



Public Transport Ombudsman

Submission

Review of the Australian Consumer Law

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Public Transport Ombudsman

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The role of the Public Transport Ombudsman (PTO)

The PTO is an industry based dispute resolution scheme, established in 2004 to receive, investigate and resolve complaints about public transport services in Victoria. We can look at complaints about public transport operators who are members of our scheme. Our members include passenger train, tram and bus operators and other organisations that provide public transport services, such as Public Transport Victoria (PTV). The membership of the PTO includes a mix of private and government entities.

We provide an informal dispute resolution service for consumers that is independent, expeditious, fair, free and accessible.

We comply with the Federal Government's *Benchmarks for Industry-based Customer Dispute Resolution* and use the principles of alternative dispute resolution to resolve complaints. When we investigate complaints we take into account the law, good industry practice and what is fair and reasonable.

We also identify, investigate and resolve systemic issues facing the public transport industry. This allows us to work with industry to improve the services they provide, and reduce the potential for future complaints.

Looking more broadly at consumer dispute resolution schemes, our policies and practices accord with the *European Union Directive 2013/11/EU of May 2013 on alternative dispute resolution for consumer disputes* (EU Directive 2013/11/EU) which focuses on access to simple, efficient, fast and low-cost ways to resolve consumer disputes.

The Productivity Commission's 2014 *Inquiry into Access to Justice Arrangements* found that Ombudsman Schemes promote access to justice by providing a mechanism for resolving low value disputes without the need to go to a court or tribunal. The Productivity Commission also found that schemes such as the PTO helped to overcome power imbalances, particularly when consumers are dealing with large service providers or government agencies.

Jurisdiction of the PTO and Australian Consumer Law

When considering a complaint, the PTO will look at relevant laws, including the Australian Consumer Law (ACL).

Issues involving the ACL most commonly arise in complaints about myki, the smartcard ticketing system for Victoria's public transport system. PTV, which is a member of our Scheme, is the trading name of the Public Transport Development Authority, the statutory

authority that administers myki. The *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 17 and 18 provide that the ACL binds the Crown in right of the State to the extent that the Crown carries on a business. To the extent that PTV manages the myki ticketing system, including the sale of myki to consumers, it can be said to be carrying on a business.

To the extent that the PTO has investigated disputes and systemic issues which raise alleged breaches of the ACL, they have generally been concerned with some of the general protections under the ACL, namely:

- Misleading and deceptive conduct
- Unfair contract terms

While we discourage parties from taking a legalistic approach to complaints, we are careful to ensure that legal rights and responsibilities are understood and addressed through the resolution process.

It is important to note that compliance with the law is the minimum standard in our investigation. We then look at what a fair and reasonable outcome would be for the consumer, taking into account their personal circumstances. We are also able to seek fair and reasonable outcomes where no legal entitlement exists but redress is warranted.

3.3 Access to remedies and scope for private action

25 Are there any barriers to consumers and businesses enforcing their rights and seeking access to remedies under the ACL? Are there barriers to private actions that need to be addressed?

It is vital that consumers have access to an avenue for complaints and disputes that is appropriate for the value of their claims. Industry based Ombudsman Schemes are often referred to an 'alternative' venue for complaint. In the case of public transport, my office is often the only avenue of complaint. For many of the issues raised with my office, it is unlikely that a consumer would even contemplate court or tribunal proceedings. For example, a consumer seeking a ticket refund due to allegedly deceptive or misleading conduct – which will generally have a low monetary value – is unlikely to commence legal proceedings if a legitimate entitlement to a refund is refused by an operator.

A significant barrier to consumers pursuing their rights is a lack of awareness of the options available to them. The members of the PTO are required to advise consumers about their right to complain to the PTO at the time the members responds to consumer complaints. We regularly audit member compliance with this requirement. However unprompted

awareness of the PTO remains very low. A 2015 PTV survey found that unprompted awareness of the PTO was less than 10% among train, tram and bus users.

The Productivity Commission found that some of the key areas of unmet legal need in the community do not represent gaps in the availability of appropriate dispute resolution services, rather gaps in community knowledge about those services. Practical steps need to be taken to improve the visibility of Ombudsman Schemes in the community, such as outreach activities, publication of Ombudsman information on consumer and information websites and ongoing provision of information by service providers.

26 What low-cost actions could consumers and businesses more readily use to enforce their rights?

According to the Productivity Commission, Ombudsman Schemes provide a low cost, informal pathway for consumers, and better directing people to Ombudsman Schemes could significantly reduce the level of unmet legal need in the community. Industry based Ombudsman Schemes cover a range of industries, including financial services, energy and water, telecommunications and public transport (in Victoria only).

The PTO offers consumers a free, fair and independent avenue to enforce their rights. The majority of disputes lodged with our office are resolved through negotiation and conciliation. However if agreement cannot be reached, I am empowered to make a decision that is binding against the operator. I can make a binding decision of up to \$5,000, or \$10,000 with the agreement of the operator. Therefore it is within my powers to enforce a right a consumer has under the ACL.

Industry based Ombudsman Schemes promote justice by ensuring that there is a level playing field between consumers and service providers and taking into account what is fair and reasonable.

27 Are there any overseas initiatives that could be adopted in Australia?

In the United Kingdom, Consumer Alternative Dispute Resolution is distinguished as a form of ADR, which includes industry based Ombudsman Schemes, and has particular focus on resolving disputes between consumers and businesses which are generally of relatively low value¹.

¹ Models of Alternative Dispute Resolution: A Report for the Legal Ombudsman 31 October 2014, Chris Gill, Jane Williams, Carol Brennan and Carolyn Hirst

UK Consumer Ombudsman

Ombudsman Services is an Ombudsman service in the UK that provides dispute resolution across a number of different industries such as energy, communications and property. It includes a Consumer Ombudsman who looks at complaints about goods and services. The Consumer Ombudsman complies with the EU Directive 2013/11/EU.

The Consumer Ombudsman allows companies to opt into the process, who then work with the Consumer Ombudsman to resolve the consumer's complaint. If the company does not opt into the process, the consumer is directed to other avenues of complaint, such as a small claims tribunal. The Consumer Ombudsman's stated mission is to provide access to justice and improve business practices in participating companies.

In its 2014/2015 Annual Report, the Consumer Ombudsman talks about expanding the service to take complaints about areas where there is consumer detriment but no sector specific scheme. While the current industry based Ombudsman Schemes in Australia cover a wide range of services, a service similar to the Consumer Ombudsman would be able to look complaints that 'fall through the gaps' of the current sector specific schemes.

Conclusion

Industry based Ombudsman Schemes play an important role in promoting access to justice, particularly in respect of consumers for whom legal remedies are not a viable option.

For consumers who wish to pursue their rights under the ACL, Ombudsman Schemes provide them with low cost options that are easy to access and fair. Better public awareness of existing schemes will address one of the major barriers to consumers accessing Ombudsman Schemes to enforce their rights. And an expansion of the reach of Ombudsman Schemes, along the lines of the UK Consumer Ombudsman, would see even more consumers in a position to take action for breaches of the ACL.

Further information

If you would like any further information, or clarification of my submission, please contact me at tjennings@ptovic.com.au.



A handwritten signature in blue ink, appearing to read 'Treasure Jennings'.

Treasure Jennings
Ombudsman
Public Transport Ombudsman Limited