

22 February 2024

Sarah Croxall
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Office of the Australian Information Commissioner
GPO Box 5288
Sydney NSW 2001

Via email: edrschemes@oaic.gov.au

Dear Sarah

Consultation on draft revised *Guidelines for recognising external dispute resolution schemes*

Thank you for the opportunity to comment on the draft revised *Guidelines for recognising external dispute resolution (EDR) schemes* (the Guidelines).

The comments contained in this submission reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy and Water Ombudsman Queensland (EWOQ) and Energy & Water Ombudsman South Australia (EWOSA).

We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, Queensland and South Australia. We have collectively reviewed the draft Guidelines and we have only commented on those aspects that align with each respective organisation's operations as they relate to the Guidelines.

We support the overall changes to streamline the Guidelines and include arrangements for Consumer Data Right (CDR) complaint handling, referrals and reporting.

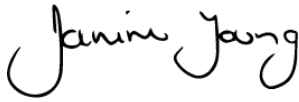
We summarise some suggested wording changes to the Guidelines in Table 1. The suggested wording changes are aimed at clarifying information in the Guidelines about:

- the Commonwealth's *Benchmarks for Industry-Based Customer Dispute Resolution* (the Benchmarks) and independent review requirements in multiple sections
- internal review procedures in one section.

We understand that the Energy and Water Ombudsman Victoria (EWOV) has made a submission with suggestions aimed at clarifying internal and external dispute resolution requirements to ensure consistency with the *Competition and Consumer (Consumer Data Right) Rules 2020* (CDR Rules) and *Regulatory Guide 271 Internal dispute resolution*. We support EWOV's comments.

If you require any further information regarding our submission, please contact Dr Rory Campbell, Manager Policy & Systemic Issues (EWON) on 02 8218 5266, Mr Jeremy Inglis, Manager Policy and Research (EWOQ) on 07 3212 0630, or Antony Clarke, Policy and Governance Lead (EWOSA) on 08 8216 1861.

Yours sincerely



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Table 1 – Summary of suggested changes for the draft Guidelines

Page	Section	Proposed OAIC wording	Our comments	Our suggested wording
4	Key messages	To be recognised, EDR schemes must demonstrate their accessibility, independence, fairness, accountability, efficiency and effectiveness to the Commissioner. These recognition requirements, as set out in s 35A, are based on the <i>Benchmarks for Industry Based Customer Dispute Resolution Schemes</i> . Most existing EDR schemes design their operations in accordance with these benchmarks. However, to be recognised under the Privacy Act, EDR schemes should also meet additional requirements that are specifically related to privacy complaints, including accountability, reporting and regular reviews (see Part 3 below).	<p>We suggest that these are not additional requirements to the Benchmarks because:</p> <ul style="list-style-type: none"> • accountability is a Benchmark • reporting falls under the accountability Benchmark • regular reviews fall under the efficiency and effectiveness Benchmarks. <p>Part 4 refers to the conditions of continuing recognition.</p>	To be recognised, EDR schemes must demonstrate their accessibility, independence, fairness, accountability, efficiency and effectiveness to the Commissioner. These recognition requirements, as set out in s 35A, are based on the <i>Benchmarks for Industry Based Customer Dispute Resolution Schemes</i> . Most existing EDR schemes design their operations in accordance with these benchmarks. However, to be recognised under the Privacy Act, EDR schemes should also meet additional requirements that are specifically related to privacy complaints, including accountability, reporting and regular reviews (see Part 3 below).
4	Key messages	Where existing schemes must meet similar requirements under a separate recognition mechanism, they can use compliance with these to demonstrate their ability to meet the requirements under these guidelines and the Privacy Act. However supplementary requirements may be required for ongoing Privacy Act recognition (see Part 3 below).	<p>The OAIC and state energy and water Ombudsman schemes have agreed that it is acceptable for privacy reviews necessary for ongoing recognition to be part of our regular independent reviews, as required by the effectiveness Benchmark. We suggest retaining specific recognition of this agreement.</p> <p>Part 4 refers to the conditions of continuing recognition.</p>	Retain paragraph: Where existing schemes must meet similar requirements under a separate recognition mechanism, they can use compliance with these to demonstrate their ability to meet the requirements under these guidelines and the Privacy Act. However supplementary requirements may be required for ongoing Privacy Act recognition (see Part 3 below).

Page	Section	Proposed OAIC wording	Our comments	Our suggested wording
10	Section 1.22	The Minister may specify a period for which the recognition of the EDR scheme is in force, and make the recognition of the EDR scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the scheme.	<p>The wording “including conditions relating to the conduct of an independent review of the operation of the scheme” comes from s35A(3)(b) of the <i>Privacy Act 1988</i>.</p> <p>We suggest that it is sufficient to include this wording once only in Section 1.14 of the Guidelines, as independent reviews fall under the effectiveness Benchmark.</p>	<p>Amend to:</p> <p>The Minister may specify a period for which the recognition of the EDR scheme is in force, and make the recognition of the EDR scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the scheme.</p>
12	Section 2.9	<p>An EDR scheme can demonstrate its effectiveness by, for example:</p> <ul style="list-style-type: none"> ensuring the scope of the EDR scheme is clear and sufficient to deal with privacy-related complaints ensuring systems are in place to refer complaints about the EDR scheme to an overseeing entity (where applicable) having mechanisms in place to bind EDR scheme members to the rules and decisions of the EDR scheme. 	<p>The effectiveness Benchmark includes conducting periodic independent reviews.</p>	<p>Amend to:</p> <p>An EDR scheme can demonstrate its effectiveness by, for example:</p> <ul style="list-style-type: none"> ensuring the scope of the EDR scheme is clear and sufficient to deal with privacy-related complaints ensuring systems are in place to refer complaints about the EDR scheme to an overseeing entity (where applicable) having mechanisms in place to bind EDR scheme members to the rules and decisions of the EDR scheme having periodic independent reviews of its performance.
14	Section 3.9	An EDR scheme may conduct an internal review of the outcome if an individual is not satisfied with the EDR scheme’s alternative dispute resolution process or	<p>We suggest being more specific about the circumstances in which an internal review is appropriate.</p>	<p>Amend to:</p> <p>An EDR scheme may conduct an internal review of the outcome if an individual is not satisfied with the EDR scheme’s alternative dispute resolution process or</p>

Page	Section	Proposed OAIC wording	Our comments	Our suggested wording
		decision. EDR schemes should conduct internal reviews where appropriate.		decision. EDR schemes should conduct internal reviews where appropriate in line with the EDR scheme's policies and procedures.
16	Section 4.1	<ul style="list-style-type: none"> make the recognition of an EDR scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the EDR scheme. 	<p>The wording “including conditions relating to the conduct of an independent review of the operation of the scheme” comes from s35A(3)(b) of the <i>Privacy Act 1988</i>.</p> <p>We suggest that it is sufficient to include this wording once only in Section 1.14 of the Guidelines, as independent reviews fall under the effectiveness Benchmark.</p>	<p>Amend to:</p> <ul style="list-style-type: none"> make the recognition of an EDR scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the EDR scheme.
17	Section 4.6	Regular and independent review of an EDR scheme's performance is a key practice to indicate an EDR scheme's efficiency. The Information Commissioner may make the recognition of an external dispute resolution scheme subject to specified conditions, including the conduct of an independent review of the operation of the EDR scheme (s 35A(3)(b)).	We suggest making it clearer that regular reviews fall under the efficiency Benchmark and independent reviews fall under the effectiveness Benchmark.	<p>Amend to:</p> <p>Regular and independent review of an EDR scheme's performance is a key practice to indicate an EDR scheme's efficiency and effectiveness, in line with the Benchmarks. The Information Commissioner may make the recognition of an external dispute resolution scheme subject to specified conditions, including the conduct of an independent review of the operation of the EDR scheme (s 35A(3)(b)).</p>
20	Section 4.20	With regard to CDR, the Minister may specify a period for which the recognition of the EDR scheme is in force. The	The wording “including conditions relating to the conduct of an independent review of the operation of the scheme”	<p>Amend to:</p> <p>With regard to CDR, the Minister may specify a period for which the recognition</p>

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		Minister may also make the recognition of the EDR scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the scheme.	comes from s35A(3)(b) of the <i>Privacy Act 1988</i> . We suggest that it is sufficient to include this wording once only in Section 1.14 of the Guidelines, as independent reviews fall under the effectiveness Benchmark.	of the EDR scheme is in force. The Minister may also make the recognition of the EDR scheme subject to specified conditions, including conditions relating to the conduct of an independent review of the operation of the scheme.
20	Section 5.3	<ul style="list-style-type: none"> documentation that demonstrates adherence with the DIST benchmarks, or, in lieu of such documentation, a declaration from the Chief Executive Officer (or equivalent) that the EDR scheme works or will work within these benchmarks 	On page 4 the shortened version of the <i>Benchmarks for Industry-Based Customer Dispute Resolution</i> is established as “the Benchmarks”.	Amend to: <ul style="list-style-type: none"> documentation that demonstrates adherence with the DIST BBenchmarks, or, in lieu of such documentation, a declaration from the Chief Executive Officer (or equivalent) that the EDR scheme works or will work within these BBenchmarks