



TO: ACCC, APRA

FROM: Shirli Kirschner

DATE: 10 April 2014

RE: Committees for APRA dispute resolution process

The purpose of this memo is to confirm a discussion that I have had with representatives from each of APRA and the ACCC in relation to the supervision of the dispute resolution process by a committee.

The current APRA dispute resolution model is a hybrid model: it is independent because it has an independent facilitator but relies wholly on funding from APRA. Other than a dispute resolution facilitator who is empowered to make decisions on individual disputes, there is in fact no "governance" body.

1. Purpose

There has been a discussion on the use of a committee to supervise the Alternate Dispute Resolution process and, the dispute resolution facilitator. It is useful and important to be clear on the purpose of any committee. Representative committees can have two main purposes (or variations thereof):

- (1) to act as a governance body to ensure independence and monitoring of the dispute process ('governance committee'); and/or
- (2) to act as a representative group that provides input based on the normative views of the stakeholder group ('advisory committee').

Clearly a committee can also have a combination of these roles.

1.1 Governance committee

There are a number of dispute resolution processes that have governance committees. Examples includes the Telecom Industry Ombudsman (TIO), and other schemes that supervise fully external dispute resolution processes. These dispute resolution processes are often set up as part of an industry, or a self-regulatory scheme for an industry. Their power is statutory or derived from a formal constitution or other document of that kind.

The establishment of a governance body requires mechanisms to ensure effective and efficient decision making and management. To be effective it also requires the selection of appropriate range of skills in the governance body to complement the powers it has. In the absence of any meta- framework, achieving this can be difficult.

In the absence of a governance structure a committee runs the risks of:

- adding a level of bureaucracy that makes the process less responsive and less efficient;
- not providing the independence and structure required because there is no mechanism for decision making;
- being unable to attract the calibre of professionals necessary due to lack of funding and the level of risk.

1.2 Advisory Committee

An advisory committee that has members drawn from the stakeholder community is also common. The SPAN wholesale telecommunications dispute process had a committee comprising the various stakeholder representatives. The dispute resolution processes in the wholesale electricity and gas markets have a wholesale energy market dispute resolution advisory group. The purpose of this group (and the SPAN one) is to provide the dispute facilitator with input to ensure that the industry's views and priorities on various tasks are taken into account. They also assist with setting and monitoring key performance indicators.

A group like this can have value in keeping a process relevant. It does not provide independence (assuming that is the goal).

In order to provide relevant industry input it is important that the group is properly constituted, and that the members of the group (usually unpaid) are committed to providing their time and energy to make such a group worthwhile. In considering an advisory group it is important to think about:

- who should sit on the group;
- what the role of the group will be;
- how the group is chaired (by the facilitator or a neutral); and
- how and to whom the group reports.

It may be useful to establish some guidelines which would make volunteering/self-selecting for the committee easier, these could include:

- specifying a meeting schedule (for example two hours per quarter in a particular city). This would allow people to self-select knowing the time commitment.
- Approaching the peak bodies such as the AHA, LPA and National film archives to get them involved, in that way getting a wide representative sample from the industry as well as a commitment to contributing resources.

1.2.1 Areas of Operation

The dispute resolution processes will have three main areas of operation:

- licensee/APRA disputes;
- member/APRA disputes; and
- member/member disputes.

The interests of the stakeholder group for APRA/member disputes and member/member disputes will have slightly different drivers from those of the licensee. It may well be that it is preferable to have two rather than one committee if the aim of the group is to provide input into the priorities for the dispute resolution provisions.

I note the existing board of directors of APRA already includes member representatives. One needs to consider how a member committee interacts with the Board and whether consistency between them is important. An option may be to have the Board include on its agenda dispute resolution in that way allowing that body which has constitutional and governance provisions to oversee the membership part of the dispute resolution provisions.

2. Other Thoughts

In the event that the aim of this process is to achieve independence and neutrality there may be other ways of doing this, this would include:

- The dispute resolution facilitator reporting into the ACCC, albeit funded by APRA.
- Requiring specific tasks to be done with consultation. Such tasks could include the selection of a pool from which dispute resolution practitioners are drawn and the key indicators to be used monitoring and evaluating the efficiency of the process. Depending on the aim, achieving a transparent and robust processes through mandating consultation at key points, may provide the same outcome without the disadvantages of a committee.

I would be happy to discuss this with you further if it is useful.

regards

A handwritten signature in blue ink, appearing to be the letter 'K' with a stylized flourish.

Shirli Kirschner