**public submiSSION**

**EXECUTIVE SUMMARY AND OVERVIEW COMPONENTS**

**productivity commission access to justice ISSUES PAPER AND DRAFT REPORT 2013-2014**

**MADELEINE KINGSTON[[1]](#footnote-1)**

**private stakeholder**

**VICTORIA, AUSTRALIA**

**JUNE 2014**

**TABLE OF CONTENTS 1-37**

1 Executive Summary 37

2 List of hard-copy and PDF copies documents 64

3 Preliminaries 65

3.1 Disclaimers 65

3.2 Technical tips in accessing submission components 68

3.3 Acknowledgements 70

3.4 Structure of Submission 94

4 Overview 97

4.1 Inter-relatedness in policy design 100

4.2 Definition of Rule of Law 106

4.2.1 Absence of alternatives for “non-deficit” populations 111

4.3 Failure of regulatory role in monitoring and enforcement 112

4.3.1 Risk shifting in the context of regulatory design 121

4.4 Definitional parameters relied on by the Commission 125

4.4.1 Some regulatory definitional parameters 131

4.4.2 Misconceptions ADR landscape and mapping deficiencies 135

4.4.2.1 Discrepant Lexicons ADR 149

4.4.2.2 Revaluation of current lexicons to achieve clarity and consistency 157

4.5 Complaints mechanisms: statutory/self-regulatory arena 161

4.5.1 Statutory complaints mechanisms and failures 176

4.5.2 Industry Complaints schemes: defining mapping quality assurance 180

4.5.3 Jurisdictional limitations and weak political will: EWOV Scheme 211

4.5.3.1 Referral policies External Industry Complaints Schemes and VCAT 220

4.6 Support services: Overview 223

4.6.1 Limitations of service provision even for the most vulnerable 224

4.7 Defining long and short term interests of consumers 225

4.8 Unmet legal needs 235

4.8.1 Unmet legal need and representation: socioeconomic impacts 245

4.8.2 Civil matters 246

4.8.3 Singing Sheep Analogy: A Legal Illiteracy Parody 248

4.8.3.1 Legal illiteracy 253

4.8.3.2 Self-Litigants all categories including articulate and competent 253

4.9 Mediation: Overview 255

4.10 Legal Aid Governance and Funding 256

4.10.1 Funding and resourcing 256

4.11 Simplification of court and tribunal processes 259

4.12 Corrupt legal system 260

4.12.1 Absence of competition in legal and regulatory system 261

4.12.2 Inflated legal costs and unaffordability 265

4.12.3 Attitudinal and conditioning barriers: legal & mediation systems 266

4.12.4 Accreditation and Training Issues: Mediators and Arbitrators 266

4.12.5 Perceived biases against unrepresented self-litigants 271

4.12.6 Resistance to change and quality issues 272

4.12.7 Proposals for structural legal reform with an inquisitorial approach 273

4.12.8 Implications of Remuneration Models on Consumer Protection 274

4.13 Coordination of Consumer Movement 275

4.13.1 Consumer-centric theories of grounding Overview 277

4.13.1.1 Consumer representation on Boards and in the LMR Process 284

4.13.1.2 Creation of well-governed National Consumer Congress 286

4.13.1.3 Adequate resourcing and governance for NFP Sector 293

4.13.1.3.1 Australia’s vital community services face funding uncertainty crisis: 294

4.13.1.3.2 Restructure to accommodate single open door philosophies 297

4.14 Creation of an independent National SME Business Council 298

4.14.1 Enhanced support for small to medium businesses 300

4.15 Selected Utilities Issues 302

4.16 Some Cartel Conduct Considerations and impacts of public policy 309

4.17 Some General Governance Issues 339

4.17.1 The Peter Principle 348

4.17.1.1 The Peter Principle Parameters 349

4.17.1.2 Overview: The Peter Principle 350

4.18 Consultative issues 351

5 Inter-relatedness in policy design 353

6 Access to Justice Inquiry Parameters Ch1 362

6.1 Terms of Reference 362

6.2 Objectives of the Civil Justice System PC Chapter 3 366

6.3 Flexibility Issues: Pros and Cons 378

6.4 Inclusivity and Accessibility 381

6.5 Preamble: How can the Commission best add value? 382

7 Structure of Civil Justice System Ch2 389

7.1 Why is Access to Justice Important 408

7.2 Some Broad Concepts of Justice 429

7.2.1 Defining Justice: Service quality when navigating the system 432

7.2.2 Inclusiveness 436

7.2.3 Exclusionary eligibility criteria 436

7.2.4 Advocacy Issues and limitations 438

7.3 Counter-Defining Justice 444

8 Pathways for complaints mechanisms prior to formal filing of proceedings 450

8.1 Complaints mechanisms: Calling a Rose by Its Name 450

8.1.1 Rationale and arrangement of material 450

8.1.1.1 Positioning 450

8.1.1.2 Plain Language Movement [PLM] 451

8.1.1.3 Internal vs External Complaints Scheme Handling 456

8.1.1.3.1 Dispute resolution vs complaint 478

8.1.2 The Perceived ADR Landscape: Design Parameters 480

8.1.2.1 Preamble: Defining and Mapping 480

8.1.2.1.1 Preamble 486

8.1.2.2 Discrepant Lexicons: “Informal Justice” 489

8.1.2.3 Abbreviated glossary for complaints handling avenues Topic-specific: 495

8.1.2.4 ADR Mapping: Selected comparative views 497

8.1.2.4.1 The Chris Field Position on the ADR and Advocacy Landscape 504

8.1.2.4.2 CCAAC April 2013 Definition of ADR [EDR/Terms of Reference] 509

8.1.2.4.3 ADR: Mapping and labelling: CCAAC 1997 Benchmarks 510

8.1.2.4.4 External Dispute Resolution [EDR] [CCAAC 2013 Glossary] 511

8.1.2.4.5 Terms of reference for an industry scheme 514

8.1.2.4.6 The Tania Sourdin Approach to “ADR” Definition and Mapping 516

8.1.2.4.6.1 Either adjudicatory or non-adjudicatory: The Flexi-ADR Definition 517

8.1.2.4.6.2 Binding or Not Binding: The Flexi-ADR Definition 517

8.1.2.4.6.3 Negotiation 518

8.1.2.4.6.4 Case Appraisal 518

8.1.2.4.6.5 Arbitration 518

8.1.2.4.6.6 Further discussion Tania Richardson’s views ADR mapping 519

8.1.2.4.7 Perspectives of Membership-based ADR Associations or Councils 535

8.1.2.4.7.1 Viewpoint of the former entity NADRAC “ADR” [sub109] 536

8.1.2.4.8 The COAT Position on “Informal Justice” and definition of “ADR” 548

8.1.2.5 The role of Complaints Handling Entities 550

8.2 Statutory investigative complaints handing ombudsmen 571

8.2.1 The Role of Commonwealth and State Ombudsmen 571

8.2.1.1 Parliamentary Ombudsmen 575

8.2.1.1.1 Commonwealth Ombudsman 575

8.2.1.1.2 State and Territory Ombudsmen 576

8.2.1.1.2.1 Ombudsman ACT 578

8.2.1.1.2.2 Ombudsman New South Wales 578

8.2.1.1.2.3 Ombudsman Northern Territory 578

8.2.1.1.2.4 Ombudsman South Australia 578

8.2.1.1.2.5 Ombudsman Queensland 578

8.2.1.1.2.6 Ombudsman Tasmania 578

8.2.1.1.2.7 Victorian Ombudsman 578

8.3 Statutory Investigative Complaints Handling and Conciliation 580

8.3.1 Australian Human Rights Commissioner 583

8.3.2 Australian Information Commissioner 583

8.3.3 Electricity and Gas Complaints Commissioner NZ 583

8.3.4 Health Services Commissioner [Victoria] 584

8.3.5 Immigration Ombudsman [National] 585

8.3.6 Legal Services Commissioner [Victoria] 585

8.3.7 Office of the Legal Services Commissioner -sub26 586

8.3.8 Privacy Commissioner 587

8.3.9 Tasmanian Anti-Discrimination Commission 588

8.4 Statutory Authorities with a conciliatory and support role 589

8.4.1 Business Development Commissions and Resources 592

8.4.1.1 Australian Small Business Commissioner [sub23] 592

8.4.1.2 Limitations of jurisdiction and cursory education support inputs 594

8.4.1.3 Relationship-building as a tool for supporting the “ADR’ model 596

8.4.1.4 Costs of mediation 598

8.4.1.5 Suppression of precedents 600

8.4.1.6 Small Business Development Corporation WA [sub076] 602

8.4.1.6.1 Richard Whitwell 081 603

8.4.1.6.2 Policy advocacy and resource provision 604

8.4.1.6.3 Market composition in WA 606

8.4.1.6.4 Unmet legal need for small to medium businesses 607

8.4.1.6.5 Access to legal advice and representation 607

8.4.1.6.5.1 Costs of accessing services 608

8.4.1.6.5.2 Effectiveness of “alternative measures” 610

8.4.1.6.5.3 Suppressing precedents: benefit or drawback of “alternatives” 612

8.4.1.6.5.4 Policy gaps 612

8.4.1.6.6 Victorian Small Business Commissioner 615

8.4.1.6.6.1 Scope of powers and labelling issues 615

8.4.1.6.6.2 Information provision 617

8.4.1.6.6.3 Pressure to mediate under pain of cost awards by VCAT upon refusal 620

8.4.1.6.6.3.1 The dark side of mediation in the statutory system 622

8.4.1.6.6.3.1.1 Dispute Resolution by the VSBC under the Retail Leases Act 2003 622

8.4.1.6.6.3.1.2 Costs for mediation services by VCBS 624

8.4.1.6.7 Victorian Equal Opportunities and Human Rights Commission 625

8.4.1.6.8 Tasmanian Anti-Discrimination Commission 627

8.5 Statutory Providers with Conciliatory and Limited Arbitration Role 628

8.5.1 Accident Compensation Conciliation Service Limited Arbitration 628

8.6 Selected Mainstream Statutory Authorities 629

8.6.1 Australian Communications and Media Authority 629

8.7 Statutory Responsibility to Investigate Alleged Breaches 632

8.7.1 Preamble: Selected Statutory Authorities 632

8.7.1.1 Risks of inappropriate physical restraint 635

8.7.2 Selected statutory bodies: regulatory rule-making and procedural responsibilities 637

8.7.3 ASIC enforcement policy 637

8.7.4 Consumer Affairs Victoria [CAV] sub 642

8.7.4.1 Acts passed/Regulations commenced or revoked CAV 2011-2012 642

8.7.4.1.1 CAV Acts passed 2011-2012 642

8.7.4.1.2 CAV Regulations commenced CAV 2011-2012 642

8.7.4.1.3 Regulations revoked 2011-2012 642

8.7.4.1.4 Acts passed/regulations commenced or revoked 642

8.7.4.1.5 Regulations commenced 1 July 2012 to 30 June 2013 642

8.7.4.1.6 Regulations Revoked 2012-2013 643

8.7.4.2 CAV: Submission to PC ATJ IP Nov 2013 645

8.7.4.3 CAV Role Scope Goals Policies Principles 2006-2013 645

8.7.4.3.1 Annual Report 2006-2007 Comparisons 645

8.7.4.3.2 CAV Current Online Information accessed 2013 from About Us pages, 647

8.7.4.3.3 CAV Scope: comparative years 647

8.7.4.3.3.1 CAV Scope Annual Report 2011-2012 648

8.7.4.3.3.2 CAV: Role Scope Policies [2013] 648

8.7.4.3.3.3 CAV: Scope 2013 654

8.7.4.3.3.4 CAV Role current 2013 654

8.7.4.3.3.5 Role: CAV General Online Information 2013 654

8.7.4.3.4 CAV functions: comparative years 656

8.7.4.3.4.1 CAV Functions Annual Report 2006-2007 656

8.7.4.3.4.2 CAV functions Annual Report 2011-2012 656

8.7.4.3.4.3 CAV functions from Highlights Annual Report 2012-2013 657

8.7.4.3.5 CAV Goals Comparative years 662

8.7.4.3.5.1 Goals of CAV 2006-2007 662

8.7.4.3.5.2 CAV Goals 2007-2008 662

8.7.4.3.5.3 CAV Goals 2011-2012 Annual Report 662

8.7.4.3.5.4 CAV Goals 2012-2013 Annual Report 663

8.7.4.4 CAV Principles comparative years 665

CAV principles: Highlights Annual Report 2011-2012 665

8.7.4.4.2 CAV Principles: Highlights Annual Report 2012-2013 665

8.7.4.5 CAV Policies : comparative years 666

8.7.4.5.1 CAV Policies Annual Report 2011-2012 666

8.7.4.5.2 Accessibility and affordability for all Victorians: 2006-2007 666

8.7.4.6 Selected Funded Programs and Projects: CAV 668

8.7.4.6.1 State-wide and special projects 2006-2007 Annual Report 668

8.7.4.6.1.1 CAV: Consumer Action Law Centre: MoneyHelp Program 669

8.7.4.6.1.2 Housing Action for the Aged Group 670

8.7.4.6.1.3 Peninsula Community Legal Centre 671

8.7.4.6.1.3.1 Geographical reach 672

8.7.4.6.1.3.2 Staffing Structure 672

8.7.4.6.1.3.3 Staffing Structure PCLC Victoria 672

8.7.4.6.1.3.4 Client base 673

8.7.4.6.1.3.5 Funding Structure PCLC Victoria 674

8.7.4.6.1.4 Tenants Union of Victoria 675

8.7.4.6.2 CAV Grants program 676

8.7.4.6.2.1 Property Fund 2012-2013 annual report Appendix 2 678

8.7.4.6.2.2 Trust Fund Grants Program Annual Report 2012-2013 679

8.7.4.7 Community sector affiliations and funded programs: CAV 680

8.7.4.7.1 Community program: Advocacy and Research CAV 681

8.7.4.8 Funded Victorian Entities offering Conciliation 684

8.7.4.8.1 Dispute Resolution Centre Victoria 684

8.7.4.8.2 Information and Dispute Services Centre [Victoria] 686

8.7.4.8.3 Estate Agents Resolution Service [Victoria] [EARS-Vic] 686

8.7.4.8.4 Building Advice and Conciliation Victoria [BACV-Vic] 686

8.7.4.9 Memoranda of Understanding between CAV and other entities 687

8.7.4.9.1 Role of the ESC as Regulator: MOU 687

8.7.4.10 The role of ADRs 689

8.7.5 CAV’s Consumer Protection Framework Annual Report 2012-2013 693

8.7.5.1 Dispute resolution and reduction 2011-2012 698

8.7.5.1.1 CAV Dispute resolution and reduction 2012-2013 Annual Report 699

8.7.5.1.2 Advocacy services – clients assisted in going to VCAT 700

8.7.5.1.3 Advocacy services – assistance with information, advice or dispute 700

8.7.5.1.4 Disputes finalised – CAV frontline resolution 700

8.7.5.1.5 Domestic Building matters Disputes finalised 2012-2013 701

8.7.5.1.6 CAV Counter Enquiries – VCBC 2012-2013 703

8.7.5.1.7 CAV Publications Provided 2012-2013 703

8.7.5.1.8 My comments: brief analysis of statistical data and CAV policies 703

8.7.5.1.9 Accessibility and affordability for all Victorians: Gaps 705

8.7.5.1.10 When things go wrong CAV’ ADR Policies 705

8.7.5.1.11 CAV: Enquiries policies as at 2013 707

8.7.5.1.11.1 Preamble: CAV redirection policies specific issues 718

8.7.5.1.11.1.1 External Industry-Specific Complaints Schemes and VCAT 718

8.7.5.1.12 CAV: General conciliation as at 2013 727

8.7.5.1.13 CAV: Specialist conciliation services 748

8.7.5.1.14 Consumer Affairs Victoria [CAV] Background and Enforcement Issues 750

8.7.5.2 Building –Related Associations and Authorities 751

8.7.5.2.1 Building-Related Statutory Bodies 752

8.7.5.2.2 Victorian Building Authority 752

8.7.5.2.3 The Building Advice and Conciliation Victoria 762

8.7.5.2.4 Professional Associations: Building Related [local and national 763

8.7.5.2.5 Preamble 763

8.7.5.2.5.1 Australian Institute of Building Surveyors [AIBS] [?National] 763

8.7.5.2.5.2 Housing Industry Association [HIA] [Australia-wide] 763

8.7.5.2.5.3 Master Builders Victoria, 763

8.7.5.3 Energy Safe Victoria [ESV] 764

8.7.5.4 Tasmanian Government Mainstream 072 771

8.7.6 Some Structural and Synergistic Issues Selected Authorities 772

8.7.6.1 Productivity Commission’s Enforcement Recommendations 2007-2008] 774

8.7.6.2 Poorly applied policy tools 775

8.7.6.3 Selected systemic issues 777

8.7.6.4 Enforcement Issues Selected Arenas 778

8.7.6.4.1 Preamble Enforcement: Vigorous or Half-Baked? 778

8.7.6.4.1.1 Recommendations 1: Kildonian Uniting Care 779

8.7.6.4.1.2 Recommendations 2: Kildonian Uniting Care 779

8.7.6.4.1.3 Overlap in regulatory control 781

8.7.6.5 Australian Competition and Consumer Commission [ACCC] 783

8.7.6.5.1 Comparative Table TPA and FTA Prof Stephen Corones 784

8.7.6.6 Australian Energy Market Commission [AEMC] 789

8.7.6.7 Australian Energy Regulator [AER] 789

8.7.6.7.1 AER Enforcement Policy 789

8.7.6.8 Australian Energy Market Operator [AEMO] 794

8.7.6.9 Australian Securities and Investments Commission 795

8.7.6.10 Consumer Affairs Victoria – enforcement principles 2006-2007 796

8.7.6.10.1 Enforcement outcomes CAV 2011-2012 Annual Report 797

8.7.6.11 Consumer Affairs Victoria Enforcement Policy 2013 798

8.7.6.11.1 3.2 Enforcement CAV 2013 800

8.7.6.11.2 Proportionality CAV 2013 803

8.7.6.11.3 Consistency CAV 2013 803

8.7.6.11.4 Transparency: CAV 2013 803

8.7.6.11.5 Targeting CAV 2013 803

8.7.6.11.6 s4. Underlying principles CAV 2013 804

8.7.6.11.6.1 Risk-Based CAV 2013 804

8.7.6.11.6.2 Prominence of Fair Trading Act 1999 s4.2 804

8.7.6.11.6.3 Outcomes focussed enforcement 4.3 804

8.7.6.11.6.4 Promoting better regulation, 4.4 804

8.7.6.11.6.5 Cooperation and consultation 4.5 804

8.7.6.11.6.6 Compliance strategies and options s5 805

8.7.6.12 Offices of Fair Trading 806

8.7.6.13 Essential Services Commission Victoria 808

8.8 Industry-based Complaints Schemes 809

8.8.1 Preamble 809

8.8.2 Structure and Governance: Industry-based complaints schemes 813

8.8.2.1 Background to national consumer protection legislative framework 813

8.8.2.2 Background to statutory and regulatory and complaints environment 839

8.8.2.3 Flimsy Unenforceable Memoranda of Understanding arrangements 839

8.8.2.4 Broader Systemic Issues: Complaints 840

8.8.2.5 Information Asymmetry 840

8.8.2.6 Systemic enforcement issues 841

8.8.2.7 Inefficient aggregation of collective interests: complaints schemes 842

8.8.2.8 Misconceptions about accountability 842

8.8.2.9 Related broader systemic issues: industry complaints schemes 843

8.8.2.10 Consumer group representation on complaint scheme boards 847

8.8.3 Mapping Definition Structure: industry-specific complaints schemes 854

8.8.4 Naming Conventions Complaints Schemes: A Rose by its Name 855

8.8.4.1 Cyber-safety Inquiry and Use of the term Ombudsman 857

8.8.4.2 Naming Conventions 866

8.8.4.3 Misleading application of the term Ombudsman 870

8.8.5 Perceptions of Dysfunctional Complaints Schemes 871

8.8.5.1 Scanned copy below of submission from Peter Mair to the Productivity Commission’s Consumer Policy Framework sub114 886

8.8.5.2 Views of Luke Nottage re bourgeoning industry-based complaints schemes 893

8.8.5.3 Half-baked self-regulation 894

8.8.5.4 Lack of juristic basis for industry complaints schemes 913

8.8.5.4.1 Compromised Industry-Specific Complaints Redress 917

8.8.5.4.2 Accountability Issues: Complaints Schemes 918

8.8.5.4.3 Case for Enhancement of State Ombudsman Powers 920

8.8.5.4.4 Accountability Shuffles 922

8.8.5.4.5 Self-regulation and market imbalance 923

8.8.5.4.6 Perceived biases: complaints schemes 924

8.8.5.4.7 Inadequacies of Hardship Policies 925

8.8.5.4.8 Industry-based complaints schemes: inefficient aggregation collective interests 928

8.8.5.4.9 Selected Systemic issues 930

8.8.5.4.10 Actual Outcomes in Service Delivery: Complaints Scheme(s) 933

8.8.5.4.10.1 Unprotected ‘Embedded and “Entrenched’ populations 936

8.8.5.4.10.2 Performance Assessment: Industry-based Complaints Schemes: 940

8.8.5.4.10.2.1 Specific example: Dispelling some myths: EWOV [Victoria] Ltd 940

8.8.5.4.10.2.1.1 Lack of advocacy role: EWOV 942

8.8.5.4.10.2.1.2 Lack of mediation role: EWOV 942

8.8.5.4.10.2.1.3 Lack of Conciliation role: EWOV 943

8.8.5.4.10.2.1.4 Impartiality considerations: EWOV 945

8.8.5.4.10.2.1.5 Jurisdictional Limitations: EWOV 947

8.8.5.4.10.2.1.6 Limited Binding Decision Scope: EWOV 949

8.8.5.4.10.2.1.7 Relationship between the Board and the Ombudsman 952

8.8.5.4.10.2.1.8 Misguided de facto role as financial counsellor: EWOV 953

8.8.5.4.10.2.1.9 CASE STUDY 2A Dedientified Case Study 2 Victim BHW Practices 954

8.8.5.4.10.2.1.9.1 Allegation 1 unconscionable conduct 962

8.8.5.4.10.2.1.9.2 Allegation 2 Breach of implied contract 964

8.8.5.4.10.2.1.9.3 Allegation 3 Threats, intimidation and coercion 965

8.8.5.4.10.2.1.9.4 Allegation 4 Unfair and inappropriate trade measurement 968

8.8.5.4.10.2.1.9.5 Allegation 5 Misleading and deceptive conduct 969

8.8.5.4.10.2.1.9.6 Allegation 6 Misleading billing details all tenants same block of flats 969

8.8.5.4.10.2.1.9.7 Allegation 7 Similar inappropriate and unacceptable business conduct 969

8.8.5.4.10.2.1.9.8 Allegation 8 Practices contrary to intent spirit letter trade measurement 970

8.8.5.4.10.2.1.9.9 Allegation 9 Inappropriate supply charges 974

8.8.5.4.10.2.1.9.10 Allegation 10 Unjust deemed consumption of energy charges 974

8.8.5.4.10.2.1.9.11 Allegation 11 Compromised protections and access to justice 974

8.8.5.4.10.2.1.9.12 My further commentary 977

8.8.5.4.10.2.1.9.13 Some health risk considerations and vicarious liability 993

8.8.5.4.10.2.1.9.14 Possible solutions: Bulk Hot Water [BWH] Arrangements water supply 995

8.8.5.4.10.2.1.9.15 s18GD Inaccurate use of measuring instruments NMA 1960 997

8.8.5.4.10.2.1.9.16 s16 References in laws to units of measurement 997

8.8.5.4.10.2.1.9.17 Other possible breaches: Cartel and Fiduciary Duty 1006

8.8.5.4.10.2.1.10 CASE STUDY 2B Industry Complaints Scheme EWOV: Accountability 1009

8.8.5.4.10.2.1.10.1 Preamble 1009

8.8.5.4.10.2.1.10.2 Access to justice for embedded or entrenched customers 1011

8.8.5.4.10.2.1.10.3 The regulatory environment as a contributor to poor outcomes 1011

8.8.5.4.10.2.1.10.4 VCAT Residential Tenancies Tribunal Victoria 1015

8.8.5.4.10.2.1.10.5 The myths of choice and redress. 1019

8.8.5.4.10.2.1.10.6 Limitations of tenancy provisions 1022

8.8.5.4.10.2.1.10.7 The compromised complaints environment: industry-specific complaints 1024

8.8.5.4.10.2.1.10.8 The Complainant’s Allegations 1025

8.8.5.4.10.2.1.10.9 Unjust imposition of contractual status under deemed gas provisions 1026

8.8.5.4.10.2.1.10.10 Coercive threats by supplier of gas to bulk hot water system 1027

8.8.5.4.10.2.1.10.11 Unjust billing practices imposition of supply charges for deemed gas or electricity consumption 1029

8.8.5.4.10.2.1.10.12 Inappropriate trade measurement practices 1029

8.8.5.4.10.2.1.10.13 Tenancy dispute involving third parties 1030

8.8.5.4.10.2.1.10.14 The history of the case management and related considerations 1035

8.8.5.4.10.2.1.10.15 Accessibility: Key Principles CCAAC 1997 Benchmark 1 1035

8.8.5.4.10.2.1.10.16 Use of EDR/Complaints Schemes: One of seven Key Practices 1035

8.8.5.4.10.2.1.10.17 Staff Assistance for EDR/Complaints Handling Schemes 1037

8.8.5.4.10.2.1.10.18 Independence CCAAC 1997 Benchmark 2 1060

8.8.5.4.10.2.1.10.19 Fairness Benchmark 3 CCAAC 1997 Benchmarks as proscribed benchmark parameters under specific enactments 1069

8.8.5.4.10.2.1.10.20 Procedural Fairness 1997 CCAAC Benchmarks 1079

8.8.5.4.10.2.1.10.21 Purpose Fairness Benchmark 3 CCAAC 1997 1089

8.8.5.4.10.2.1.10.22 Key Practices Fairness CCAAC 1997 Benchmark 3 1089

8.8.5.4.10.2.1.10.23 Key Practice Determinations CCAAC 1997 Benchmarks 1089

8.8.5.4.10.2.1.10.24 Provision of Information to the Decision-Maker 1099

8.8.5.4.10.2.1.10.25 Fairness Key practice Confidentiality CCAAC 1997 Benchmarks 1106

8.8.5.4.10.2.1.10.26 Coercive conduct by case managers EWOV and ESC personnel 1117

8.8.5.4.10.2.1.10.27 Key Practices Independence: Benchmark 2 1997 CCAAC Benchmarks 1119

8.8.5.4.10.2.1.10.28 Key Practices: The Decision-maker Independence Benchmark 2 1119

8.8.5.4.10.2.1.10.29 Staff 1123

8.8.5.4.10.2.1.10.30 Overseeing Entity 1123

8.8.5.4.10.2.1.10.31 Funding 1129

8.8.5.4.10.2.1.10.32 Terms of Reference 1130

8.8.5.4.10.2.1.10.33 Reciprocal disclosure of perspectives 1134

8.8.5.4.10.2.1.10.34 Accountability Benchmark 4, as legislated mandated benchmark 1135

8.8.5.4.10.2.1.10.35 Inadequate Governance and Accountability as a proscribed benchmark 1136

8.8.5.4.10.2.1.10.36 Failure to Report Unresolved Issues in Annual Report 1144

8.8.5.4.10.2.1.10.37 Failure to admit at the outset limits of jurisdictional boundaries 1145

8.8.5.4.10.2.1.10.38 Systemic Jurisdiction Issues 1148

8.8.5.4.10.2.1.10.39 Efficiency as a proscribed benchmark under specific enactments 1156

8.8.5.4.10.2.1.10.40 Inadequate file management and record-keeping by EWOV 1157

8.8.5.4.10.2.1.10.41 Poor case-management and handover 1158

8.8.5.4.10.2.1.10.42 Delays and accountability football between regulator and EWOV 1163

8.8.5.4.10.2.1.10.43 Mishandling of the Merits Review Process 1165

8.8.5.4.10.2.1.10.44 Effectiveness as a proscribed benchmark under statute 1166

8.8.5.4.10.2.1.10.45 Clarification of scope of scheme 1167

8.8.5.4.10.2.1.10.46 Sufficient powers of decision-maker 1168

8.8.5.4.10.2.1.10.47 Referral of systemic issues or to other authorities Benchmark 6 Effectiveness 1169

8.8.5.4.10.2.1.10.48 Failure to report systemic issues and or ESC to act: Independent evidence 1179

8.8.5.4.10.2.1.10.49 Confidentiality and Privacy Matters 1184

8.8.5.4.10.2.1.11 CASE STUDY 2C Divided Loyalties and Biases Complaints Scheme 1186

8.8.5.4.10.2.1.12 CASE STUDY 2D Accountability & Transparency Complaints Schemes 1188

8.8.5.4.10.2.1.12.1 Report on the ESC-EWOV Response to Retailer Non-Compliance with Capacity to Pay Requirements of the Retail Code: Sharam/EAG 2004 1192

8.8.5.4.10.2.1.13 Non-Embedded/Entrenched outcomes: Transparency and Accountability 1211

8.8.5.4.10.2.1.13.1 Discussion 1212

8.8.6 Australian Standards for Complaints Handling 1214

8.8.6.1 Preface 1214

8.8.6.2 Australian Standard for Customer-Satisfaction Complaints handling in organisations AS ISO 10002-2006 [internal] 1215

8.8.6.3 Normative reference for Australian Standard AS-ISO-2006 1218

8.8.6.3.1 Quality management systems – Fundamentals and Vocabulary International Standard AS/NZS ISO 9000 1218

8.8.7 International Standard ISO-10003-2007 Quality management – Customer satisfaction – Guidelines for dispute resolution external to organizations 1219

8.8.8 CCAAC 1997 Benchmarks for Industry-Based Customer Dispute Resolution Schemes ISBN 978-0-462-74887-4 [Australia] 1222

8.8.8.1 Preamble: CCAAC 1997 Benchmarks 1222

8.8.8.2 Principles existing 1997 Benchmarks for Industry-Based CDRS-EDR 1230

8.8.8.2.1 Cursory discussion of broad principles of Existing 1997 Benchmarks 1232

8.8.8.2.2 Failure to adequately clarify broad principles under six criteria 1232

8.8.8.2.3 Failure to include any mechanisms through with at least adequate quality control can be undertaken 1233

8.8.8.2.4 Failure to provide both normative or informative references 1233

8.8.8.2.5 Failure to identify how contractual matters may be addressed 1233

8.8.8.2.6 Failure to provide staff recruitment training and employment criteria 1233

8.8.8.2.7 Failure to include adequate coverage on feedback from stakeholders 1233

8.8.8.2.8 Failure to specify of any juristic basis 1234

8.8.8.2.9 Scope clarity and Interpretation of standards 1235

8.8.8.2.10 Good Business Practice [Industry Practice; or Professional Practice] 1249

8.8.8.3 SCAN Accessibility Benchmark 1 CCAAC 1997 Benchmark 1253

8.8.8.3.1 Accessibility 1256

8.8.8.4 SCAN Independence Benchmark 2 CCAAC 1999 Benchmarks 1260

8.8.8.4.1 Independence: Benchmark 2 CCAAC 1997 Benchmarks 1262

8.8.8.4.1.1 Principle: Independence 1262

8.8.8.4.1.2 Purpose: Independence 1262

8.8.8.4.1.3 Key Practices Independence: Benchmark 4 1997 CCAAC Benchmarks 1266

8.8.8.4.1.3.1 The Decision-maker 1266

8.8.8.4.1.3.2 Staff 1268

8.8.8.4.1.3.3 Overseeing Entity 1268

8.8.8.4.1.3.4 Funding 1276

8.8.8.4.1.3.5 Terms of Reference 1276

8.8.8.4.1.4 Awareness/Promotion/Accessibility 1280

8.8.8.4.1.5 Accessibility to EDR/Complaints Handling Schemes 1284

8.8.8.4.1.6 Cost of EDR/Complaints Handling Schemes 1284

8.8.8.4.1.7 Use of EDR/Complaints Schemes 1288

8.8.8.4.1.8 Staff Assistance for EDR/Complaints Handling Schemes 1289

8.8.8.4.1.9 Non-Adversarial Approach 1303

8.8.8.4.1.10 Legal Representation 1303

8.8.8.5 SCAN Fairness Benchmark CCAAC 1997 Benchmarks for Customer Dispute Resolution Schemes 1304

8.8.8.5.1 Fairness Benchmark 3 CCAAC 1997 Benchmarks for Customer Dispute Resolution Schemes 1306

8.8.8.5.1.1 Principle 1306

8.8.8.5.1.2 Purpose 1306

8.8.8.5.1.2.1 Key Practices 1306

8.8.8.5.1.2.1.1 Determinations 1306

8.8.8.5.1.2.1.2 Procedural Fairness 1306

8.8.8.5.1.2.1.3 Provision of Information to the Decision-Maker 1308

8.8.8.5.1.2.1.4 Confidentiality 1308

8.8.8.5.2 Accountability Benchmark CCAAC 1997 Benchmarks 1313

8.8.8.5.2.1 Purpose 1313

8.8.8.5.2.2 Key Practices 1314

8.8.8.5.2.3 Determinations 1314

8.8.8.5.2.4 Reporting 1317

8.8.8.6 SCAN Efficiency Benchmark 5 CCAAC 1997 Benchmarks for Customer Dispute Resolution Schemes, page 20 1319

8.8.8.6.1 Efficiency Benchmark 5 CCAAC 1997 Benchmark 1321

8.8.8.6.1.1 Purpose 1321

8.8.8.6.1.2 Key Practices 1321

8.8.8.6.1.2.1 Appropriate Process or Forum 1321

8.8.8.6.1.2.2 Tracking of Complaint 1321

8.8.8.6.1.2.3 Monitoring 1322

8.8.8.7 SCAN Benchmark 6 Effectiveness CCAAC 1997 Benchmarks for Customer Dispute Resolution Schemes, 1323

8.8.8.8 Effectiveness 1325

8.8.9 Perspectives of selected consumer organizations 1327

8.8.10 Perspectives of Complaints Handling Consulting Services 1331

8.8.10.1 Complaints Handling Consulting Service: Baljurda Comprehensive Consulting ACT 1331

8.8.10.2 CameronRalph Navigator 1334

8.8.11 Professional Association Perspectives: Complaints bodies 1342

8.8.11.1 Australian and New Zealand Ombudsman Association [ANZOA] 1342

8.8.11.1.1 Membership of ANZOA as at 10 December 2013 1342

8.8.11.1.2 Parliamentary Ombudsmen as ANZOA Member 1344

8.8.11.1.3 Statutory Bodies as Members of ANZOA 1346

8.8.11.1.4 Industry-based Complaints Schemes as members of ANZOA 1347

8.8.11.1.5 Contributors to the ANZOA submission 133 to the PC’s Issues Paper 1352

8.8.11.1.5.1 Parliamentary Commonwealth and State Ombudsman 1352

8.8.11.1.5.2 Industry-based Complaints Schemes termed Industry Ombudsman] 1352

8.8.11.1.5.3 Quality Assurance Issues in Brief ANZOA members and others 1353

8.8.11.1.5.4 Financial Planning Association of Australia 1358

8.8.12 Selected further discussion specific External Industry-Specific Complaints Schemes 1361

8.8.12.1 Preamble 1361

8.8.12.2 Some Statistics on Complaints or Known Disputes 1367

8.8.12.3 Energy and Water Ombudsman NSW 1368

8.8.12.4 Energy and Water Ombudsman [Vic] Ltd [industry-based] [sub019] 1369

8.8.12.4.1 EWOV submission sub119 to PC-ATJ-IP 1379

8.8.12.5 Banking and Financial Services Ombudsman 1383

8.8.12.6 Credit Ombudsman Services Ltd [COSL] 1384

8.8.12.7 Financial Industry Complaints Service [Victoria] 1386

8.8.12.8 Financial Ombudsman Service [FOS] 1386

8.8.12.9 Insurance Brokers Disputes Ltd [IBD] 1388

8.8.12.10 Insurance and Savings Ombudsman New Zealand 1388

8.8.12.11 Private Health Insurance Ombudsman 1388

8.8.12.12 Public Transport Ombudsman [Victoria] sub018 1389

8.8.12.12.1 Inequity Issues 1390

8.8.12.12.2 Structural Issues 1391

8.8.12.12.3 Public Transport Ombudsman [industry-based] [sub018] Industry Association Affiliations 1392

8.8.12.12.4 Governance concerns in brief` 1395

8.8.12.12.5 Operational Parameters 1399

8.8.12.13 Telecommunications Industry Ombudsman [TIO] [nationwide] [sub134] 1402

8.8.13 Internal Industry-Specific Complaints Schemes 1403

8.8.13.1 AAMI Consumer Appeals 1403

8.9 Mediation Issues General non-court-directed 1404

8.9.1 Preamble 1404

8.9.2 Unjust and unlawful conciliation and mediation practices 1404

8.9.3 Mediation Training Accreditation Expertise and Scope Issues 1408

8.9.3.1 Business education 1411

8.9.3.2 Training Accreditation Expertise and Scope Issues: Private Mediation 1416

8.9.3.2.1 Inclusiveness 1419

8.9.3.2.2 Informal justice 1423

8.9.3.2.3 Restricted court access and implications for unaffordable mediation 1424

8.9.4 Private Mediation Providers 1424

8.9.4.1.1 Negocio Resolutions 052 1424

8.9.4.1.2 Richard Whitwell 1424

8.10 Legal Aid Services 1425

8.10.1 Preamble 1425

8.10.2 National Legal Aid [sub006] 1429

8.10.3 Legal Aid Commission [ACT] 027 1430

8.10.4 Legal Aid NSW sub068 1431

8.10.5 Legal Aid Queensland 1432

8.10.6 Legal Aid Western Australia 1432

8.10.7 Northern Territory Legal Aid Commission sub128 1433

8.10.8 Legal Aid Tasmania 1433

8.10.9 Victoria Legal Aid [VLA] sub102 1434

8.10.9.1 Preamble 1434

8.10.9.2 Legal Structure and Accountability: VLA 1436

8.10.9.3 Statutory Mandate: VLA 1436

8.10.9.4 Defining and Mapping “ADR” – the VLA example 1438

8.10.9.5 Pragmatic decisions re future focus: VLA 1440

8.10.9.6 Models of service delivery: VLA 1442

8.10.9.6.1 Mixed Model Approaches 1442

8.10.9.6.2 Demographic profile for clients 1444

8.10.9.6.3 Eligibility criteria 1444

8.10.9.6.4 Eligibility for funding for representation 1444

8.10.9.6.5 Eligibility for direct non-financial assistance and/or advocacy 1446

8.10.9.6.6 Educational programs targeting organizations 1448

8.10.9.6.7 Legal Assistance Service Funding 1449

8.10.9.7 Unaffordability of legal assistance and ineligible for legal assistance 1449

8.10.9.8 Example of Dissonance: Legal Aid Statutory Ombudsman Tribunal re undue force against prisoner Horrocks, sub148 1450

8.10.9.8.1 Case Study: Undue force against prisoner resulting in serious injury with compromised redress attempts 1451

9 Direct Support Services: Selected 1452

9.1 National Association of Community Legal Centres [NACLC] 1456

9.2 Central Highlands Community Legal Centre 1458

9.3 Central Coast Community Legal Centre sub039 1459

9.4 Centre for Rural Regional Law and Justice [sub020] 1459

9.5 Community Legal Centres NSW and others sub004 1460

9.6 Consumer Action Legal Centre Victoria [CALC2] 1461

9.7 Footscray Community Legal Service 1464

9.8 Catering for diversity [per Curran, L] 1465

9.9 Hunter Community Legal Service 1466

9.10 Housing Action for the Aged Group 1469

9.11 Kingsford Legal Centre [NSW] sub053 1469

9.12 Mid North Coast Community Legal Centre sub085 1470

9.13 Peninsula Community Legal Service [PCLS] [sub028] 1470

9.13.1 Mixed model service delivery in legal assistance: PCLC 1472

*9.13.2* Service reach 1474

9.13.3 Client base 1474

9.14 Redfern Legal Centre NSW 1476

9.15 Shearer Doyle sub021 1478

9.16 Shoalcoast Community Legal Centre 1480

9.17 Springvale Monash Legal Service Inc. [Victoria] sub084 1481

9.18 St Kilda Community Legal Service [Victoria] sub051 1482

9.19 Victorian Council of Social Services[sub132] 1483

9.20 Selected Public Interest Law Clearing Houses 1485

9.20.1 Justice Action sub043 1485

9.20.2 Justice Connect sub104 1485

9.20.3 Public Interest Advocacy Centre sub045] 1488

9.20.4 Queensland Public Interest Clearing Houses [sub058] 1488

9.20.5 University of Queensland Pro Bono sub074 1488

9.20.6 Support Services 1489

10 Understanding and Measuring Legal Need 1490

10.1 Preamble 1490

10.2 Defining Legal Need 1491

10.2.1 Level of demand for legal need 1492

10.2.1.1 Consultation Questions 1492

10.2.1.2 Draft Finding 2.1 ATJ Inquiry 1493

10.2.2 Demand assessment of legal need and inquiry parameters 1495

10.2.2.1 Specifics of the LAW Survey Data 2012a 1501

10.2.2.2 Estimates composition concentration prevalence and severity of legal problems 1503

10.2.2.3 Clustering of legal need 1507

10.2.2.4 Definitional Matters: Differences between conflicts and disputes 1508

10.2.2.5 Selected Policy and Survey Design Issues 1509

10.2.2.5.1 Behavioural economics 1512

10.2.2.5.2 Behavioural and attitudinal considerations: consumption patterns and dissonance 1515

10.2.2.5.3 Use made of statistical or other data 1518

10.2.2.5.4 Churn: Means-or-end competition policy 1523

10.2.2.5.5 Snapshot assessment: flawed conclusions 1524

10.2.2.5.6 Example: Data paucity in analysing retail competitiveness AEMC 1525

10.2.2.5.7 Example: Data paucity in analysing the case for the mandated advanced metering infrastructure roll-out Victoria [AMRO 1526

10.2.2.6 Responsibility and risk shifting in assessing legal need 1527

10.2.2.6.1 Misconceptions regarding unmet need 1530

10.2.2.7 Unrepresented Parties 1533

10.2.2.7.1 Terminology Issues Unrepresented Parties 1548

10.2.2.7.2 Funding restrictions 1548

10.2.2.7.3 Self-litigation on the basis of financial constraints 1549

10.2.2.7.4 Self-litigation because of barriers to regulator-led representative action 1551

10.2.2.7.5 Selected categories of unrepresented parties 1556

10.2.2.7.6 Case Example 4A Unrepresented [per Hunter CLC] 1556

10.2.2.7.7 Case Example 4B Impacts on claimants of refugee status 1557

10.2.2.7.8 Victims of Workplace Bullying 1559

10.2.2.7.8.1 Case Study 4C: Unrepresented Competent Litigant Workplace Bullying/Discrimination 1559

10.2.2.7.9 Victims of a weak statutory monitoring and enforcement regime: enforcement building trade 1563

10.2.2.7.9.1 Case Study 4D Unrepresented Competent Litigant Building Dispute Statutory Authorities and Tribunal and Mediation 1563

10.2.2.7.10 Rural, Regional and Remote Communities 1572

10.2.2.7.11 General Population: Other 1574

10.2.2.7.12 Victims of perceived multi-sector cartel conduct 1575

10.2.2.7.12.1 Preamble 1579

10.2.2.7.12.2 Victims of abuse by authorities and/or undue force 1579

10.2.2.7.12.3 Residential tenants in multi-dwellings 1580

10.2.2.7.12.4 Owner/occupiers or residential tenants in Strata Titled Property 1580

10.2.2.7.12.5 Shop owners and lessees in shopping centres 1580

10.2.2.7.12.6 Businesses all profiles in certain business parks and premises 1580

10.2.2.7.12.7 Most commercial and industrial premises 1580

10.2.2.7.12.8 Office buildings of all descriptions 1580

10.2.2.7.12.10 Preamble 1581

10.2.2.7.13 Selected Unmet legal & socioeconomic needs: Policy Impacts 1590

10.2.2.7.13.1 Is unmet need concentrated among particular groups? 1590

10.2.2.7.13.1.1 Poverty as a Precarious Public Policy (David Adams views) 1591

10.2.2.7.13.1.2 Risk shifting to consumers: Peter Kell 1593

10.2.2.7.13.2 Ability of disadvantaged parties to effectively appear in person] 1596

10.2.2.7.14 Drivers for participation 1605

10.2.2.7.14.1 Adopting appropriate funding mechanisms 1605

10.2.2.7.14.2 Adopting better measurement of performance and cost drivers 1606

10.2.2.7.14.3 Selected Complementary Non-Legal Support Services 1609

10.2.2.7.15 Jurisdictional powers 1609

10.2.3 Expectations reducing level of unmet legal need through ombudsmen 1611

10.2.3.1 Preamble 1611

10.2.3.2 Draft Finding 2.2 1612

10.2.3.2.1 Accreditation and Training Complaints Schemes 1615

10.3 Socioeconomic impacts on unmet legal need and representation 1621

10.3.1 Preamble 1621

10.3.2 Gaps in addressing impacts of Poverty and Homelessness 1623

10.3.3 Marginalisation and Poverty as a Precarious Public Policy 1629

10.3.3.1 Deep Persistent Disadvantage in Australia: PC Findings 1629

10.3.3.1.1 Key points 1629

10.3.3.1.3 Views of David Adams 1631

10.3.4.1 Views of peak bodies in the Not-For-Profit Sector 1639

10.3.4.2 Views of David Russell on peace welfare and good order 1641

10.3.5.1 Analysis by Gavin Dufty of ESC Objectives identified by John Tamblyn 1642

10.3.7 Selected Vulnerable Groups 1649

10.3.7.1 Preamble on Philosophies of inclusivity for Vulnerable Groups 1650

10.3.7.2 CALD Communities – General Comments Inequities 1653

10.3.7.2.1 CALD Services 1655

10.3.7.2.1.1 Judicial Council on Cultural Diversity sub120 1655

10.3.7.3 Disability Support Issues 1657

10.3.7.3.1 Preamble 1657

10.3.7.3.2 Unmet legal need: disability community 1660

10.3.7.3.2.1 Preamble 1660

10.3.7.3.2.2 Cost Barriers: Disability Sector 1662

10.3.7.3.2.3 Timely Intervention 1665

10.3.7.3.2.4 Gaps: Cognitive impairment and unmet legal need and service provision 1666

10.3.7.3.2.5 Gaps Services and Representation for Mental Health Sufferers General Population 1668

10.3.7.3.2.6 Disregarded Universal Human Rights 1672

10.3.7.3.2.7 Disability sector: Guardianship and administration matters 1674

10.3.7.3.2.8 Anti-discrimination matters 1674

10.3.7.3.2.9 Forensic orders – disability 1674

10.3.7.3.2.10 Health care and life sustaining measures 1674

10.3.7.3.2.11 Abuse, neglect and serious injury 1674

10.3.7.3.3 Disability Sector Services 1674

10.3.7.3.3.1 Human Rights Legal Services 1674

10.3.7.3.3.2 The Mental Health Legal Service [MHLS] 1674

10.3.7.3.3.3 Australian Federation of Disability Organizations [AFDO] sub024 1674

10.3.7.3.3.4 Australian Centre for Disability Law sub067 1674

10.3.7.3.3.5 Communication Rights Australia sub071 1674

10.3.7.3.3.6 Disability Advocacy Network Australia [DANA] sub035 1675

10.3.7.3.3.7 Disability Discrimination Legal Services Inc. [DDLS] sub11 1676

10.3.7.3.3.8 Intellectual Disability Rights sub075 1677

10.3.7.3.3.9 Justice Action sub043 1677

10.3.7.3.3.10 Mental Health Carers Inc. [WA] ARAFMI sub005 1678

10.3.7.3.3.11 People with Disabilities Australia Incorporated 1678

10.3.7.3.3.12 Queensland Advocacy Inc. [QAI] [sub064] 1679

10.3.7.4 Selected Indigenous Justice Issues 1680

10.3.7.4.1 Indigenous Services 1684

10.3.7.4.1.1 Indigenous Legal Aid Services 1684

10.3.7.4.1.1.1 Central Australasian Aboriginal Legal Aid [sub089] 1684

10.3.7.4.2 Indigenous Legal Advice and Support Services General 1684

10.3.7.4.2.1 Aboriginal Legal Service of Western Australia (Inc.) [ALSWA] [sub112] 1684

10.3.7.4.2.1.1 National Aboriginal and Torres Island Legal Centre sub078 1684

10.3.7.4.2.1.2 National Aboriginal and Torres Islanders Legal Service sub003 1684

10.3.7.4.2.1.3 North Australian Aboriginal Justice Agency sub095 1684

10.3.7.4.2.2 Indigenous Family Violence Services 1685

10.3.7.4.2.2.1 Aboriginal Family Violence Prevention [AFVP] sub097 1685

10.3.7.4.2.2.2 Aboriginal Family Violence Prevention Legal Service Vic. sub099 1685

10.3.7.4.2.2.3 Queensland Indigenous Family Violence 046 1685

10.3.7.4.2.3 Indigenous: Native Title Issues 1688

10.3.7.4.2.3.1 NSW Aboriginal Land Council sub080 1688

10.3.7.4.2.3.2 National Native Title Tribunal sub055 1688

10.3.7.4.2.3.3 Victorian Aboriginal Legal Service 1689

10.3.7.5 Gaps: vulnerable groups in Detention 1690

10.3.7.5.1 Preamble 1690

10.3.7.5.2 Prisoner and Ex-Prisoner Issues 1693

10.3.7.5.2.1 Preamble 1693

10.3.7.5.2.2 Abuses of authority within the prison system 1697

10.3.7.5.2.2.1 Preamble 1697

10.3.7.5.2.2.2 Use of inappropriate physical and chemical restraint 1698

10.3.7.5.2.2.2.1 Case Study: Undue force against prisoner resulting in serious injury with compromised redress attempts 1699

10.3.7.5.2.2.2.2 Case Study: Force-feeding and other abuses of human rights 1700

10.3.7.5.2.3 Parole issues 1701

10.3.7.5.2.4 Straight from jail to homelessness: PIAC report 1705

10.3.7.5.2.4.1 Link between homelessness, dual diagnosis and prison records 1707

10.3.7.5.2.5 Injustice for exoneerees in miscarriage of justice: cost-shifting 1708

10.3.7.5.2.6 Prisoners’ Support Services 1709

10.3.7.5.2.6.1 Justice Action [sub043] 1709

10.3.7.5.2.6.2 Prisons’ Legal Service Inc. [Qld] sub082 1710

10.3.7.6 Other abuses of authority 1711

10.3.7.6.1 Physical or other restraint in the process of apprehension 1711

10.3.7.6.1.1 Risks of inappropriate physical restraint and compromised complaint pathways 1714

10.3.7.6.1.1.1 CASE STUDY 2E Victim on inappropriate potentially life threatening physical restraint. 1716

10.3.7.6.1.1.2 Case Study 2F: Melbourne Train ticket inspector drops girls head onto ground 1725

10.3.7.7 Refugee Issues 1727

10.3.7.7.1 Discussion 1727

10.3.7.7.2 Refugee Support Services 1755

10.3.7.7.2.1 Australian Refugee Support Centre [ARSC] 1755

10.3.7.7.3 The Refugee Advice and Casework Centre sub047 1755

10.3.7.8 Family Issues 1756

10.3.7.8.1 Preamble 1756

10.3.7.8.2 Family Issues Services 1762

10.3.7.8.2.1 Australian Institute of Family Studies sub101 1762

10.3.7.8.2.2 Family Court of Australia sub070 1762

10.3.7.9 Women’s Issues 1764

10.3.7.9.1 Preamble 1764

10.3.7.9.2 Women’s’ Support Services 1765

10.3.7.9.2.1 Women’s Legal Services Australia sub029 1765

10.3.7.9.2.2 Women’s Legal Services sub032 1765

10.3.7.9.2.3 Women’s Legal Service Tasmania sub048 1765

10.3.7.9.2.5 Women’s Legal Services Victoria sub033 1766

10.3.7.10 Children and Youth Issues 1767

10.3.7.10.1 Australian Institute of Family Studies sub101 1768

10.3.7.10.2 National Children’s and Youth Law Centre sub050 1769

10.3.7.11 Regional Rural and Remote Communities 1770

10.3.7.12 Aged Care Issues 1771

10.3.7.12.1 Preamble 1771

10.3.7.12.2 Aged Care Services 1773

10.3.7.12.2.1 Aged Care Assessment, Placement and Rehabilitation Facilities 1773

10.3.7.12.2.2 Barwon South West Aged Care Assessment Centre – Geelong 1773

10.3.7.12.2.3 Barwon South West Aged Care Assessment Centre Warrnambool 1773

10.3.7.12.2.4 Bundoora Extended Care 1773

10.3.7.12.2.5 Caulfield Aged Care and Rehabilitation Centre 1773

10.3.7.12.2.6 Eastern Metropolitan Aged Care Assessment Peter James Centre Eastern 1773

10.3.7.12.2.7 Gippsland Regional Aged Care Assessment Service – Traralgon 1773

10.3.7.12.3 Housing Action for the Aged Group 1773

10.3.7.12.3.1 The Aged Care Rights Services sub031 1773

10.3.7.13 Workplace Discrimination Bulling and Harassment 1774

10.3.7.13.1 Workplace Discrimination Services/Authorities 1775

10.3.7.14 Needs of Medical Consumers and Accident Victims 1777

10.3.7.14.1 Medical Consumers Services/Advocates 1777

10.3.7.14.2 Medical Consumers Association Inc. sub 041 1777

10.3.7.14.3 Tom Benjamin VP Medical Consumers Association Inc. sub044 1777

10.3.7.15 Australian Inquest Alliance sub062 1777

10.3.7.16 Victims of Mining Accidents 1778

10.3.7.17 Miscellaneous parties impacted by power imbalances in disputes 1779

10.3.7.17.1 East Mine Action Group sub037 1779

10.3.7.18 End-users of utilities as essential fungible goods 1780

10.3.8 Objectives National Competition Policy and Public Interest Test 1781

10.3.8.1 National Competition Policy Select Senate Committee: CSR 1783

10.3.8.1.1 Public Interest and Exemptions from the TPA 1791

10.3.8.1.2 Review of effectiveness energy retail competition & consumer safety net 1794

10.3.8.1.3 Response by VCOSS to the Review of the ESC Act 2001 1796

10.3.8.1.4 Scanned copy details Gavin Dufty paper Who Makes Social Policy? [2004a] 1800

10.3.8.1.5 Scanned copy of Gavin Dufty’s discussion re energy competition impacts on Victorian household 1802

11 Costs of accessing civil justice Chapter 4 1804

11.1 Impact of costs of accessing justice services 1806

11.2 Financial costs in accessing justice 1813

11.3 Cost constraints 1815

11.4 Cost risks of legal representation 1816

11.5 Costs of disbursements and administrative costs and filing fees 1819

11.6 Costs of expert witness reports and appearances 1820

11.7 Cost risks for Not-for-Profit Sector and/or Individuals 1820

11.8 Cost award risks and other cost barriers: 1820

11.8.1 Disability Sector [as an NFP example] 1820

11.9 Cost award risks in Limited Merits Review Processes 1824

11.10 Cost awards against unrepresented self-litigants 1842

11.11 Cut price alternatives to court: a compromise too far? 1843

11.12 Timeliness and delays 1847

11.13 Simplicity and usability 1849

11.14 Geographic constraints 1850

11.15 Impacts of Commercial Perspectives Policies and Practices 1852

11.15.1 Australian Institute of Company Directors sub040 1852

11.16 Preamble: Policy Corruption [broadly meant] 1853

12 Avenues for improving access to civil justice 1854

12.1 Corrupt Legal System 1857

12.1.1 Power imbalance 1857

12.1.2 Absence of competition in legal and regulatory reform 1859

12.1.3 Legal ethics and related public policy matters 1861

12.1.4 Impacts of legal representation on effectiveness 1868

12.1.5 Preventing issues for evolving into bigger problems 1868

12.1.6 Effective matching of disputes and processes 1870

12.1.7 Steering towards less formal dispute resolution mechanisms 1871

12.1.8 Informal justice 1875

12.1.1 Informal justice 1880

13 Legal Institutions: Structures and Processes 1882

13.1 Preamble Courts and Tribunals: Overview 1882

13.1.1 Flawed Assumptions Minor Litigious Issues 1884

13.2 Improving accessibility Tribunals: Structures and Processes 1889

13.2.1 Mapping Tribunals in the civil dispute landscape 1895

13.2.2 Use of Mediation in Tribunal and Court Practices: 1897

13.2.2.1 The COAT Interpretation of “ADR” [sub098] 1916

13.2.2.2 Cut price court alternatives: cost vs quality 1917

13.2.2.3 The Ideological Position: Rule of Law 1918

13.2.3 Definitional and Interpretative Issues 1919

13.2.4 Creeping legalism in Tribunals 1920

13.2.5 Political Pressure 1922

13.2.6 Tight Timelines 1922

13.2.7 Jurisdictional Structural Differences 1923

13.2.8 Balance between generalised and specialist tribunals 1923

13.2.9 Enforcement tribunal objectives on legal and other representatives 1923

13.2.10 Restriction of access to Tribunals [and courts] 1924

13.2.11 Use of information and communication technologies 1925

13.2.11.1 Gary’s Institute sub038 1928

13.2.12 Tribunals: Cost Barriers 1929

13.2.12.1 Cost Awards 1931

13.2.13 The Limited Merits Review process 1932

13.2.13.1 Tribunals: Some Specifics with selected case examples 1933

13.2.13.1.1 Preamble 1933

13.2.13.1.2 Impact of self-representation on courts, tribunals and all participants 1935

13.2.13.1.2.1 Impacts on Industry Litigants 1936

13.2.13.1.2.2 Impacts on self-represented litigants of absence of legal representation 1938

13.2.13.1.2.3 Impacts on potential consumer-focused interveners 1939

13.2.13.1.2.4 My comment on Limited Merits Review as Administrative Review 1942

13.2.13.1.2.5 Conditioning issues: court impacts 1942

13.2.14 Discussion of selected tribunal processes and related case studies 1943

13.2.14.1 Administrative Appeals Tribunal [Cth] [AAT] sub065 1943

13.2.14.2 Australian Competition Tribunal Limited Merits Review [LMR] Design Parameters under Energy laws 1945

13.2.14.3 Preamble 1946

13.2.14.4 TOR LMR regime National Electricity Law and National Gas Law 1953

13.2.14.5 Background 1953

13.2.14.6 Expert Panel Advice: selected issues 1954

13.2.14.7 LMR decision by SCER post- Expert Panel advice 1960

13.2.14.8 The role of the Tribunal in undertaking a review 1960

13.2.14.9 Limited merits review test 1962

13.2.14.10 Seeking leave to appeal 1963

13.2.14.11 Legislative changes to Tribunal’s functions 1964

13.2.14.12 The role of the Tribunal in undertaking a review 1965

13.2.14.13 Parties to reviews, costs, and consumer participation 1966

13.2.14.14 Review of the Tribunal’s role in energy matters 1979

13.2.14.15 LMR impacts potential conflict: discounting policies transmission sector 1983

13.2.14.16 Non-transparent pricing models and pass-through risks 1986

13.2.14.17 Restrictions and approach of Tribunal in Merits Review 1987

13.2.14.18 Discussion of MEU’s views on the LMR design proposals 1988

13.2.14.19 Grounds for Appeal 1994

13.2.14.20 Selected LMR Case studies before the ACT 1995

13.2.14.20.1 Case Study 3A GasNet LMR Appeal ACCC Revenue Determination 1995

13.2.14.20.2 Case Study 3B LMR EAG EUAA Amcor BHP Billiton and Orica Failed Intervener Standing ACT Revocation of Coverage Moomba to Sydney Gas Pipeline System 1996

13.2.14.20.3 Case Study 3C Administrative Law Public Interest Electricity Price Determination Review Community Groups VIC/AER LMR [withdrawn] 1998

13.2.14.20.3.1 Regulatory environment in brief 2000

13.2.14.20.3.2 Structural issues: regulatory framework 2000

13.2.14.20.3.3 Lion’s Den Enticement 2002

13.2.14.20.3.3.1 Market imbalances [temporary labelling} 2007

13.2.14.20.3.3.2 Skilling and resourcing 2008

13.2.14.20.3.3.3 Consumer Advocacy Panel arrangements and new structural developments 2010

13.2.14.21 Case Study 3D Admin Law Competition Tribunal Unrepresented Party Gas Access Determination Public Interest 2027

13.2.14.21.1.1 Case Study AER-JGN matter Potential Intervener 2034

13.2.14.22 Hypothetical Case YYY 2037

13.2.14.23 Case Study ZZZ 2040

13.2.14.24 Parodied Letters of Coercive Threat Based on Real Case 2040

13.2.14.25 My Comment on the Parodied Case study example 2044

13.2.14.26 Risks of Appeals 2079

13.2.14.27 Consumer Trader and Tenancy Tribunal [NSW] 2080

13.2.14.28 Council of Australian Tribunals [COAT] sub098 2081

13.2.14.29 Fair Work Commission [FWC] 2082

13.2.14.30 Guardianship Tribunal [NSW] 2082

13.2.14.31 Migrant Review Tribunal Refugee Review [sub014] 2082

13.2.14.32 Mental Health Review Tribunal [NSW] 2083

13.2.14.33 Motor Accident Assessment Service [NSW] 2083

13.2.14.34 National Native Title Tribunal sub055 2083

13.2.14.35 State Administrative Tribunal of Western Australia SAT [WA] 2083

13.2.14.36 Social Security Appeals Tribunal sub086 2083

13.2.14.37 Superannuation Complaints Tribunal [SCT] 2083

13.2.14.38 Tasmanian Anti-Discrimination Tribunal 2083

13.2.14.39 Veterans Review Board [VRB] 2084

13.2.14.40 Victorian Civil and Administrative Tribunal [VCAT] 2085

13.2.14.40.1 Case Study 4A Admin Law Building List VCAT “Scandalous” Mediation Process Margaret Singleton Senior Pensioner 2086

13.2.14.40.2 Case Study 4B Admin Law VCAT Public Interest Environmental decision unrepresented litigant and three others 2095

13.2.14.41 Queensland Civil and Administrative Appeals Tribunal [QCAT] 2098

13.2.14.42 Cost barriers: awards and court fees 2099

13.2.14.43 Case management issues 2102

13.2.14.44 Funding for Courts and Tribunals 2105

Reforms in Court Procedures 2106

13.2.15 Improving the accessibility of courts 2106

13.2.15.1 Court processes 2107

13.2.15.2 Model Litigant Rules 2107

13.2.15.3 Vexatious or Querulous Litigants 2108

13.2.15.4 Complexity in procedures Courts and Tribunals 2109

13.2.15.4.1 Court practices and processes 2109

13.2.15.4.2 Discovery 2109

13.2.15.4.3 Material required 2111

13.2.15.4.4 Witnesses and experts 2113

13.2.15.4.5 Barriers for represented/unrepresented consumer groups or individuals 2113

13.2.15.4.6 Procedural Reforms 2116

13.2.15.4.7 Case management 2116

13.2.15.4.8 Pre-action requirements and procedures 2116

13.2.15.4.9 Cost awards and court fees 2116

13.2.15.4.10 Arrangements for awarding costs 2116

13.2.15.4.11 Court Fees 2116

13.2.15.4.12 Courts – commentary on some specifics 2117

13.2.15.4.12.1 Family Court of Australia [FCA] [sub070] 2117

13.2.15.4.12.2 District and County Courts 2118

13.2.15.4.12.3 Federal Courts Selected 2119

13.2.15.4.12.4 Supreme Courts and Courts of Appeal 2119

13.2.15.4.12.5 Supreme Court New South Wales 2119

13.2.15.4.12.6 Magistrates Courts [Jurisdictional] 2120

13.2.15.4.12.7 Magistrates Court New South Wales 2120

13.2.15.4.12.8 Magistrates Court Northern Territory 2120

13.2.15.4.12.9 Magistrates Court South Australia 2120

13.2.15.4.12.10 Magistrates Court Queensland 2120

13.2.15.4.12.11 Magistrates Court Tasmania 2121

13.2.15.4.12.12 Magistrates Court Victoria 2121

13.2.15.4.12.13 Magistrates Court Western Australia 2122

13.2.16 Court Processes 2122

13.2.17 Conduct of parties in disputes and vexatious litigants 2123

13.2.18 Case Management 2124

13.2.19 Adversarial and uncooperative system 2127

13.2.20 Pre-action requirements and procedures 2128

13.2.21 Expedited procedures and processes 2129

13.3 Effective models of service provision: Australia and overseas 2130

13.3.1 Disparity impacts effectiveness adversarial system/processes 2132

14 Alternative mechanisms: Improving equity/access to justice at lower cost 2134

14.1 Early intervention measures 2136

14.2 Enhanced Legal Aid Assistance 2138

14.3 Specialist courts or community conferencing 2141

15 Improving the effectiveness of public or private legal services 2142

15.1 Reforms within the Legal Profession 2142

15.1.1 Legal Reform: Systemic Corruptions 2142

15.1.2 Corruptions in the Administrative System 2146

15.1.3 Responsive legal profession 2151

15.1.4 Litigation funding 2151

15.1.5 Legal curricula 2152

15.2 Legal Councils, Societies and Associations 2153

15.2.1 Preamble 2153

15.2.2 Law Council of Australia sub011 2153

15.2.3 City of Sydney Law Society [sub110] 2154

15.2.4 Law Society of South Australia [sub131] 2155

15.2.5 New South Wales Bar Association [sub034] 2155

15.2.6 Queensland Law Society sub057 2155

15.2.7 NSW Young Lawyers Committee sub079 2156

15.2.8 Victorian Bar [sub127] 2156

15.2.9 The University of Queensland Australia UQ Pro Bono [sub074] 2156

15.3 Pro Bono parameters 2157

15.3.1 Allens/Linklaters 2162

15.3.2 Australian Lawyers Alliance sub107 2164

15.4 Pro Bono Services 2167

15.4.1 The reducing availability of Pro Bono Services 2167

15.4.2 The reducing availability of Pro Bono Services 2167

15.4.3 Private Funding 2169

15.4.4 Other features of legal services market driving costs 2170

15.5 Private Law Firms 2172

15.5.1 Preamble 2172

15.5.2 Allens/Linkalters sub111 2173

15.5.3 Jones Day Solicitors sub054 2174

15.5.4 Maurice Blackburn Lawyers sub059 2174

15.5.5 SALVOS sub123 2175

15.5.6 021 Shearer Doyle sub021 2176

15.5.7 Slater and Gordon sub056 2176

15.5.8 Legal education and skills 2177

15.5.9 Myths regarding lawyers as providers of resolution services 2178

15.5.9.1 Competency vs accreditation and/or self-perception 2179

15.5.10 Billing Practices 2180

15.5.10.1 Proportionate ratio of costs to issues in dispute 2182

15.5.11 Unbundled legal services 2182

16 Advocacy Issues 2183

16.1 Preamble Consumer Focus 2183

16.2 Some Advocacy Concerns (including Theory Models) 2188

16.3 Applied Grounding Theory vs Consumer Policy Dogma: Advocacy/ADR 2191

16.4 Defining and mapping of consumer advocates – some pitfalls 2194

16.5 The dangers of policy dogma 2194

16.6 What it means to be a consumer advocate 2194

16.7 Challenge to role perceptions of consumer advocates. 2200

16.8 Theories of competition: Tool, or end in itself? 2201

16.9 Blurred boundaries accountability; conflicts of interest: reflections 2210

16.10 Stakeholder Engagement Spectrum 2211

16.11 Absence of direct clientele at coalface 2218

16.12 Some Plain Language Pitfalls 2219

16.13 Absent scoping mechanisms views or priorities of general public 2222

16.14 Lack of political will to scope for stakeholders views or priorities 2224

16.15 Skilling Resourcing and Capacity Building Issues 2227

16.16 Philosophical and attitudinal position 2235

16.17 Time constraints foci and related NFP sector and others 2242

16.17.1 Belongs with Advocacy Section Transfer 2247

16.17.1.1 Outcomes from Stakeholder and ‘Advocacy’ Inputs 2247

16.18 Design Gaps: Proposed Engagement/Advocacy Framework 2252

16.19 Optimal engagement and advocacy model: ideological barriers 2254

16.20 Some reflections on barriers to consultation 2256

16.21 AER Customer Reference Group Statement of Objectives 2258

16.21.1 Cross-ref to discussion of the 2000 Taskforce on Self-regulation. 2258

16.21.2 Intent of AER CRG Framework 2260

16.21.3 Objectives of AER CRG Framework 2262

16.21.4 Composition new AER Consumer Consultative Group 2014-2016 2265

16.22 Selected Policy and Campaign-Based Advocates 2267

16.22.1 Preamble 2267

16.22.2 Consumer Action Law Centre sub049 2268

16.22.3 Public Interest Advocacy Centre sub045 2270

16.22.4 Justice Action sub043 2270

16.22.5 Queensland Advocacy Incorporated sub064 2270

16.22.6 Queensland Public Interest Clearing House sub058 2270

16.22.7 Council on the Ageing [COTA] 2270

16.22.8 Consumer Utilities Advocacy Centre [CUAC] 2272

16.23 CUAC Customer Reference Group 2273

16.23.1 CUAC/CAP Reference Groups 2278

16.24 CUAC Funding and Grant Allocations 2285

16.24.1 Preamble 2285

16.24.2 CUAC Grants 2002-2010 Financial Years 2287

16.24.3 Organizational synergies 2302

16.25 Previous report 2006-2007 PROGRAMS 2308

16.26 NEM Advocacy Scheme: Passing reflections 2309

16.26.1 Advocacy Panel Scope 2312

17 Not for Profit Regulator 2321

17.1 Interim Arrangements and Consumer Liaison Representative 2329

17.2 Equity issues in policy advocacy representation funding & focus 2330

18 Research Function 2333

18.1 Scanned Copy EAG Submission MCE 2006 Legislative Package 2335

19 Governance and Leadership Considerations 2351

19.1 Some Best Practice Leadership Principles 2351

19.2 Some Burning Best Practice Evaluative Principles 2355

20 Reflections on Public Accountability and Transparency 2369

20.1 Preamble Selected Specific Governance Issues 2369

20.2 Perceived Corruptions: Administration and Public Policy 2372

20.2.1 Preamble: Administration and Policy Corruption [broadly meant] 2373

20.2.2 Public Policy Impacts on Unmet Legal and Socioeconomic Need 2374

20.2.3 Federalism vs Anti-Federalism: Implications of Vertical Fiscal Imbalances 2375

20.2.3.1 Welfarist approaches to public policy 2378

20.2.3.2 The Lens Approach: David Adams [2002:95] 2378

20.2.3.3 Selected Impacts of Cohesion Service Provision and Regulation 2382

20.2.3.4 Commonwealth-State Agreements National 2385

20.2.3.4.1 AEMC Establishment Act 2004 2385

20.2.3.4.1.1 Schedule: Part 15 General AEMC official 2386

20.2.3.4.1.2 Schedule: Part 15 General AEMC official 2386

20.2.3.4.1.3 Schedule: Part 15: General 318—Immunity in relation to personal liability of AEMC officials 2387

20.2.3.4.1.3.1 Commonwealth State Agreements: COAG National Reform Agenda 2388

20.2.3.5 Good Faith Arrangements: What do these mean? 2389

20.2.3.5.1 Unenforceable Memoranda of Understanding Public Entities 2398

20.2.3.5.2 AEMC and structural synergies: selected stakeholder concerns 2400

20.2.3.5.4 EAG’s Response to MCE Framework for MoU AEMC-AER-ACCC 2419

20.2.3.5.5 Transgrid Submission to AER-AEMC-ACCC MOU April 2004 2423

20.2.3.5.6 Strengthening Regulation 2425

20.2.3.5.7 Memorandum Understanding AEMC-ESC 14 Dec2012 2436

20.2.3.5.8 Memoranda of Understanding: ESC and other bodies 2447

20.2.3.5.8.1 Memorandum of Understanding: ESC and EWOV 2452

20.2.3.5.8.2 Limited Binding Decision Scope: EWOV 2454

20.2.3.5.8.3 Memorandum of Understanding between the ESC ad CV dated 18 October 2007 2461

20.2.3.5.8.3.1 Role of the ESC as Regulator: MOU 2461

20.2.3.5.8.4 Role Scope and Functions of the CAV 2470

20.2.3.5.8.4.1 Role of Consumer Affairs Victoria 2470

20.2.3.5.8.4.1.1 Accessibility and affordability for all Victorians: Gaps 2006-2007 2471

20.2.3.5.8.4.1.2 Memoranda of Understanding between CAV and other selected bodies 2473

20.2.3.5.8.4.1.3 Extract and Discussion of MOU between CAV and ACCC 2474

20.2.3.5.8.4.1.4 Discussion of MOU between CAV and ESC Victoria 18 October 2007 2478

20.2.3.5.8.4.1.5 MOU between CAV and DPI [now DEPI] 2485

20.2.3.5.8.4.1.6 MOU between CAV and DSBDI 2486

20.2.3.5.8.4.1.7 Selected MOUs: Essential Services Commission Victoria other bodies 2487

20.2.3.5.8.4.1.8 Memorandum of Understanding [MOUs] AER and other entities 2488

20.2.3.5.9 ACCC-AER Dispute Management Plan and Policy 2489

20.2.3.5.10 Internal Complaints Handling Public Entities 2500

20.2.3.5.10.1 Mandatory conciliation by coercion: The New Redress 2501

20.2.3.5.10.2 Unaccountability for conduct corporatized public entities 2503

20.2.3.5.10.3 Setting good examples to industry 2504

20.2.3.5.11 Blurring of corporate social responsibility obligations 2506

20.2.3.5.11.1 Gaps in Meeting NGO and NGO Principles 2507

20.2.3.5.12 Accountability multiple statutory and common law tenets 2508

20.2.3.6 The Consultative and Engagement Conundrum 2523

20.2.3.6.1 Defining effective engagement 2523

20.2.3.6.2 Lack of meaningful consultation 2527

20.2.3.6.3 Consumer engagement issues utilities arena 2530

20.2.3.6.4 Narrow focus of consultative reach 2532

20.2.3.6.5 Complex far reaching inter-related decisions 2537

20.2.3.6.6 Critique of review process 2537

20.2.3.6.7 Multi-sector cartel issues: Overview 2538

20.3 Governance at statutory and corporatized levels 2547

20.3.1 Squashed community expectations 2548

20.3.2 Tiered Policy Inertia 2549

20.3.3 The Shuffle “It’s not us, it’s them” 2550

20.3.4 Information asymmetry 2550

20.3.5 Non-Consensus Malaise 2550

20.3.6 Unaddressed conflicts of interest consumers and policy-makers 2551

20.3.7 Sustainability of Government Institutional Structure 2556

20.3.8 Gaps in Assessment of Internal Energy Market 2559

20.3.8.1 Preamble 2559

20.3.9 Missing Steps in Completing the Internal Energy Market: 2560

20.3.9.1 Preamble: my comments: 2560

20.3.9.2 Command and Control vs Whole-of-Market Responsiveness 2564

20.3.9.3 Inter-relatedness: Regulatory design 2567

20.3.9.4 Political legislative & regulatory framework inter-relatedness 2569

20.3.9.5 Examination of existing & proposed regulatory framework 2569

20.3.9.6 Regulatory Coordination of transmission network planning 2569

20.3.9.7 Impact inter-related decisions national transmission system 2570

20.3.9.7.1 Wide impacts of complex interrelated decisions transmission system 2570

20.3.9.7.2 Political legislative and regulatory framework corruption 2570

20.3.9.8 Proper examination of Corruption 2571

20.3.9.8.1 Regulatory scapegoating in policy-making 2571

20.3.9.8.2 Comment on Regulatory Burden Issues 2571

20.3.9.8.3 Transparency, Independence, Governance Issues 2574

20.3.9.9 Corruption (broadly defined) 2581

20.3.9.9.1 My cursory comment: on interpretation of competition 2583

20.3.9.9.2 B. Corruption: [adverse outcomes] 2590

20.3.9.9.3 Comment: corruption impacts on consumer protection framework 2591

20.3.9.10 Sustainability Government Institutional Structure 2592

20.3.9.10.1 Preamble 2592

20.3.9.10.2 Political and institutional instability 2594

20.3.9.10.2.1 Corruption impacts on market conduct: Political regulatory and institutional instability 2596

20.3.9.10.2.2 Serving two masters 2597

20.3.9.10.2.3 Commissioned report gaps and disclaimers CRA 2599

20.3.9.10.2.3.1 Flawed interpretation of churn and ‘switching behaviour’ 2599

20.3.9.10.2.3.2 Snapshot approach versus prospective longitudinal analysis 2599

20.3.9.10.2.4 Synergies between complaints bodies and statutory or corporatized bodies 2601

20.3.9.10.2.5 Synergies between complaints schemes and not-for-profit sector 2602

20.3.9.10.2.6 Institutional structures and parameters: brief comment 2603

20.3.9.10.2.7 Institutional ideological barriers and accountability shuffles 2606

20.3.9.10.2.8 Global impacts of trading decisions or acquisition investment [CEER] 2610

20.3.9.10.2.8.1 6.5 Pricing of network services 2611

20.3.9.10.2.9 Examination of Renegotiation and Bailout factors 2611

20.3.9.10.2.10 Lack of robust, deep and liquid organized energy markets 2612

20.3.9.10.3 Regulatory leadership and impacts on institutional stability 2612

20.3.9.10.3.1 Consideration of transmission asset issues 2620

20.3.9.10.4 Further selected specifics: Governance and Accountability 2623

20.3.9.10.4.1 Blind Freddy’s Views 2625

20.3.9.10.4.2 Advanced Metering Infrastructure [AMIRO] Issues 2627

20.3.9.10.4.3 Selected Market and Policy Distortions: Asset Management, Bulk Hot Water Arrangements and related 2628

20.3.9.10.4.3.1 Policy and political considerations general 2628

20.3.9.10.4.3.1.1 Sale of Queensland Government’s retail energy assets 2634

20.3.9.10.4.3.1.1.1 Energex Cost Pass-Through Submission QCA, p37 13,500 BHW victims 2653

20.3.9.10.4.3.1.1.2 Cursory discussion cartel issues 2654

20.3.9.10.4.3.1.1.3 Highlights of events of enforcement action the Henry Kaye property developer and spruiker banned for 5 years by ASIC in 2010 2669

20.3.9.10.4.3.1.1.4 Continuation Asset Management and cartel issues 2680

20.3.9.10.4.3.1.1.5 Preventing dividend washing 2696

20.3.9.10.4.3.1.1.6 Some Tenancy Issues 2696

20.3.9.10.4.3.1.1.7 Implications for complaints handling mechanism and inappropriate referrals 2696

20.3.9.10.4.3.1.1.8 Some Plain Language Drafting Issues: Example 2711

20.3.9.10.4.3.1.1.9 Policies and Impacts Bulk Hot Water Arrangements 2712

20.3.9.10.4.3.1.1.10 Bulk Hot Water Pricing and Charging Confusolopy, ESC Victoria 2727

20.3.9.10.4.3.1.1.11 Confusolopy re Ascertainment of consumption of energy 2731

20.3.9.10.4.3.1.1.12 Extract deliberative documents ESCV BHW and Pricing/Charging 2732

20.3.9.10.4.3.1.1.13 Applicable Term: Conversion Factor 2732

20.3.9.10.4.3.1.1.14 Fixed Conversion Factor [Adopted] Victoria Bulk Hot Water 2733

20.3.9.10.4.3.1.1.15 Proposed/Adopted Version 11 Energy Retail Code 2738

20.3.9.10.4.3.1.1.16 Meter Definition Victorian Energy Retail Code 2738

20.3.9.10.4.3.1.1.17 Gas Bulk Hot Water Definition Victorian Energy Retail Code 2739

20.3.9.10.4.3.1.1.18 Gas Bulk Hot Water Rate Victorian Energy Retail Code 2739

20.3.9.10.4.3.1.1.19 Electric bulk water Definition Victorian Energy Retail Code 2739

20.3.9.10.4.3.1.1.20 Electric Bulk Hot Water Conversion Factor 2739

20.3.9.10.4.3.1.1.21 Energization Definition Victorian Energy Retail Code 2742

20.3.9.10.4.3.1.1.22 Legal Traceability: Trade Measurement 2743

20.3.9.10.4.3.1.1.23 Conceptual Diagram Bulk Hot Water Systems 2750

20.3.9.10.4.3.1.1.24 Service Link Australia Pty Ltd Centralised Boiler System Standard Form Online Water and Heating Service 2751

20.3.9.10.4.3.1.1.25 Origin Energy Standard Form Agreement: “Understanding your energy Agreement with us [Default] – Agreement for the Supply of Hot Water Services NSW SA, Qld Vic NT 2762

20.3.9.10.4.3.1.1.26 Some competition issues 2774

20.3.9.10.4.3.1.1.27 Rising electricity and gas prices, brokerage activities and related 2778

21 Nature and Pitfalls of Legislative Drafting 2786

21.1 Preamble 2786

21.1.1 Legislative intent in statutory interpretation 2787

21.1.2 Pitfalls of Plain Language Usage in Legislative Drafting 2789

22 General Self-Regulatory Considerations 2791

22.1 Preamble 2791

22.2 Cutting Red Tape: The Deregulation Agenda 2792

22.3 Factors Determining effectiveness of self-regulation 2799

22.4 Self-Regulation: Features of market contributing to effectiveness 2806

23 Effective market governance: reflections 2807

23.1 Preamble 2807

23.2 Alternative models for advocacy and research 2807

23.3 Better Regulation Program [and Better Deregulation] 2813

23.4 Effective markets: safe, fair, sustainable: some reflections 2824

23.5 Effective Stakeholders Communication: Operational Parameters 2832

23.5.1 Cultural orientation: general considerations 2832

23.5.2 Transparency and publication of material 2832

23.5.3 Effective-Intergovernmental strategic policy planning 2832

23.5.4 Rule changes. conflict and overlap between regulatory schemes timetabling 2835

23.5.5 Some timetabling concerns 2836

23.5.6 Flexibility in Consultative Design 2838

23.5.7 Consistency 2844

23.5.8 Vertical and fiscal imbalances – federalism implications 2846

23.5.9 Capturing and preserving authentic and accessible evidence 2848

23.5.9.1 Case Study 5A Compromised Accessibility to Information 2865

23.5.10 Conclusions: Effective Markets including Research and Advocacy 2870

24 Closing remarks 2874

24.1 Some socioeconomic impact considerations 2874

24.2 Direct and Advocacy Services: Structure, governance and funding 2876

24.3 Legal aid funding policies and governance 2877

24.4 The Plain Language Movement and the lexicon debate 2878

24.5 Court- or tribunal based mediation and mapping issues 2882

24.6 Complaints handling and accreditation 2883

24.7 Grossly deficient statutry and industry based complaints schemes 2884

24.8 Enhanced support for small to medium businesses 2887

24.9 The statutory regulatory framework and governance issues 2888

24.10 Our corrupt legal system 2892

24.11 Consumer Movement: Grounding governance funding resourcing 2896

24.12 Governance transparency and leadership 2897

24.13 Proactive governance and consultative approaches 2904

24.14 Never mind the quality feel the width 2906

25 Annotated Glossary [incomplete] 2907

26 Selected List of Publications Andrea Sharam 2924

27 Selected List of Publications Gavin Dufty 2927

28 Selected Publications Tenants Union Victoria 2933

29 Public Submissions Madeleine Kingston 2934

30 BIBLIOGRAPHY & READING LIST 2944

# Executive Summary

We should retain the concept of seamless access to justice at least as an aspiration goal but set about refining the definitions. I have posed some annoying challenges to lexicons and have drafted my own, explaining why I felt the need to do so.

Freedom to navigate the system is an option for most of us if we are prepared to be disappointed. Unless you would prefer to be Behind Prison Walls[[2]](#footnote-2) Or an Exonoree? Or an administrative detainee. In which case things could hardly get worse and complaining under the civil justice system about treatment in prison futile.

Just in case prison issues interest you or other socioeconomic impacts on unmet legal need and representation, I have tried to address this as a subset of Section 10 Understanding and Measuring Legal Need and Representation, including 10.3.7.6.2.

I agree with many that there should not be such a clear-cut demarcation between the civil justice and criminal justice system, whilst recognising that the Commission’s Terms of Reference were restricted.

Treatment in the prison system or in other forms of detention, within the mental health area of the immigration arena under administrative detention, is very much a civil issue. Would you kindly explain to me what prisoners exonorees and other detainees may rely upon when seeking redress about their treatment in detention and what accountabilities exist and how they may be accessible? This may be an Australian Inquiry with narrow constraints but the question is just as applicable to the international arena, wherein persons deemed to have breached the law are inhumanely and unjustly treated? What about them? What about those we detain in the name of saving their lives?

I note that many stakeholders have raised concerns about the absence of focus on the criminal justice system and the many overlaps with the civil justice system. If the Commission has been offered valuable insights and opinions on such issues it is a gold opportunity to have access to information ahead of any specific inquiry. The Commission is also in a position to make recommendations about the focus of future enquiries.

The Australian prison system is not operating as it should and nor is the wider context of Detention, arbitrary or otherwise. I have discussed this in Section 12.3 along with some 17 discrete categories of specific of unmet legal need within demographic populations labelled as vulnerable, disadvantaged marginalised and disenfranchised. The Commission has had directly from some individuals who have tried to get their voices heard, despite denial of access to technological facilities. Please do not over-estimate the value of these facilities. Not everyone can access them.

The discussion about Leal Aid Services and adequate funding should be read with my commentary under my extended Section 12, where I begin under the heading Understanding and Defining Legal Need with my usual approach of addressing lexicon and interpretative issues, followed by brief commentary on survey methods, use of statistics and possible distortions; and some matters relating to the embryonic field of behavioural economics

The remainder of Section 12 is divided into discussion of selected issues such as the plight of unrepresented parties, with some examples of outcomes for such parties provided by case study

The recent submission of Stan van de Wiel, [subdr218][[3]](#footnote-3) describes the appalling state of affairs within the legal profession and institutions illustrated through his direct experiences of attempting to defend himself against a government body. In this submission the author suggests that *“a person who defends himself has a fool for a client”*

The problem is that for most people including the articulate, the option does not exist for representation at all. In terms of legal aid funding for civil matters is virtually non-existent and the approaches are mostly about *“strategic funding”* rather than on the merits of the case.

After discussing the issues related to the plight of unrepresented parties and how they are received within a culture that has always been legalistic and onerous, with creeping legalism in tribunal settings, despite their self-perceptions, at Section 12.3 I focus especially on a range of categories of particular need in vulnerable and marginalised populations.

This sub-section begins with broader discussion of the impacts of deep and persistent disadvantage and marginalisation, quoting for example from the work of David Adams in his award winning Sir George Murray essay *“Poverty: A Precarious Public Policy*’ [2002a] [in which he also speaks of governance matters including structural issues]

This preamble material is followed by examination of the particular problems faced various categories of vulnerable groups, with some discussion of the issues raised by several community organizations involved in either policy advocacy or provision of direct services. Each category is separately addressed with limited case study references

Section 12.3 concludes with an examination of the Objectives of National Competition Policy and the Public Interest Test. Here I divide the discussion into subsections and provide scanned copies of some material by respected authors highlighting the deficiencies in aspects of public policy that contribute to socioeconomic detriments in the general population and especially in vulnerable groups.

Gavin Dufty for example as Manager Research and Social Policy at St Vincent de Paul Society has examined the philosophies of the Essential Services Commission Victoria [ESC] as described by the then Chairperson of the ESC John Tamblyn, who went on to become Chairperson of the AEMC and then joined a group of three experts known as the Energy Expert Panel, providing advice to the newly formed COAG Council on Energy [which replaced the Standing Committee on Energy and Resources [SCER] which had replaced the Ministerial Council on Energy [MCE

The views of the ESC in meeting the single objective of protecting “long term interests of consumers” appear to be startlingly divorced from those objectives, which are enshrined as policy dogma of little real meaning in multiple instruments including those relating to essential fungible goods and services. I introduced discussion of these matters in my Overview Section 6 under Support Services: Defining the long term interests of consumers” and continue some of the discussion towards the end of Section 12.

There are many categories of vulnerable populations who will never be able to benefit from the renewed emphasis on information provision, especially through technological means. Homogenisation can only get so far when seeking to redress unacceptable imbalances.

As to accessible formal legal structures as they stand, well I have a view on this. I hardly need to point out to the credible and articulate responses, mostly from legal academics on the need to effect a major re-vamp of the legal system all the way through, not only to address perceived creeping legalism within tribunals, despite denials, but throughout the current system of mostly passive response to whatever is thrust before the judiciary by parties facing clear imbalances in resources, skill and capacity to present a case, let alone get past the other barriers to seeking not merely access to justice [however weakly that may be defined]; but actual delivery to justice.

I leave aside that major reform is not on this year’s map for reform, as suggested by Evan Whitton[[4]](#footnote-4) [Our Corrupt Legal System} and his numerous supporters

I have read with interest the recent submission to the Commission’s Inquiry, including that from the latest appointment to the Office of the Victorian Ombudsman Deborah Glass as of March 2014[[5]](#footnote-5) who has suggested that seed funding to assist the statutory ombudsman community to establish a similar body to the Australasian Council of Auditors-General. I support that goal, since it could then provide:

*“evidence .. to underpin the development of rigorous approach to benchmarking*” [final paragraph, page 18 of 18 newest Victorian Ombudsman]

I support the position that the entire system needs a shake-up, rationalisation, and to be blunt ruthless scrutiny and re-revamp, kicking and screaming if needs be.

I absolutely refuse to accept homogenisation between those with statutory ombudsman stature and those clinging on to coat-tails by adoption of misleading labels such as industry-based Scheme Ombudsman and Offices, meaning the half-baked unaccountable complaints handling landscape or its characterisation and mapping. I provide my reasons in detail, not only in Sections 6.5 [Overview] and Section 10.

I have already provided below a fairly lengthy overview section that is divided into a number of headings that do not exhaustively cover all the issues I raise in the body of this submission. I will resist the temptation to provide headings here but urge consideration of all components of this submission including ancillary material for the sake of embracing the principles of continuity and inter-relatedness.

The ancillary material has been grouped into batches that are topic-related and many components overlap with sections. A complete listing of this is provided indicating the contents of each folder. This is attached to the electronic bundle on a USB, with a further copy of the bibliography. Of these there are two particular items that I wish to highlight as they are case studies that augment particular matters that I wish to air. Some material has also been provided as hard-copies. I can provide further material upon request.

Over the years I have battled with a poor commitment by government departments and agencies to uphold the principles of transparency, and I found that I was unable to provide verifiable links to certain material that ought to have remained publicly available. In many cases I had downloaded my own copies, and to make the task of the Commission easier I have provided a sizeable proportion of PDF and hard copies in addition to listing all material relied upon in my Bibliography and Reading list.

Whilst I have addressed many of the issues the Commission has addressed in its Issues Paper and Draft Report, I have introduced many topics that may be beyond the immediate scope of this Inquiry. There is a dearth of reliable data out there through which public policy can be better informed. I believe that an opportunistic approach to accept information that may be helpful in future similar enquiries or other concurrent inquiries is a good plan to adopt.

I cheerfully proffer more than you asked for and hope that despite far exceeding usual document size constraints that it will be published in its entirety. It has been cross-referenced throughout the document and certain matters will lose impetus if there is not an easier way of accessing the material than ploughing through 32 separate chapters.

My intent is to target other authorities with similar material where there is overlap between regulatory frameworks.

This summary does not aim to cover all the material that is addressed in this submission, but rather highlights particular issues. The Overview section at 6 is divided into chunks under headings and walks through topics addressed in more detail in later sections.

The 220 submissions made to this Inquiry to date have covered a lot of ground, but not necessarily on the matters that I wish to highlight. I have referred to numerous opinions from the submissions made and included all of those in the bibliography material.

I start with the complaints arena since there have been few inputs on this topic other than those from self-interested complaints schemes promoting their wares. I regret that I cannot accept their collective views. I also think the structural arrangements are messy and lack coordination.

I firmly believe that there is a need to re-evaluate the extent to which governance and structural issues may be perversely contributing towards unmet legal need, decision-making bottle-necks and perceptions of an uncoordinated approach to addressing public policy design and delivery.

I have focused on a selection of governance issues throughout the submission and from Section 21 onwards have broadened my approach to include matters that were not part of the Inquiry parameters, but I hope that some consideration will be given to those issues.

The inter-relationships between authorities, the corporately-badged public sector, complaints mechanisms of varying degrees of accountability, if any have a direct impact on service delivery. Amongst the hot spots are the interactions between corporately-badged economic regulators and various complaints schemes, most of them industry-based.

In some sectors, including the utilities arena, the tensions between overseeing regulators and the complaints schemes that were established under their respective enactments have become acute enough for the schemes to be motivated to express this publicly in the context of public submissions. Whilst my examples have mainly been taken from these sectors, it is likely that extrapolation to other arenas is appropriate.

I have spoken of squashed community expectations, tiered policy inertia, the accountability shuffle, information asymmetry, the non-consensus malaise, unaddressed conflicts of interests and sustainability of government institutions, aside from sustainability of the social fabric of society and how this may be impacting on perceptions of availability to services and avenues through which the elusive access to justice pathways may be navigated.

Professor Mary Noone and others have referred to justice as including the quality of the experiences of those attempting to navigate the system. On page 2 of her submission she described justice as

*“encompassing how people navigate and are treated in the many transactions [with legal consequences] that compromise everyday life, particularly those that are administered or involve government agencies. It is in these encounters that equality before the law’ is experienced by most people.”*

In recognition of that broader concept, I have dealt not only with examining the plethora of complaints mechanisms available and whether the Commission’s predictions that the incidence of unmet legal need will be deliverable simply by lifting awareness of their existence, but whether under current structural arrangements and governance, the quality of service delivery is sufficient to deliver desired outcomes.

What are the questions that we should be asking about at least adequate alternative dispute resolution solutions in the effort to minimize demands on the formal system of justice and apparently deeply flawed formal legal process that represemts a pathway to upholding the rule of law and access to justice?

What should be make of the notion of promoting access to a deeply flawed alternative pathway in the pursuit of access to civil justice and related criminal justice arena?

Why should we rely on self-perception of the parameters of service delivery including impartiality, efficiency; effectiveness or accountability; or self-perceptions of jurisdictional powers*;*

In relation to industry-based complaints handling mechanisms [note my reluctance to dignify them with the term ombudsman or Office as industry associations would like to see happen]; I strongly support nationalisation and absorption of all industry-schemes into a statutory framework with a juristic basis. This will meet with the expected resistance and already has. There are questions to be asked whether there is a sufficient level of collective insight into the parameters of own performance to make it possible for self-interest in self-promotion to be a reliable indicator of the level of service quality.

Existing ancient Benchmarks that are not Australian Standards and do not meet community expectations or relevance in the 21st Century are relied upon as policy dogma that cannot be substantiated in the theory to practice translation, and lack the quality assurance parameters through which service delivery and performance may be objectively measured.

I note that the 18-page submission from the Victorian Ombudsman’s 18-page response to the Draft Report deals with the issue of the existence of a **network of complaint handling bodies** minus vision and governance in a single framework where consistency and a modicum of accountability can be achieved. I am pleased to see this choice of phrasing since complaints handling and justice or access thereto are not synonymous. My headings for sections and sub-sections throughout my submission will reflect how I view the categorisation of various complaints handling mechanisms.

The Victorian Ombudsman, Deborah Glass, has mainly compared levels of demand for service within the statutory framework, listing on page 11 as comparative graph that five statutory authorities and one industry-based scheme, the Public Transport Ombudsman Scheme, which is industry-based. He noted that the other Victorian bodies listed did not receive more than ten per cent of the volume of complaints as did the Victorian Ombudsman.

Whether this is just a matter of awareness is not easy to assess, but an indicator is a survey conducted by the Australian Communications Consumers’ Action Network in 2012,[[6]](#footnote-6) as referred on page 17 of the CHOICE submission to the CCAAC Review of the 1997 Benchmarks that showed that

*“Among consumers who had an unresolved complaint against their service provider, 46% were aware of the existence of ‘an Ombudsman” or Telecommunications Industry Ombudsman [Scheme] [TIO] Of those who did not take their complaint to the TIO, only a small proportion [10%] cited a lack of awareness as the reason.”*

The Victorian Ombudsman receives over 30,000 approaches each year, with the next highest amongst the complaints bodies being about $10,000 to best knowledge. [page 11 of submission dr176]

On the issue of the proposal that contribution to be made by government agencies against whom a complaint is made towards the cost of complaint-handling, the Victorian Ombudsman believes that this recommendation is

*“not appropriate in a public sector context and would have unintended consequences that are contrary to the public interest and could place vulnerable members of the community at risk.”*

If it is the case that complaints against statutory authorities are likely to be against those dealing with the most vulnerable, and if financial penalties for complaints may lead to avoidance of acceptance of complaints by those agencies [being those that can least afford such penalties according the Ombudsman], then the advice should be heeded that approaches and incentives in the commercial sector may not be appropriate for the statutory sector.

In passing I direct attention to my discussion in Section 10 of perceived conflicts of interest when a Statutory Ombudsman wears multiple hats and concurrently holds a Scheme Ombudsman role in an industry-based scheme. Either an industry scheme is separate or the concept of industry-based schemes is demolished and all complaints handling comes under one umbrella with a juristic basis..

This means that a single statutory Office can have divided duties to address complaints against government authorities and complaints that are industry-related but not industry-managed since all manner of untended consequences may arise when industry-based schemes see themselves as unaccountable other than to their management boards, whilst statutory services are required to deliver more accountability. This inequity needs to be addressed. I have long been a supporter of streamlining of services and parity in the accountability and transparency benchmarks.

The comparison between the role and scope of parliamentary ombudsmen is a chalk and cheese one, and I have resisted the notion of homogenization whilst schemes are operating outside statutory accountability parameters.

Frankly if the Commission wishes to recommend promotion or industry-based schemes minus juristic basis or quality standards of international standing, whilst using the terms Ombudsmen or Office, please forgive me for saying, you have lost my vote. This is rank manipulation. How little respect the government and industry must have for end-consumers of goods and services of any description.

Could we please lift the bar of community expectation?

I totally agree with the Victorian Ombudsman that:

*“The major impediment to real progress has been the varying nature of the jurisdiction of each of the state and commonwealth ombudsmen.”*

I would go further in my concerns that on the one hand industry-based schemes as a self-interested self-promotional measure have assumed the name of *“ombudsmen”* or Office implying stature power and accountability that does not exist, and on the other they wish to be considered altogether unaccountable to governments or to external scrutiny unless they are seeking top-up funds.

I have illustrated this in the case of the Victorian Scheme known as the Energy and Water Ombudsman [Victoria] Ltd [with an incorporated overseeing management board enjoying a separate legal identity] and have provided to this entity a high-beam spotlight through which my numerous concerns may be used to draw attention to the structural and governance issues of concern, including the lack of juristic basis for these schemes.

The myriads of industry-ombudsman schemes mushrooming like topsy without juristic basis will ensure that equity and service quality will be variable and the discrepant political wills to deliver a more effective impartial service compromised.

I strongly support the Victorian Ombudsman’s reflection regarding the requirement for enhanced accountability and transparency for statutory Ombudsmen.

I am also pleased to see that with great restraint this Ombudsman seems to have drawn a line by avoiding discussion of schemes assuming the Ombudsman label, which conveys a subtle message about labelling, In her concluding paragraph the Victorian Ombudsman has asked for seeding funds to establish a body similar to the Australian Council of Auditors-General. This would be an excellent plan, rather than the current arrangement of associations such as ANZOA, which attracts personal membership from industry and some statutory authorities in a scheme to elevate the status of the industry-based schemes.

The image of statutory ombudsman is not enhanced by that arrangement, which in any case only offers personal membership to post-holders of the key positions and is not an organizational membership. Therefore such schemes have no direct sanction control over the staff of such schemes particular with regard to performance.

I have devoted some sections to discussing labelling, perceptions and mapping of complaints entities and to this end have also mostly in Section 10, sub-divided discussion of these according to role and function. I have made no bones about my objection to the application of the term Ombudsmen or Office for industry-based schemes without juristic basis.

The bar has been set too low for community expectations and I do not accept that the schemes are performing consistently to standard. There is no hope whilst weak ineffectual old and tired Benchmarks are upheld as appropriate or relevant. I have also discussed this in section 10 comparing these with Australian Standards published by Standards Australia and International Standards, in both cases recognizing the differences between standards for internal and external complaints handling with a focus on consumer-centricity, quality assurance, operational and performance criteria that is based on the SMART principles with detailed implementation plants and external accountability.

At present the inputs of professional external industry consulting firms is hampered by the lack of implementation plans, including effective operational manuals against which any benchmarks at all may be measured.

I vigorously oppose the rationale provided by EWOV and any other industry-based schemes or associations to retain the current hutch-potch governance, if that is the correct word to use. I have provided hard copies and scanned PDF copies of EWOV’s Constitution and Charter with discussion and other material as ancillary documentation which may serve to identify a certain long-standing resistance to the parameters of external accountability and transparency, mostly addressed in Section 10, but also discussed under Section 22“Reflections on Government Accountability and Transparency.”

I thank the current Victorian Ombudsman for highlighting the need for accountability and transparency benchmarks to be raised, though she has discretely focused on statutory authorities, and for suggesting that a model which:

*“provides for Audit Offices” [as in the case of the Australasian Council of Auditors-General [ACAG][[7]](#footnote-7) to improve their own effectiveness and efficiency by such means as may be agreed from time to time, including a professional quality assurance peer review program, benchmarking surveys, targeted reviews of particular functions and operations.” [page 17 Victorian Ombudsman submission subdr176]*

My concerns about governance and accountability of both statutory authorities and industry-based complaints handlers are extensive. My material including case studies aims to illustrate these concerns.

If the system is to be overhauled a more balanced view of the effectiveness of the current system and schemes needs to be obtained than that which is projected through self-interest through the schemes themselves and their associations.

I have minimised my reference to *“Alternative Dispute Resolution”* and to “Appropriate Dispute Resolution” except where I explain the differences in lexicon usage and my preference for definitional and mapping parameters that may not suit mainstream Plain Language Movement proponents, many from academia with a particular ideological and political stance.

I have discussed alternative views on mapping and definition of both the complaints handling arena and with regard to the mapping and definition of the role of consumer advocates. In particular I believe that advocacy without grounding is meaningless and potentially dangerous.

I have refuted the views of Chris Field in his ADR and Advocacy mapping approaches. In support, I have presented the views of David Tennant, former Director of Care Inc. Financial whose eloquent rebuttal of the views of Chris Field at the 2006 National Consumer Congress deserve to be highlighted again.

To augment the arguments presented I have presented an academic model of grounding, relying on the Theory of Grounding espoused by UK economist Edmund Chattoe[[8]](#footnote-8) [1995a] who has asked the question *“Can Sociologists and Economists Communicate?”* This is mostly addressed in Section 18 Advocacy Issues, but it is applicable to all other arenas, and particularly to the arena of public policy design.

David Tennant has demonstrated that it is entirely possible to put grounding theories into practice if the political will exists. The current Consumer Movement has the potential to be better governed. I have supported the views of David Tennant, the Foundation for Effective Market Governance [FEMG] and others in calling for the urgent establishment of a truly independent [though accountable] National Consumer Congress along UK lines, such as was proposed at the 2006 National Consumer Congress in presentations made by David Tennant after the Think Tank. As this material is less accessible now, I have provided scanned and hard copies of this material and discussion in Section 18 Advocacy Issues and elsewhere.

I make no apology for using different lexicons, but I do take the care to explain my rationale and my own glossary of terms, notably in Section 10 where I examine both statutory and industry-based schemes.

This is unachievable in a governance model that permits schemes to do as they wish and establish charters and constitutions from which public input and accountability are excluded notwithstanding the inclusion of niche-focused consumer representatives on scheme board most without voting rights and no visible or measurable influence

I reject without qualification the claims made by such bodies as EWOV regarding the desirability of retaining private and unaccountable corporate structure

I especially reject EWOV’s claims to efficiency and effectiveness no matter how many educative schemes they have promoting their services

Please see extensive case study material and discussion at Section 10.8 and my direct experience of this scheme over a 21 month period. I have alleged ongoing perceptions of bias incompetence and accountability and have support this with independent accounts and credible reports not associated with my direct experiences in a third party complainant capacity. Please see the disturbing report researched and prepared by social researcher and author Dr Andrea Sharam[[9]](#footnote-9) after obtaining access to documents on FOI.

Though written ten years ago and glancing back approximately five years prior that, that is as relevant now as it ever was. I have provided a scanned copy in-text with Case Study 2D in Section 10, a hard copy and an electronic copy on USB.

The report examined the accountability and reporting parameters of the Essential Services Commission Energy and Water Ombudsman Retailer Non-Compliance ‘Capacity to Pay’ parameters, the total lack of triangulation in the reporting and accountability of own performance by both corporatized entities, and the outcomes for hardship consumers relying on this scheme and its overseeing regulator.

In particular Dr Sharam demonstrated that many hardship clients seeking *“conciliation”* through EWOV’s services found themselves in worse spiralling and unaffordable plans recommended, with outcomes that worsened rather than improved their dilemma. These concerns are repeated in her Book Report *Power Markets and Exclusions* [Sharam, A 2004b][[10]](#footnote-10) and other material as included in a discrete selected list of her publications and the work of other authors including Carat and Bingham [2002a].[[11]](#footnote-11)

I have in strong terms discussed the implications of an entity however corporately badged or an individual providing financial counselling services to vulnerable people without training, accountability, juristic basis or anything else that would justify this kind of input under the guise of *“conciliation.”*

It has been found that retailers are indifferent to their obligations under mandated hardship policies pursuant to energy codes and guidelines, and that EWOV has been entirely ineffective in negotiating reasonable and affordable instalment repayment plants. The consequences for many have been irreversible debt.

There is no reason why EWOV cannot keep a file open and appropriately refer hardship clients to an accredited and experienced financial counselling service to see what can be done through them, though sadly Dr Sharam has reported that where these services have been utilized without EWOV’s involvement, it has been very difficult to achieve compliance with hardship policies, and in many cases, essential goods and services have never been reinstated.

Schemes that are so enamoured with themselves and their self-perceptions of performance and their associations lack the insight grounding skills and political will to deliver at least adequate services or to recognise accountability

The impressions I have gained from a variety of sources, including others who have used the scheme; from credible reports; and from the public submissions made by EWOV in particular have led me to conclude that this body operates more as an industry association than an impartial complaints scheme. I have gone as far as suggesting sustained perceived bias

I note from EWOV [Victoria] Ltd second input into this Inquiry, dated 21 May in response to the draft report opposes nationalisation of the complaint mechanisms that involve industry-based complaint bodies on the grounds that not all jurisdictions have agreed to participate in the National Energy Customer Framework [NECF] legislative package under uniform legislation known as the National Energy Retail Law [South Australia] 2011, which in embracing a tripartite contractual governance model, and despite its title implying applicability to retailers alone, a mandated tripartite reciprocal system of determining rights and responsibilities between distributors retailers and customers and/or end-users. I clarify that customers are not always end-users, but may be middlemen or others not directly consuming gas electricity or water as goods not services.

Conversely, end-users of utilities may not be customers in situations where a body corporate, including a community association managing strata-titled property or business premises may be the customer and contractually liable.

My 21 months of unsatisfactory dealings with the EWOV Scheme was a valuable learning experience. The merits review could not have been less appropriately handled and the case management was so deficient as to make a mockery of perceptions of independence, fairness, accountability transparency efficiency and effectiveness

The only conclusion that I can draw is that we have a deeply corrupt complaints and regulatory framework to contend with whilst plans are underway to promote schemes that in many cases cause more harm than good. My experience with this scheme has cured me of any desire to bring complaints forward in any capacity or to recommend usage

There is no argument that will shake my perceptions on the following matters, as discussed in considerable detail with case study examples in Section 10, notably 10.8 and all subsections thereof

1. absence of effective redress, compounded by the lack of juristic basis and the lack of effective governance, if any; including through approaching statutory authorities, either with a perceived overall governance role; or with a statutory role to protect the general and specific rights of consumers pursuant to generic laws, including the Australian Consumer Law and fair trading provisions;
2. impotence of various Good Faith Memoranda of Understanding between entities notionally embracing reciprocal cooperation with a focus on consumer protection. The Handshake Method has been repeatedly shown to be of less value than the paper upon which these arrangements are printed;
3. serious unaddressed governance and oversight at all levels; specifically a dysfunctional governance arrangement wherein over many years it has been found that the regulator is derisive of any and all attempts to bring systemic issues to its attention.
4. Systemic jurisdictional limitations accompanied by lack of insight into the inherent weaknesses of such impediments to effective complaints handling over a range of issues other than for minor complaints more readily dealt with
5. [EWOV has made two Binding Decisions in 13 years, the last being in 2003, eleven years ago; is restricted as to the types of matters in which such rare decisions or determinations may be made, the ceiling amount of compensation and the circumstances; with requirement to consult with the regulator, whose attitude to consumer protection and rights is not generally seen to be consumer-centric.
6. On the other hand, if the Scheme were left to its own devices with greater power; given the matters I have described and discussed at length in Section 10.8, the outcomes are hardly likely to be much different. Actual or perceived bias in favour of industry must be taken into account and indeed it is a legislative requirement that both actual and perceived bias must be avoided]
7. bias and manipulation, including legal stancing and posturing, heavy-handed conciliatory techniques [such as threat of closure of the file if legal advice were to be sought on behalf of the Complainant, written *“strong recommendations”* [taken to be veiled threat] to capitulate in favour of the scheme member the subject of complaint a host retailer on the board of management]; I note that the same attitudes were mirrored by the regulator when the matter was directly referred for intervention
8. parallel perceived bias in the regulator;
9. poor skilling;
10. inadequate understanding of the legislation or of comparative law considerations,
11. lack of understanding of the technicalities and legalities that are required for proper assessments of complaints
12. poor identification of systemic issues; failure to refer;
13. perceived lack of political will;

In a system where the regulator appears to have:

1. careless regard for its obligations to monitor the market and enforce
2. its relationship with the complaints scheme notionally under its control is such that the any reliance on appropriate consultation, oversight and addressing of system issues is misplaced, and further, perhaps most importantly
3. where the policies adopted by the statutory policy-maker and regulator, including the content of codes guidelines and license provisions are seen to be either deliberately or perversely fanning market distortions and rendering inaccessible the enshrined rights of individuals community associations and businesses as consumers of goods and services;

I would never recommend the EWOV scheme to anyone and have broader concerns about the structure and governance issues generally with the *“private company”* model to which EWOV has once again referred in public submissions.

I note the ANZOA has seized the opportunity to promote its members again in its second submission of May 2014, this time to the draft report. Prior to reading that I had already refused, mostly in Section 10, a number of presumptions made about the accountability independence efficiency and effectiveness of many of the industry-based schemes.

I note that this member-based association that offers membership on a personal not organizational basis to a mix of industry-based schemes with no accountability; some statutory ombudsman, and one or two statutory complaints bodies, now styles itself not only ombudsman according to the usual practice that I believe is misleading, but also an Office, implying statutory status juristic basis and accountability

In its opening paragraphs of the second response ANZOA makes these statements

*“ANZOA agrees that evidence demonstrates Ombudsman offices are effective in promoting access to justice and generally perform well on measures of timeliness, service costs and complainant satisfaction.”*

I suggest that ANZOA is unfamiliar with what is happening on the ground with service delivery or of the disturbing reports and other evidence of gross failure.

By way of blowing trumpets for its members, ANZOA has especially selected the EWOV Scheme to illustrate or at least to suggest that systemic issues are being appropriate referrals are being made where matters are out of jurisdiction and that they have enough insight to recognize that a fair proportion of the users of the service and others making objective reports without the baggage of complaint, third party or others, have a very different view.

ANZOA’s May submission[[12]](#footnote-12) makes these observations in responding to Draft Recommendation 5.1 which refers specifically to legal assistance services not complaints handlers without statutory status or accountability; not limited jurisdiction industry-based schemes who believe they are private companies because a certain governance approach believed that corporatization and self-managed schemes such as these would deliver *“justice”*

I quote from the predicable response from ANZOA

*“For most Ombudsmen, their title suggests their role. For example, Energy and Water Ombudsmen deal with energy and water complaints, and the vast majority of complaints made to those offices around Australia are about energy and water issues within the office's jurisdiction.*

*That said, referral of out-of-jurisdiction matters is an established part of the role of all Ombudsman offices. Where someone contacts an Ombudsman office and the office cannot assist, the person is provided with detailed contact information for an appropriate dispute resolution service — be that another Ombudsman, Fair Trading or Consumer Affairs, a tribunal or court, or another body. Where the person has rung an Ombudsman's office, in many cases their call is transferred directly to the appropriate agency. The offices of ANZOA members regularly*

I can only assume that ANZOA believes what it wants to believe and does not wish to read inconvenient reports about the performance of its members. I should again stress that membership is personal to members and not to the scheme or its staff. A clique of senior representatives of schemes, who seek peer support and validation. An exclusive club if you will to aid personal professional development.

I assume that ANZOA is unaware of reports dating back years that found demonstrable failure in reporting and referring and entrenched dysfunctionality in the triangulation of performance reporting between the Scheme and its overseeing regulator, which body never did respond in any case to such matters as were brought before it.

I had to make my own referrals during by 21 months of abortive dealings with EWOV in third party complaint matter detailed in Section 10 Case Studies and 2B. Buck-passing, confusion of roles and responsibility of plain and simple statutory and non-statutory apathy and unresponsiveness were evident in the whole of the handling of the complaint by four case managers in a row.

EWOV Scheme staff unable to figure out the boundaries of their own jurisdiction for 18 months before file closure and progression to a botched merits review process that failed to review either the substantive issues of complaint, or the additional complaint about case management, errors/omissions in the so-called investigation for matter in in which they had no power; and perceived bias.. I have said enough here. For details please read the case studies and extensive discussion in Section 10.

I feel entirely unable to endorse the perception that these schemes are what they are made out to be on the basis of self-perception and those of their association, with a duty to promote the interests of its members, and I am disappointed over the recommendations made in the Draft Report to promote these schemes as a pathway to justice.

In relation to Draft Recommendation 5.1 which is intended for legal services, I see nothing wrong with heading for a structural process by which data may be collected and reported more objectively.

ANZOA has argued that their members have so much depth of knowledge about the nuances of the industry that no-one else could do at least the data gathering as well.

I found that the staff were singularly ill-informed about the legislation relevant to them, that there had little understanding of the technicalities, and that comparative law considerations had never occurred to them, even if they were legally qualified. How then would one expect them to know what to refer, where it should be referred and how to ensure that breaches that may cross regulatory framework boundaries were dealt with?

I note the structure of the ANZOA report, providing a copy of the dated Benchmarks in place that schemes assert they are upholding. There appears to be acceptance that this is occurring or that there is any in-built quality assurance in the existing CCAAC 1997 Benchmarks that are purported to be Australian standards simply because they began life in a government department.

In the earlier parts of the May submission ANZOA seeks to homogenise the work of State Ombudsman and their wide powers of investigation with the limited powers of complaints handlers in schemes. This is achieved by the use of the misleading term ombudsman, capitalised, frequent use of the term Office which implies a statutory standing with accountability; and glowing recommendations for certain schemes.

However the bulk of the examples provided are not matters in which industry-schemes are the remotest involvement in, but instead were extensive investigations conducted by State Ombudsman of systemic issues within the statutory sector.

As a marketing exercise to hang on to coat-tails in the incessant and tiring self-praise that one has to endure from schemes and their associations is an irritation to those who have experienced the service beyond quick-fix issues that may be possible to turn-over quickly.

EWOV in particular has made public statements about its confusion over loyalties in such discussions as hinged on extension of their jurisdiction to include unlicensed parties of all descriptions on a contractual basis. This did not sit well with their strong need to secure financial stability through funding arrangements that could guarantee this. They also considered denying additional scheme members voting rights, and mentioned the issues of parity if their members had different controls imposed on them as opposed to the absent controls that EWOV would theoretically have if they were fully paying members.

The very matters that are likely to arise from the small-scale licencing or exempt selling regime are those for which EWOV has no jurisdiction. I cannot see how government funding to set up a structure and legislative package that would theoretically facilitate access to “informal” assistance for a wider range of complainants will help to deliver effective outcomes in the absence of political will and given the regulator’s entrenched position on such matters. EWOV is subservient to both its Board and the regulator whose history since establishment in 2001 has not demonstrate a robust consumer protection approach in its regulatory functions. I have discussed these concerns in many segments, including in specific Overview sections discussing how best *“the long term interests of consumers”* should be interpreted and delivered.

I repeat that as an informed and articulate user of the service I did not appreciate the bullying tactics and legal stancing and posturing, threat of closure of file and general incompetence in case management at all levels.

Submissions such as those from ANZOA are calculated to obscure the theory and practice gaps as if by floating a list of vague benchmarks in the air it must be a given that the practical implementation will be guaranteed.

I note that Victoria has to date resisted participating in national uniform energy legislation under retail provisions and as a consequence the plan to have all energy-related schemes embrace a superior set of Standards, or to access any of the protections such as do exist in that package.

Those impact by the detriments that arise from inappropriate asset management practice, alleged third line forcing activities, entrenched long-term contracts of questionable legality will have access at all to anything resembling justice. Even if these schemes morphed into something else altogether overnight, they do not have the power or the political will to cater for these groups of complainants. I refer to Case Studies 2A-2D and to ancillary case studies as well as discussion of some of the technicalities at the end of Section 22.

I refer to ANZOA’s response to recommendation 24, suggesting that customer satisfaction may be one of the data sets considered in evaluation. One has to wonder just how selectively surveys are since I certainly was not requested to provide feedback [proxy] customer feedback.

I read the ANZOA submissions as being full of rhetoric and little substance. It is a tailored desperate plea for validation. I am unable to proffer that as an end-user.

I agree with the Victorian State Ombudsman that there is an extensive *“network of complaint handling bodies”* but decline to style them as ombudsman and especially not the industry-based schemes. I also agree with the VSO that there is room to revamp rationalise and streamline the provision of complaints handling under a single umbrella that will be provide with adequate governance and mandated accountability pursuant to administrative law in the same way as the non-corporatized public services must be accountable.

It is more than time to challenge the perception held of public entities fulfilling a public role, after being established under statutory provisions that they are *“private companies”* with no accountability other than to the industry-based management boards, [with some niche-based consumer group representation minus voting power or discernible influence] If they have been deliberately set up to escape scrutiny and accountability then there is something inherently wrong in the governance model and legislative provisions that allowed this to happen.

I am not the first comment on the remarkable uncertainties as to the juristic basis of these schemes and will not be the last. If a revamp is on the cards, let us please avoid shooting from the hip and rushing over in an expensive promotional exercise that will not necessarily be cost effective or effective in any other way.

The CHOICE submission to the 2013 CCAAC Review of the Benchmarks for Customer Dispute Resolution Schemes directed attention to a 2012 survey in which it was found that only a very small proportion of those who did not complain to these schemes were unaware of the service. A host of reasons may be in play, including unwillingness to expend the time and effort required; preoccupation with other more pressing issues such as daily survival or other pressures; anecdotal accounts from friends or other associates of negative experiences. Where complaints may have been lodged in the past, burnt fingers may ensure that it does not happen again.

Launching a nation-wide campaign at the expense of the public purse before examining whether the rosy self-perceptions of these schemes and their associations have any basis in truth. I have tried to provide anecdotal and other more formal evidence that the garden is not all that rosy, and believe that we should start calling roses by their names, and spades as they should be described.

It is my view that the alleged *“independence”* of these private companies on the basis of corporate structure leaves the gate wide open for them to operate not as impartial accountable complaints schemes, but instead as industry associations with a perceived bias leaning in favour of industry. These perceptions do not bode well for improved confidence within the general population, no matter what consumer representations may say.

On the sensitive issue of consumer group representation [CRG] in various arenas, including on boards of management of industry-based schemes [where they mostly, if at all have no voting rights and no measurable influence, if at all]; and on similar representation on the Consumer Group Consultative Committees auspices by various regulators, I believe there is room to question effectiveness.

In this regard I have discussed the risks of organizational capture and the impacts of *“institutionalisation”* of consumer representatives absorbed into a system where their separate or collective identity may be eroded. I have also spoken about synergistic influences, choosing a handful of examples.

I have addressed the niche-focus interest of the not-for-profit sector. It is not my intent to undermine the work that is done both by policy advocates and by those predominantly offering grassroots direct services to the some 12.5% of the population facing multiple disadvantage vulnerability marginalisation and/or disenfranchisement. This is necessary and valuable work and should be adequately funded and resourced so that those services can be continued and enhanced as a measure to minimise unmet legal need and the correlation between socioeconomic impacts on unmet legal need in accessing services and representation.

I do not consider representation to mean minor assistance with engrossment of documents for lodgement in formal proceedings. In a legal sense this normally means direct court-based advocacy through legal professionals. Because of the primary costs, the risk of cost awards and the legal risk it is rare for community groups such as Community Legal Centres to go further than offer a supportive role.

Turning to the sorry state of affairs in the statutory system, not only has this been developed in an ad hoc manner with overlap in jurisdictional powers between statutory authorities and state ombudsmen with parliamentary accountability, but the legislative instruments that established a plethora of Councils, Commissioners and a variety of complaints handling officers and mechanisms have disempowered those offers such that it is rare for any decision or determination to be made. At the end of the day if the option is to give the system a try to test the waters and discover whether toothless tigers have a place in the 21st century.

I have illustrated that those who have approached statutory mechanisms including regulators with a bounden and mandated duty to monitor and regulate and market as well as enforce the law have come away burnt and disappointed.

The new meaning for regulation and enforcement is not to *“protect”* consumers but rather by *“empowering”* them with a pamper shower of printed and unprinted written material and/or cursory oral advice and constant re-direction from one inadequate service to another. I have discussed some of these matters in Section 10 in analysing the scope, objectives, goals functions and policies of selected statutory authorities

There are some industries in which regulatory slackness is more evident than in others. In order to avoid turning this into a tirade of rhetoric I have selected a number of case studies through which my concerns may best be illustrated. In some cases I was directly involved in a third party capacity. Please refer to my Case Studies 2A-2D in Section 10; and to other studies recounting the experiences of others who have fruitlessly tried to navigate the statutory or non-statutory complaints mechanisms.

I note from several submissions made to the Commission’s Issues Paper and Draft Report that even articulate and qualified unrepresented parties face enormous impediments. One of these is Kev Rothery a Tasmanian victim of workplace bullying who had initially sought statutory complaints and conciliation inputs, and whose self-case study I have highlighted in Section 12 with the case of Kev Rothrey also discussed in Section 12 at subsection 12.2.2.7.8.1 as Case Study 4C[[13]](#footnote-13) [unrepresented competent self-litigant Workplace Bullying [Tasmania] the barriers were not of the kind normally identified by consumer advocates or community agencies

Margaret Singleton a competent and articulate senior pensioner who faced impediment after impediment within the statutory complaints arena before taking her matter to VACT before the Building List. There she found that court-directed mediation was a stressful and intimidating experience. She was brow-beaten into accepting Terms of Settlement in a mediation process that she described as *“scandalous.”* She also referred to cronyism and maladministration with the statutory system.

Her submission to the Commonwealth Consumer Affairs Advisory Committee’s [CCAAC] 2013 Review of the Benchmarks for Customer Dispute Resolution Schemes details her experiences, which I have highlighted in my own submission as Case Study 4D[[14]](#footnote-14) Building Dispute Statutory Complaints then VCAT and apparently ‘scandalous pre-Tribunal mediation meetingIn the Singleton family’s case [Section 12. 2 Unrepresented Parties 12.2.2.7.9.1 and again in Section 15 Legal Institutions: Structures and Processes.

Her experience was given further credibility in the articulate submission made by the Building Compliance Reform Association [BCRA][[15]](#footnote-15) which exposed the deficiencies in the existing statutory complaints mechanisms with particular regard to the building industry. Even when breaches of regulations are blatant it is rare for anyone to secure a timely response to concerns, to investigate specific allegations of breaches, and to respond proactively in such a manner as to fan not diminish community confidence. This is not occurring.

The BCRA submission referred to disturbing reports by the Victorian State Ombudsman, the Attorney-General and the recent KPMG Report on Fraud and Corruption within the building industry.

This is fundamentally an issue of governance and leadership such that the bar is set high enough to be expected to deliver, and if that does not occur, there should be a penalty system.

The central problem with lumping the entire complaints mechanism area under a collective label in the same breath as mentioning access to justice, is that the matters become blurred and homogenised. The functions role and service delivery parameters of each group needs to be discretely examined, with less reliance on self-perceptions of self-interested parties using the public consultation area as a free marketing exercise.

As to the ancient Benchmarks authored by the Consumer Affairs Advisory Committee, this sorry document floating in Cyberspace without auspices is not an Australian or International Standard and would never meet even the most modest expectations of quality assurance in complaints handling There is a clear distinction made in Australian and International Standards between parameters for internal and external complaints handling. Without the detail that will facilitate implementation, broadly cushioned key principles and practices leaving enough room for interpretation to mean anything one wishes it to mean will hardly substitute for a more accountable system where staff selection training and accreditation methods, customer satisfaction parameters [other than tick box *“resolution statistics”* and a clear set of guidelines on operational parameters. Designing of standards as a specialist task.

I have discussed these matters comparing existing Australian and International Standards in Section 10 and comparing them with what passes for an adequate set of Benchmarks. I have also discussed the legislative changes that will compel energy-specific industry-schemes in jurisdictions that have embraced the National Energy Customer Framework NECF legislative package through uniform application laws to replace the flimsy benchmarks with an Australian Standard AS-ISO-10002-2006, albeit that this was designed for internal complaint handling, whereas ISO-10003-2007[E] is the appropriate standard for external complaints schemes.

For too long complacency with weak frameworks for statutory and industry-based complaints schemes has lowered standards of expectation, unless I am mistaking that for sheer apathy, which is a cousin of complacency but lower down the pecking order of acceptable attitude.

Legal Aid Centres, which should be far better funded adopt a mixed model approach predominantly relying on pro bono services that do not represent a bottomless pit. I admire the work done by many taking on pro bono services. Over-reliance on a system already over-burdened and dependence on a number of factors including availability; legal risk; cost-award risks and the like, and therefore can only be seen as relatively ad hoc, and dependent on effective triage management for such services.

Because of eligibility criteria that is restrictive and designed to exclude rather than include those in particular need of legal advice and representation, many amongst the marginalised and vulnerable are forced to appear unrepresented with cursory duty lawyer advice where4 the complexities of a matter cannot be examined or optimal representation achieved.

The LAC models appear to rely mostly on provision of discrete services, information provision, minor assistance and referral elsewhere. The quality on input provided in those circumstances cannot go far enough. In Section 10.10, I have examined the service provision parameters and views of three Legal Aid Centres including perceived drawbacks

Later, in discussing governance accountability and transparency issues at Sections 21 and 22, I further discussion with some general observations and commentary followed by more specific discussion, many related to the utility arena.

The material at Section 22 Reflections on Public Accountability and Transparency includes analysis of theory models in identifying the Gaps in the Internal Energy Market principally based on a credible literature review undertaken in 2005 by Mark Jamison and colleagues from the Public Utility Research Centre, followed by more specific discussion of hot spots in the Australian setting labelled Missing Steps in Completing the Internal Energy Market analysis at Section 22. Subsection 22.3.9. and further discussion Specifics 22.3.9.10.4

At the end of that section I examine specific issues to illustrate my view of the state of disarray and poor governance at a policy level, choosing specific examples of gross multi-sector market distortion seen to be fanned by flawed public policy and regulation at jurisdictional and national levels.

Some of these have led to:

1. steady erosion of consumer and business rights,
2. breaches of fiduciary duty under the common law as illustrated in the landmark decision in 2007 before the New South Wales Supreme Court [NSWSC] 527” 2007 delivered by McDougall J on 30 May 2007 with implications for the whole of Australia
3. perceived breaches of cartel provisions, perceived collusive behaviour that is not restricted to industry
4. other erosions of general and specific consumer and businesses

I have not only suggested corruption in regulatory and policy design but have gone as far as suggesting that the direct and indirect impacts of appalling policies and inclusions in license provisions for energy providers, for example could be seen as matters of vicarious liability when the impacts are such that enshrined rights of consumers and businesses are hampered by undermining of any chance of accessing justice.

These matters are poorly understood across the board, and especially by the regulators and policy-makers responsible, by industry-based complaints schemes; by statutory complaints mechanisms and by the niche-focused consumer representatives, rarely exposed to wider matters of concern to the community which may be outside the reach of their focus on vulnerable groups alone.

I have exampled amongst others the bizarre bulk hot water arrangements that permit disregard for trade measurement provisions; for protections under tenancy provisions, albeit well-nigh impossible to access when third parties are involved in utility matters including inappropriate imposition of deemed contractual status on the wrong parties, using the wrong instruments of trade, the wrong Standard Units of Measure; and a deeply flawed interpretation of the deemed provisions for the sale and supply of gas and electricity.

This leads to allegations of deemed *“illegal usage”* of goods not supplied at all, and in which the principles of legal traceability in trade measurement and the provisions contained in all other provisions other than those representing policy derogations in codes guidelines and licences. There are flow-on consequences with unjust and unwarranted imposition of both contractual obligation unilaterally imposed but false claims of debtor status with far reaching consequences for the weak and the strong, the vulnerable and the remaining population of some 87.5% according to ACOSS figures published in 2012.

I have alleged that the Essential Services Commission Victoria may have over-stepped the boundaries of jurisdiction in explicitly sanctioning questionable arrangements and misinterpretations of the deemed provisions within energy laws, notably the *Gas Industry Act 2001*, the *Electricity Industry Act 2000* and authorising conduct that may be breaching other regulatory provisions in other frameworks and with non-statutory provisions including the common law and the rules of natural justice.

I have provided commentary and some hard-copy and/or scanned material in support of my claims, and case study material in both Section 10.8 in ancillary material including two Appendices as Case Study 1A The BOOT System of Operation [buy own operate and transfer] and related Case Study 2B The Soda Water Argument dealing with some of the policy implications. These mainly refer to asset management practices that could be interpreted as third party line forcing with respect to service arrangements and sale and supply arrangements imposed on innocent parties purchasing or occupying property in multi-occupied developments, including strata-titled property managed by a community association; and in other settings such as business parks and shopping centres; caravan parks, rooming houses, rented blocks of flats that are not strata-tiled and others

Asset management has become a popular side-line for utility providers and for various other sectors such as holding companies, trust companies, investment banks; solicitors’ trust funds; property developers and builders; real estate managed funds and property management; service providers in the energy, water and communications arenas, and a plethora of miscellaneous groups known as Metering Data Service Providers pursuant to a new category of market participant under the AEMC Rule Change ERC0092 of 2010-2011 to which I made four submissions in April and July of that year, in addition to further material provided orally at public workshops and by telephone and correspondence to the AEMC SCER and the AER amongst others.

When evidentiary material of extensive market distortions came my way, I became motivated to examine the matter a bit further but was unsuccessful in my attempts to secure the attention and proactive input of statutory authorities

Ultimately I decided to try my luck at gaining standing leave as an unrepresented party before the Australian Competition Tribunal [ACT] in a gas access matter for which merits review of a decision made by the AER in a gas access determination with cost allocation, and in which Jemena Gas Networks [NSW] Ltd [JGN] sought arbitration

The history of success with gaining standing leave in such matters, and especially for gas illustrates that the hurdles are significant and that the legislation is calculated to be as exclusionary as possible. I was not directly impacted by the issues raised but in a spirit of community duty as a private individual I proceeded with a formal application for standing leave, meeting vigorous opposition from the regulator’s legal representatives; from the Applicant in the matter a major gas network service provider with synergies with asset management company[ies] including Jemena Asset Management [JEM] [which provides on contract to other parties including retailers] expert asset management advice and service arrangements

My primary allegation in the substantive matters that I wish to raise beyond arguing for standing leave, was that the regulator AER had far exceeded the boundaries of its jurisdiction by inappropriately granting recoverable cost allocations by way of massive OPEX and CAPEX costs to the Applicant JGN for the unnecessary purchase installation and maintenance of water infrastructure, including water meters otherwise known as hot water meters, and hot water flow meters.

This gadgetry does not form part of the distribution and transmission systems over which the regulatory has control has no technical capability for measuring either gas volume or quantity or electricity quantity [both goods not services under generic and energy laws].

The use of these instruments in stationary boiler tanks used to centrally heat water to reticulate to individual premises is inappropriate when deeming consumption of gas or electricity. The use of puffery terms like hot and heat or hated water serves to misleadingly convey the impression that there are inherent capabilities in these instruments to measure either gas or electricity, or heat representing the alleged amount of gas or electricity deemed to be consumed. Not only are these instruments incapable of measuring heat [temperature] but heat is an attribute not a saleable commodity.

I have referred to national trade measurement provisions definitions of measurement when referring to descriptive terms, and the requirement to use legally traceable means to calculate consumption of goods that are measurable and provide in trade

I will leave out in this executive summary the technical explanations but direct you to case studies in Section 10 case studies in ancillary material and the tail end of Section 22 where I discuss the bulk hot water arrangements that are legally, scientifically and technically unsustainable, but are widely used throughout the nation whether or not there are explicit directives such as in the case of Victoria, which so far as not come on board with joining the national energy consumer protection framework reflected in uniform legislation to be adopted under application law in participating states and territories.

As I am uncertain how much of my material will be published even within the main document, given size, I have included discussion of some of these matters within the main document mostly in Section 10 and 22.

These are all matters that the usual array of industry-based complaints schemes are precluded from dealing with because they relate to policy, tariff design, legislative provisions and other matters for which they have no jurisdiction at all.

In an industry environment where the norm is to provide exempt licenses to numerous parties who seek loopholes through which to exploit enshrined rights of consumers and businesses as consumers, there is room to be fearful that access to justice will become further eroded and confidence in regulatory and policy frameworks impossible to restore.

Though I have addressed vulnerability issues, the thrust of much of my material is about the contribution that is made to unmet legal need and erosion of rights by flawed public policy, spurning conflicts and disputes that can turn nasty and protracted.

I have referred to the principles of vicarious liability of statutory and non-statutory authorities or other entities if nothing is done to stem the flow of provisions and policies given the wrong signals to industry, indicate failure to use common sense or accurate interpretation of the law, directly facilitating either deliberately or inadvertently market distortion and express exploitation of the enshrined rights of individuals

At the end of the day, no single State of Commonwealth statutory provision will affect other rights or remedies

At the end of the day attempts to limit access to or otherwise attempts to undermine enshrined rights will not succeed, even in the name of *“competition policy”* that permits the lightest regulatory touch, if at all, in the alleged long-term interests of consumers and businesses; or any other such guise, under any circumstances, howsoever engrosses, structured, intimated or otherwise conveyed within such provisions, or for that matter terms of commercial agreement between one party or another, including between government authorities and other entities.

Expressly, such attempts **WILL NOT:**

1. **affect or limit a civil right or remedy**, apart from such an Act, whether at common law or otherwise, save and except for the expense and inaccessibility issues the subject of the Productivity Commission’s Access to Justice inquiry;
2. **exonerate from liability including under the common law**, such recourses, including through compliance with any given legislative Act or ancillary provision, including misguided Codes and Guidelines that appear to be fanning rather than limited misconduct;
3. **hamper restrict or remove civil or other rights or obligations under other statutory provisions**, notwithstanding any misguided transparent or hidden warranties or guarantees [for example any warranties or guarantees entered into during the disaggregation of infrastructure or other assets);
4. **over-ride recourse to seeking justice under enshrined rights** within the written or unwritten laws, including under the common law and rules of natural justice;
5. **imply or create limitations as to culpability and/or liability** by the mere existence of perceived exoneration under one enactment or ancillary provision [or for that matter terms of any commercial agreements {whether or not between government or other statutory authorities, including during the disaggregation and sale of infrastructure assets; specific legal provisions under state, local government or federal laws or generic laws;
6. **in any way limit a court’s powers** under the *Penalties and Sentences Act* *“without limiting subsection (1) compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.”*

|  |  |
| --- | --- |
| **Numbered list of ancillary documents some 340 in total**  Some of these are also provided as hard copies | **Appendix 1** |
| Case Study 1A BOOT system of operation [buy own operate and transfer  This study has been expanded since it was publicly submitted to the Australian Energy Regulator [AER] on 21 January 2013 with 15 other appendices in three groups and a substantial main submission covering some of the matters included in this submission and appendices  I have covered quite a bit of in in-text including Section 22  The matter relates to a dispute between an Owners’ Corporation and a Service Provider appointed by an Inerim Body Corporate Guardian Property Developer of a major development complex designed in stages to accommodate some 300 strata titled units known as the Oasis Inkerman Development of Henry Kaye notriety [See ASIC decision 2010 to ban Henry Kaye from managing corporations for 5 years]  The dispute has implications for alleged breaches of fiduciary duty under the common law and may be usefully studied in the context of the New South Wales Supreme Court decision delivered by McDougall, J on 30 May 2007 in the Arrow Asset Management Case [[16]](#footnote-16)  New South Wales Supreme Court Community Association DP No 270180 v Arrow Asset Management Pty Ltd & Ors [2007] NSWSC 527 delivered by McDougall J on 30 May 2017, an [Case] = NSW Supreme Court Community Association DP No 270180 v Arrow Asset Management Pty Ltd & Ors [2007] NSWSC 527 delivered by McDougall J on 30 May 2017, an : NSWSC 527 2007 Community Association DP No 270180 v Arrow Asset Management & Ors : DP No 270180 v Arrow Asset Management Pty Ltd & Ors [2007] NSWSC / counsel. (Plaintiff) F C Corsaro SC/ D B Studdy (Plaintiff) per McLaughlin & Riordan Solicitors, Defendants) J S Wheelhouse SC (First and Second Defendants) per Deutsch Partners Lawyers Pty Ltd (First and Second and Mallesons N Perram SC/J S Emmett (Third Defendant). - [s.l.] : | **Appendix 2** |

|  |  |
| --- | --- |
| The Supreme Court, NSW Commercial List, 30 May 2007. - Landmark decision before the NSW Supreme Court Community Association DP No 270180 v Arrow Asset Management Pty Ltd & Ors [2007] NSWSC 527 delivered by McDougall J on 30 May 2017, analysed by Francesco Andreone and Gary Bugden  [*http://www.lawlink.nsw.gov.au/scjudgments/2007nswsc.nsf/aef73009028d6777ca25673900081e8d/19fd2e5b9c7df7d2ca2572e5002269c4?OpenDocument*](http://www.lawlink.nsw.gov.au/scjudgments/2007nswsc.nsf/aef73009028d6777ca25673900081e8d/19fd2e5b9c7df7d2ca2572e5002269c4?OpenDocument)[*http://www.austlii.edu.au/au/cases/nsw/supreme\_ct/2007/527.html*](http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2007/527.html)*;*  [*http://www.austlii.edu.au/au/cases/nsw/supreme\_ct/2007*](http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2007)  Community Association DP No 270180 v Arrow Asset Management Pty Ltd and Ors [2007] NSWSC 527 (Decision 30 May 2007)  <http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2007/527.html> |  |
| Bugden, G [2007] The Arrow Asset Management case has implications throughout Australia  <http://www.mystrata.com.au/doc-store/Arrow-Asset-Management.pdf>  Andreone, F [2009 [2011] The Implications of the Arrow Asset Management Case first published in 2009, and presented by the author at the Strata and Community Title in Australia for the 21st Century III Conference in 2011 [first published 2009]  <http://www.francescoandreone.com/uploads/4/0/0/6/4006916/paper_-_griffith_university_-_the_arrow_case_-_august_2009.pdf>  see <http://www.lawlink.nsw.gov.au/scjudgments/2007nswsc.nsf/aef73009028d6777ca25673900081e8d/19fd2e5b9c7df7d2ca2572e5002269c4?OpenDocu>  David Bugden, Management Rights – Are Developers Promoters? [1996] QLSJ 281 c/f Andreone, F [2009a, 2011a]  c/f Andreone, F [2009, 2011] see Bannerman's Lawyers [2008] Management Rights - Fiduciary Duties – Developers  [www.bannermans.com.au/articles/strata-and-development/139-management-rights-fiduciary-duties-developers](http://www.bannermans.com.au/articles/strata-and-development/139-management-rights-fiduciary-duties-developers) |  |
| Other useful references, cited with the consent of AUSTRAC with all disclaimers are public legal interpretation guidelines clarifying the use of such terms as Agent and Agency, Customer and others and providing in PLI Guideline No. 10 referene to relevant case law based on common law tenets  Australian Transactions Reports and Analysis Centre [©AUSTRAC] on behalf of the Commonwealth of Australia [2010a] Public Legal Interpretation Series No 10 Agency and the AML/CTF Act.  <http://www.austrac.gov.au/files/pli10_agency.pdf>  and <http://www.austrac.gov.au/pli.html>  As accessed online 25 February and 23 Nov 2013 with all disclaimers Public Legal Interpretation series [2010a] [©AUSTRAC]  This particular Guideline with the written consent of ©AUSTRAC has been reproduced in my Main submission and ancillary material to call attention to matters relevant to public policy, legislative drafting issues and my case study material. |  |
| Australian Transactions Reports and Analysis Centre [©AUSTRAC] on behalf of the Commonwealth Government] [2009a] Public Legal Interpretation No. 9 Customer Identification Requirements under the AML/CTF Act  <http://www.austrac.gov.au/pli.html>  Refer also to ©AUSTRAC PLI No. 10 Agency under the AML/CTF Act. Common law tenets Agency. Arrow Asset Management case 527:2007 NSWSC. BOOT system of operation. Case studies 1A and 1B., 2A-D other material. Citations and reprodution with written consent  This document is scanned into the main document, and has also been provided as a .pdf copy with the various batches of appendices that are divided into several topic-related batches |  |

|  |  |
| --- | --- |
| Case Study 1B The Soda Water Argument  The substance of this material has already been aired repeatedly in my multiple submissions to the public arena  I have in addition provided similr material in communictions with various relevant statutory authorities  A copy of the same case study that is 1A, but in briefer form, as published on the AER website <http://www.aer.gov.au/18677> in my extended response to the AER’s Revised Exempt Selling Regiume [associated with a Legacy Program]  I have criticized the practice of providing exemption from the requirement for holding a retail licence for the sale of energy, which according to an extensive and elaborate plan to provide such exemptions is equipped to accommodate just about any party wishing to escape the enshrined legislative provisions within energy laws.  Though the relevant instruments refer to the retail sector, as has already been pointed out by industry players, the implications also have impacts for the downstream components of the supply chain.  In particular, consistent with legislative provisions under uniform legislation known as the National Energy Retail Law [South Australia] 2011 [the National Energy Customer Framework package] to be adopted by participating jurisdictions through application law in each such jurisdiction, which exclude through out-out provisions Western Australia and Northern Territory, and await decisions from Victoria and Queensland regarding participation] there is a tripartite contractual governance model that has been adopted.  This governance model recognizes a seamless contratual obligation and entitlement on distributors, retailers and customers. I have criticized the loose use of the term customer, which may not be the end-user of goods. Failure to spell this out will undoubtedly lead to ongoing and unresolved disputes. This is but a single example of sloppy legislative drafting that will contribute to unmet legal need of the kind apparently never highlighted by community agencies involved in the consumer advocacy and consumer group representation arenas.  This along with all other material is provided in good faith to augment some of the detail in Case Study 1A BOOT system of operation | **Appendix 3** |

|  |  |
| --- | --- |
| Incidentally the participation of such groups on the management boards of industry-based complaints schemes does not guarantee of voting rights or measurable influence. In any cse these matters are well beyond the jurisdiction of industry-based complaints schemes which are forbidden from becoming involved in matters relating to policy including tariff design, however bizarre and inappropriate; legislation and a host of other issues. Therefore even at best case scenario in which staff selection, training, accreditation and performance benchmarking and monitoring, numerous issues will remain untouchable by such schemes, regardless of what may be done to lift their profiles  On that basis and for numerous other reasons, I have had real difficultly responding to many of the findings and recommendations contained in the Commission’s Draft Report including under Chapter 8 Alternative dispute resolution [refers to Chapters 2 and 3 of the Issues Paper on pages 52 and 53 of the Draft Report]; Chapter 9 Ombudsmmen and other comp;laint mechanisms, Chapter 10 Tribunals; Chapter 10 Unrepresented Parties [Self-Litigants – one is either represented or not; there is no such thing as self-representation] |  |

[Productivity Commission note: Ms Kingston provided the Commission with a full submission (as shown in the table of contents above) and additional supporting material. These are available from the Commission on request.]

1. Please refer to my list of submissions to the public arena and informal submissions to numerous statutory and/or non-statutory authorities including many fulfilling a public role, successive Ministers under successive Governments and my extensive Bibliography and Reading List supporting concerns about public policy gaps and other matters [↑](#footnote-ref-1)
2. Behind Prison Walls Yeah I hear the Train: Jonny Cash A Concert Behind Prison Walls

   [*http://www.youtube.com/watch?v=sfKdwvuR50Y*](http://www.youtube.com/watch?v=sfKdwvuR50Y) [↑](#footnote-ref-2)
3. van de Wiel, S [Capt] Submission to Productivity Commission Access to Justice Issues Paper [sub218] Aggrieved litigant against government agency. Corrupt legal profession. 21 May 2014 2 pages

   [*http://www.pc.gov.au/\_\_data/assets/pdf\_file/0009/137178/subdr218-access-justice.pdf*](http://www.pc.gov.au/__data/assets/pdf_file/0009/137178/subdr218-access-justice.pdf)

   [*http://www.pc.gov.au/projects/inquiry/access-justice/submissions*](http://www.pc.gov.au/projects/inquiry/access-justice/submissions)*\* [↑](#footnote-ref-3)
4. Whitton, E [2013b] Second submission to Productivity Commission's Access to Justice Issues Paper [042] [November] <http://www.pc.gov.au/__data/assets/pdf_file/0004/129226/sub042-access-justice.pdf>

   <http://www.pc.gov.au/projects/inquiry/access-justice/submissions>

   See <http://www.netk.net.au/whittonhome.asp>

   Supporters or those with similar views are not limited to Christopher Enright, Annette Marfording, John Joseph, Paul Evans to name a few

   SALUTE [↑](#footnote-ref-4)
5. Victorian Ombudsman [2014a] Submission to the Productivity Commission's Draft Report Access to Justice Inquiry 18 pages

   [*http://www.pc.gov.au/\_\_data/assets/pdf\_file/0020/136613/subdr176-access-justice.pdf*](http://www.pc.gov.au/__data/assets/pdf_file/0020/136613/subdr176-access-justice.pdf) [↑](#footnote-ref-5)
6. Australian Communications Consumers’ Action Network [ACCAN [2012a] National Consumer Perspectives Survey pp 66 available at [https://acan.org.au/files/ACAN20%National20%Survey-1.pdf](https://acan.org.au/files/ACAN20%25National20%25Survey-1.pdf) c/f page 8 Submission of 7 June 2013 from CHOICE to the CCAAC Review of the 1997 Benchmarks [↑](#footnote-ref-6)
7. Australian Council of Auditors-General [ACAG] [2013a] About Us downloaded by the Victorian Ombudsman on 16 May 2014 and cited on page 17 of her submission to the Productivity Commission’s Access to Justice Draft Report of May 2014

   [*http://www.acag.org.au/about.htm*](http://www.acag.org.au/about.htm) on 16 May 2014 [↑](#footnote-ref-7)
8. Chattoe, E [1995] Can Sociologists and Economists Communicate? (examining the Grounding Theory)

   <http://www.kent.ac.uk/esrc/chatecsoc.html>

   c/f Kingston, M 2010d Grounding theory. As embraced by David Tennant previously Director Care Financial Inc. Taking the Consumer out of Consumer Advocacy" 2006 National Competition Congress c/f subdr242part3 PC CFP. [↑](#footnote-ref-8)
9. Sharam, A [2004a] for Energy Action Group [EAG] Energy Action Group and Sharam E [2004b] “Report on the Essential Services Commission Energy and Water Ombudsman Victoria Response to Retailer Non-Compliance with ‘Capacity to Pay’ Requirements of the Retail Code September 2004

   -included as attachment 1 with Energy Action Group [EAG] [John Dick] [2007a] Some Late Brief Observations to the MCE Legislative Package 2006 and Advocacy Arrangements [23 Jan]

   <http://www.ret.gov.au/Documents/mce/_documents/EnergyActionGroup20070123103540.pdf> [↑](#footnote-ref-9)
10. Sharam A [2004b] *Power, Markets & Exclusions assessing the effectiveness of social protections in deregulated markets: an electricity case study from Victoria* / Financial & Consumer Rights Council Victoria Inc.

    [Report written and researched by A Sharam] ISBN 1875506217 Dewey No. 363.6086942 Libraries Australia ID 25651802. National Lib Australia ID 25651802. State Library Victoria ID 1156145 held, academic libraries x 9 VIC, NSW x3, Qld, WA

    [*http://catalogue.nla.gov.au/Record/3083705*](http://catalogue.nla.gov.au/Record/3083705) *and*

    [*http://trove.nla.gov.au/work/33546746?q=Andrea+Sharam+Power+Markets+and+Exclusions+2004&c=book&versionId=41527364*](http://trove.nla.gov.au/work/33546746?q=Andrea+Sharam+Power+Markets+and+Exclusions+2004&c=book&versionId=41527364)*;* [*http://www.vcoss.org.au/images/reports/Full%20Report.pdf*](http://www.vcoss.org.au/images/reports/Full%20Report.pdf) [↑](#footnote-ref-10)
11. Sharatt, D. & Brigham, B.H., [2002] *The Utility of Social Obligations in the UK energy industry, Centre for Management under Regulation*, University of Warwick, c/f Langmore and Dufty [2004] [↑](#footnote-ref-11)
12. Australian and New Zealand Ombudsman Association [2014a] Submission to Productivity Commission Access to Justice Inquiry Draft Report

    <http://www.pc.gov.au/__data/assets/pdf_file/0007/136744/subdr200-access-justice.pdf> [↑](#footnote-ref-12)
13. Rothery, [2013] Submission to Productivity Commission Access to Justice Issues Paper sub 022

    [*http://www.pc.gov.au/\_\_data/assets/pdf\_file/0003/129108/sub022-access-justice.pdf*](http://www.pc.gov.au/__data/assets/pdf_file/0003/129108/sub022-access-justice.pdf)

    [*http://www.pc.gov.au/projects/inquiry/access-justice/submissions*](http://www.pc.gov.au/projects/inquiry/access-justice/submissions)*\* [↑](#footnote-ref-13)
14. Singleton, M [2013a] Submission to Commonwealth Consumer Advisory Committee [CCAAC] Review of Benchmarks for Customer Dispute Resolution [June] [Building Dispute, internal, external [statutory] and Tribunal VCAT

    [*http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/*](http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/)

    Margaret Singleton's submission to the CCAAC Review of the 1997 Benchmarks presents an eloquent case study of the plight of owners maladministration and cronyism in the building industry and inadequate informal redress or tribunal outcomes [↑](#footnote-ref-14)
15. Building Compliance Reform Association [2013a] Submission to Commonwealth Consumer Advisory Committee [CCAAC] Review of Benchmarks for Industry-Based Customer Dispute Resolution Schemes: Issues Paper 2013 [June] [21 pages]

    <http://ccaac.gov.au/files/2013/06/BuildingComplianceReformAssociation.pdf>

    [*http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/*](http://ccaac.gov.au/2013/04/24/review-of-the-benchmarks-for-industry-based-customer-dispute-resolution-schemes/) [↑](#footnote-ref-15)
16. Tip of the Iceberg. But What a Decision. Arrow Asset Management Case 2007 [527:2007 NSWC Don’t you think? Evidence Fiduciary Duty.

    As we all know Common Law tenants may be quite useful pro tem, especially and not exclusively per fiduciary duty, but evidence Dear Chaps. Evidence is everything. [↑](#footnote-ref-16)