See further Simon Smith, 'The Role of an Ombudsman in an Insurance Company' (1990) *Australian Insurance Institute Journal* 13. The SIO was sold to the GIO in 1992 and the brand disappeared. In 1994 SIOCAC was merged with the then insurance industry disputes scheme *Insurance Enquiries and Complaints Limited.*

2. See generally John Wood, 'Government Involvement in Consumer Affairs' in Simon Smith (ed), *In the Consumer Interest: A Selected History of Consumer Affairs in Australia 1945-2000* (2000) 29.

3. See generally Joe Isaac, *The General Insurance Enquiries and Complaints Scheme: The First Ten Years* (2001) ch 1.

4. See further Gerard Goggin, 'Telecommunications: Consumers on the Line', in Simon Smith (ed), *In the Consumer Interest: A Selected History of Consumer Affairs in Australia 1945-2000* (2000) 101.

a tactical triumph, the Government was persuaded to leave development and supervision of the Code to the industry through the by then formalised claims panel, Insurance Enquiries and Complaints Limited.[5]

Nor was the federal government inactive. Following the 1997 Wallis 'Financial System Inquiry' there was a restructure of regulatory bodies. It saw the creation of the Australian Prudential Regulation Authority ('APRA') and the Australian Securities and Investment Commission ('ASIC') and an inevitable review of prudential and consumer protection regimes. On the complaint handling front ASIC adopted a 'hands off' approach. Although ASIC made it a condition of a financial services license (as did the telecommunications regulator) that licensees have an approved Internal Dispute Resolution ('IDR') mechanism and belong to an approved External Dispute Resolution ('EDR') mechanism, it left the day to day management and supervision of the ADR schemes as self regulated by industry. The telecommunications regulators took the same approach. Broadly, this is the 'light touch' regulatory regime of Ombudsman schemes that exists today.

Current scene

In 2009 the industry Ombudsman scene in Australia is dominated by two organisations, the FOS and the TIO. The FOS came into being on 1 July 2008 following a progressive merger of most of the Ombudsman schemes in financial services.[6] Although the two schemes are not on 'all fours', it is possible to make sufficient comparisons and contrasts for purposes of a principles based discussion. It is a measure of the growing prominence of the EDR phenomenon that there is now an international standard (ISO 10003:2007) that provides guidance on how to operate, maintain and improve an effective EDR. It emphasises transparency, accessibility, capacity, fairness, timeliness and continual improvement.[7] The following analysis draws upon that standard.

Governance

In the traditional civil justice system there are checks and balances in place that maintain public confidence in the independence, fairness and accessibility of the legal system. Pivotal is the appointment of independent decision-makers (judges) by an Attorney-General answerable to the Parliament. In turn, the quality of decision making is buttressed by an open court system, established rules of evidence, independent bar and an appeal system. Inevitably, a self regulated EDR system will compromise on important aspects of these elements as it strives to reconcile consumer accessibility and cost effectiveness. This has seen the EDR schemes develop their own governance structures, most often a company limited by guarantee that is effectively controlled and funded by the industry sector.

In the early days, the Boards were chaired by eminent Australians. The first Chair of the Banking Ombudsman was former High Court judge and Governor-General Sir Ninian Stephen and there is an apocryphal story of him demonstrating real independence when he stared down an early attempt by edgy banking directors to narrow the schemes Terms of Reference. Since then, the Chairs have tended to be drawn from sources sympathetic to their industry. Indeed, until recently, Peter Daly AM was chair of two insurance EDRs for 15 years. As a former CEO of the Insurance Council of Australia that established the schemes, best practice might suggest that both his period of office and closeness were inappropriate. It is important that the Chairs of the Board are independent so that there is no perception that they are aligned with one of the major stakeholders. Similarly change at the top on a regular basis allows for fresh ideas and change. Here, Annex F of ISO 10003:2007 states that dispute resolvers and dispute-resolution personnel should be insulated from influence by parties at all times in the process, so that their efforts to determine eligibility and to reach a resolution of a dispute are the result of independent judgment.[8]

For 'balance', the practice of the schemes has been to match industry appointments to the Board with up to four Directors said to represent the interests of consumers. The process for doing this is not particularly transparent. Again, ISO 10003:2007 states as a guiding principle, that sufficient information about the dispute-resolution process, the provider and its performance should be disclosed to complainants, organisations and the public. Although less obvious with the TIO, over the last decade in the financial services EDRs, these paid directors have been largely drawn from people who have recently held/or hold senior executive positions in consumer organisations such as the Consumers Federation of Australia ('CFA'), the Australian Financial Counselling and Credit Reform Association ('AFCCRA') and CHOICE. No doubt these appointments bring a level of expertise but they do raise serious issues of perception of conflict of interest and placed board confidentiality constraints upon those directors in their parallel public roles as consumer advocates. At the same time the appointments have run parallel with financial support offered to consumer advocates to meet and hold conferences by the Banking Ombudsman.[9] This support dates to the 1997 de-funding of the CFA by the Howard government. Best practice would suggest that were greater separation and transparency demonstrated in these matters, the political support for Ombudsman schemes offered by the CFA, AFCCRA and other consumer groups such as CHOICE may carry greater credibility.

The key appointment for all EDR schemes is that of Principal Ombudsman. Their personal status and credibility is crucial to the public confidence in the EDR scheme. Their appointment and ongoing tenure are totally within the remit of the Board. Only recently have the schemes adopted formal positions on Ombudsman renewal, setting an upper limit of 7 years continuous service, no doubt with a view to minimising real and perceived concerns about 'capture' by the sector.[10] It has been rather honoured in the breach. Both schemes have/had Ombudsman whose terms exceed ten years. Further, unlike government Ombudsman who have freedom to publicly report and comment on a wide remit of (government) activity, industry Ombudsman do not. For example the Banking Ombudsman is specifically precluded from providing

5. Isaac, above n 3.

6. See further Financial Ombudsman Service, *Financial Ombudsman Service Annual Report 2007–2008* (2008) <fos.org.au/centric/home_page/publications/annual_reports.jsp> at 8 August 2009.

7. International Organization for Standardization, *Quality Management: Customer Satisfaction–Guidelines for External Customer Dispute Resolution* (2007) <iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=38449> at 30 April 2009. The international standard is only available through the International Organization for Standardization (ISO).

8. Ibid.

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'information about financial services providers or financial services'.[11] This needs to be compared with the transparency advice in Annex I clause I.4 of ISO 10003 which suggests that in appropriate circumstances (eg where the case volume is low and the educational benefit is high), the text of individual dispute-resolution results (eg recommendations, determinative decisions, settlements or related information) can be published without names if all parties agree.[12] This partly explains why industry Ombudsmen have low profiles in public discourse on challenges surrounding their sectors, despite being in possession of unique data bases charting industry behaviour. This void might not be as significant if Australia had an independent national consumer research and advocacy centre of excellence such as Consumer Focus in the United Kingdom.[13] That body ensures a strong and researched consumer voice is at the centre of government policy debates in Britain. The Australian government equivalent is the honorary part-time Commonwealth Consumer Affairs Advisory Council.[14] Given its invisibility during the Howard years, it was a surprise that the Rudd government continued its existence.[15]

Finally, the schemes lack the important external review mechanisms that buttress the independence of the traditional legal system such as the Auditor-General and the government Ombudsman. Both these report to Parliament. There are also Freedom of Information ('FOI') laws that enable citizen access to information about the workings of these government accountability systems. In lieu, regulators such as ASIC require an independent 'review' every three years. Typically the Terms of Reference are set, and the Reviewer appointed (and paid), by the schemes themselves after consultation with the regulator. Such a 'light touch' review process inevitably raises questions about its rigour, visibility and accessibility and how perceived and real conflicts of interest are managed.[16]

Terms of Reference and caseloads

It is important to note that although the main focus of industry Ombudsman schemes is to resolve consumer disputes, they do not have the full jurisdiction and range of remedies that courts do [nor of course do governmental ombudsmen schemes]. Their remits are narrower and typically limited to service, fees and claims disputes. As noted above, issues of policy and matters such as complaints about product pricing, advertising and governance are commonly excluded. They cannot fine, they cannot issue injunctions and their ability to award un-liquidated compensation is circumscribed. Nor do they necessarily have universal and automatic coverage of their sectors as courts do. This is less of a challenge with banks and insurers that are small in number and linear in construction but more problematic in the investment and telecommunication sectors where smaller, less cohesive operators abound.

Analysis of the caseloads is difficult. Terminology used and processes followed, do not easily compare. Within Annual Reports, data is not always easily reconciled. Nor is it independently audited. Again, unlike the public sector, there are no Auditor-General, Ombudsman or FOI laws that enable verification as demonstrated in a recent public hospital waiting lists scandal in Victoria.[17] As Table 1 indicates there are considerable differences in key data areas.

Table 1 Caseloads of EDR schemes 2007–08

	Financial Ombudsman Service (FOS)			TIO
	Banking	Insurance	FICS*	
Telephone calls	35 704	122 442	3737*	274 040
Contact by email	3954	N/K	N/K	14.6%
Contact by letter	N/K	N/K	739*	2.4%
Cases closed or received	7497	2170	702*	149 742
Outside Terms of Reference	1587	26	N/K	N/K
Ombudsman Decision	Nil	1724	100*	5
% cases closed within 60 days	56%	5%	22%*	N/K
Systemic issues investigated	51	N/K	2*	7
IDR figures	N/K	N/K	N/K	N/K

Sources: 2007–08 Banking and Financial Services Ombudsman Annual Report; 2007–08 Insurance Ombudsman Service Annual Report: 2007–08 Telecommunications Industry Ombudsman Annual Report.

*These figures relate to the first 6 months of 2008 only. See 2008 Financial Industry Complaints Service Limited Annual Report.

N/K = data not published.

Accessibility is a key criterion in assessing an effective EDR. With their national remit this is a problem for the schemes. The tyranny of distance emphasises their remote, 'on the papers' only bias.[18] Thus it is

9. See for example the financial support from FOS for the National Consumer Congress, (2009) <ncc2009.com.au/sponsors.htm> at 15 April 2009.

10. See Financial Ombudsman Service, *Banking and Finance Terms of Reference* (2008) [15.1] <fos.org.au/centric/home_page/about_us/terms_of_reference.jsp> at 17 April 2009.

11. Ibid [1.2].

12. International Organization for Standardization, above n 7.

13. Previously called the National Consumer Council (UK). See further Consumer Focus, <consumerfocus.org.uk/> at 17 April 2009.

14. For the current membership see the Commonwealth Consumer Affairs Advisory Council listing in the *Government Online Directory* (2009) <directory.gov.au> at 17 April 2009.

15. In May 2009, the then Minister of Consumer Affairs released a further discussion paper seeking views on how best to sustain consumer advocacy and research. That the Government believes further consultation is necessary is rather surprising given the issues were fully canvassed in the 2007 Report of the Productivity Commission 'Review of Australian Consumer Policy Frameworks'. See further Chris Bowen, *Consumer Voices: Sustaining Advocacy and Research in Australia's New Consumer Policy Framework* (2009) Australian Treasury <treasury.gov.au/contentitem.asp?NavId=037&ContentID=1532> at 20 June 2009.

16. For material on the current Terms of Reference Project see Financial Ombudsman Service, *Terms of Reference* <fos.org.au/centric/home_page/about_us/terms_of_reference.jsp> at 17 April 2009.

17. See further Mex Cooper, 'Health Minister 'Dismissed Waiting List Concerns'', *The Age* (Melbourne) 3 April 2009, <theage.com.au/national/health-minister-dismissed-waiting-list-concerns-20090403-9lp0.html> at 17 April 2009.

not surprising that the telephone dominates as the means of initial consumer access. What is surprising is how relatively few calls the Banking Ombudsman receives, whilst the number the TIO receives is clearly unsustainable (on a fulltime staff ratio of 145). It is difficult to believe that these calls are just simple inquiries from consumers seeking general guidance about a concern. Even if they are, it would indicate a major failure of the industry dispute resolution system at the company where such information should be provided. Either way, the lack of accessible data from the companies themselves makes it hard to properly analyse. Then there is the changing nature of consumer access. Here, the emerging swing to email as a preferred access channel can only compound the access challenge and introduce other management issues such as the involvement of numbers of parties through the 'cc' and 'bcc' and a growth in the volume of documentation through long emails and attachments. The schemes will need to be smart about how they manage this.

There are also significant differences in caseloads. Of concern is that 21.1 per cent of presenting complaints were ruled as outside the Banking Ombudsman Terms of Reference. The two other financial services schemes are silent on how many matters fall outside their Terms of Reference. This raises serious questions of unmet need. How large is the gap and where do they go?

A point of distinction between industry and government Ombudsman is the ability of the former to make determinations whereas the latter can only, as a last resort, make recommendations to Parliament. It is surprising therefore how relatively few determinations are made. The Banking Ombudsman reported none and the TIO only a handful. In both sectors one would have thought there might be more intractable disputes that required a decision-maker to bring finality. It is hard to believe all disputes can be negotiated through. This raises a quality issue. It is the insurance scheme where determinations are more the order of the day. They are made by a combination of Panels, Adjudicators and Referees. The Insurance Ombudsman position appears to have a mainly administrative role.

The criterion of timeliness is a further measure of an effective EDR. Here, the TIO is coy on disclosing this information. It would most likely reflect the pressure of an unsustainable caseload. Interestingly, the Banking Ombudsman closes half its caseload in under two months. This probably reflects the tight control on what is accepted in the first place. Missing from all this data is information on the time complaints have taken to work their way through from the company based Internal Dispute Resolution service where complaints must go before being eligible to progress to EDR. It is likely to have been considerable. Full transparency on this data, indeed all IDR data, would enable an informed assessment of the health and quality of complaint handling through EDR schemes. To our knowledge, only AAMI Insurance publishes its IDR and EDR results as part of public commitments made through the AAMI Customer Charter process.[19]

It is a measure of the industry influence over the schemes that after twenty years of operation there is so little transparency on corporate complaint handling performance.[20] However, in 2010 this will change when ASIC introduces new guidelines relating to EDR schemes in the financial service sector. In particular the EDR will be required to publish statistics about the number of complaints received and resolved against individual EDR scheme members. Again, it is noted that this change is not an initiative of the industry schemes but one forced by the regulator.[21]

Finally, the schemes differ in their approach to systemic issues identified through their unique insights into market behaviour. This reporting obligation, placed first on the financial services scheme in 1999, should be a pivotal weapon in controlling burgeoning caseloads.[22] Surprisingly, the schemes uncovered few issues given the presence of the Global Financial Crisis and dynamics of the telecommunications sector. There were only 51 systemic issues identified in the caseload in Banking and seven in Telecommunications. FOS does not 'name' the banks involved and it appears that ASIC does not insist. However, the TIO does 'name' but there appears to be little enforcement follow-up by the regulator, the Australian Communications and Media Authority ('ACMA'). These matters pose questions about the rigor of the systemic reporting process and the effectiveness of the regulators in monitoring the work of the EDRs.

ADR approaches

Although the schemes differ in the way they describe the ADR process they follow, there is commonality on the basics that distinguish them from the court system. Broadly, they follow a three-tiered approach. It begins with an initial assessment to determine whether the complaint is eligible and in particular that it has been through the IDR process. Complaints that are not disposed of at this stage progress to conciliation, usually conducted by letter and telephone between consumer and the company to scheme timetables. Face to face meetings are unusual. Finally, complaints remaining unresolved are seamlessly elevated to an Ombudsman for final determination. The determination is binding on the company if accepted by the consumer. The company cannot challenge the decision.[23]

It is difficult to make a full assessment on the quality of this process. Significantly, in twenty years, there has been little academic scrutiny of the schemes especially from legal scholars. This reflects the varied nature of the accessible data and the lack of determinations and written Reasons for Decision. Only the insurance and investment schemes regularly publish Reasons. However, as the schemes pre-empt review by courts there is virtually no court scrutiny.[24] Nor is there a standing mechanism that can review the schemes processes on a regular basis. This exists in Britain where the Independent Assessor is an important accountability mechanism of the Financial Ombudsman Service.[25] As a result, what has developed is a process remote from consumers and emphasises the process

18. The schemes also discourage 'in person' attendance. FOS in particular, located at 31 Queen Street Melbourne (colloquially known as 'Whinge House') keeps its address low profile. It is not on the 'contact us' section of its web site.

19. See for example AAMI, *Working Together: AAMI Customer Charter Annual Report 2007–2008* (2008) <aami.com.au/company-information/news-centre/charter-reports.aspx> at 18 April 2009. See also Simon Smith, 'Customer Charters: The Next Dimension in Consumer Protection' (1997) 22 *Alternative Law Journal* 138.

20. See International Organization for Standardization, above n 7, Annex I, ISO 10003: 2007 for guidance on the issue of transparency.

21. See further Australian Securities and Investments Commission, *ASIC Improves Dispute Resolution Schemes* (2009) <asic.gov.au/asic/asic.nsf/byheadline/09-88AD+ASIC+improves+dispute+resolution+schemes> at 20 June 2009.

22. See Australian Securities and Investments Commission, *Policy Statement 139: Approval of External Resolution Schemes* (1999) [139.62] <fics.asn.au/RG_139.pdf> at 15 July 2009.

It may well be cheaper not to hold hearings but it raises questions about whether denying consumers a 'day in court' may eventually erode public confidence in the schemes. At the moment however they have nowhere else to go.

over the substance. That inevitably has a bias toward the literate and technology savvy middle class. It may well be cheaper not to hold hearings but it raises questions about whether denying consumers a 'day in court' may eventually erode public confidence in the schemes. At the moment however they have nowhere else to go.

Further, the schemes do not appear to conduct or publish regular qualitative polling testing consumer perceptions on the justice they receive from the schemes.[26] Nor does the court system but they do conduct proceedings in public and face scrutiny through the appellate system, the parliament and the media. In the 21st century, in the absence of quality controls available to the public sector, the EDR schemes should avail themselves of modern management tools as qualitative polling.

Finally, the dominance of the EDR schemes in the national civil justice arena and the 'hands off' supervision they enjoy from federal regulators, has resulted in a failure of the small claims jurisdictions of the Magistrates courts/tribunals and Consumer Affairs agencies to develop. Historically, resolution of small civil disputes fell to the State legal systems as the Commonwealth did not have the small claims and consumer jurisdiction and thus the need for a small claims infrastructure. This has changed as the role of the states has diminished and that of the Commonwealth become more pervasive. This is reflected in the rise of the industry Ombudsman schemes, focussed on federally regulated products such as banking, insurance and telecommunications. This has effectively marginalised the state small claims systems. Both systems could learn from each other but have failed to do so. Government systems could benefit from linking the tiers of information/assessment and conciliation, currently offered by consumer affairs agencies, with seamless elevation to a (tribunal) decision maker. These are currently separate. This would help address the sustainability issue being faced by the TIO and would introduce needed decentralisation. It would also add the rigor of the more transparent and accountable government system to the resolution of such disputes. In respect of the industry schemes it is suggested that it is now time to bring them back under tighter statutory remit as in Britain. This would introduce greater transparency and accountability. As in Britain there is no reason why the industry funding formula discussed below could not remain and be improved.

The cost

A traditional argument used in support of EDR schemes is that they are cheaper than the legal system as entry is free, lawyers are barred and there is no risk of an adverse costs order. Whether EDRs are in fact cheaper is more difficult to establish. As Table 2 indicates, two of the (now merged) EDR schemes do not disclose their audited financials.

Table 2 Cost of Industry Ombudsman Schemes 2007–2008

Financial Ombudsman Service			TIO
Banking	Insurance	Investments (FICS)	
$7.2m	N/A	N/A	$15.1m

Sources: 2007–08 Banking and Financial Services Ombudsman Annual Report; 2007–08 Insurance Ombudsman Service Annual Report: 2008 Financial Industry Complaints Service Limited Annual Report; 2007–08 Telecommunications Industry Ombudsman Annual Report.

Whether there will be greater transparency following the FOS merger remains to be seen. The two schemes that do disclose, do so selectively. Here, it is understood that industry funds their schemes in two ways. There is an annual levy on each company based on their size and a second, or 'user pays' levy, based on that company's caseload at EDR. It is of concern that no scheme publicly discloses this latter formula. It is a tiered fee that increases the further the dispute travels in the EDR process and always means that a scheme is playing 'catch-up' as it seeks to adequately resource rising caseloads. Most probably, the higher a matter goes the greater the temptation a company will 'roll over' for fiscal reasons rather than case merit. In the absence of an appeal process to act as a quality monitoring mechanism there must be reservations about the quality of this resolution process. This is not to say that commercial commonsense has not always been part of any dispute resolution process. However, in the legal system it is more transparent. Access to this data would be one way to objectively test the quality of the resolution data. There is a contrast here with the transparency shown by the UK Financial Ombudsman Service that publishes the break-up of annual levy and case fees. It even makes an attempt at providing a unit cost of each finalised dispute to enable quality assurance. In 2008 it was £529.[27]

Of course any discussion of the cost effectiveness of EDR schemes needs to recognise that it is really also a discussion about cost shifting. Instead of the taxpayer meeting the cost of the legal system it is moved to

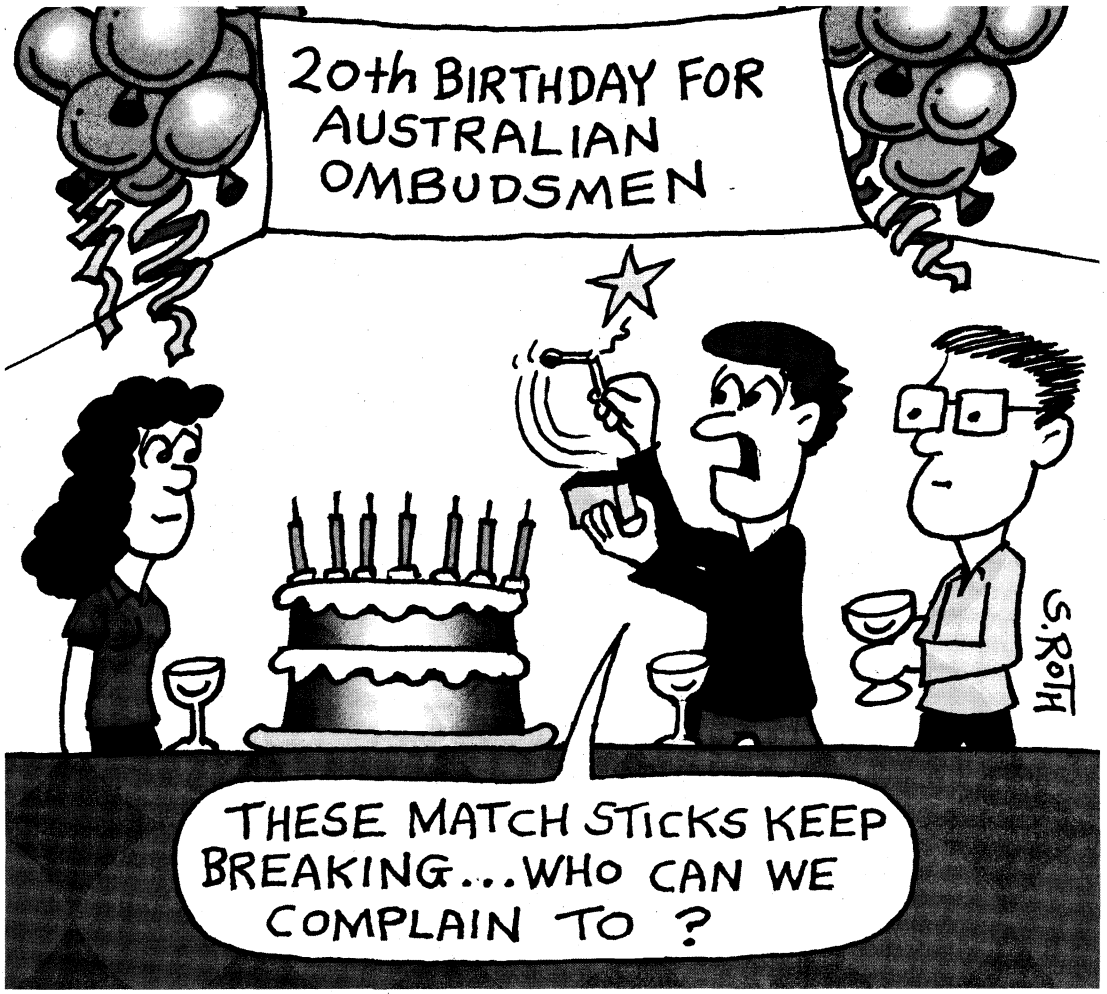
23. The courts have declined invitations to review Ombudsman decisions. For example see: *Citipower Pty Ltd* v *Electricity Industry Ombudsman (Vic) Ltd & Anor* [1999] VSC 275 (Unreported, Warren J, 5 August 1999).

24. Ibid.

25. For further information see <financial-ombudsman.org.uk/publications/ar08/ia_report.html> at 17 April 2009.

26. The Financial Ombudsman Service in the UK does conduct and publish qualitative polling results. See Financial Ombudsman Service, *Annual Review 2007/08* <financial-ombudsman.org.uk/publications/ar08/who.html#ar4> at 30 April 2009.

27. Ibid 51.



the consumer of products. Companies simply fold the EDR cost into their prices. Advocates of a competitive market would argue that this is how it should be as it provides an incentive for businesses to keep their prices competitive by encouraging quality products that customers don't complain about. If only that were so but it does not take account of those companies that simply see the industry scheme as a cheap outsource of their complaints management! One thing is clear: the cost of the schemes is a small impost for the multibillion dollar sectors they service.

Conclusion: the way forward

Twenty years on, industry Ombudsman schemes are now an established part of the civil dispute resolution framework in Australia. It seems fair to say that they have lifted industry dispute resolution standards. That was not hard as the base was low. Prior to the coming of the industry schemes the main dispute resolution trail for consumers was the court system, one rarely travelled. The requirement that all companies in the sectors discussed now have in place an accessible IDR has inevitably forced cultural change just as has the 'review' offered by the EDRs. As we have argued in this article, the disappointing thing is that after a promising start the schemes can be said to have stalled and cannot be described as world best practice. It is now time for next steps forward, although it is important to note that industry schemes are not suitable for all sectors. Indeed both the TIO and the former FICS demonstrate the challenges of sectors with multiple products, participants and loose connections.

In a further twenty years it will be interesting to review the complaint handling landscape of Australia. Key changes one would expect to see would be:

- A federally-funded consumer research centre of excellence such as *Consumer Focus (UK)* to ensure the consumer voice is at the centre of government policy making.
- Industry Ombudsman schemes under closer statutory supervision driving transparency and accountability.
- A government-based small claims system that incorporates a seamless elevation of complaints to a decision maker, including an 'on the papers' remit.
- Improved, consistent and objective data reporting particularly with corporate IDR.

Industry Ombudsman Schemes: Advance Australia Fairly!

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