

**Oilcode DRA Annual Report**  
**1 July 2010 to 30 June 2011**

**Enquiries**

During this period the DRA has received 8 enquiries (7 from retailers and 1 from a commission agent).

**Mediation Requests and Appointments**

There has been 1 request received during this period. A mediator was appointed and mediation resulted in a successful outcome.

The DRA has not made a determination during this period.

**Requests for Other Assistance**

During this period the DRA has adopted a more pro-active approach to consider and assist with matters at an early stage (where appropriate).

**Nature of Disputes Mediated and Unmediated**

The first enquiry related to a former retail agreement and the outstanding issue of deposit money being returned to the ex-retailer. The retailer had not yet approached the other party, but had heard of our office through a colleague whom we have helped with a similar problem. We suggested initial direct contact and negotiation. The enquirer was happy to contact the other party and would mention that the DRA had suggested they attempt to resolve the matter directly at this early stage. The matter has not needed to proceed beyond this.

The second enquiry related to interim period negotiations regarding a change of owner (oil company) and new agreements with commission agents/retailers. There was concern expressed regarding perceived treatment as a new franchisee rather than long-term operator and the time period surrounding termination clauses and takeover. The enquirer was seeking initial advice regarding their rights and was referred to the ACCC and a specialist solicitor for further guidance. The enquirer did not wish to use the DRA service at this point in time.

A separate enquiry was made regarding unpaid invoices for periods during 2004 and 2005. This matter pre-dated the Code and we were therefore not able to provide assistance. The enquirer was of two minds as to whether they wanted to chase the outstanding amount, given the lapse in time. We provided contact details for the small claims process in their State should they wish to pursue the matter.

Another enquiry related to a dispute over whether leakage of a product had occurred and if so, what product had leaked on site. 2 expert reports had produced contradictory outcomes and issues of responsibility had arisen. This matter proceeded to mediation and was successfully resolved.

A separate enquiry focused on end of lease arrangements, particularly regarding a decontamination clause and responsibility for implementation of this. The enquirer was at the early stage of seeking information before negotiating with the other party. We provided our information pack and explained the DRA process should they wish to use the service at a later date.

Another enquiry received during this period related to alleged inflation of invoiced pricing, adjusted for ambient quantity. This enquirer was not certain of whether this was the case and it was suggested that they initially approach the other party directly. We provided our information pack and explained the DRA process should they wish to contact us for further assistance. The enquirer was happy to approach the other party in the first instance and has not requested further assistance at this stage.

One enquiry related to a former retail agreement and the outstanding issue of deposit money being returned to the ex-retailer. The retailer's attempts to raise the matter with the supplier had been unsuccessful. The DRA office engaged in early facilitation with both parties and the matter was successfully settled as a result.

The final enquiry related to the replacement of the fuel re-selling agreement with a new franchise agreement subsequent to the purchase of the original supplier by a second supplier company. The enquirer opted not to replace the old agreement with the new and the old agreement was hence being terminated. It transpired that the matter had previously been heard in court and that there had already been a court-based mediation of the dispute. Based on the information provided, the DRA was satisfied under section 44(1) of Oilcode that there was no reason for the parties to attempt any further negotiation and that therefore Oilcode was not available to assist.

### **How the Enquirer was made aware of the DRA**

Service Stations Australia (NSW) and the Australian Competition and Consumer Commission each referred 1 enquirer to the DRA (2 in total). Solicitors made 2 referrals. 3 enquirers located our service through the DRA website while another was made aware of our service via word of mouth.

### **Emerging Trends**

We do not perceive there to be an emerging trend during this period.

## **Identification of Systemic Problems Faced by the Petroleum Industry**

We have not identified any such problems at this stage.

### **Conclusion**

I believe that the availability of Oilcode encourages parties to settle disputes at an early stage. Without Oilcode many disputes either would not be resolved or resolved so early.

David Newton  
Dispute Resolution Adviser  
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