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MODELS FOR INTERNAL COMPLAINT SYSTEMS AND EXTERNAL CONSUMER REDRESS SCHEMES IN ASEAN

OUTPUT 8

ASEAN COMPLAINT AND REDRESS MECHANISM MODELS

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GLOSSARY OF TERMS AND ABBREVIATIONS

TITLE	EXPLANATION
ACCP	ASEAN Committee on Consumer Protection
Administrative Tribunal	A form of Public Ombudsman Schemes
ADR	Alternative Dispute Resolution
AMS	ASEAN Member States
Outputs Three	Assessment Report on Consumer Complaint Systems
Codes of Conduct	A form of External Consumer Redress
Consultative Meeting	Meetings of the working group on cross border consumer redress
Consumer Claims Court	A form of external consumer redress
Cross-Border Redress	A redress scheme across state boundaries
External Redress Scheme	Redress schemes external to the business or organisation complained about
Features	Key components of best practice
Fieldwork	Research conducted in Thailand, Malaysia and Singapore
Framework for Assessment Criteria	Output two
Industry Dispute Resolution Scheme	A form of external consumer redress
Internal Complaints System	Systems implemented by the organisation or business complaint about
Licensing Schemes	A form of government established external consumer redress
Model Implementation	Steps which can be taken to implement the models
Models	Seven approaches to complaint handling and external consumer redress
Models for Complaint Systems and Redress Schemes	Output five – describing models for implementation
Nominated AMS	Thailand, Malaysia and Singapore
OECD	Organisation for Economic Cooperation and Development,
Ombudsman Schemes	Common name for name for public or private external redress schemes
Output Five	Models for complaint systems and redress schemes
Output Six	Guidelines for implementation of models
Output Three	Assessment framework for complaint handling and redress schemes
Principles	Key elements of best practice complaint and redress schemes
Private Organisation	SOCAP
Public Sector Ombudsman	Schemes for resolution of complaints against government agencies and departments
Public Sector Redress Bodies	Bodies set up by statute or otherwise through government action
Redress Mechanism Models	Output five
Results	Expected outcomes for complaint handling and redress schemes
Self-Regulation	Industry rules with no external enforcement
Small Claims Court	Similar to small claims Tribunal
Small Claims Tribunal	A form of external consumer redress
Statutory Complaints Bodies	Bodies established by statute

1. INTRODUCTION

This document, Models for the Development of Internal Complaint Systems and External Consumer Redress Schemes in ASEAN, is Output 5 of the Development of Complaint and Redress Mechanism Models in ASEAN consultancy. The paper presents models for complaint handling systems and consumer redress schemes which may be suitable for implementation in the ASEAN Economic Community.

Building on the Framework for Assessment Criteria and the Assessment Report, the Team has developed redress mechanism and complaint handling models for national consumer protection agencies, regulatory institutions, industry Ombudsmen, Small Claims Courts or Tribunals and for business complaint system operators. The models are based on identified international best practices and feedback from the 1st Consultative Meeting.

The 2nd Consultative Meeting of the Working Group on Cross Border Consumer Redress, held in Jakarta Indonesia on October 9-10, 2013, considered draft versions of the models and guidelines. To ensure contextualisation, special emphasis was given to the appropriateness for implementation in local settings within the ASEAN Member States (AMS). The feedback from this Consultative Meeting has been used to make revisions and in particular to change the language used to describe the models to allow their practical application, and include the perspectives of all stakeholders.

During the 2nd Consultative Meeting, a number of AMS questioned the absence of specific or prescriptive recommendations for model selection and implementation. This was the subject of extensive conversation and the consultants pointed out that as each AMS has a different political system, administrative system and cultural context. It is not the task of this project to design a consumer redress system that fits directly into any one of the AMS systems of government; but rather to design models, based on frameworks and principles, that can be adapted to any system. These guidelines will enable decision makers in each AMS to consider their own context. For example, consumer redress options can range from actions in the courts of the country concerned, applications to complaints tribunals and small claims courts that are part of the country's judicial system, through public or industry dispute resolution (often called Ombudsman schemes) for particular industries, to more informal alternative dispute resolution (ADR) schemes, involving conciliation or mediation.

Goals for complaint systems and redress schemes in ASEAN Member States



Consultative meetings

This paper takes into account discussions and feedback received at the 1st and 2nd Consultative Meetings. Key changes arising from the 2nd Consultative Meeting included the incorporation of a glossary of terms, simplification of some concepts and the use of alternative language to describe some processes. As noted earlier, a number of AMS requested a more prescriptive approach in which the consultants would set out in a definitive way which model should be applied to particular countries. For reasons previously provided, the consultants are of the view that this is not possible or helpful in this project. To accommodate the desire for more specific guidance, the guidelines have been amended to emphasise approaches that AMS might take. In addition, the consultants have undertaken to incorporate in the policy paper some specific suggestions as to implementation within and between AMS.

Terminology

During the course of the Consultative Meetings and subsequently in comments on the assessment report, Draft Models Paper, and the Draft Guidelines, a number of AMS officials expressed some confusion about the terms used to describe complaint handling systems and redress schemes. This section of the report describes the terminology used throughout the project.

Internal complaint handling systems for the purposes of this report refers to systems designed and implemented by an organisation (public and private) to deal with expressions of dissatisfaction about some aspect of the goods or services provided by the organisation to consumers or to the public. An example of such a system is Ergon Energy, a Queensland company which provides electricity services to consumers. Ergon has a dedicated complaint handling system for dealing with expressions of dissatisfaction. Ergon Energy is, at the same time, a member of a Redress Scheme which means that there is the Electricity Ombudsman, an external body, which deals with complaints which are not resolved internally by Ergon Energy.

An internal complaint handling system has a multiplicity of purposes that can deliver benefits for all the participants. Such a system provides an opportunity for consumers of goods or services to have their voice heard

Circumstances for the implementation of Internal Complaint Handling Systems

- the organisation fails to deliver its goods or services;
- they are delivered in a manner that is unacceptable to the consumer;
- the goods or services are faulty;
- the organisation fails to meet its own standards of service, or those considered generally acceptable for the industry in which the organisation operates;
- the organisation fails to meet an undertaking; or
- the organisation acts in a manner that the consumer considers to be injurious to his or her interests or self.

Secondly, an internal complaint handling system provides a unique opportunity for an organisation to find out what its consumers think of it, both good and bad. It is a window into the minds of its consumers and avoids their tarnishing the reputation of an organisation by voicing their complaints in the wider community. An organisation will fail to discover what its public thinks is wrong with it until there is a critical mass that compels attention.

Thirdly, an internal complaint handling system is an essential ingredient of a service quality program. Research has shown that effective internal handling of a complaint will lead to greater levels of loyalty and customer satisfaction than if there had been no problem at all. Complaints made to an organisation can also highlight quality inadequacies in goods and services they provide, allowing the organisation to rectify these problems as part of its continuous improvement program.

Finally, effective internal complaint handling by an organisation is a major component of an accountability system. It is a declaration by an organisation that it has sufficient confidence in itself to conduct its business in the public gaze; invite complaints, deal with them properly, and report publicly on the outcomes.

External consumer redress schemes is the term used in this project to describe schemes external to the business or agency whose purpose is to receive, investigate, and resolve complaints about organisations where they have been unable to satisfactorily deal with the complaint internally. Complaint handling is internal to an organisation while redress is external to the organisation complained about. Should Ergon Energy fail to resolve a complaint using its internal system, then consumers can seek redress from the Electricity Ombudsman. Put simply, external consumer redress schemes provide for an appeal mechanism where a problem can't be resolved by the organisation that provided the goods and/or services.

Internal consumer complaint systems entail the processes for a wronged or injured consumer to obtain a remedy or put forward their case for compensation. The range of remedies includes; replacement or repair of goods or services, repayment of a sum paid by the consumer or in the case of complaints involving government services, reconsideration of decisions. It may involve the payment of compensation or damages to a consumer or group of consumers adversely affected by the failure of the goods or services or their ability to undertake their purpose.

External consumer redress schemes may provide remedies which range from a simple apology to a consumer through to payment of substantial damages for injury and/or economic loss.

External redress may be obtained from a regulator that investigates the matter and makes an order or direction under their legislation – such as a consumer protection law; or may be through a disputes tribunal, court, or industry based disputes resolution scheme.

Background to internal complaint handling systems

Businesses and governments have always been responsible for dealing with expressions of dissatisfaction with the services they provide to consumers and clients. It is fair to say however, that until just a few decades ago, business and public organisations spend very little effort in establishing systems to ensure consumer and client complaints were dealt with in a systematic way.

Since the 1980s, complaint handling theory and practice has developed into a major strategic focus in successful organisation. In recent years it has become more common for complaint mechanisms to be sufficiently accessible and easy to use to enable consumers to complain without the need for external assistance as far as possible.

Consumers should be provided with clear, comprehensible, and accurate information on the process for initiating a complaint and be given information on avenues for appeal.

Internal complaint systems should be designed so that they can be used by consumers with only minimal additional information or help. An example would be through the use of standard forms to facilitate the submission of necessary documents, and the special needs of disadvantaged or vulnerable consumers should be considered so that they, or their representatives, can access these mechanisms.

Background to external redress schemes

The emergence of external consumer redress schemes took place in the late 1980s with Britain at the fore, initiating both the Insurance and the Banking Ombudsman schemes. These were a reflection of consumer, government, and (some) industry concern that there was a considerable imbalance in the relative bargaining position of the parties when it came to resolving complaints. Previously, affected consumers had to either take a dispute to court, or rely on a consumer protection or fair trading agency to take up the matter as a breach of relevant laws.

The court option was prohibitively expensive, and consumer protection bodies simply did not have the resources to pursue more than a fraction of complaints. Besides, many of the complaints related to service quality and information related complaints that were not covered by any statute. The emphasis, when action was taken was, thus, on prosecution for fines and/or court orders rather than consumer redress and compensation. It remains the case today that most statutory consumer agencies have as their key role actions relating to wrongful practice with an impact beyond the individual complaint.

Consumer activism and media interest exposed large numbers of unsatisfactory and unacceptable practices in various industries. These ranged from incomprehensible contract terms through to failure to respond to complaints and repair mistakes or, indeed to provide any relevant information to bewildered consumers.

Initially, the focus was on the financial services sector, but the utilities rapidly came in for the same sort of scrutiny. This was accelerated in various countries with the privatisation of previously state owned monopolies. Other sectors that attracted attention and various redress systems included real estate agents; funeral directors; legal services; public and private health services.

Throughout Europe, English speaking Commonwealth countries and the Sub-continent there are a range of consumer complaints Boards with a general remit and consumer bodies (also known as Ombudsmen) for particular sectors. In Australia, there has been an evolution of the various schemes

with, for example, a number of financial services schemes joining together to form the Financial Ombudsman Service, and with the rationalisation of governance in some schemes. (See Appendix 2)

2. DEVELOPMENT OF THE FRAMEWORK FOR ASSESSMENT CRITERIA

In developing the framework for the assessment criteria by which ASEAN and reference country redress schemes and complaint handling systems were reviewed, the Team conducted an extensive global literature search. From the database developed, core principles features and results of redress schemes and complaint handling systems were identified. During fieldwork conducted in March 2013, Team members visited Thailand, Malaysia and Singapore and reviewed the operation of 30 schemes. During the course of the fieldwork principles, features and results were revised and during the 1st Consultative Meeting held in Bangkok in April 2013 they were further examined and revised.

Because of a unique set of developments in the mid-1970s, when Australia enacted world leading consumer protection law, and administrative law (including Ombudsman schemes), it has been at the forefront of developments and initiatives in the fields of consumer protection legislation, complaint handling, and dispute resolution mechanisms. It adopted the 1st standard for complaint handling in 1995, which formed the basis of the International Standard, ISO 10002 in 2004.

Set out in Appendix 2 are the sources for principles features and results which form the assessment framework which can be found at Appendix 3.

The Framework and ASEAN : consumer protection in the ASEAN Economic Community

Consumer protection is an essential tool in building a people-oriented ASEAN Economic Community (AEC). The AEC prioritises the interests and welfare of consumers in the implementation of strategies for achieving an integrated economic region.

Consumer protection laws must ensure fair competition and the free flow of information in the marketplace. At present, Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Viet Nam have principal consumer protection acts. Consumer protection law in the Lao PDR has been in force since 1 December 2010. Vietnam's National Assembly also passed a new Consumer Protection Law on 17 November 2010 which has been effective since 1 July 2011 and replaces the 1999 Ordinance on Protection of Consumers Rights. Brunei Darussalam enacted the Consumer Protection (Fair Trading) Order on 10 November 2011 which took effect on 1 January 2012. Cambodia is in the process of drafting their consumer protection policy and law which is to be enacted by 2015, while Myanmar is in the process of drafting their consumer protection policy and law. Meanwhile, consumer protection elements in these countries are covered by other legislations in order to achieve consumer protection objectives.

ASEAN Member States have differing levels of administrative capacity, available resources, public and private sector culture and capacity to adapt. In addition, each has a different political and administrative system and so there is no single consumer complaints and redress system which will fit all countries. Rather, models based on principles which might be adapted to any system are a preferable approach to gaining adequate levels of consumer protection across all countries.

Singapore, Malaysia and Thailand all have well-developed redress schemes which have been of assistance in identifying common features which can be adapted to other AMS. However, during the discussion at the 2nd Consultative Meeting a number of officials from Malaysia and Thailand pointed out that in addition to well-developed redress schemes, there were areas of their jurisdictions which could be improved. The objectives of the field trip were to gain an understanding of current practices in complaint handling systems and redress schemes in Thailand, Malaysia and Singapore. Following the field trip and the 1st Consultative Meeting the framework has been modified to incorporate suggested amendments to make it more suitable for the ASEAN context.

Using the ASEAN complaint and redress mechanism models and the assessment framework

The models found in this paper are descriptions of various means for dealing with internal complaint handling or external redress. The details provided are intended to explain their structure purpose and to an extent suitability. Case studies include information about their legal form, when they were established and details of their key goals and mode of operation.

It is crucial to note that the existence of a particular model for internal complaint handling or external redress in an AMS does not of itself give an indication of the quality or effectiveness of the model. For that reason, in selection and implementation of models, it is crucial to have regard to the Assessment Framework as well.

The Framework describes principles, features and results of a range of internal consumer complaint systems and external consumer redress schemes currently in operation and they are intended to provide a guide to the content of each of the possible models. Having decided on the appropriate model law models to implement, AMS policymakers should review the Assessment Framework and ensure to the greatest extent possible, that the model incorporates the principles and features outlined in the framework which, if incorporated, are most likely to lead to the results sought..

The **principles** outline the situation that should exist to protect consumers and provide redress, and guide the design and implementation of complaint systems and redress schemes and procedures and organisations' engagement with consumers. The **features** are indicators that can be used as evidence of the existence and application of the principles. These have been measured through collection of quantitative data, and gathering of qualitative data. The range of features outlined in the tables may not be relevant to all AMS; however they provide a set of benchmarks that can be selected and used in the design of specific systems and procedures.

The **results** describe the expected outcomes from the successful implementation of consumer complaints and redress systems in operation in an AMS. These are medium to long-term results, and could be used in promotional materials to provide a vision for organisations to incorporate into their strategic plans or mission statements.

Assessment of consumer complaint systems and redress schemes in ASEAN reference countries, Korea and Australia

A key part of the project has been to assess current complaints systems and redress schemes against the relevant criteria contained in the various benchmarking guides, involving stakeholder discussions and targeted questions in the three nominated AMS and through a desk study of other AMS systems and the reference countries Australia and South Korea. The relevant criteria have been determined through consultation and discussion that has clarified what are appropriate in the particular circumstances of a particular AMS. In assessing current schemes in operation, common principles, as outlined below have been used.

We have examined a limited number of internal complaint handling systems and a wide range of external consumer redress schemes to assess implementation, operational structures and effectiveness of the current complaint handling and redress scheme systems in Singapore, Thailand, and Malaysia and those of the reference countries, Australia and South Korea. The assessment report includes other alternative dispute resolution redress mechanisms. In relation to internal complaint systems, only a small number of organisations were identified by AMS contact points for interview. It is expected that as models for redress schemes and complaint handling systems are further developed, new opportunities will emerge for exploring internal complaint handling systems in AMS.

During the course of the 2nd Consultative Meeting in October 2013, participants were invited to comment on the existence and adequacy of internal complaint handling systems in their AMS. In most cases, participants were confident that there were internal complaint systems present for both business and government bodies, however as to the extent to which they might incorporate the principles and features of the Assessment Framework, participants were far less certain. Responses made by participants in relation to the presence of internal complaint handling systems in their AMS can be seen at Figure 2.

In addition to the fieldwork visits a comparative analysis was conducted and a literature review of legislation relating to complaint handling systems and redress mechanisms in the three nominated AMS, Australia, and South Korea. These were used as benchmarks and will enable other AMS to assess their current systems. At the 2nd Consultative Meeting, a number of participants expressed their disappointment that the fieldwork did not include all AMS or that in relation to those AMS which were chosen for the fieldwork, the assessments were not more comprehensive. The Terms of Reference for the project only provided for a limited number of case studies from just three reference AMS. Participants were particularly keen to learn more about complaint and redress in fellow AMS. Appended to the Guidelines for selection and implementation of internal complaint systems and external consumer redress schemes is a more comprehensive outline of legal and structural provisions in each AMS. As noted in the Guidelines paper, the bulk of the information appearing in that appendix was provided in a research study in 2010. While a number of AMS have since updated this information, it should not be relied on as a current statement of laws and policies.

Each of the steps outlined, has informed the Team of elements of appropriate models that are likely to work in the various AMS, including in the context of prevailing administrative capacities, available resources, public and private sector culture, and perceived willingness to adapt.

During the 1st Consultative Meeting with AMS officials and some NGO representatives, the Team presented initial assessments of systems and gained feedback – including from invited Australian

and South Korean representatives and explored options for the development of models for redress systems and complaint handling schemes. Key contacts have been kept informed and invited to ask questions or make suggestions on any aspect of the project.

Approach to assessment

Our approach to the assessment of internal complaint handling systems and external consumer redress schemes in ASEAN and reference countries has been listening to stakeholders in the various organisations in different AMS; understanding the relevance of experiences in other countries and projects; discussing models that have worked and how they might be adapted to the AMS circumstances; and devising new strategies for adoption by AMS.

There are many models that can be considered for application in the AMS, but all depend for their likely success on the presence of the common principles of: Accessibility; Responsiveness; Objectivity; Confidentiality; Consumer-focused approach; Accountability; and Continual improvement. These are the critical principles that underlie all successful complaint systems and redress schemes that are in place around the world, and were the subject of extensive discussion at the 1st Consultative Meeting which was held in Bangkok in April 2013.

A general description of complaint systems and redress schemes can be found in the Assessment Report at Appendix 3, while more specific information on proposed models for complaint and redress models will be found in the 10 models detailed in this paper.

Rationale for the complaint handling and redress assessment

1. Internal complaint handling

If organisations such as suppliers of goods and services, including government services, implement a complaint handling system it can:

- provide a complainant with access to an open and responsive complaint handling process;
- enhance the ability of the organisation to resolve complaints in a consistent, systematic and responsive manner, to the satisfaction of the complainant and the organisation;
- enhance the ability of an organisation to identify trends and eliminate causes of complaints, and improve the organisation's operations;
- help an organisation create a customer-focused approach to resolving complaints, and encourage personnel to improve their skills in working with customers; and
- provide a basis for continual review and analysis of the complaint handling process, the resolution of complaints, and process improvements made.

Organisations can use the internal complaint handling process in conjunction with customer satisfaction codes of conduct, citizen charters and external dispute resolution processes. We have explored the connection between organisational complaint handling systems and redress schemes.

In addition, information obtained through the internal complaint handling process can lead to improvements in products and processes and, where the complaints are properly handled, can improve the reputation of the organisation, regardless of size, location and sector.

In assessing internal complaint handling systems, and designing appropriate models, we took the following into account. Any internal complaints system should have essential features including:

- **visibility and accessibility**, i.e. it is critical for the public to easily know where and how to complain;
- being **responsive**, meaning that complaints must be dealt with quickly;
- having a **customer-focused approach**, i.e. the organisation should have a culture that welcomes complaints, and a no-blame approach when complaints arise;
- each complaint being addressed in an **equitable, objective, and unbiased** manner through the complaint handling process;
- access to the complaint handling process should be **free of charge** to the complainant - (Note: charging can be a deterrent for lodging a complaint and make the system less accessible);
- personal identifiable information concerning the complainant should be available where needed only for the purposes of addressing the complaint within the organisation and should be **actively protected from disclosure** unless the customer or complainant expressly consents to its disclosure;
- the organisation should ensure that **accountability** for, and reporting on, the actions and decisions of the organisation with respect to complaint handling is clearly established.

An internal complaint handling framework should cover the internal 'infrastructure' that needs to be set in place in order for a proper functioning complaints system. Issues covered should include organisational commitment to the process, a customer-focused complaint handling policy and the allocation of responsibility and authority throughout the organisation (the 'who does what' in complaint handling within an organisation). This covers the respective role everyone in the organisation has in relation to complaints, and also acknowledges the need for someone to drive the complaint handling process within the organisation. Other framework matters are the planning and design process including setting policy, objectives and targets, processes and resources.

The internal complaint handling system should also cover how complaint handling operates on a day-to-day basis particularly as it relates to dealing with individual complaints. Issues include communication about the process to the public, complaint receipt, tracking complaint handling, acknowledgement, assessment, resolution, investigation, decision and action, feedback to the customer, customer response, and customer satisfaction surveys.

While the operation section concentrates on the process for dealing with individual complaints, the complaint handling system needs to cover maintenance and improvement which is all about product, service, process and complaint handling system improvements arising from analysis of complaints data. Other matters to be covered include information and improvement, ongoing monitoring, the classification of complaints, analysis and critical evaluation, ongoing review of the system, auditing the system, management review and improvement, including continuous improvement. Guidance on these matters can be found in Customer satisfaction—Guidelines for complaints handling in organizations (ISO 10002) which can be purchased from www.iso.org.

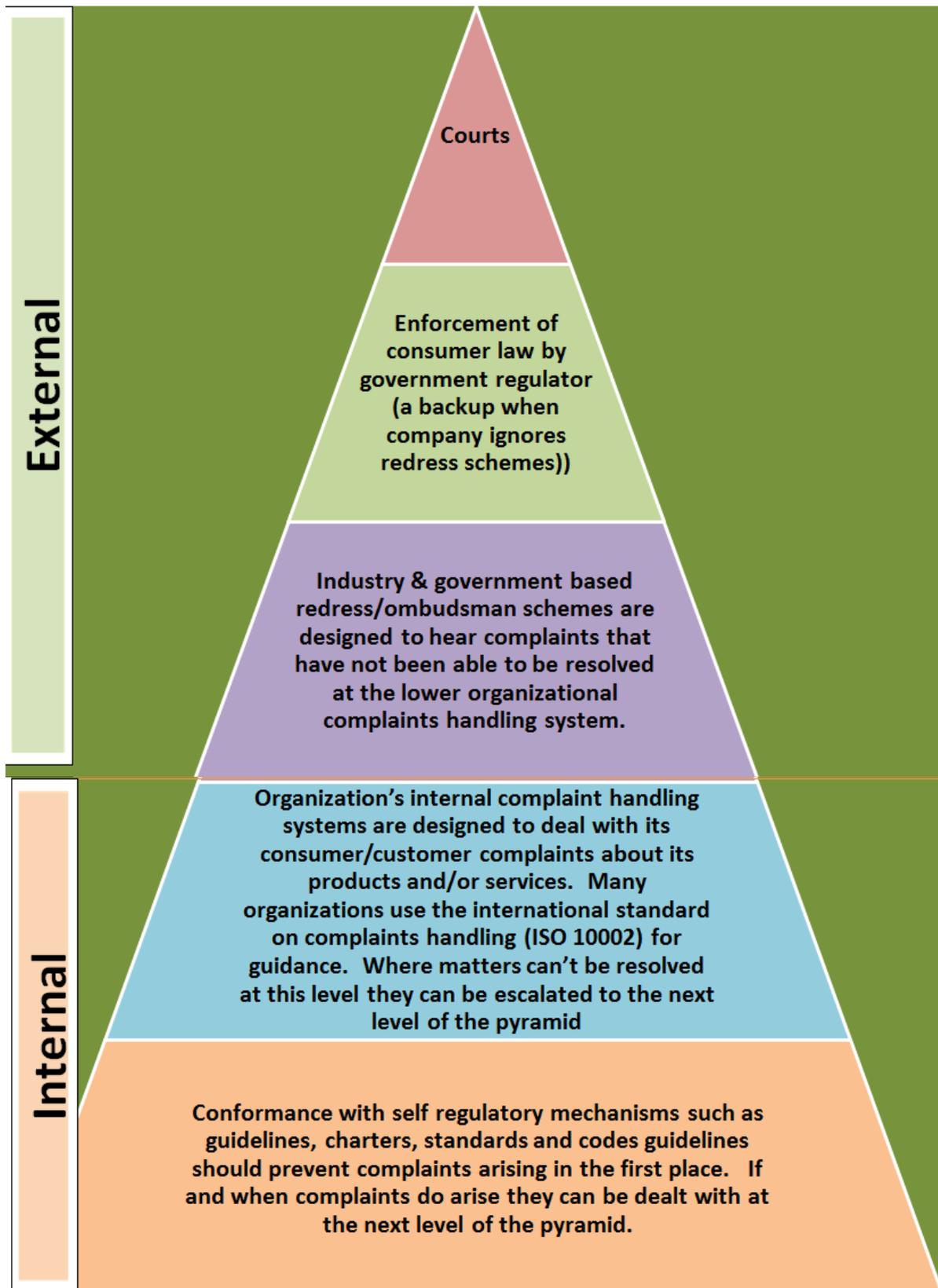
2. External consumer redress schemes

External consumer redress entails the process for enabling a wronged or injured consumer to obtain a remedy or put forward their case for compensation. A remedy may involve replacement or repair of goods or services, or repayment of the sum paid by the consumer. It may involve the payment of compensation or damages to a consumer or group of consumers adversely affected by the failure of the goods or services, or their inability to undertake their purpose. A remedy may range from a simple apology to a consumer, through to payment of substantial damages for injury and/or economic loss.

A remedy may be obtained, in the first instance, by direct complaint to the supplier of the good or service by accessing its complaints handling system, and this is, of course, the best outcome. However, if an approach to the supplier is disputed and fails, then there is a need for a mechanism, external to the supplier, to resolve the dispute. This may be a regulator that investigates the matter and makes an order or direction under their legislation – such as a consumer protection law. Or it may be through a disputes tribunal, court, or industry based disputes resolution scheme.

Complaint systems and redress schemes can be represented graphically as falling between operations of business and governments in dealing with customers and the more formal application of consumer laws in the form of litigation in the courts. Figure 1 shows where complaint systems and redress schemes fit in the picture of consumer affairs.

Figure1. Complaint and redress pyramid : Internal complaint handling systems and external consumer redress schemes



The key to effective consumer complaint systems and redress schemes is that they are: accessible; independent; fair; accountable; efficient; effective; and transparent.

In assessing such schemes, and designing appropriate models, we asked questions in our consultations, to take into account the following:

- capacity of the parties to participate effectively;
- whether the parties should be represented;
- context of the applications required to be submitted;
- how an identified need for urgency is dealt with;
- how multiple parties involved in an application are handled;
- how complexity of the issues in dispute are identified;
- how bona fides of the parties are assessed;
- how cultural factors are taken into account;
- safety provided to the parties;
- how agreed outcomes, or reduced issues in dispute, are managed;
- relative cost to the parties of the process and a determination;
- case management requirements of the scheme;
- whether the scheme can offer a more flexible solution than a determination;
- whether public interest issues dealt with in the course of the proceedings require a determination.

Choice of models for consumer protection

With the progressive implementation of the Economic Blueprint in which market oriented measures will be adopted across ASEAN, governments might be considering more flexible and market sensitive means of regulation to deal with consumer protection. Choice of the best instrument for securing the greatest welfare for consumers is by no means straightforward. There is a wide spectrum from prescriptive regulation of market conduct enforced through institutional arrangements, to models in which market participants and service providers are self-regulating and have no government monitoring or assessment. One of the problems with government legislation is that it is often seen as being not flexible enough to meet rapidly changing market situations. Even with conventional statutory systems there is a trend nowadays for governments to specify performance characteristics for the laws as opposed to detailed prescriptive rules so as to not unduly stifle innovation and to better accommodate changes in the market. This approach and more market-sensitive, flexible means of regulating the markets include guidelines, charters, standards and codes that are being used increasingly by governments to regulate the market.

Evolution of complaint and redress models in Australia

Industry funded alternative dispute resolution schemes emerged in Australia in the late 1980s and early 1990s following the development of a Banking Ombudsman model in the United Kingdom. The Australian Banking Industry Ombudsman was the first Australian scheme. Through the 1990s, schemes developed in other industries including life and general insurance, financial planning, electricity, water and telecommunications, and private health insurance. Dispute schemes have fulfilled a need for cost-free, accessible and effective resolution of disputes.

These schemes developed in response to two trends – the need for an alternative to legal action for consumers seeking redress against industry members and an increasing policy emphasis by

government on self-regulation. Cost was a common factor in both trends – the increasing costs to parties of resolving disputes through the courts and the cost of regulation to government.

Voluntary industry codes have been developing over the same period and are part of what might be described as the self-regulation ‘package’. For example, the voluntary code for the banking industry, the Code of Banking Practice (CBP), was published in November 1993 by the Australian Bankers’ Association.

The 1993 Code of Banking Practice entrenched ADR schemes in the dispute resolution framework for banks by providing in clause 20.4 that: *‘A Bank shall have available for its Customers free of charge an external impartial process (not being an arbitration), having jurisdiction similar to that which applies to the existing Australian Banking Industry Ombudsman scheme, for resolution of a dispute that comes within that jurisdiction and is not resolved in a manner acceptable to the Customer by the internal process.’*

Self-regulatory mechanisms such as codes and charters can prevent complaints arising in the first place as it is clear to both the consumer and the supplier what the level of quality of goods and services that they can expect.

Alternative dispute resolution (ADR) mechanisms formed the basis of the model because of a growing recognition that ADR processes had the potential to limit costs, preserve relationships and offer more flexibility than formal, adversarial court processes. At the same time, there was recognition that accessing ADR schemes should not preclude consumers from accessing courts and should be voluntary for the consumer.

General consumer law setting out consumer rights and trader obligations

In a market economy unsafe goods can be sold. Fraud, misleading and unconscionable conduct occurs, and ‘take it or leave it’, one sided unfair contract terms are used. To maximise consumer welfare in ASEAN markets there is a role for each of the different market participants; governments, businesses, and consumers.

The role of government

Markets, particularly contestable markets, can deliver benefits to consumers but this can only occur where there are strong competition and consumer protection laws and visible and vigorous enforcement of these laws. Contestable markets need to be underwritten by general consumer protection laws. Provisions needed should include safety, misleading conduct, unconscionable conduct, and unfair contract terms as a safety net for other, more specific, forms of intervention in a contestable market doesn’t necessarily deliver the outcomes for which these laws are designed. In Australia these protections are afforded by the Australian Consumer Law¹. Absence of such laws means that consumer detriment in terms of death and injury from unsafe good and economic loss can occur. These laws, in turn, need to be visibly and robustly enforced. Governments also need to have the will and capacity to identify where unscrupulous market participants are disadvantaging vulnerable consumers and to intervene quickly and resolutely on their behalf. However, there is an option for regulators to promote effective self-implemented compliance systems for these safety net laws and to concentrate their efforts on those who deliberately flout the law or are indifferent to implementing a compliance system.

¹ *Competition and Consumer Act 2010*

The policies that traditionally identify separately as *'antitrust'* (or competition law) and *'consumer protection'* serve the common aim of improving consumer welfare and naturally complement each other. For example, South Korea and Australia have such laws and enforcement bodies. Governments can also have a role in improving consumer access to market information through the promotion of standards or codes that set rules for better information disclosure and access to objective advice for consumers.

The key role, therefore, for governments is to ensure that there are adequate national policy settings for consumer protection. These need to empower a national consumer policy and enforcement agency to police markets while laws or regulations mandating the need for sound complaint handling systems and redress mechanisms within business and government departments are also required.

The role for businesses

Self-regulation is the preferred model for complaint handling and redress by business but, for it to operate effectively, business needs to be able to demonstrate that there are credible systems which deliver good outcomes for consumers.

- The ways in which business can deliver such outcomes include:
- implementing effective competition and consumer protection policies and standards backed up with compliance systems within the business;
 - setting in place effective in-house complaint handling systems such as ones based on the International standard on Complaint handling, ISO 10002; and
 - promoting and participating in industry based external dispute resolution schemes where they exist.

Market mechanisms are of increasing importance for consumer transactions carried out across national borders (e.g. buying goods through the internet) where domestic laws are largely irrelevant and private enforcement of legal rights is not a viable option. Subscribing to codes of conduct that promote better consumer information disclosure is also an important self-regulatory tool. The emergence of industry disputes schemes is due in part to increasing recognition of the value of effective industry self-regulation. Such schemes enable industry to ascertain the problems faced by their customers and take steps to rectify them, negating the need for government intervention.

The role for consumers

The best form of consumer protection is a population of vigilant and informed consumers operating in fair and competitive markets. Consumers equipped and enabled to pursue their own best interests will be more inclined to complain to suppliers where goods and services are unsatisfactory and to place competitive pressure on suppliers to improve their overall system.

In order to perform their role effectively, consumers require access to timely and accurate information about the goods and services they buy, and to know that there are responsive complaint handling systems in businesses and government agencies against which they have complaints.

In any society, classes of consumers will be at a considerable disadvantage in relation to acquisition of goods and services. Disadvantages such as poverty, lack of education, cognitive impairment, physical disability, and lack of choice due to geographical remoteness or poverty call for special measures to enable consumers to participate effectively in markets.

In many societies, women form the most important class of consumer, often having the responsibility for acquiring food and essential services for a family and carrying the burden of dealing with circumstances where goods or services fail to perform as expected. It is appropriate that as ASEAN develops and implements practical and responsive models for complaint handling and consumer redress systems, that particular attention be paid to the needs of women as consumers.

3. MODELS FOR COMPLAINT SYSTEMS AND REDRESS SCHEMES

There are many possible models for the establishment of consumer redress schemes in ASEAN Member States. This section sets out proposed models for possible implementation in ASEAN. They derive from models currently to be found in Australia and AMS; this section describes their key features and provides a number of examples.

Information presented in this chapter has been drawn from the extensive interviews undertaken by the project Team in Thailand, Malaysia and Singapore in March 2013. In addition extensive references have been made to the documents listed at the end of this report and to the complaint handling systems and redress schemes in operation in Australia, South Korea and elsewhere in the world.

Figure 2: Indicative Matrix of Models Currently Found in Some AMS

AMS	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
Brunei							
Cambodia	Some	Some					
Indonesia	Some		Some				
Lao PDR	Govt Yes Business Some		Community based				
Malaysia			Some				
Myanmar			Chamber of Commerce				
Philippines		Chamber of Commerce					
Thailand	Govt and Private		Internal and External		Consumer Court	6 Organisations	
Viet Nam							

Key to Table:

Notes:

- Information contained in this matrix has not been verified. It was gathered from AMS delegates at the 2nd Consultative Meeting as a tool for clarification of terms.
- The presence of a Model in an AMS does not indicate that it incorporates the principles and features in the Assessment Framework.
- Information gathered at the workshop was based on the draft report which included 10 models. Since then, four models have been combined and results for model 3 include responses relating to draft models 3,4,5 and 7.
- **Green** Model = present in AMS
- Blank Model = not present in AMS
- **Orange** Model = currently under consideration

MODEL 1: Internal complaint handling systems

Internal complaint handling refers to systems designed and implemented by organisations (public and private) such as a business firm or a government agency that provides services to the public to deal with expressions of dissatisfaction about some aspect of the goods or services provided by the organisation to consumers or to the public. An internal complaint handling system has a multiplicity of purposes, which can deliver benefits for all the participants. Such a system provides an opportunity for consumers of goods or services to have their voice heard on those occasions when:

- the organisation fails to deliver its goods or services;
- they are delivered in a manner that is unacceptable to the consumer;
- the goods or services are faulty;
- the organisation fails to meet its own standards of service, or those considered generally acceptable for the industry in which the organisation operates;
- the organisation fails to meet an undertaking; or
- the organisation acts in a manner that the consumer considers to be injurious to his or her interests.

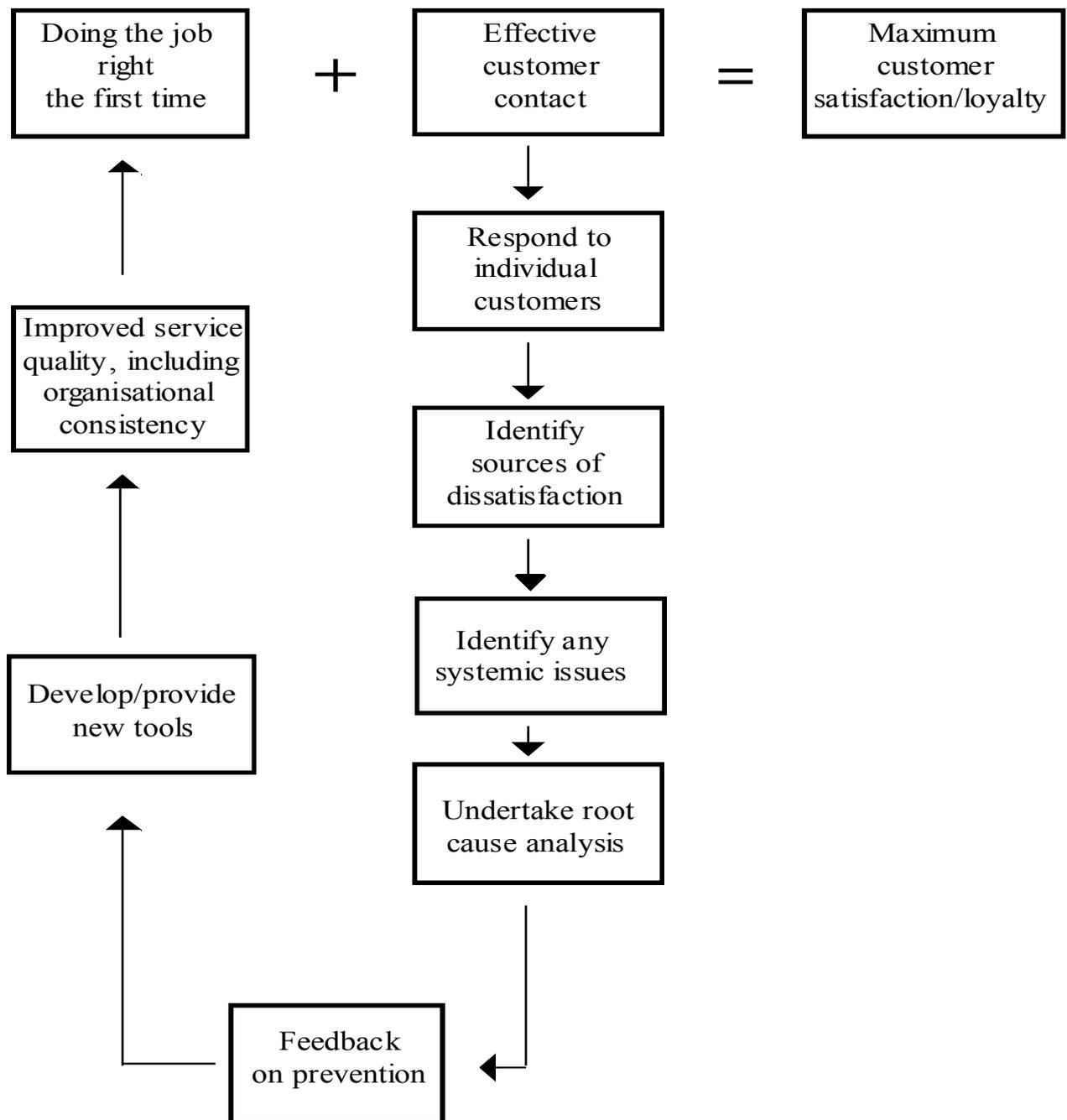
In addition, an internal complaint handling system provides a unique opportunity for an organisation to find out what its customers think of it, both good and bad. It can be a window into the minds of its customers and can avoid tarnishing the reputation of an organisation by voicing their complaints in the wider community. An organisation will fail to discover what customers think is wrong with it until there is a critical mass that compels attention.

Finally, an internal complaint handling system is an essential ingredient of a service quality program. Research has shown that effectively handling a complaint will lead to greater levels of loyalty and customer satisfaction than if there had been no problem at all.

Far from being a burden on businesses or government agencies, an effective internal complaint handling system can add great value to both business and government organisations. International research over many years as demonstrated the strong correlation between prompt and effective complaint resolution with customer satisfaction and loyalty. Figure 3 describes these relationships.

Figure 3: Formula for maximising customer satisfaction and loyalty

Formula for maximising customer satisfaction and loyalty



Customers will reuse your services, and speak well of your services to others

Adapted from original formula by T ARP (USA)

Key Features of Model 1: Internal Complaint Handling Systems

- implemented by businesses and government agencies providing services to resolve consumer complaints
- should embody the principles and features of Complaint Handling Systems (Appendix 3)
- may be voluntary or required by law or regulations
- appropriate for organisations of all sizes
- guidance in implementation can be found in international standard ISO 10002

Example of internal complaint handling systems

(a) Thailand National Health Security Office (NHSO): Public Organization to respond to the public good management system www.nhso.go.th

The Thailand National Health Security Office was established in 2002, set up as a public organization to create health security for 48 million Thai citizens, whereby. 'Every person born as Thai should feel secure irrespective of being sick or not'. The NHSO is responsible for the implementation of the Thai universal coverage system for health care and is responsible to develop the service system which is easily accessible, effective and efficient. NHSO has implemented an information system for communications and has a highly evolved and efficient complaint handling system.

NHSO has a highly developed, well-resourced and well supported complaint handling function. Operating from the head office building in Bangkok, well trained and enthusiastic call centre staff manage large workloads in an efficient and effective manner. The complaint handling system draws on international benchmarks and is subject to rigorous quality assessment and review at periodic intervals.

As NHSO is a large organisation and the elaborate systems in place are not wholly transferable to the experience of small agencies or organisations in AMS which have a less sophisticated legal system and capacity for implementation. However, for the purposes of modelling complaint handling systems, NHSO is a very good example of the application of international principles converted to effective domestic operation. Thailand faces many challenges with a significant refugee and non-Thai speaking population, rural and remote areas where poverty and transport are problematic and great development challenges exist. This complaint handling system therefore faces some of the significant challenges for other areas of ASEAN to which sees recommended models may be applied.

An important conceptual element in the structure of complaint handling system is to provide multiple channels for consumers to express their dissatisfaction with elements of the service they have received. Known as channels for complaint, the NHSO provides three main channels for complaint received. They are illustrated in Figure 4.

Figure 4: NHSO channels for complaint



MODEL 2. Self-regulatory external consumer redress schemes

The least formal external consumer redress schemes are those implemented by some industry associations. They may be described as 'self-regulation' or 'informal industry regulation'. Such schemes are established by agreement or contract between members of an industry and seek to provide consumer redress through establishment of norms of conduct which may be expressed in a code of practice or may include mediation and the use of persuasion, rather than enforcement, to encourage members to provide compensation or some other redress to a complaint. Typically, the powers of the association will be no more than persuasive although sometimes contractual remedies can be found which give a small measure of enforceability to determinations.

Governance of informal industry associations is typically by a Board or Committee established by member organisations and empowered to levy fees on industry members to finance the association. Rules and procedures are set out in the agreement between members and will define jurisdictional limits, matters to be taken into account in the exercise of its role, and details of funding operations.

Self-regulatory schemes can be brought into existence very quickly and with an absolute minimum of formality. Terms of reference and procedures can be very flexible and change as needed without bureaucratic processes.

As such schemes are purely voluntary, and at most engage a contractual relationship between members, the determinations are typically not enforceable. One weakness is that rules and

procedures are set at the standard that members of the Association are prepared to accept - which is often very low. A further weakness of voluntary schemes is that governments and consumer groups will generally have little or no role in the establishment or oversight. Weaknesses of self-regulatory external consumer redress schemes often lead to their transition to statutory schemes or industry Ombudsmen schemes which are under-pinned by licence conditions, regulation or legislation.

The success or failure of self-regulatory schemes to provide adequate levels of redress to consumers will depend upon the extent to which the schemes incorporate the principles and features of best practice external redress systems. Although there are structural characteristics of self-regulation which tend to make it unsuccessful, there are nonetheless examples of schemes that are very effective. AMS considering encouraging the implementation of self-regulatory external consumer redress schemes should consider strengths and weaknesses. This matter is dealt with in more detail in the Guidelines paper.

Key Features of Model 2: Self-regulatory external redress schemes

- set up with little formality
- usually used in the early stages of consumer policy and law implementation
- tend to relatively low standards of performance
- unless they are based on contractual arrangements between industry members, such schemes are usually not enforceable
- there is no stakeholder engagement particularly with consumers and governments
- generally held in low regard by consumers and some governments
- considered to be just an interim step in development of consumer redress schemes

Examples of Self-regulatory external redress schemes

(a) *Financial Mediation Bureau (FMB) of Malaysia* www.fmb.org.my

The Financial Mediation Bureau (FMB) which was established in 2004 is an amalgamation of the Banking Mediation Bureau and Insurance Mediation Bureau in Malaysia. FMB started its operation in 2005 as a non-profit alternative dispute resolution channel. It was an initiative mooted by Bank Negara Malaysia (Central Bank of Malaysia) and supported by the entire financial industry. Y. Berbahagia Tan Sri Dato' Seri Siti Norma Binti Yaakob, a retired Chief Judge of Malaya, is the Chairman of the Board of Directors of FMB. The Board of Directors is constituted by 11 members. Of which, majority of the members are independent Directors.

The primary mandate of FMB is to ensure that all disputes against financial service providers in Malaysia arising from their services and products are being dealt with effectively to the satisfaction of all the stakeholders, in particular, the complainants. The members of FMB are the conventional and Islamic commercial banks, investment banks, insurance companies and takaful operators, selected development financial institutions and payment systems operators/card issuers. As at 31 December 2012, FMB has 106 members. In terms of manpower, FMB has a total strength of 40 employees, of which, 5 are Mediators and 14 Assistant Mediator.

In line with the fundamental principle of accessibility as subscribed by financial ombudsman services schemes worldwide, the complaint handling services provided by FMB is free of charge to the complainants. Over the last eight years, FMB has grown from strength to strength as an alternative dispute resolution channel, both in terms of the numbers of inquiries received and the number of complaints registered and resolved by FMB. In 2012, FMB received close to 14,000 enquiries from the general public through letters, emails, telephone calls and in-person (walk-ins), of which 35 per cent were enquiries on banking matters while 65 per cent related to insurance. As at 31 December

2012, a total of 1,919 new complaints were registered and 2,718 cases were closed by FMB. Out of which, a total of 1,161 cases related to banking and the remaining 1,557 cases were on insurance. The bulk of the cases were resolved by mediation (49.2%) and adjudication (32.7%) while the rest were attributed to withdrawal of complaints and those that fell outside the jurisdiction of FMB. The FMB is now well recognised as an independent and impartial alternative dispute resolution channel and has emerged as an important component of the dispute resolution landscape in Malaysia.

The success of FMB in resolving complaints contributes towards a sound, stable and competitive financial sector. FMB is expected to play an even bigger role with the proposed establishment of the Financial Ombudsman Services Scheme (FOS) by Bank Negara Malaysia, as outlined in Bank Negara Malaysia's Financial Sector Blueprint 2011-2020 and with the coming into force of the Financial Services Act 2013 and Islamic Financial Services Act 2013 on 30 June 2013. Bank Negara Malaysia and FMB are in the midst of formulating the FOS. The FOS, once approved by Bank Negara Malaysia, is expected to be implemented in 2014. It is envisaged that the mandate of the FMB would be expanded and greater powers would be granted to FMB under the proposed FOS so as to ensure that disputes between complainants and the financial service providers (limited to members of the FOS as prescribed by Bank Negara Malaysia by way of Regulations pursuant to the two laws) would be resolved efficiently and effectively.

(b) Thai Bankers Association- Thailand www.tba.or.th

Formed in 1958, when a group of bankers representing domestically incorporated banks held a series of meetings to discuss the formation of an association. They founded the Thai Bankers' Association in September 1958. There were 15 founding members, representing all the commercial banks incorporated in Thailand at that time. Its management rests with an elected Board of Directors, which consists of a Chairman, a Vice Chairman, and three other Directors.

TBA is also a founding member of the ASEAN Bankers Association, which meets annually to foster cooperation among bankers in the ASEAN countries. Their recent cooperation includes the Y2K solution, the corporate debt restructuring workshops, and strategy to meet intensifying competition in the coming years.

The TBA does not have a formal consumer redress role, however from time to time disputes which have not been resolved by member banks are referred to the TBA for action. In such cases, the role of TBA is conciliation and they are often able to obtain remedies or agreement between consumers and bankers which settle outstanding issues. With no formal rules or jurisdiction, the TBA does not publish any details of its role or overall results in this sector.

(c) Financial Institutions Dispute Resolution Centre-Singapore (FIDReC) www.fedrec.com.sg

FIDReC commenced operations in August 2005 following a merger of two Singaporean bank and insurance industry mediation schemes. FIDReC is an independent and impartial institution specialising in the resolution of disputes between financial institutions and consumers that was initiated by the financial services sector. The stated mission is to provide an affordable redress scheme that is independent and impartial, so as to encourage and assist in the resolution of disputes between consumers and financial institutions in an amicable and fair manner.

The jurisdiction of the scheme for insurance claims is up to S\$100,000, while banking and capital market claims up to S\$50,000 may be granted. Jurisdiction extends to all consumers and sole

proprietors of small business. To use the scheme, consumers must agree to procedural rules of mediation and determinations are binding on service providers but not consumers

(d) Victorian Public Transport Ombudsman (PTO) www.ptovic.com.au

The Victorian Public Transport Ombudsman was established in 2004, as a not for profit, independent dispute resolution body, providing a free, fair, informal and accessible service for the resolution of complaints about Victorian public transport operators, who are members of the PTO scheme. It is independent from the transport operators and government and does not act as a consumer advocate.

The PTO's role is to receive, investigate and provide redress to consumers who use or are affected by Victorian public passenger transport services, or the public transport related activities of the operators.

Complaints are raised with the relevant transport operator first. The PTO will only investigate a complaint if the operator has been given the opportunity to respond to it, and it is within jurisdiction. It provides impartial advice and referral information in response to enquiries and complaints that haven't been raised with the operator or are out of the PTO's jurisdiction.

When a complaint is being investigated by the PTO, it investigates and assists the consumer and operator to negotiate a fair and reasonable outcome. It handles complaints independently and promptly and where an agreement can't be reached, the Ombudsman may make a binding decision or dismiss the complaint.

It also plays an important role in identifying, investigating and reporting systemic issues which affect more than one consumer, and are within PTO jurisdiction. Other systemic issues are referred to the Department of Transport or other relevant bodies.

(e) Code of Practice for Computerised Checkout Systems in Supermarkets Australia www.anra.com.au

This scheme was developed to ensure that the interests of customers are protected in the operation of supermarket scanning systems.

The Code is voluntary and applies to supermarkets and food stores who are signatories to it. Signatories to the Code include the largest supermarkets in Australia. The Code of Practice covers all scanned merchandise within a store. This includes items registered using a PLU ('Price Look Up') number.

The Code does not cover liquor products, tobacco products or Items which do not have a bar code or PLU number or Items where the shelf price is \$50 or greater. If the price displayed at the checkout or on the customer receipt is higher than the shelf price, the customer is entitled to receive that item free of charge. The Shelf Price is the price of an individual item that appears on a shelf label or shelf price label. The Shelf Label or Shelf Price Label means the sign or label showing the price of individual items at the place where the product is displayed for sale to the customer. The item free policy does NOT cover goods that are 'item priced'.

A scanning error is deemed to have occurred when an item has been scanned, or the correct PLU number entered, and a price higher than the shelf price is displayed at the checkout or on the customer receipt. It is not necessary for the customer to have paid for the item or to have left the store to be entitled to receive the item free of charge. Other provisions of the Code require retailers to give customers a detailed, legible receipt describing each item purchased, the price, the date and the store name.

The Code provides that customer grievances be referred to the store manager or supervisor in the first instance. Where a grievance is not resolved to the satisfaction of the customer they may lodge a formal complaint with the Australian National Retailers Association (ANRA). Complaint forms are available from the store on request. Alternatively, customers may lodge a complaint via ANRA.

MODEL 3: Government established external consumer redress schemes

Model 3 describes external consumer redress schemes that are established, monitored and usually enforced by a central government agency and is the largest and most comprehensive **model for** redress schemes² presented in this paper.

Model 3 includes four recognisable elements:

- A. statutory complaints bodies
- B. licensing schemes
- C. alternative dispute resolution schemes
- D. industry or public sector codes of conduct with legislation or regulatory backing

A. Statutory complaints bodies

By definition, statutory complaints bodies are established by legislation and most commonly with legislation specific to the industry to be regulated. Such bodies are frequently used for regulation of the conduct of professions and they may obtain redress for consumers while investigating consumer complaints, however, their objectives are often more of a public interest nature such that obtaining redress for individuals is secondary to maintaining overall high levels of commercial or professional conduct. Schemes of this sort are not really redress schemes in the fullest sense, however, on occasion individual redress can be provided to consumers.

Special purpose or industry specific regulators, on the other hand, often have a consumer redress power or may oversee the establishment of self-regulatory or co-regulatory bodies which have this function. Most countries with a general consumer law have a consumer protection, compliance and enforcement agency, many of which have as part of their mandate redress for consumers.

In most cases statutory complaints bodies form part of a larger government department or agency committed to fair trading or consumer protection. Functions often include investigation of claims of breaches of consumer law, maintenance of product safety and, commonly, such agencies will supervise licensed professions, and may deal with building and disputes against tradespeople. In relation to industry specific regulators, these are often associated with a Department of State with primary policy or regulatory responsibilities for an industry sector such as energy or telecommunications.

² Following extensive discussion at the 2nd Consultative Meeting, a number of proposed models were incorporated into a single larger category.

Industry specific regulators will almost always have industry specific legislation and staffing and resources to deal with licensing, research, sometimes economic regulation, and matters relating to consumer protection. Funding can either be provided by direct appropriation from the national budget or, as in the case of a number of industry specific regulators, operating costs are recovered from the regulated industry through levying of licence or operating fees.

Key Features of Element A: Statutory complaints bodies

- Jurisdiction usually covers most economic activity
- Some are established to deal with a specific industry or practice
- Generally part of a larger government agency responsible for consumer policy and law enforcement
- May also be linked to industry regulators and small claims courts

Examples of statutory complaints bodies

(a) Korea Consumer Agency – www.kca.go.kr

The Korea Consumer Agency is a government organisation established in 1987 by the Consumer protection Act. Its founding principle is to protect consumer rights and interests, to promote rational consumption and to contribute to the sound development of the national economy.

Key functions are:

- Provide consumer counselling and redress
- Conduct tests and inspection and investigation on standards, quality and safety of products and services
- Research and process consumer protection policies and laws
- Collect and provide information on rationalisation and safety of consumption
- Provide education/training on consumer protection
- Conduct comprehensive research to enhance national life
- Investigate and enforce consumer protection laws
- Handle consumer related complaints

The Korea Consumer Agency is a mature consumer agency with more than 25 years of experience in development and implementation of consumer policy. The agency embodies modern management and policy structures to achieve its goals and provides within its system of operation adequate opportunities for early mediation, fact-finding, escalation of matters that are serious or intractable and follow-up.

Figure 5 shows the scheme of operation of KCA. Figure 6 summarises post redress measures that indicate the extent to which the agency is able to learn from its complaint experience in developing new policies and strategies for dealing with consumer issues. Together, the scheme of operations and post redress measures form a valuable tool for strategic planning.

Figure 5 Scheme of Operation of the Korea Consumer Agency (KCA)

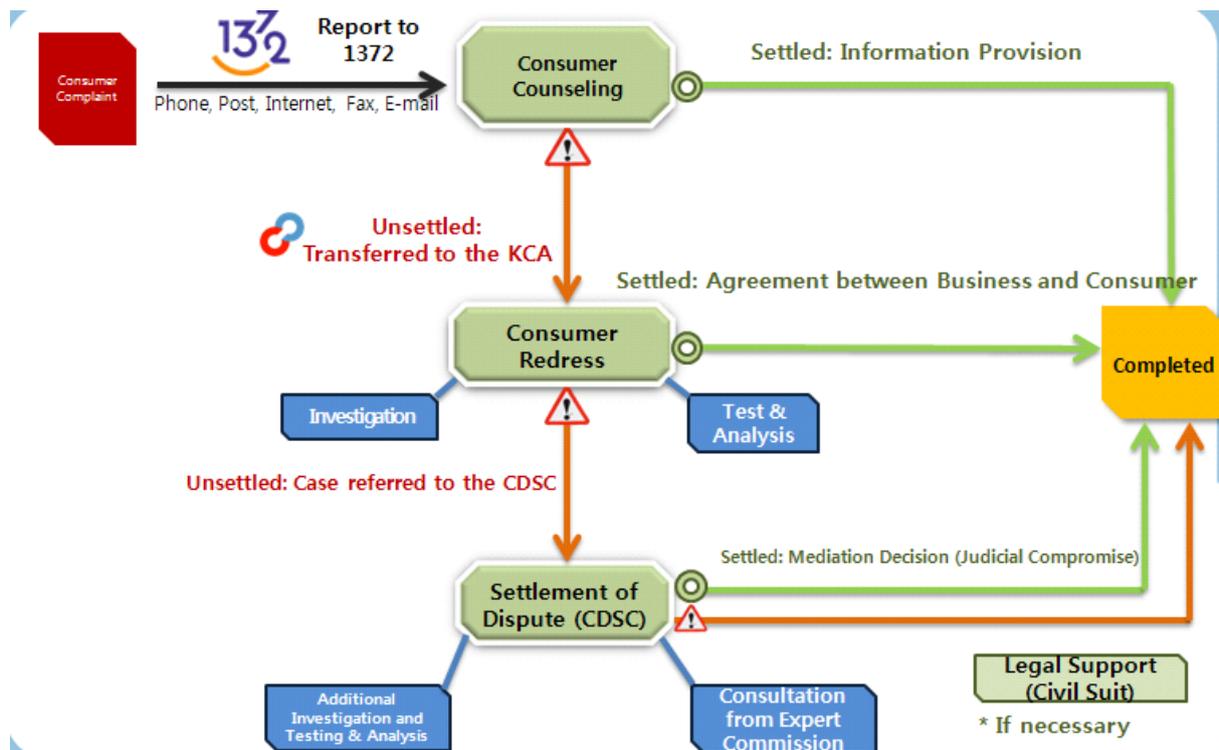
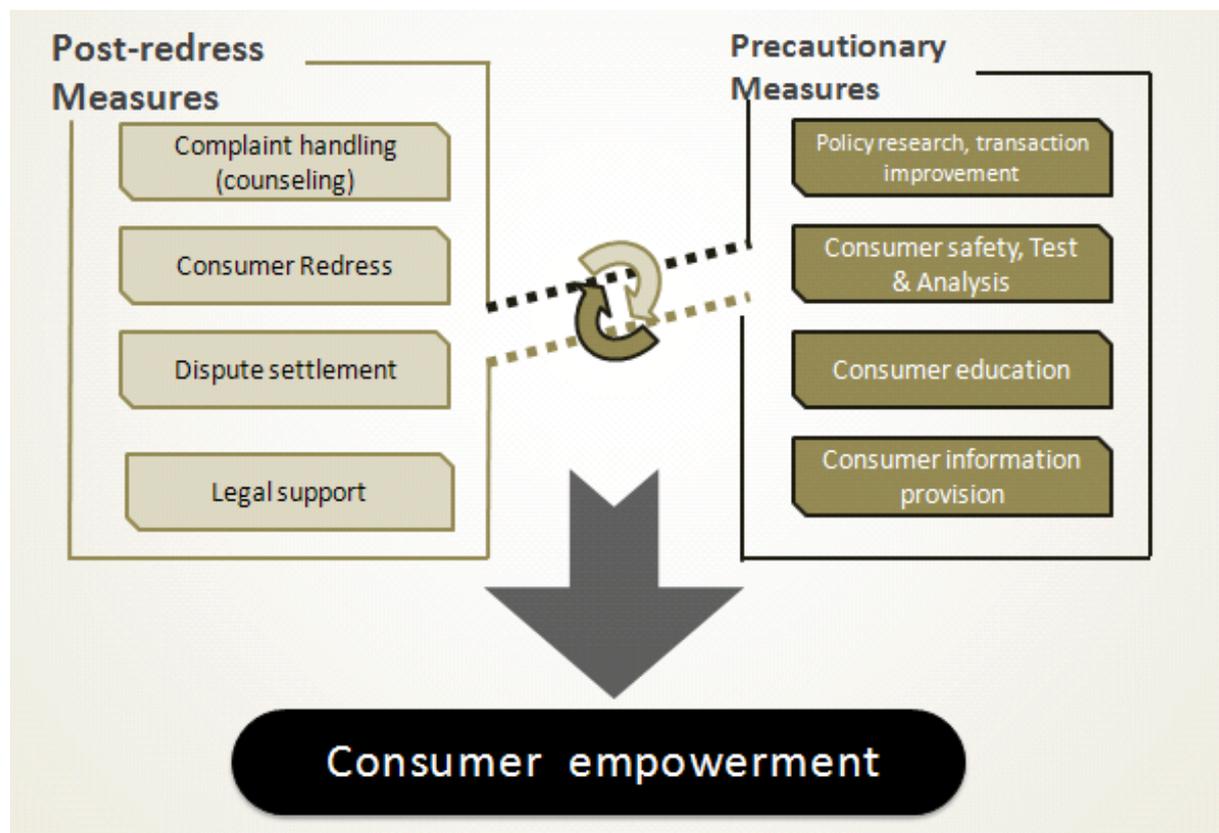


Figure 6: Summary of Korea Consumer Agency (KCA) Post Redress Measures



(b) *Malaysian Communications and Multimedia Commission (MCMC)* (www.skmm.gov.my)

The Malaysian Communications and Multimedia Commission (MCMC) is a statutory body established under the Malaysian Communications and Multimedia Commission Act 1998 (MCMCA) which implements and promotes the Government's national policy objectives for the communications and multimedia sector. MCMC key role regulates and promotes the development of the communications and multimedia industry.

The regulatory framework includes economic regulation, technical regulation, consumer protection and social regulation MCMC provides that disputes between parties should 1st be attempted to be resolved by negotiation -. Common areas of action by MCMC involve consumer matters, compliance with standard access obligations or spectrum interference. Some of these are of a commercial in character involving disputes between industry participants.

Under section 188, under the Communications and Multimedia Act 1998 (CMA 1998) require licensee to deal reasonably with consumers and adequately address consumer complaints. MCMC has issued the Guidelines on Complaints Handling which set out the principles and procedures for making, receipt, handling and resolution of complaints.

MCMC deals with consumer complaints through a three-step process

- Step One: Problems with telecommunications, postal, Internet and radio services must 1st be referred to service providers before further redress is sort
- Step Two: Where complaint are not resolved or complainants are not satisfied with the resolution provided by the service provider, consumers can lodge their complaints to the Industry Forum i.e. content complaints are dealt with by the Communications and Multimedia Content Forum of Malaysia (CMCF), while complaints on services are dealt with by the Communications and Multimedia Forum of Malaysia (CFM)
- Step Three: if consumers are still not satisfied with the resolution, complaints may be referred to MCMC.

Under the self-regulation concept in line with the requirement of CMA 1998, MCMC has designated four Industry Forum; Consumer Forum, Content Forum, Technical Forum and Access Forum. Two of the forums which deal with consumers are:

Communication and Multimedia Consumer Forum of Malaysia (CFM) www.cfm.org.my is a designated forum under MCMC was established in February 2001 to encourage the development of industry self-regulation. One of its functions is to provide an avenue and channels for complaints, disputes and grievances.

Communications and Multimedia Content Forum of Malaysia (CMCF) was established in February 2001 under a clause in CMA 1998 to govern content and address content related issues. CMCF operates a Complaints Bureau that addresses grievances from consumers and industry members on matters relating to content over the electronic networked medium. For more details, kindly visit www.cmcf.my

(c) *Office of the Consumer Protection Board (OCPB) – Thailand* www.ocpb.go.th

Established by the *Consumer Protection Act 1979*, the OCPB receives complaints from consumers who suffer hardship or injury resulting from the acts of business entities. Key roles for OCPB are to follow-up and scrutinise actions of any business entity that may do anything infringing the consumer's rights and conduct studies and research on the problems concerning consumer protection. OCPB has a duty to promote and encourage the provision of education to consumers at all levels, on safety and harm from goods and services and to provide technical information and provide educational information to consumers in order to instil good consumption habits that promote health, economise and make the best use of natural resources.

In undertaking this work, the OCPB cooperates with government offices or state government agencies which have the power and duty to control promote or prescribed standard of goods and services.

Consumer rights as referred by the Act:

- the right to receive correct and sufficient information and descriptions as to the quality of goods and services
- the right to enjoy freedom in the choice of goods or services
- the right to expect safety in the use of goods and services
- the right to receive a fair contract
- the right to have injury considered and compensated in accordance with the laws on such matters or with the provisions of the consumer protection act

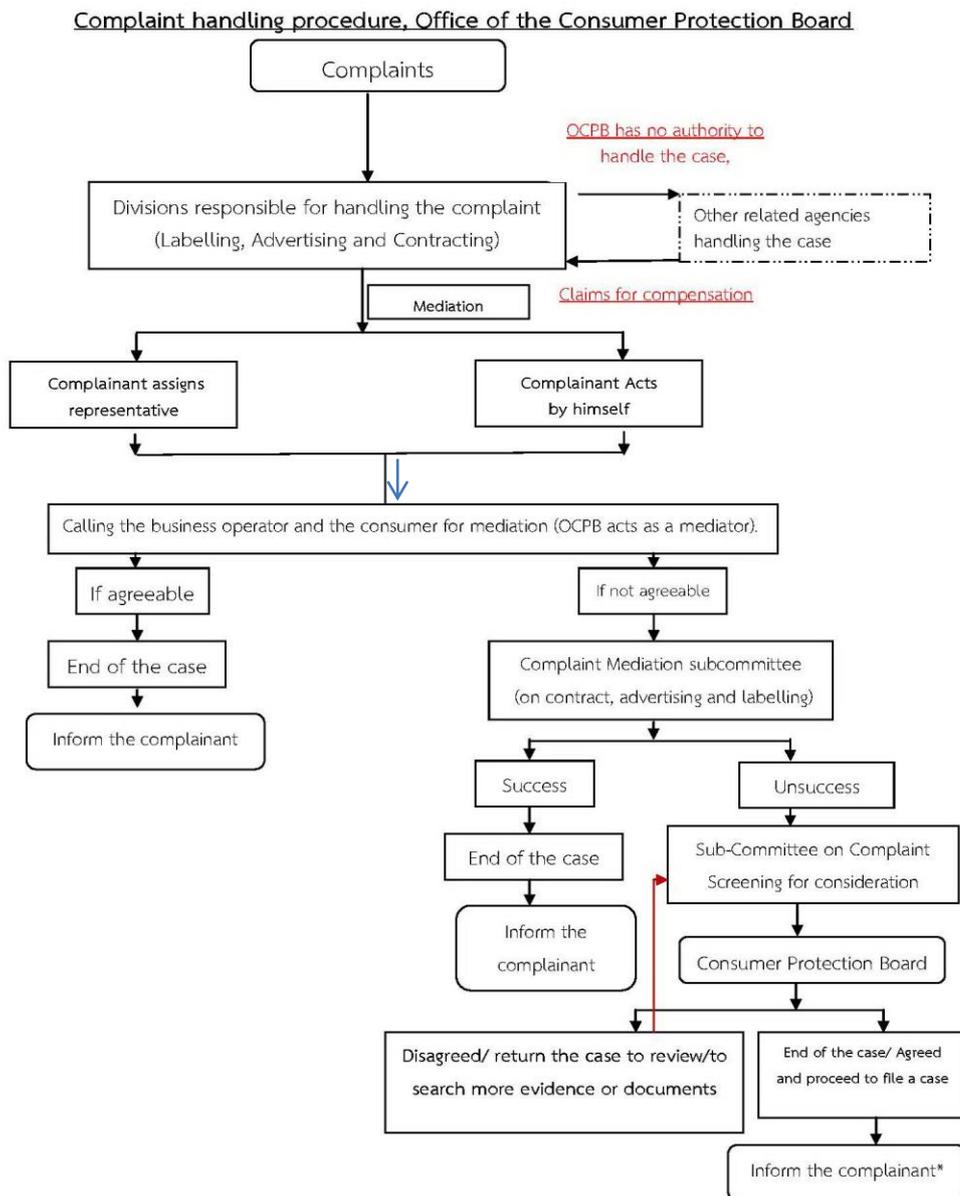
As a consumer law enforcement body, OCPB enforces consumer's rights by the institution of legal proceedings on behalf of consumers in cases where their rights were infringed. Such action will only be taken where the Consumer Protection Board concludes that the institution of legal proceedings will be beneficial to consumers as a whole. The Board has the right in consumer case prosecutions.

A further significant way in which the OCPB protect the interests of consumers is through its complaint handling role. OCPB has a wide jurisdiction in consumer complaints resolution and complaints can be filed by telephone hotline, mail, e-mail, online complaint or submitted in person. Complaint forms are distributed at 7–eleven convenience stores, Jiffy stores in the gas stations, Big C, TESCO, Lotus and Fashion Island department stores. The agency can bring an action for compensation for an injured consumer

In common with most statutory consumer protection agencies, the OCPB seeks first to deal with consumer complaints through mediation which is undertaken initially by officials of the Office. The matter is referred to the Complaints Mediation Subcommittee (on contract, advertising and labelling) or the Subcommittee on Complaints Screening for further consideration, if the preliminary mediation fails. As the prosecution, the Consumer Protection Board will make a decision to file a court case on behalf of the consumer without any payment and consumers shall be redressed.

The statute which establishes OCPB is underpinned by provisions within the Constitution of the Kingdom of Thailand. Section 61, provides that 'The right of a person who is a consumer to receive actual information shall be protected and that consumers shall have the right to make a complaint for remedies of damage and to amalgamate with one on another so as to protect consumers' rights' Complaint handling procedures and data flows in the OCPB system are graphically represented in the chart that follows.

Figure 7: Complaint handling procedure. Office of the Consumer Protection Board



*In case that the complainant does not have a lawyer, the OCPB will act on his behalf without any payment.

(d) Consumer Complaints Management Centre (CCMC) Malaysia

CCMC was established on 26 May 2010 by Ministry of Domestic Trade, Co-operatives and Consumerism as the one stop center in managing consumer complaints.

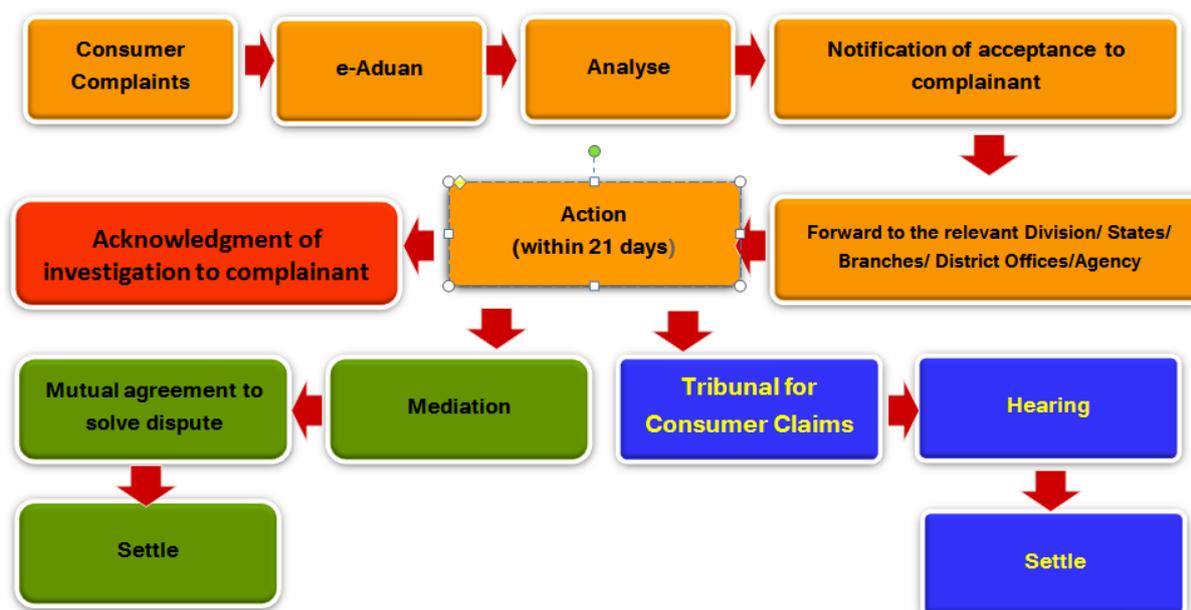
CCMC's functions and responsibilities include:

- To manage consumer complaints from various sources
- To coordinate complaints received by all States Office of DTCC and other agencies ;
- To monitor and update the Ministry's e-complaints system;
- To manage the Call Centre for consumer complaints;
- To assist mediation between complainant and traders;
- To monitor complaints in the new media such as blogs, Twitter and Facebook;
- To coordinate inter-ministry meetings with regards to related consumer complaints; and to give advice on consumer related issues.

In the years since CCMC commenced operations, a great deal of experience has been obtained in the most effective way in which matters can be received from consumers, processed and lead to more effective community-wide outcomes in terms of laws and policies.

CCMC has a sophisticated complaint handling data flow that forms an important part of the internal quality control and intelligence gathering function. Figure 8 shows schematically the complaint handling data flow.

Figure 8: CCMC Complaint Handling Data Flow



(e) e-TRIBUNAL and e-ADUAN Malaysia <http://eaduan.kpdnkk.gov.my>

The Ministry of Domestic Trade Cooperative and Consumerism of Malaysia has introduced an internet based consumer redress scheme which has been in operation since June 2004. Complaints are lodged electronically and the redress scheme is linked to a small claims court known as the e-TRIBUNAL which has a wide jurisdiction across consumer complaints and uses electronic systems and social media to provide accessibility and speedy responses.

The interlocking consumer protection measures in Malaysia including early emphasis on complaint mediation, the provision of multiple channels for investigation, and the presence of both generalist and specialist panels for resolution of complex matters, lead to high levels of consumer satisfaction. However, there is a further need for the capacity to deal with escalated complaints and in the Malaysian jurisdiction the escalated complaints can be dealt with before a judicial style tribunal. The tribunal has a wide jurisdiction Figure 9 describes the range of claims that might be brought before the tribunal.

Figure 9: Types of Claims that May be Brought Before the e-Tribunal

Types of Claims that May be Brought Before the Tribunal

A consumer can lodge a claim with the Tribunal claiming for any loss suffered on any matter concerning his interests as a consumer under this Act arising from:

- a. A false or misleading conduct, false representation or unfair practice, that is:
 - i. a misleading or deceptive conduct as to the type, manufacturing process, suitability for purpose, quality and quantity;
 - ii. a misleading indication as to the price at which any goods or services are available;
 - iii. offer of gift, prize or other free item with the intention of not providing it or not providing it as offered;
 - iv. misleading claims such as:
 1. while stocks last;
 2. goods are limited, etc.
 - v. receiving payment for goods or services without the intention to supply;
 - vi. future services contract in respect of services to be rendered on a continuous basis.
- b. Safety of goods and services:
 - i. safety standards in respect of any goods or class of goods;
 - ii. safety standards in respect of any services or class of services.
- c. The right against a supplier in connection with any of the guarantees implied by the Act:
 - i. as to title;
 - ii. as to acceptable quality;
 - iii. as to fitness for a particular purpose;
 - iv. that goods comply with description;
 - v. that goods comply with sample;
 - vi. as to reasonable pricing of goods;

B. Licensing schemes

The second element of Government established external consumer redress schemes is those which involve a licence to operate. These are schemes; under which industry participants must establish complaint handling systems and belong to redress schemes as a condition for permission to operate.

In many countries, as a condition of their licence to operate, financial, energy, telecommunications and credit industry participants must have a complaint resolution system for handling their consumer and financial investor complaints. Typically these dispute resolution systems must consist of internal dispute resolution procedures and processes that meet approved standards and requirements as well as membership of an approved redress scheme.

Key Features of Element B: Licensing schemes

- such schemes are rapidly growing around the world in service industries such as telecommunications, energy, banking and finance
- usually combined with elements of Model 4: ADR Schemes
- enables governments to identify specific areas of poor industry practice to be improved
- when properly implemented and well-funded they can provide successful consumer redress
- ASEAN has a number of good example of such schemes
- Guidance in establishment and implementation can be found in the list of Source documents at Appendix 1

Examples of licensing schemes

(a) *The Communication and Multimedia Consumer Forum of Malaysia (CFM)* www.cfm.org.my

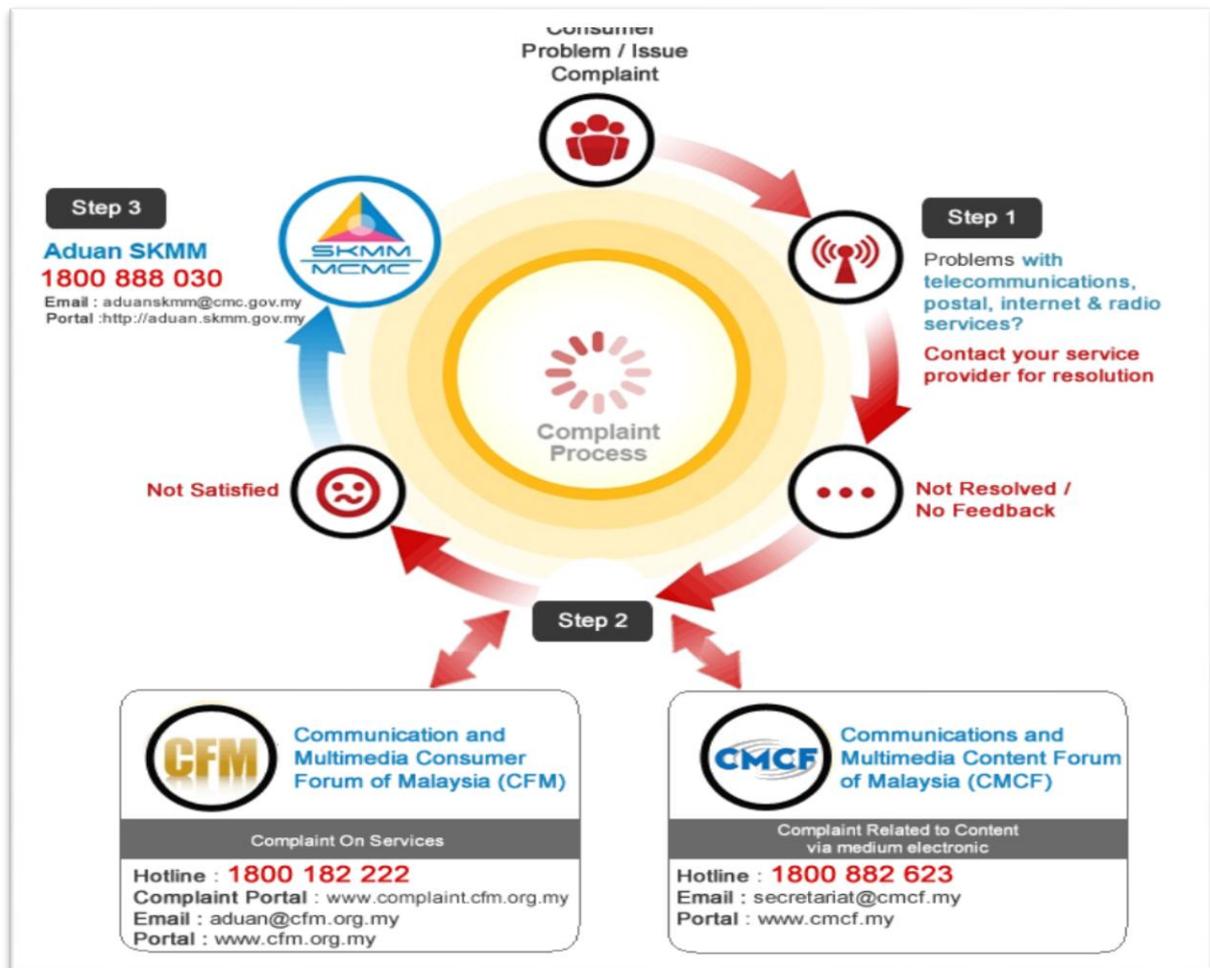
CFM is responsible for the administration of the General Consumer Code of Practice (GCC) for the Communications and Multimedia Industry Malaysia. The GCC was registered as a voluntary industry self-regulatory code in 2003. The GCC is binding on and requires compliance of all licensees under the Communications and Multimedia Act 1998 (CMA)

Under the code it is mandatory for licensed operators, specifies a comprehensive complaint handling regime which deals with:

- visibility and accessibility
- special needs
- responsiveness
- charges
- further recourse
- suspension of charges
- internal data collection and analysis
- review
- changes to complaint handling processes
- retention of records
- audit of the complaints handling processes of the Service Providers and of the Consumer Forum

Communications and multimedia transactions by consumers can lead to complex complaints requiring a considerable amount of expertise to resolve. In addition evidence shows that early in the complaint process, there should be avenues for clarification and mediation to resolve complaints. In Malaysia the CFM is one such means of providing early opportunities the mediation and for gradual escalation of complaints. The three-step process for multimedia complaints is outlined in Figure 10.

Figure 10: 3 Step complaint and redress scheme



(b) Office of Gas and Electricity Markets (OFGEM) www.OFGEM.gov.uk

The UK Office of Gas and Electricity Markets (OFGEM) enforces a mandatory code under which all licence energy suppliers in the UK are required to adhere to strict complaint handling standards.

Although the mandatory complaint handling standard regime has been in place for a number of years, until recently little was done to ensure compliance by energy companies.

In 2011 OFGEM levied substantial fines against two of the U.K.'s six major energy retailers. The fines for breach of the regulations which set standards for the way energy companies handle customer complaints amounted to the equivalent of US \$10 million.

The fines result from investigations by the energy regulator which found that the retailers had:

- failed to record all the required details of domestic and micro-business complaints received;
- failed to provide customers whose complaint it could not resolve with some key details about the redress service provide by the Energy Ombudsman;
- failed in some respects to put in place adequate policies and processes for dealing with complaints in an efficient and timely manner.

The complaint handling regulations took effect from October 2008 and complement the role of the Energy Ombudsman. The regulations set out minimum standards with which domestic suppliers must comply.

(c) *Australian Securities and Investments Commission (ASIC)* www.asic.gov.au

Australia's financial services sector, which includes banking, finance, credit, insurance and securities, is regulated by ASIC. Pursuant to its extensive powers, ASIC imposes obligations on a broad range of licensed financial services operators to subscribe to redress schemes in the form of industry Ombudsmen and in addition imposes requirements for each licensee to have an internal complaint handling system.

Legislative power for the imposition of complaint handling and redress schemes can be found in *The Corporations Act 2001* which has a requirement covering both complaint handling and redress schemes. Under the provisions of Section 912A, licensees must have a dispute resolution system (complaint handling) which conforms to the standard '*Guidelines for complaint handling in organizations (AS ISO 10002:2006)*'

While it is common for enabling legislation to prescribe the need for complaint handling and membership of an external consumer redress scheme, the ASIC powers take that a step further by prescribing the standard upon which the schemes are to be based. Such an approach is of considerable value in that it provides an objective basis for the assessment of schemes and one that is the current expression of world's best practice in this field.

For AMS without substantial resources to invest in drafting, and actively monitoring their own standards for such schemes it would seem a logical step to link domestic schemes to the international standard. Moreover, as AMS are active participants in the work of the International Organisation for Standardization (ISO), it would seem logical and efficient for an ASEAN wide approach to reference the standards in the implementation of complaint handling and redress schemes.

C. Alternative dispute resolution (ADR) techniques

A common and desirable feature in Government established external consumer redress schemes is the use of alternative dispute resolution (ADR) techniques to provide redress. ADR techniques provide an alternative to going to court to resolve disputes. There are many variations in the way it can be applied but the underlying principle is that ADR provides a low-cost, speedy and relatively informal way of resolving consumer complaints. The most common application of ADR is the industry Ombudsman scheme described below.

Industry Ombudsman schemes

Independence strongly underpins the way schemes/offices undertake their ADR roles. In practice, this means –

- following the principles of ‘natural justice’ or fair hearing allowing each party a fair opportunity to explain their perspective
- allowing each party equal opportunity to provide any further information that may be relevant to the investigation
- not pre-judging a complainant
- avoiding personal conflicts of interest
- avoiding the deliberate withholding of information, so that one party can obtain a better outcome.

Industry Ombudsmen schemes are independent, impartial redress bodies which may be established under legislation or by voluntary contractual arrangements within an industry. Such schemes form part of the classification known as ‘*Alternative dispute resolution schemes*’. They are so named as they are established as an alternative route to redress rather than forcing a consumer to file an action in a court of law.

The goal of industry Ombudsmen schemes is to provide accessible, informal and speedy alternative to courts. Typically they are free of charge to consumers and while processes are impartial, they seek to redress the imbalance of resources and expertise between consumers and service providers such that parties do not require - and are often not permitted - to be represented by a lawyer.

The governance structure can vary among different industry Ombudsmen schemes. The most common schemes have a single level structure and such schemes are governed by an independent Board of consumer representatives and industry appointees. The role of the Board is to monitor the performance of the industry Ombudsman scheme and provide directions to the Ombudsman on policy matters, set the budget and review the terms of reference including the jurisdictional limits of the scheme.

The Board does not get involved in the detail of cases which come before the Ombudsman as that would prejudice the independence of the Ombudsman. An important feature of such a scheme is that decisions made by the Ombudsman are independent of any interference from the Board. A single Board or council governing scheme is considered best practice and is preferable to a dual layer in that it invests matters of governance of the scheme (apart from those that are the responsibility of the Ombudsman) squarely in the hands of a body made up of an equal number of industry and consumer representatives with an independent chair.

Some schemes employ a two level structure in which the Board has a corporate governance responsibility including financial management of the scheme and ensuring compliance with the Constitution and rules of the organisation. In this model directors are appointed by constituent industry members. In addition to a Board, such schemes have an advisory council which is often comprised of an equal number of industry representatives and consumer representatives with an independent chair. While the Ombudsman has responsibility for day-to-day operations of the scheme, in this model, the Council provides advice to the Ombudsman on policy and procedural matters.

In the dual layer schemes the Ombudsman is appointed through a complex process. Appointment is made by the Board on the recommendation of a joint industry and consumer committee which requires the appointment of an independent chair. In single level schemes, a much simpler process is followed. The Ombudsman is appointed by the joint industry and consumer council. Best practice criteria specify that the person appointed as Ombudsman should be removable only for misconduct or incapacity according to clearly defined processes. A critical factor is that the Ombudsman is not subject to direction or influenced by others including the governing body of the scheme.

Influence in this context, can include restricting resources, or threatening to do so. A common concern in schemes having dual levels of governance is that where only industry is represented on the Board, financial control can influence the effectiveness of the scheme.

To be effective in delivering the most effective consumer protection, redress schemes should have 100% coverage of the industry concerned. Increasingly this is being achieved through making membership of a redress scheme a condition for a grant of license to operate. In many cases, the industry scheme is underpinned by a regulatory statute making it mandatory for all of those in the industry to be part of the scheme. In Australia this is true of schemes covering financial services, telecommunications and essential services in which licence holders are required to belong to a scheme.

It is commonly provided that membership of such schemes must be open to all service providers from that sector and that all members are then obliged to apply appropriate rules.

Just as there are variations in forms of governance, there are also variations in obligations on industry members to belong to a scheme. Some schemes require that industry participants be a member of an approved redress scheme and in some cases there may be a number of competing schemes. Such a provision exists in relation to some Australian schemes as is the case in New Zealand and in some industry sectors in the United Kingdom.

Concern is often expressed that where there is a choice of schemes, industry participants could become disenchanted with the redress scheme, leave it and set up an alternative one carrying a much lower standard of service to consumers. A further concern is that the notion of competition in relation to redress schemes operates to the benefit of industry participants rather than consumers with the potential of a 'race to the bottom' in independence and quality of service. By way of contrast other schemes have a single mandated redress scheme and current assessment of best practice favours this approach

A key feature in the operation of Parliamentary or public sector Ombudsmen is that in coming to a conclusion about a complaint, they take into consideration whether the action complained of was reasonable, in all the circumstances. Complaints to such redress schemes may have been lawful, but may be unfair or unreasonable. This is a power that should exist in all schemes wishing to be known as Ombudsman schemes.

To be effective, an industry Ombudsman must be able to investigate whether an organisation within jurisdiction has acted fairly and reasonably in taking, or failing to take, administrative action or in providing, or failing to provide, a service.

Accessibility is a critical principle for the operation of redress schemes. This means an Ombudsman should be able to ensure the scheme is made known to potential users and in some early manifestations of such schemes, where this principle of accessibility was not in evidence, consumers were simply unaware of the existence of the body and thus incapable of obtaining redress.

In 2007, the OECD Council adopted a recommendation on consumer dispute resolution and redress. Requirements for dispute resolution and redress mechanisms:

- mechanism should be designed to be sufficiently accessible and easy to use to enable consumers to elect to conduct the procedure without need for legal representation or assistance as far as possible;
- consumers should be provided with clear, comprehensible, and accurate information on the procedure, including the process for initiating a complaint and selecting a dispute resolution mechanism, expected costs and duration of the procedure, possible outcome, avenues for appeal, and whether the outcome is binding;
- these mechanisms should be designed so that they can be used by consumers with only minimal additional information or help such as through the use of standard forms to facilitate the submission of necessary documents; and
- the special needs of disadvantaged or vulnerable consumers should be considered so that they, or their representatives, can access these mechanisms

The Australian and New Zealand Ombudsman Association policy provides that a person must be able to approach the Ombudsman's office directly. Many consumers report that they are unaware of the existence of a redress scheme, or were not told by their service provider of their right to escalate their complaints to such a scheme.

As part of the process of instilling confidence in a redress scheme, it is important that the Ombudsman is free to publish the names of members involved in disputes where that is relevant, and especially where the member has not met their obligations under the scheme. A further improvement, from an accountability perspective, would be more extensive and consistent performance reporting in some schemes annual reports. This would enable not only assessment of members' performance, but also the performance of the scheme itself.

Agreement between schemes and some standard for public reporting – including of outcomes – would also assist in enabling schemes and the public to analyse comparative performance.

Key features of alternative dispute resolution (ADR)

1. ACCESSIBILITY

The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.

2. INDEPENDENCE

A feature of the decision-making process and administration of the scheme are independent from scheme members.

3. FAIRNESS

The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

4. ACCOUNTABILITY

The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.

5. EFFICIENCY

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

6. EFFECTIVENESS

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

A list of industry sponsored dispute resolutions schemes is attached at Appendix 2.

Examples of alternative dispute resolution

(a) Financial Ombudsman Scheme (FOS) – Australia www.fos.gov.au

The Financial Ombudsman Service sets out to ‘fairly and independently’ resolve disputes between consumers — including some small businesses — and member financial services providers. Membership of the Financial Ombudsman Service is open to any financial services provider carrying on business in Australia.

Independent dispute resolution processes cover financial services disputes including banking, credit, loans, general insurance, life insurance, financial planning, investments, stock broking, managed funds and pooled superannuation trusts. The scheme also covers estate planning, estate management and trustee services, and is free to consumers.

FOS, in common with other industry Ombudsmen schemes which employ alternative dispute resolution methodologies, is an alternative to going to court. There is no need to obtain legal or other advice when lodging a dispute and FOS can help consumers with the dispute process. Consumers unhappy with financial, insurance or investment products or services can complain to the financial services provider and ask for a resolution of a dispute in accordance with its own complaint handling scheme. Also, in common with similar schemes, all financial services providers who are members of the FOS are required to have a consumer complaints system.

Where a consumer is dissatisfied with the results of a complaint to a member financial services provider, FOS provides a conciliation process or investigation of the dispute that will result in a written decision on cases which is binding on the financial services provider.

The Financial Ombudsman Service Limited (FOS) claims to embody 'independence, integrity and transparency in all aspects of its operations'. As a result, FOS applies principles of good corporate governance to the running of the company. The FOS Constitution outlines the purpose and objectives of the Financial Ombudsman Service Limited, including how redress rules and processes are developed, agreed and implemented.

Terms of reference which govern the operations of FOS were published and came into effect in January 2010. The terms of reference spell out processes such as: power to consider disputes; dispute resolution processes; and reporting obligations.

(b) Telecommunications Industry Ombudsman (TIO) – Australia www.tio.com.au

A further example of an industry ombudsmen scheme that is backed by legislation is the Telecommunications Industry Ombudsman (TIO) which was established in 1993 to provide consumer redress in the telecommunications sector. The scheme is provided for under a Commonwealth of Australia Act of Parliament; the TIO is operated by Telecommunications Industry Ombudsman Ltd and is independent of industry, the government, and consumer organisations.

The TIO's Constitution and Memorandum and Articles of Association outline its objectives and rules. The general role and powers of the TIO are included in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Two further examples of Industry Ombudsman Schemes can be found in Appendix 2 to this report.

D. Codes of conduct

Over the past 25 years, there has been a discernible international trend to convert purely self-regulatory consumer redress schemes into ones that have a legislative or regulatory underpinning and so become an element of the Government established external dispute resolution schemes. The causes of the shift are mainly dissatisfaction by consumers with the standards and outcomes of voluntary schemes. Typically remedies were very limited, slow to obtain and schemes were underfunded. Many industry and public sector codes of conduct now have legislative or regulatory underpinning to ensure their enforceability.

The choice of mechanisms for providing legislative or regulatory underpinning are quite wide with some regulations which call up the previous self-regulatory or voluntary scheme and deem it to be an enforceable regulation of government. In other cases laws or regulations have built on previous provisions but added enforcement and accountability mechanisms. Still others are fully enshrined in legislation but often disregard previous unregulated versions.

Common features of such schemes are that they are specific to a particular industry or form of conduct sought to be the subject of redress, and that public authorities are assigned the responsibility of administering or enforcing them. Another common feature is that they confer rights on consumers to take action under the provisions that might be enforced in small claims courts or in the court system more generally.

Key advantages of providing regulatory or legislative underpinning for codes are that they can retain some of the industry connection and dynamism which comes from engaging industry associations with rule-making but with the added advantage of ensuring wider coverage and a more certain possibility of redress for consumers using such schemes.

Key features of codes of conduct

- fast replacing voluntary or industry association redress schemes around the world
- many different models depending on the circumstances of the industry concerned
- usually specific to a particular industry or sector
- deal with common consumer problems that arise within a specific industry
- often administered by an industry specific regulator
- usually specify standards of conduct required by a business
- regulatory backing allows full industry coverage

Examples of codes of conduct

(a) *Franchising Code of Conduct - Australia*
www.accc.gov.au/business/industry-codes/franchising-code-of-conduct

The mandatory *Franchising Code of Conduct* was introduced under the *Trade Practices Act 1974* (since replaced by the Australian Consumer Law 2010) in 1998 by the Australian Government.

The Code is designed to ensure that franchisees are given information that is important to the running of the franchised business, and provides access to a fast and relatively inexpensive redress scheme. Broadly, it achieves this by requiring franchisors to disclose specific facts to franchisees and to follow set procedures in their dealings with franchisees. For instance, if a dispute arises, either party can require the other to attend mediation.

To support the dispute resolution aspects of the Code, the Government established the Office of the Mediation Adviser (OMA) in 1998 to assist with the mediation of disputes between franchisees and franchisors. The OMA appoints qualified and experienced mediators to help franchisors and franchisees resolve their problems and disputes without going to court. While the OMA provides an initial free and confidential discussion, the parties to the mediation are responsible for their own costs.

(b) *Superannuation Complaints Tribunal - Australia* www.sct.gov.au

The Superannuation Complaints Tribunal developed from years of dissatisfaction with the operation of industry codes and rules to regulate this rapidly growing sector in the Australian economy. The Tribunal administers a scheme that deals with complaints about superannuation in the areas of regulated superannuation funds, annuities and deferred annuities, and retirement savings accounts. The *Superannuation (Resolution of Complaints) Act 1993*, a Federal Act of Parliament, sets out the Tribunal's functions, powers and procedures. In all its work, the objectives of the Tribunal are to be fair, economical, informal and quick.

The Tribunal does not, however, have unlimited jurisdiction to deal with all superannuation-related grievances. The Tribunal will inquire into the complaint and try to resolve it by conciliation. However, if conciliation is unsuccessful, the Tribunal will conduct a formal review of the complaint and issue a determination. A panel consisting of one or three Tribunal members is allocated to sit at a review meeting depending on the nature of the complaint. The Tribunal Chairperson or Deputy Chairperson is often one of the members of the review meeting panel. The Tribunal also has 24 part-time members drawn from a variety of professions from around Australia, including: superannuation, insurance, actuarial practice, law, medicine, rehabilitation and sociology.

MODEL 4: Public sector redress body (also known as Ombudsman)

The fastest growing and most effective vehicle for redress of complaints against governments as providers of services is the public sector redress body or Ombudsman scheme. For the sake of simplicity and consistency in this report such external redress bodies will be described as 'Public sector Ombudsmen schemes'. They are most commonly established by legislation with the objectives of:

- resolving public complaints efficiently, fairly and effectively;
- reporting and recommending solutions to resolve systemic problems of administration;
- improving resolution rates of complaints by government agencies;
- determining the root cause of complaints and seeking to reduce the incidence of them;
- proposing administrative innovation which may improve service and reduce complaints;
- providing advisory services to agencies in order to improve the effectiveness of public complaints management systems; and
- providing advice to governments on ways to improve public administration.

Public sector Ombudsmen are usually appointed by the government or by parliament but with a significant degree of independence. They are charged with representing the interests of the public by investigating and addressing complaints of maladministration or violation of rights. In some countries an Inspector-General, Public Advocate or other official may have duties similar to those of a national Ombudsman, and may also be appointed by the legislature. Below the national level an Ombudsman may be appointed by a state, local or municipal government. Although falling well short of the minimum standards of independence required to meet the definition of an Ombudsman, sometimes unofficial Ombudsmen may be appointed by, or even work for, a corporation such as a utility supplier or a newspaper, for an NGO, or for a professional regulatory body. It is not recommended that any such approach be adopted by ASEAN Member States.

It should be noted that the mere use of the term 'Ombudsman' does not mean that the body meets the reasonably strict international standards for use of that term. In fact the international Ombudsman movement has taken great pains to set out a functional definition of 'Ombudsman' to distinguish it from the very many pale imitations.

Whether appointed by the legislature, the executive, or an organization (or, less frequently, elected by the constituency that he or she serves), the typical duties of an Ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation.

Ombudsmen also aim to identify systemic issues leading to poor service or breaches of people's rights. At the national level, most Ombudsmen have a wide mandate to deal with the entire public sector, and sometimes also elements of the private sector (for example, contracted service providers). In some cases, there is a more restricted mandate, for example with particular sectors of society. More recent developments have included the creation of specialised Children's Ombudsman and Information Commissioner Agencies.

In some jurisdictions an Ombudsman charged with the handling of concerns about national government is more formally referred to as the 'Parliamentary Commissioner' (e.g. the United Kingdom Parliamentary Commissioner for Administration, and the Western Australian State Ombudsman). In many countries where the Ombudsman's remit extends beyond dealing with

alleged maladministration to promoting and protecting human rights, the Ombudsman is recognised as the national human rights institution. The post of Ombudsman had, by the end of the 20th century, been instituted by many governments and by some intergovernmental organizations such as the European Union.

Most commonly, seeking redress from an Ombudsman is free of charge and in general, an Ombudsman is a state official appointed to provide a check on government activity in the interests of the citizen, and to oversee the investigation of complaints of improper government activity against the citizen.

If the Ombudsman finds a complaint to be substantiated, the problem may be rectified, or an Ombudsman report is published making recommendations for change. Further redress depends on the laws of the country concerned, but this typically involves speedy determination of a decision or sometimes financial compensation. Ombudsmen in most countries do not have the power to initiate legal proceedings or prosecution on the grounds of a complaint.

The major advantage of an Ombudsman is that he or she has extensive investigative powers, examines complaints from outside the offending state institution, thus avoiding the conflicts of interest inherent in self-policing and the perception of bias. However, the Ombudsman system relies heavily on the selection of an appropriate individual for the office, and on the cooperation from officials within the apparatus of the state.

In Australia, at the Federal, State and Territory level, an Ombudsman is an official who is appointed by the government with a significant degree of independence and answerable to Parliament and who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or violation of rights. At the national level, the Commonwealth Ombudsman's (www.Ombudsman.gov.au) office handles complaints, conducts investigations, performs audits and inspections, encourages good administration, and carries out specialist oversight tasks.

Key features of MODEL 4: Public sector Ombudsman

- most such schemes cover administrative actions of the government
- some extend jurisdiction to contractors on behalf of governments
- independence from the government is an important element
- usually have no powers of enforcement for decisions
- can however, require production of documents needed for investigations
- sometimes include anti-corruption and human rights functions
- goal is to provide redress and also deal with systemic issues of poor administration

Examples of public sector ombudsmen

(a) *Ombudsman of the Republic of Indonesia* www.ombudsman.go.id

The Ombudsman of the Republic of Indonesia is an example of a fully independent redress scheme for dealing with complaints about government administration.

Key features of its structure and operations can be found in the Mission statement and Ethical Guidelines which are reproduced in the table below:

REPUBLIC OF INDONESIA OMBUDSMAN MISSION

1. Through the participation of the community to help create and / or develop conditions conducive in promoting the eradication of corruption, collusion and nepotism.
2. Improve the protection of people's rights to obtain public services, justice and better welfare.
3. Prioritize community service with continuous increase knowledge about the needs of people with a good relationship of mutual respect and provide an impartial resolution, keeping personal secrets and fast and precise.
4. Perform the steps to follow up on complaints or information regarding the occurrence of irregularities by state officials in performing their duties and in public service.
5. To coordinate and cooperate with Government Agencies, Universities, NGOs, The Experts, Practitioners, Professional Organizations etc..
6. Maximize the value added to society by constantly socialize the Ombudsman of the Republic of Indonesia, including providing information on how complaints are acted upon, the way how to make a complaint and to encourage people to do so.
7. Ensuring the success of the work through a thorough commitment to a high standard of work management through open and provide ongoing training to improve professional knowledge and assistance team in handling / follow up on the complaints. This is all done with integrity and high responsibility.

REPUBLIC OF INDONESIA OMBUDSMAN ETHICAL GUIDELINES

INTEGRITY

Independent, impartial, fair, sincere and committed, upholds moral values as well as obligations.

SERVICE TO THE COMMUNITY

Providing services to people quickly and effectively in order to gain the trust of the public as a public institution that really help to improve the implementation of the interests of everyday people.

MUTUAL RESPECT

Fair treatment, both to the community and among members / staff of National Ombudsman.

LEADERSHIP

Be examples and role models of justice, equality, transparency, innovation and consistency.

EQUAL RIGHTS

Provide equal treatment in public without distinction based on age, sex, marital status, physical or mental condition, race, ethnicity, religion, language or social status.

OMBUDSMAN NATIONAL TASKS

Advise and assist the community to best use public services for the resolution of issues.

SUSTAINABLE EDUCATION

Implement training and continuous education to improve skills.

COOPERATION

Implement good cooperation with all the parties, having an assertiveness and mutual respect in acting to get effective results in addressing public complaints.

WORK in groups

Incorporation of the abilities and experiences from team members and have similar goals and a commitment to the success of the overall National Ombudsman.

INCREASING PUBLIC AWARENESS OF LAW

Disseminate legal information received and processed by the Ombudsman to state institutions, non-governmental organizations, communities or individuals.

PROFESSIONAL

Have a good level of intellectual maturity in performing duties so that performance can be justified both legally and scientifically.

DISCIPLINE

Loyalty and commitment to duty.

(b) Public Complaints Bureau-Malaysia www.pcb.gov.my

A further example of a public sector Ombudsman scheme, although one which is administratively part of the Office of the Prime Minister and thus does not possess the degree of independence of the Ombudsman of the Republic of Indonesia can be found in Malaysia. Established in July 1971, the Public Complaints Bureau became a Department of the Government of Malaysia in 1992. PCB was set up as a watchdog and monitoring body to ensure efficient and fair administration of the government. There are 9 State Offices and the 197 Staff are under the Director General, Dato' Mahani Tan Abdullah. PCB has an Advisory Board with consumer representatives which meet twice each year. Administratively, the PCB is located within the Prime Minister's Department.

PCB investigates complaints about shortcomings/mismanagement of the ministries, department and agencies at the federal, state and local level. In common with most public sector Ombudsmen schemes, there are no fees or charges to lodge a complaint.

With consent, a complaint on behalf of another person can be lodged and anonymous complaints may be lodged if the complaint involves public interest and sufficient information is given by the complainant to enable investigation to be conducted.

Types of complaint that can be lodged to PCB:

- Delay / no action
- Unfair action
- Lack of public amenities
- Inadequacies of policy implementation and law
- Abuse of power / misconduct of civil servants
- Failure to adhere to set procedures
- Failure of enforcement
- Unsatisfactory service quality

Not all matters are within the jurisdiction of the PCB. Matters which cannot be dealt with include:

- those that are against Government policies
- matters under the jurisdiction of:
 - Public Accounts Committee (PAC)
 - Anti-Corruption Commission (MACC)
 - Enforcement Agency Integrity Commission (EAIC)
 - Legal Aid Department
 - Courts of Law

In common with other public Ombudsman schemes, the PCB employs a systematic approach to the provision of redress to complaints against government agencies.

In keeping with good practice principles, PCB generates a case number after a complaint is registered in the system. Following receipt, PCB sends a letter of acknowledgement to the complainant and investigation commences.

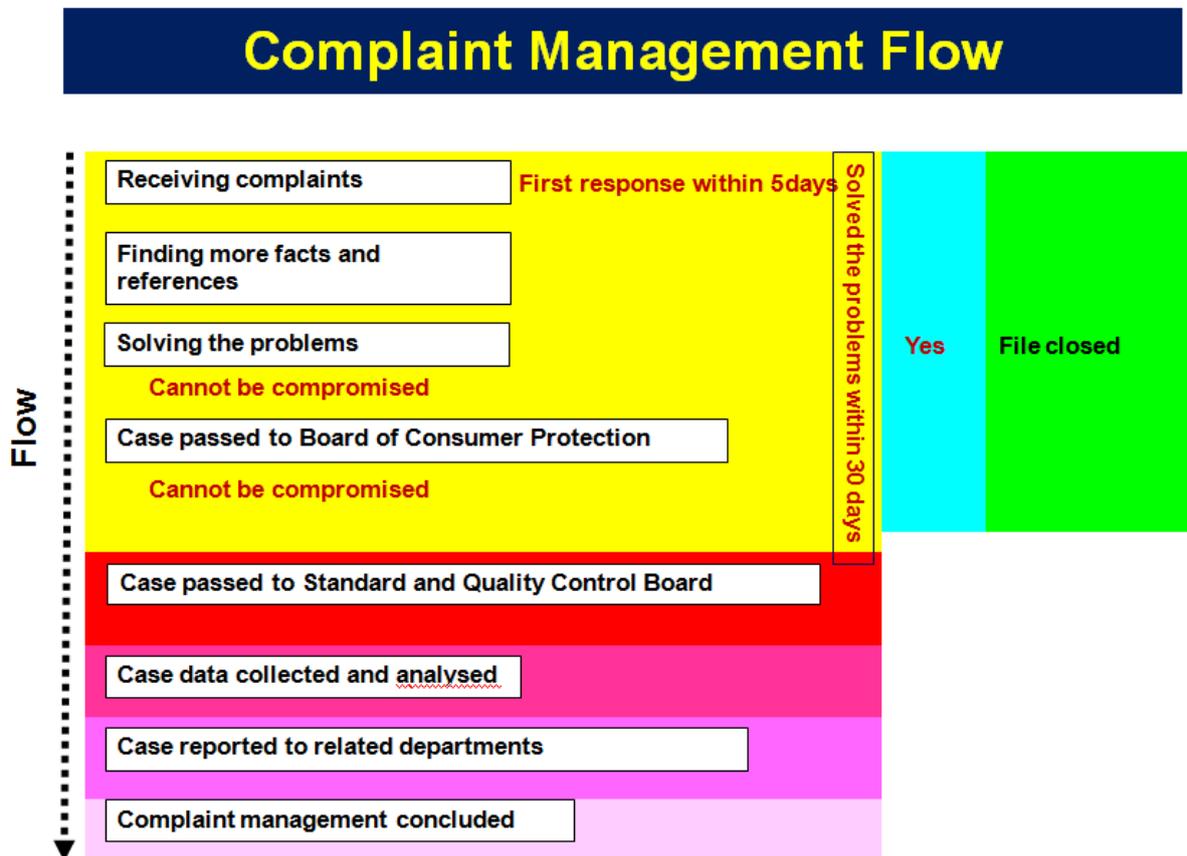
All correspondences relating to the investigation will be copied to the complainant for information and complaints which are of public interest will be brought to the attention of the Permanent Committee on Public Complaints and Cabinet. PCB informs the complainant of the result of investigations and follows up the complainant on the customer satisfaction index to evaluate the service of PCB.

PCB's Standard Operating Procedures stipulate that all complaints must be resolved within 15 days. Notwithstanding this general requirement, the time taken to resolve complaints will depend on the nature of complaints whether it is simple, moderate or complex. Simple cases may be resolved immediately or within 3 days. Moderate cases may be settled within 5 to 15 days.

To facilitate access, PCB does not require any supporting documents; however the complainant may supply some documents.

The Figure 11 provides a typical complaint management flow diagram. Resolution times will depend on the nature of the scheme and the complexity of the issue at hand.

Figure 11: Complaint management flow



MODEL 5: Small claims courts or tribunals (also known as consumer claims tribunals or civil and administrative tribunals)

Small-claims courts are widely known in many countries, while they are relatively new to ASEAN member states. Some have limited jurisdiction to hear civil cases between private litigants. Courts authorized to hear small claims may also have other judicial functions, and go by different names in different jurisdictions. For example, it may be known as a County or Magistrate's court. These courts can be found in Australia, Brazil, Canada, England, Singapore, Wales, Ireland, Israel, New Zealand, Scotland, South Africa, Hong Kong, and the United States.

The jurisdiction of small-claims courts typically encompasses private disputes that do not involve large amounts of money. The routine collection of small debts forms a large portion of the cases brought to small-claims courts, as well as evictions and other disputes between landlords and tenants, unless the jurisdiction is already covered by a tenancy Board.

A small-claims court generally has a maximum monetary limit to the amount of judgments it can award, often in the thousands of dollars. By suing in a small-claims court, the plaintiff may sometimes be required to waive any right to claim more than the court can award. The plaintiff may

or may not be allowed to reduce a claim to fit the requirements of this venue. Schemes vary in procedure and jurisdiction. And in the case of small claims courts in Australia, the UK and New Zealand, claimants might forego part of an outstanding claim in order to bring the matter within the monetary jurisdiction of the small claims court.

The rules of civil procedure, and sometimes of evidence, are typically altered and simplified to make the procedures economical. A usual guiding principle in these courts is that individuals ought to be able to conduct their own cases and represent themselves without a lawyer. Rules are relaxed, but still apply to some degree. In some jurisdictions, corporations must still be represented by a lawyer in small claims court while it is common in Commonwealth countries that lawyers are prohibited from participating in hearings. Expensive court procedures such as interrogatories and depositions are usually not allowed in small claims courts, and practically all matters filed in small claims courts are set for hearings unless they are resolved by preliminary mediation. Under some court rules, should the defendant not show up at a hearing and not have requested postponement, a default judgment may be entered in favour of the plaintiff.

Winning in the small claims court does not automatically ensure payment in recompense of a plaintiff's damages. This may be relatively easy, in the case of a dispute against an insured party, or extremely difficult, in the case of an uncooperative, transient, or indigent defendant. The judgment may be collected through wage garnishment and liens.

Most courts encourage parties with disputes to seek alternative dispute resolution, if possible, before filing suit. For example, the Small Claims Tribunal of Singapore provides guidelines for resolving disputes out of court. Both parties can agree on arbitration by a third party to settle their dispute outside of court. Though small claims court judgments can be appealed, arbitration awards cannot.

The movement to establish small claims courts typically began in the early 1960s, when other forms of complaint resolution such as civil courts were increasingly seen as costly and inefficient and officials felt it desirable to have such a court to allow people to represent themselves without legal counsel.

Key features of Model 5: Small claims tribunals

- Designed for swift and inexpensive redress for consumers
- Most do not permit legal representation
- Usually suggest or require mediation prior to adjudication
- Tend to have modest monetary limits for jurisdiction
- Employ ADR techniques
- Judgements usually enforceable in the courts

Examples of small claims tribunals

(a) *Small Claims Tribunal – Singapore* www.app.subcourts.gov.sg

Chaired by a District Judge, the Singapore Small Claims Tribunals are part of the subordinate Courts in Singapore.

Established in 1985 under the Small Claims Tribunal Act, the tribunal was introduced to provide a quick and inexpensive forum to the resolution of small claims between consumers and suppliers and has a jurisdiction up to S\$10,000, or if both parties consent S\$20,000.

Each year there are around 13,000 hearings while many more potential matters are settled through the provision for prehearing mediation.

The tribunal is currently investigating online dispute resolution schemes such as those operating in the United Kingdom with a view to further streamlining and making more efficient its operations. Procedures employed at the tribunal encourage initial contact with the supplier and where a hearing proceeds, legal representation is not permitted. The tribunal is supported by community Justice Centres which provide consumer advice. Debt enforcement remains the consumer's obligation and decisions are binding on both parties, subject to appeal to the High Court of Singapore.

(b) Consumer, Trader and Tenancy Tribunal (CTTT) – New South Wales – Australia
www.nswcttt.gov.au

The CTTT is an informal and accessible service for consumers to resolve disputes with traders. Procedures ensure an emphasis on fair and cost-effective solutions through the use of alternative dispute resolution methods such as conciliation to help parties settle their disputes.

CTTT encourages consumers to negotiate in reaching agreement often without the need of a hearing while hearings are designed so that parties can generally run their cases without legal representation.

Orders made are final and binding and are legally enforceable against traders against whom they are made. Small claims courts and tribunals are established with very wide jurisdiction which is intended to cover the vast majority of consumer transactions.

The CTTT has a jurisdiction which is even wider than most and the following is a list of the areas of competency:

- residential tenancies – disputes between tenants and landlords
- social housing – disputes between tenants and landlords relating to social housing
- residential building work – disputes between homeowners and builders
- purchase and supply of goods and services – consumer claims about the supply of a wide range of goods and services
- motor vehicle repair sales – claims about motor vehicle purchased from motor dealers
- residential parks disputes
- retirement villages – disputes between retirement village residents and operators
- Strata and community schemes – disputes about Strata schemes in community scheme living
- commercial disputes
- disputes about certain agent commissions and travel compensation fund appeals
- disputes about occupancy, Boarding houses, holiday Parks, pawnbrokers and second-hand dealers
- conveyancing costs disputes

While the jurisdiction to hear complaints and provide redress to consumers is very wide, there are limits in the form of the value of consumer claims. CTTT deals with consumer claims against a business about the supply of goods or services up to the value of AU\$30,000

CTTT conducts dispute hearings in urban and regional centres and has 70 hearing venues across New South Wales. During 2012, the Tribunal conducted 76,000 hearings and dealt with 65,000 applications.

In order to ensure public awareness of its functions, CTTT conducts extensive community and information and education events. In addition it conducts stakeholder forums and consultative forums. To deal with the complaints load, CTTT has nine specialist divisions to adjudicate disputes with a wide range of remedies available and publishes fact sheets in many community languages. CTTT uses social media to share information including Facebook, Twitter and You Tube.

MODEL 6: Private organisation to improve consumer complaint systems

Government consumer protection authorities have the primary responsibility for establishing policy for consumer complaint handling and redress schemes. Governments alone however, cannot hope to achieve high levels of compliance in systems over which they have no direct control. Also needed are businesses with a firm senior management commitment to serving customers well and to the swift resolution of consumer complaints when they occur. Internationally, there are a number of organisations of consumer protection officials from businesses and government who band together to improve the standard of complaint systems and compliance with them.

While not at 1st glance a model for either complaint handling or redress schemes, the establishment and support for such a private organisation with the capacity for it improve the management of consumer complaints should be regarded as a legitimate aspirations for AMS.

Key features of Model 6: Private organisation to improve consumer complaint systems

- made up of representatives from businesses and government agencies who deal with consumer complaints
- provide best practice training on consumer support functions (e.g. complaints handling)
- requires senior management support to be successful
- highly effective in those countries in which they operate
- strong domestic and international networks
- consistent with building a responsible and responsive business sector

Example of private organisation to improve consumer complaints systems

(a) *Society of Consumer Affairs Professionals (SOCAP) - Australia* www.socap.org.au

SOCAP is a non-government organisation made up of an extensive membership of businesses, government officials, consumer representatives, and academics committed to the goal of improved customer service. SOCAP has been at the forefront of development of complaint handling systems by organisations, as part of an international network. SOCAP Australia prides itself on providing members with research, networking opportunities and other tools to achieve best practice in complaint handling, complaints prevention and consumer affairs.

SOCAP Australia has been at the forefront of promoting corporate complaint handling particularly with the undertaking of its joint survey with American Express on consumer attitudes to complaint handling released in 1995. That survey was a watershed in making the case for companies to establish effective complaint handling systems and, in that sense, has internalised consumer protection within companies. The launch of the Australian Standard on Complaint handling AS 4269 (now replaced by AS ISO 10002) at about the same time has also assisted companies in developing effective complaint handling systems.

Although not strictly a model for complaint handling systems, nonetheless we propose that ASEAN Member States consider the development of an ASEAN consumer affairs professional association made up of:

- individual consumer affairs officials involved in administering consumer protection laws;
- members of consumer groups in ASEAN countries;
- consumer affairs/customer services professionals in business

The organisation would aim to encourage strong networking and a cooperative approach to complaint handling and redress sharing ideas so that emerging problems arising out of the creation of borderless markets and technological advances can be dealt with effectively.

As currently envisaged, this professional organisation would be independent of government and have no government affiliation.

Even though such a body would not be an arm of government, it would be appropriate for governments employing members to support the organisation through various means such as sending officers to an annual conference.

The aims of the organisation could include:

- creating an ASEAN network of consumer affairs officials;
- encouraging best practices in consumer policy regulation and administration;
- developing ASEAN consumer protection policies;
- encouraging the development and harmonisation of consumer protection laws;
- encouraging agencies to exchange research,
- opening up training programs to overseas officials and commit themselves to the use of technology for interagency communication;
- advocating cost effective consumer remedies and encouraging business to adopt consumer responsive, market sensitive, mechanisms for dealing with consumer problems.

Communication between members could be via a variety of means including an annual conference, regional conferences, regular newsletters, and the internet.

MODEL 7: Cross-border redress: ASEAN regional facility for cross-border complaints management

Consumer protection is an essential tool in building up a people centred ASEAN economic Community. The ASEAN Economic Blueprint demonstrates that AMS are mindful that consumer interests and welfare have to be taken into account in measures implemented to achieve an integrated economic region.

Consumer protection laws ensure fair competition and the free flow of correct information in the marketplace. At present, Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Vietnam have principal consumer protection legislation. The remaining ASEAN Member States are planning or are in the process of drafting their consumer protection policies and laws. Meanwhile, consumer protection elements in these countries are covered by other legislation in order to achieve consumer protection objectives.

Consumer protection is a new area of regional cooperation. As initiated under the ASEAN Economic Community (AEC) Blueprint, the ACCP was established in August 2007. The ACCP, and its three Working Groups, serve as the focal point for the implementation and monitoring of regional arrangements and mechanisms to foster the sustainable development of consumer protection in ASEAN.

In order to steer the implementation of initiatives and commitments under the AEC Blueprint, a strategic approach towards consumer protection has been adopted by the ACCP³.

This approach contains policy measures and detailed priority actions with specific timeframes for implementation, including the development of a:

- notification and information exchange mechanism by 2010;
- cross border consumer redress mechanism by 2015; and
- strategic roadmap for capacity building by 2010.

Malaysia, as the Chair of the Working Group on Cross Border Consumer Redress, is in the final stage of developing a comprehensive website on cross border consumer redress for the ASEAN region. This website will serve as the main reference point for matters pertaining to consumer redress, including:

- information on basic cross border redress mechanism (handling complaints);
- information on focal point for consumer redress in each AMS;
- information on online/hotline access to cross border redress mechanism (handling complaints); and
- information related to ACCP.

As the website for cross-border consumer redress becomes operational, it will be an opportune time for AMS to further consider the establishment of a regional consumer protection facility. Such a body could, in addition to coordinating cross-border complaint handling and redress schemes, provide research support and training in very practical areas of consumer agency design, governance and operations.

Key features for Model 7: Cross border redress

- an important consumer protection function for dealing with cross-border issues
- build on existing ASEAN work program
- could link with similar international schemes
- work already underway in ASEAN
- consistent with the ASEAN Economic Blueprint
- recommended in the ASEAN Consumer protection Road Mapping report

³ www.aseanconsumer.org

Appendix 1: Source Documents

The following is a summary of source documents which have been used for the development of an assessment framework for ASEAN complaints and redress mechanisms and for the development of models for complaint handling and redress mechanisms in ASEAN

COMPLAINT HANDLING SYSTEMS:

The International and Australian Standard, Customer satisfaction—Guidelines for complaint handling in Organisations AS/ISO 10002: 2006

This International Standard provides guidance for the design and implementation of an effective and efficient complaints-handling process for all types of commercial or non-commercial activities, including those related to electronic commerce. It is intended to benefit an Organisation and its customers, complainants and other interested parties.

The information obtained through the complaints-handling process can lead to improvements in products and processes and, where the complaints are properly handled, can improve the reputation of the Organisation, regardless of size, location and sector. In a global marketplace, the value of an International Standard becomes more evident since it provides confidence in the consistent treatment of complaints.

It sets out the guiding principles for an effective complaint handling system and the appropriate framework; planning and design considerations; key aspects of operation of the complaint handling process; and key aspects of maintenance and improvement of the system.

The Why and How of Complaint Handling; Bill Dee, Standards Australia 2005

This guide is intended to assist those involved in complaint handling/dispute management, by giving explanations of the Standards and practical suggestions on their application. The guide is intended for all of those involved with complaint handling/dispute management. This includes all companies particularly those involved in dispute schemes such as those for financial services, telecommunications, private health insurance, and utilities. The guide is also intended for government agencies, particularly those with a large public interface, as well as non-government Organisations.

It explains why it is important to have a complaint handling system; setting up a system; the day to day running of the system; and maintaining the system in good order. It also provides useful appendices on selection criteria for complaint handling personnel; how to process oral complaints; and good investigation practice.

The Better Practice Guide to Complaint Handling, produced by the Commonwealth Ombudsman, Australia; 2009

This guide was designed for government agencies, but is well suited for other bodies, such as large businesses. It describes five elements of effective complaint handling:

- *Culture:* Agencies must value complaints as a means of strengthening their administration and improving their relations with the public.
- *Principles:* An effective complaint handling system must be modelled on the principles of fairness, accessibility, responsiveness, efficiency and integration.
- *People:* Complaint handling staff must be skilled and professional.

- *Process*: The seven stages of complaint handling—acknowledgment, assessment, planning, investigation, response, review, and consideration of systemic issues—should be clearly outlined.
- *Analysis*: Information about complaints should be examined as part of a continuous process of organisational review and improvement.

A strong complaint handling system is built on all five elements. A good system managed by skilled staff will be less effective if an agency's culture is antagonistic towards complainants. A defective system can hamper the work of a committed agency with skilled staff. Staff who lack the skill and commitment to handle complaints properly can undermine a system that is otherwise ideal.

Aspects of the International Standard, Quality management — Customer satisfaction — Guidelines for dispute resolution external to Organisations ISO 10003:2007

This International Standard provides guidance for Organisations to plan, design, develop, operate, maintain and improve effective and efficient external dispute resolution for product-related complaints. Dispute resolution gives an avenue of redress when Organisations do not remedy a complaint internally. Most complaints can be resolved successfully within the Organisation, without the need for further time-consuming and more adversarial procedures.

This International Standard can be used to

- design a dispute-resolution process and decide when to offer dispute resolution to complainants, and
- select a dispute-resolution provider (hereinafter referred to as 'provider') that is able to meet an Organisation's specific needs and expectations.

Organisations are encouraged to plan, design, develop, operate, maintain and improve a dispute-resolution process in conjunction with a customer satisfaction code of conduct and internal complaints-handling process, and to integrate them with the Organisation's quality or other management systems.

This International Standard can assist individuals and Organisations in evaluating the effectiveness, efficiency and fairness of an Organisation's dispute-resolution process. Implementation of this International Standard can:

- provide flexible dispute resolution that, in comparison with court-based processes, can be less expensive, easier and quicker, especially in disputes across borders;
- help to enhance customer satisfaction and loyalty;
- provide a benchmark against which individuals and Organisations can evaluate claims by Organisations and providers that they operate in an effective, efficient and fair manner;
- help to inform potential users of dispute resolution about the conditions of access, cost and the legal consequences;
- enhance the ability of an Organisation to identify and eliminate causes of disputes;
- improve the way complaints and disputes are handled in the Organisation;
- provide additional information that can contribute to improvement of the Organisation's processes and products;
- improve the Organisation's reputation or avoid damage to it;
- improve domestic and international competitiveness;
- provide confidence of fair and consistent treatment of disputes throughout the global marketplace.

The Australian Benchmarks for Industry-Based Consumer Dispute Resolution Schemes.

These benchmarks were developed to apply primarily to nationally-based customer dispute schemes set up under the auspices of an industry. The benchmarks are constituted by key practices which it is hoped many schemes will adopt. Industries should consider the applicability of each of the key practices to their sector taking in to account the industry's size, resources and complaint history. However, where possible, the use of these benchmarks by all customer dispute schemes is encouraged.

The benchmarks have a three-fold purpose. They are meant to act as a guide to good practice for those industry sectors which intend setting up a scheme to resolve disputes between their industry members and individual consumers of their goods or services. For existing schemes they will provide objective guidance on the practices to aim for in the operation of such schemes. They will also serve as a guide for consumers in giving them some idea of what they should expect from such schemes. They have been adopted in New Zealand as well as Australia. The benchmarks are: accessibility; independence; fairness; accountability; efficiency; and effectiveness.

International Ombudsman Institute's Practitioner's Guide to Evaluating Ombudsman Offices.

This is a guide for Ombudsman bodies on how to conduct an evaluation of their office and its operations. It covers evaluation strategies; questions for self-evaluation; developing a logic model; applicability of international standards, client surveys; and statistical reporting. This is a guide that can profitably be considered more widely than just by Ombudsmen.

CONSUMER REDRESS SCHEMES:

Australian National Principles for Resolving Disputes, April 2011.

This is a simple, but important, statement of the seven principles that set out a fundamental approach to dispute resolution that is consistent with better access to a just outcome.

National Principles for Resolving Disputes and supporting Guide of the National Alternative Resolution Advisory Council, Australian National Alternative Dispute Resolution Advisory Council, 2011.

This expands on the seven principles, and provides information to help understand more about managing and resolving disputes, including information about: what ADR (alternative dispute resolution) is and the National Principles for Resolving Disputes

- how to identify a dispute
- what can be done to prevent disputes
- ways of resolving a dispute
- ADR processes to help resolve a dispute.

ADR describes a collection of processes that can be used to help resolve disputes.

European Small Claims Procedure, Official Journal of the European Union, July 2007.

This is Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

The Regulation establishes a European procedure for small claims (the European Small Claims Procedure), intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure is available to litigants as an alternative to the procedures existing under the laws of the Member States.

The Regulation eliminated the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure.

The Regulation applies, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements.

It does not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority.

It is an interesting guide to the structure and processes of procedures necessary to resolve cross border small claims.

Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes, European Commission, November 2011.

A substantial proportion of European consumers encounter problems when buying goods and services in the internal market. In 2010, this was the case for approximately 20% of European consumers. Despite a generally high level of consumer protection guaranteed by legislation,

problems encountered by consumers are often left unresolved. The losses incurred by European consumers because of problems with purchased goods or services are estimated at 0.4% of the EU GDP.

In order to address this problem, the European Commission issued a directive requiring that Member States shall ensure that all disputes between a consumer and a trader arising from the sale of goods or the provision of services can be submitted to an ADR entity, including through online means. In order to fulfil their obligation, Member States may use existing ADR entities and adjust their scope of application, if needed; or they may create new ADR entities or a residual cross-sectoral entity.

The Directive covers disputes between consumers and traders arising from the sale of goods or the provision of services. Member States are also required to ensure that consumers can obtain assistance when they are involved in a cross-border dispute. Member States may delegate responsibility for this task to their centres of the European Consumer Centre Network (ECC-net) which currently performs the function of guiding consumers to the ADR entities competent to deal with their cross-border disputes.

Under the Directive, ADR entities are encouraged to become members of networks of ADR entities in sector-specific areas when they deal with disputes in that area. In addition, the Directive encourages cooperation between ADR entities and national authorities entrusted with the enforcement of consumer protection legislation.

The Directive sets out requirements relating to accessibility, expertise, principles to underlie ADR procedures, information provision, and monitoring.

Consumer Dispute Resolution and Redress in the Global Marketplace, OECD, 2006.

This publication contains an overview of OECD member country frameworks for consumer dispute resolution and redress.

Part I focuses on the different mechanisms that have been put in place to respond to the varying nature and characteristics of consumer disputes including: internal complaint handling processes; payment cardholder protections; alternative dispute resolution; small claims courts; private collective action lawsuits; legal actions by consumer associations; and government obtained redress. Part II examines the impediments to obtaining monetary remedies for consumers in cross-border cases. The paper aims to identify the elements of effective domestic frameworks for consumer dispute resolution and redress, examine how these frameworks can better address cross-border cases, and consider how increased international cooperation could improve the effectiveness of judicial remedies across-borders.

Recommendation of the Council on Consumer Dispute Resolution and Redress, OECD, 2007.

The OECD Committee on Consumer Policy (CCP) worked towards the development of a harmonised framework for effective dispute resolution and redress mechanisms that would apply to both domestic and cross-border transactions. In 2004, the CCP embarked on a comprehensive study of dispute resolution and redress. In a 2005 analytical report, the CCP presented an overview of Member country frameworks, which served as a background for an OECD Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace, held in Washington, DC on 19-20 April 2005.

The report and discussions at the workshop revealed significant legal and practical impediments to adequately resolving consumer disputes with cross-border elements, thereby pointing to the need for Member countries to provide consumers with more effective and comprehensive dispute resolution and redress mechanisms. On the basis of this preparatory work, the CCP decided to develop the present Recommendation setting out principles for an effective and comprehensive dispute resolution and redress system that would also be applicable to domestic and cross-border disputes. Taking into consideration of the rapid growth in electronic commerce, the Recommendation intends to provide consumers with confidence that their claims arising from both online and offline transactions with business will be settled in a fair and effective manner.

The Recommendation sets out common principles for Member countries on mechanisms for consumers to resolve disputes and obtain redress for economic harm resulting from transactions with businesses involving goods or services, including transactions across borders. It is intended to apply solely to complaints initiated by or on behalf of consumers, and not to complaints initiated by businesses against consumers or another business. The Recommendation is primarily aimed at third-party dispute resolution and redress mechanisms. It recognises that consumer disputes can often be resolved directly by the relevant business and those consumers and businesses should 1st attempt to resolve their disputes directly before seeking recourse through third-party mechanisms.

The document sets out principles that should apply to:

- Dispute resolution and redress mechanisms for consumers acting individually;
- Dispute resolution and redress mechanisms for consumers acting collectively;
- Mechanisms for consumer protection enforcement authorities to obtain or facilitate redress on behalf of consumers;
- Cross-border disputes;
- Private sector co-operation;
- Mechanisms for collecting consumer complaints and analysing marketplace trends; and
- Education and awareness.

Australian Practice Manual for Tribunals, Council of Australian Tribunals, 2012.

This is an extensive resource, covering all aspects of practice relevant to the work of dispute tribunals.

Chapters cover: the nature of tribunals including powers, key competencies required for members, and appeals; procedural fairness; conduct of hearings; decision-making processes including the giving of reasons and orders; communication including plain language and media relations; case flow management; and the conduct of tribunal members.

Tribunal Competency Framework, Council of Australian Tribunals, 2012.

This Framework has been produced to assist Tribunals in developing a Competency Framework suited to their particular needs. It provides a guide for newly appointed and experienced Members to the full range of critical abilities and qualities expected of them. Members should be able to demonstrate not only that they have achieved high levels of knowledge and technical competence, but that they have also developed the behaviours, motivation and values that are essential to professional excellence.

The Framework is divided into eight 'headline' competencies, associated qualities and performance indicators as follows:

- Knowledge and Technical skills
- Fair Treatment

- Communication
- Conduct of Hearings
- Dispute Resolution: Decision Making and Alternative Dispute Resolution (ADR)
 - Decision Making
 - Alternative Dispute Resolution
- Efficiency
- Professionalism and Integrity
- Leadership and Management

Each headline competency represents a core element of the role of a Tribunal Member. All of these are integrated to produce 'professional excellence'. Professionalism, as opposed to technical competence, represents the highest standards of conduct that the community has a right to expect of Tribunal Members and to which all Members should aspire.

Performance indicators are associated with each competency. They provide examples of how competency would be demonstrated in practice. The examples given of necessary knowledge, skills and behaviour are intended to be illustrative – they are not exhaustive.

Members are not expected to meet all performance indicators on appointment. Competency in each area will develop over time, through experience and participation in a structured professional development program.

The Framework is designed to provide fair and transparent criteria to facilitate the appraisal of Tribunal Members. It will also facilitate a competency based approach to training to ensure that an individual's on-going professional development needs are effectively met.

The practical application of the Framework and its future development will be the subject of continuous evaluation.

This is a particularly useful reference for members of dispute resolution schemes.

Alternative Dispute Resolution Guidelines of the Australian Administrative Appeals Tribunal, 2006.

This contains a useful summary of various factors that need to be considered when referring a matter to Alternative Dispute Resolution. When considering whether an ADR process will assist in resolving the matter, the following should be taken into account:

- Capacity of the parties to participate effectively;
- Whether the parties are represented;
- Context of the application including the history of past applications by the applicant;
- Any identified need for urgency;
- Number of parties involved in the application;
- Complexity of the issues in dispute;
- Bona fides of the parties;
- Cultural factors;
- The safety of the parties;
- The likelihood of an agreed outcome or reduced issues in dispute;
- Relative cost to the parties of an ADR process and a determination;
- Case management requirements of the Tribunal;
- Whether an ADR process might offer a more flexible solution than a determination; and
- Whether public interest issues require a determination.

When deciding which ADR process would be most appropriate the Member or Conference Registrar should exercise sound judgment and discretion, taking into account a range of considerations.

Appendix 2: List of industry sponsored Ombudsman schemes in Australia

- **[Credit Ombudsman](#)**
The Credit Ombudsman Service Limited (COSL) is the external dispute resolution scheme for the non bank credit industry, approved by the Australian Securities and Investments Commission (ASIC).
- **[Employee Ombudsman \(SA\)](#)**
Provides advice and assistance to South Australian employees.
- **[Energy and Water Ombudsman NSW](#)**
Provides an independent way of resolving customer complaints about all [electricity](#) and [gas](#) suppliers in New South Wales and some [water suppliers](#).
- **[Energy and Water Ombudsman Victoria](#)**
EWOV has the power to investigate and resolve disputes between Victorian consumers and their electricity, gas and water companies.
- **[Energy and Water Ombudsman Queensland](#)**
Provides complaint investigation and dispute resolution services to residential and small business energy customers across Queensland and water customers in south east Queensland.
- **[Energy Industry Ombudsman SA](#)**
Investigates and resolves disputes between South Australian electricity and gas customers and their providers.
- **[Energy Ombudsman TAS](#)**
Investigates and resolves disputes between Tasmanian energy customers and their providers.
- **[Energy Ombudsman WA](#)**
Investigates and facilitates the resolution of complaints from residential and small business customers in Western Australia about their electricity or gas company
- **[Financial Ombudsman Service](#)**
FOS is an independent External Dispute Resolution service which you can use if you are unable to resolve your dispute through your financial service provider's Internal Dispute Resolution process. FOS independent dispute resolution processes cover complaints about financial services including banking, credit, loans, general insurance, life insurance, financial planning, investments, stock broking, managed funds and pooled superannuation trusts.
- **[Private Health Insurance Industry Ombudsman](#)**
Provides an independent service to help consumers with health insurance problems and enquiries.
- **[Produce and Grocery Industry Ombudsman](#)**
Resolves disputes over supply of fresh produce and processed foods to markets and retailers.
- **[Public Transport Ombudsman VIC](#)**
Deals with complaints about Victorian public transport that members of the community have been unable to resolve directly with the public transport operators.
- **[Superannuation Complaints Tribunal](#)**
An independent Tribunal set up by the Australian Government to deal with complaints about superannuation funds, annuities and deferred annuities, and Retirement Savings Accounts.
- **[Telecommunications Industry Ombudsman](#)**
Deals with complaints that consumers have not been able to resolve with their telephone or internet company.

Appendix 3: Assessment Report of Current Complaint and Redress Systems

Insert Output 3

Assessment Report of Current Complaint and Redress Systems