

Seminar on Root Cause Analysis: A Tool for Addressing Utility Consumer Issues

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The role of the Energy Ombudsman - Resolving disputes and identifying systemic issues

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1. Introduction

Thank you Peter. I am delighted to be here for this seminar on root cause analysis. I must say it is particularly pleasing to see this important joint initiative of the Economic Regulation Authority, Energy Ombudsman and Department of Commerce so well embraced by energy stakeholders, and particularly those who represent the interests of consumers. I think there is little doubt that the importance of utilities issues for consumers continues to grow and makes this opportunity to gather and discuss these issues all the more welcome. Can I take this opportunity to thank our conference organiser Lexie Duncan and, in particular, the members of our organising committee, Gary Newcombe, Wayne Mann, Lanie Chopping and Liz Benson for their excellent work in developing today's seminar.

As you know, in this session I am discussing the role of the Energy Ombudsman in resolving complaints and identifying systemic issues. It is my intention, in addition to discussing our complaint-handling work, to explore how complaints link to underlying problems and system wide issues, and how the work of various stakeholders, using tools such as root cause analysis, assist to reduce these problems and concomitant consumer detriment. To do so, I propose to touch upon three issues. The first is to set out a short history of the development of Ombudsmen. Second, I will consider the role of the Energy Ombudsman in resolving complaints and finally I will discuss the role of the Energy Ombudsman in identifying systemic and serious issues and reducing consumer detriment, including the role of root cause analysis.

At the outset, it is important that I note that each time I refer to Ombudsmen in this presentation, I am referring to industry Ombudsmen such as the Telecommunications Industry Ombudsman or the Energy Ombudsman Western Australian and not Parliamentary Ombudsmen. The role of a Parliamentary Ombudsman shares many characteristics, and has many very useful synergies, with industry ombudsmen, however, as a parliamentary officer of administrative investigation with the powers of a standing royal commission, the role also differs very significantly to industry Ombudsmen in relation to the capacity to investigate, and recommend wide ranging action on, thematic and systemic issues.

2. The history of Ombudsmen in Australia

As I have just said, I want to start today by setting out a very short history of the development of Ombudsmen in Australia. I do so because the reasons that underpin the establishment of Ombudsmen is, I think, very instructive in understanding their current role.

The history of Ombudsmen is short, but significant in activity. Ombudsmen began operation in Australia just over twenty years ago, with the establishment of the (then) Banking Ombudsman in 1990 and have developed at a remarkable pace since. In fact it would not, in my view, be overstating the case that the institution of the Ombudsman has revolutionised access to justice in Australia. Ombudsmen now provide the major pathway to access to

dispute resolution in a number of the major sectors of the economy, including telecommunications, financial services, energy and water supply and public transport.

There are many reasons for the growth of Ombudsmen, among them privatisation of public services and an increasing reliance on self-regulatory mechanisms, including industry being encouraged to take responsibility for their own complaint handling. The growth of Ombudsmen, however, has also paralleled the growth in concern for access to justice and interest in alternative dispute resolution. It is clear that Ombudsmen were conceived, developed (and have flourished) in no small part because of a recognition that traditional justice mechanisms had a number of shortcomings including problems with (1) awareness and accessibility and in particular the cost of dispute resolution; (2) the time taken to have disputes resolved; and (3) the extent to which courts and tribunals were not equipped to identify thematic or system-wide problems arising from complaints and then refer those problems to agencies such as departments of consumer affairs or regulators who might be in a position to encourage resolution of those problems.

Following directly from this history, we can readily pinpoint the core functions of Ombudsmen, including the Energy Ombudsman Western Australia. We exist principally to do two things:

- Resolve complaints for residential and small business consumers about energy providers (that have not been able to be resolved between providers and consumers); and
- From these complaints, to identify serious, systemic and emerging issues (incorporating trends and themes), as well as monitor the outcomes of complaints, discuss these issues with companies and report these issues and outcomes to the industry regulator, the Economic Regulation Authority, and in other relevant forums.

To ensure we are able to do both of these functions effectively, we also undertake outreach, education, liaison and other activities to ensure awareness and accessibility to the Energy Ombudsman.

3. The role of the Energy Ombudsman in resolving complaints

I now want to turn to the first of these things, namely, the role of the Energy Ombudsman in resolving complaints. Prior to the Energy Ombudsman considering a complaint it requires the consumer to have first allowed the member company an opportunity to resolve the complaint. This is the case for virtually all Ombudsman schemes. There are a range of reasons for this, including, that it achieves early resolution of cases at least cost, helps to preserve company/customer relationships which are generally of an ongoing nature and encourages industry responsibility for complaints management. It would also be typical to describe the Energy Ombudsman as free and, indeed, for a consumer using our services there is no direct cost (discounting any time cost). As Milton Friedman reminded us, however, there is no such thing as a free lunch, and it is important to remember that there is no such thing as a free Ombudsman! The cost of any Ombudsmen scheme is, of course, passed through to consumers. It is for this reason, among others, that Ombudsmen have an obligation to operate at least cost for the services they provide.

When the Energy Ombudsman does consider complaints, it does so not only in relation to the law, but also good industry practice and what is fair and reasonable in all of the circumstances. The Energy Ombudsman resolves the vast majority of complaints in less than 10 business days and does so at a cost that is significantly less than traditional justice mechanisms. The Energy Ombudsman has the power to make determinative findings up to \$20,000 (or \$50,000 by the agreement of a member company).

In 2010/11, we anticipate receiving more than 4000 complaints, the bulk of these relating to electricity. As is the case for most Ombudsman schemes, the majority of complaint issues relate to billing.

4. The role of the Energy Ombudsman in identifying systemic and serious issues

Besides resolving disputes, our second role is to identify the issues that lead to these disputes. Complaints made to an Ombudsman scheme become, over time, a rich evidence base of potential individual causes and system wide problems. At any given time complaints to an Ombudsman might also reveal issues that are not systemic in their nature, but are so sufficiently serious that they warrant further consideration of their cause to avoid similar detriment to other consumers in the future. It is important that the Energy Ombudsman works with energy companies to bring these issues to their attention and assist, where appropriate, to facilitate their resolution. Of course, energy companies should, and do, become aware of problems through their own service delivery, quality assurance, audit and complaint handling, among other things.

In addition to informing companies of problems that appear to underlie complaints, the Energy Ombudsman has an important role in informing relevant government agencies and regulators of these problems. In particular, the Energy Ombudsman informs the Economic Regulation Authority in both quarterly reports, and through a range of ongoing meetings, of serious, systemic and emerging issues in the energy sector. Examples of these issues include problems with information provided on bills, delays in issuing and reissuing bills, and problems with bills based on estimated consumption.

Beyond this reporting and referral, is an important statutory obligation that requires the Ombudsman to report to the Economic Regulation Authority substantial breaches of either the *Code of Conduct for the Supply of Electricity to Small Use Customers* or the licence conditions of energy companies. An example of a substantial breach reported by the Energy Ombudsman related to the requirement for Synergy to issue bills “no more than once a month and no less than once every three months, unless the retailer has obtained a customer’s verifiable consent to issue bills less frequently.” The reporting, and subsequent action on this issue was very much the sort of effective regulatory cooperation for the benefit of consumers that was envisaged when Ombudsmen were first created some two decades ago.

In discovering what has led to the problems that give rise to detriment and complaint, root cause analysis has a number of particular attractions including the fact that it is collegiate and multi-disciplinary, is structured and rigorous and seeks out human, organisational and informational causes for problems that occur. It is obvious, given its methodology, why root cause analysis is particularly attractive in health and medical settings, but it is clear that it could sensibly be part of a range of fit for purpose tools available to energy companies to find fundamental underlying causes of problems. In short, root cause analysis encourages a rigorous and careful methodology for identifying the underlying problems that lead to consumer detriment.

It is important to keep in mind that the resolution of these problems should also be undertaken with equal rigour and care. Even when a root cause has been identified, further work must be done to ensure that any remedy for the cause will solve the problem identified, have no unintended undesirable consequences and the remedy proposed will not be so costly (including its opportunity cost) as to outweigh the benefits it will deliver. For anyone who does not think that a perfectly well-intentioned, but imperfectly considered cure can be worse than a cause, I simply point to American prohibition which was a perfectly well-

intentioned idea with, unfortunately, spectacularly bad results. A much more recent example in the Australian context is the Federal Government's home insulation scheme.

Before coming to my concluding remarks, I want to make one further observation about reducing consumer detriment. I think it is clear from everything that I have said to date that I believe there is a critical role for independent regulators, Ombudsmen and government agencies in the identification and resolution of serious and systemic issues that cause consumer detriment and give rise to consumer complaints, but we should not overlook the importance of competitive, transparent markets in delivering the best outcomes for consumers. Competition in energy markets reduces the consumer detriment which leads to complaints and simultaneously enhances consumer welfare. In short, the threat of your customers being lost to another provider incentivises companies to serve consumers well. Retail contestability also has another powerful beneficial function. Rather than have only the option to complain about your energy provider, a contestable retail market gives consumers the option to choose an alternative energy provider when dissatisfied.

5. Conclusion

In conclusion, the Energy Ombudsman deals with disputes between consumers and the energy industry, resolving the vast majority of complaints in less than 10 business days and does so at a cost that is significantly less than traditional justice mechanisms. The Ombudsman is independent of all parties, completely impartial and never an advocate. In considering complaints we do so not only in relation to what the law says, but also what would constitute good industry practice and, ultimately, what is fair and reasonable in all of the circumstances.

Our second role is to identify the issues that lead to those disputes. The Energy Ombudsman is only delivering on one half of its mission, and the mission envisaged twenty years ago for Ombudsmen generally, if it resolves cases alone. It is vital that we identify issues of a system-wide or serious nature that are directly or indirectly causing consumer detriment and inform energy companies of these issues. It is also the case that it is our role to inform relevant government departments or regulators, most centrally the Economic Regulation Authority, of these issues. While it is not the role of the Energy Ombudsman to resolve these issues directly (this being a critical point of difference to Parliamentary Ombudsmen who do have that role), it is most certainly the role of the Energy Ombudsman to be a facilitator of this resolution through problem identification, referral and follow-up.

As part of this endeavour, we believe root cause analysis is a promising tool to utilise in the energy sector. The data used and processes undertaken by companies in that analysis can be enriched by the findings of the Ombudsman.

Ultimately, transparent, competitive markets, that are both regulated and have access to effective and efficient dispute resolution, will see companies employ a variety of tools, including root cause analysis, to not only minimise the consumer detriment that leads to dissatisfaction and complaint, but maximise benefits for every Western Australian.