

# **Telecommunications Consumer Safeguards**

International and sectoral  
comparisons of redress and  
complaints handling models for  
consumers and small businesses

Department of Communications and the Arts

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# 1. Introduction

## 1.1. Context

On 17 April 2018, the Minister for Communications, Senator the Hon Mitch Fifield, released Terms of Reference for a Consumer Safeguards Review (the Review) that will develop the next generation of consumer safeguards for the telecommunications industry in Australia. The first part of the Review will consider and make recommendations to ensure consumers have access to effective consumer redress and complaints handling mechanisms; this includes the most appropriate complaints handling, resolution and redress model, as well as whole-of-system complaints data collection, analysis and reporting that provides transparency and holds industry accountable for its performance.

While many safeguards are already delivered through broader consumer protection provisions under the Australian Consumer Law, some form of telecommunications-specific safeguards may remain necessary. In this context, the Review will have regard to:

- the need for regulatory or institutional reform
- existing consumer protection frameworks
- the form safeguards should take
- where in the supply chain they should be applied
- the regulatory approach to be taken.

A key component of an effective consumer safeguards framework is the ability for consumers to access redress and complaints handling mechanisms. As the scale of the telecommunications industry increases and the market becomes more complex, it is important that consumers can access these mechanisms in a quick, fair and transparent way.<sup>1</sup>

This paper provides information about the current consumer redress and complaints handling mechanisms in Australia, in comparable countries around the world, and in other industries in Australia.

It should be noted that due to the variance in definitions and applications across countries and industries there is additional nuance that cannot be captured using only information gathered in a desktop review. The purpose of this paper is to provide a baseline level of information to inform consultation on complaints and redress safeguards; it should not be considered exhaustive or used in isolation for decision making.

In this paper, ‘complaints handling’ refers to the procedures, governance structures, and any fees or funding associated with complaints made by consumers about telecommunications services (and other industries, where specified). Redress refers to the outcomes of complaints made by consumers.

Comparative countries included in this paper are:

- Canada
- Germany (and the European Union as the governing framework)
- New Zealand
- Singapore
- South Korea
- United Kingdom (UK)
- United States of America (USA).

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<sup>1</sup> Communications Alliance Ltd (2017) In line with ‘Our Key Commitments to Consumers’ section of the Telecommunications Consumer Protections Code, available at: [https://www.acma.gov.au/-/media/Networks/Regulation/pdf/TCP\\_code\\_C628\\_2015\\_incorp\\_Variation\\_No1\\_2017-pdf.pdf?la=en](https://www.acma.gov.au/-/media/Networks/Regulation/pdf/TCP_code_C628_2015_incorp_Variation_No1_2017-pdf.pdf?la=en).

Other industries used for comparative purposes in Australia were Australian utilities (electricity and gas).

The majority of countries and industries considered in this paper use Alternative Dispute Resolution (ADR) to informally resolve disputes between telecommunications providers and consumers. Examples of ADR include, but are not limited to, negotiation and mediation.<sup>2</sup> These processes are typically facilitated by a party that does not hold an interest in the outcome of the dispute, that is, an independent third party. The primary focus of this paper is on the comparability of ADR processes across countries.

## **1.2. Consumer complaints and redress framework for telecommunications in Australia**

### **1.2.1 Governance**

The Australian Communications and Media Authority (the ACMA) has primary responsibility for regulating the Australian telecommunications industry in Australia. As such, the ACMA monitors compliance with redress and complaints handling processes, but it does not conduct these processes itself.

In Australia, telecommunications service providers must be given the opportunity to address complaints relating to their service, at least in the first instance.<sup>3</sup> All service providers are required to have complaints handling processes, in line with the Australian Standard on complaints handling (AS/NZS 10002:2014 Guidelines for complaint management in organisations), and from 1 July 2018 the ACMA's Telecommunications (Consumer Complaints Handling) Industry Standard 2018. The ACMA has the ability to enforce compliance with these processes.

The Telecommunications Industry Ombudsman (TIO) provides an independent dispute resolution service for complaints that remain unresolved through a service provider's complaints handling processes.

The TIO Scheme is established under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS). The TIO's Company Constitution establishes Telecommunications Industry Ombudsman Ltd – an independent statutory corporation – as the company which corresponds to the one specified in the TCPSS, and enables the creation and amendment of an associated Terms of Reference (ToRs). These ToRs set out the types of complaints the TIO can handle, and how it handles them.

The TIO was established in 1993 to resolve disputes in the telecommunications industry. Today, it covers individual and small business consumer complaints relating to telephone and internet services (both fixed and mobile). All carriers and eligible carriage service providers have a legal obligation under the TCPSS to join and comply with the TIO Scheme. The ACMA can, however, declare that a carrier or carriage service provider is exempt from the requirement to join the TIO scheme.<sup>4</sup>

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2 Attorney-General's Department (2012) Your Guide to Dispute Resolution, available at: <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/Your%20Guide%20to%20Dispute%20Resolution.pdf>.

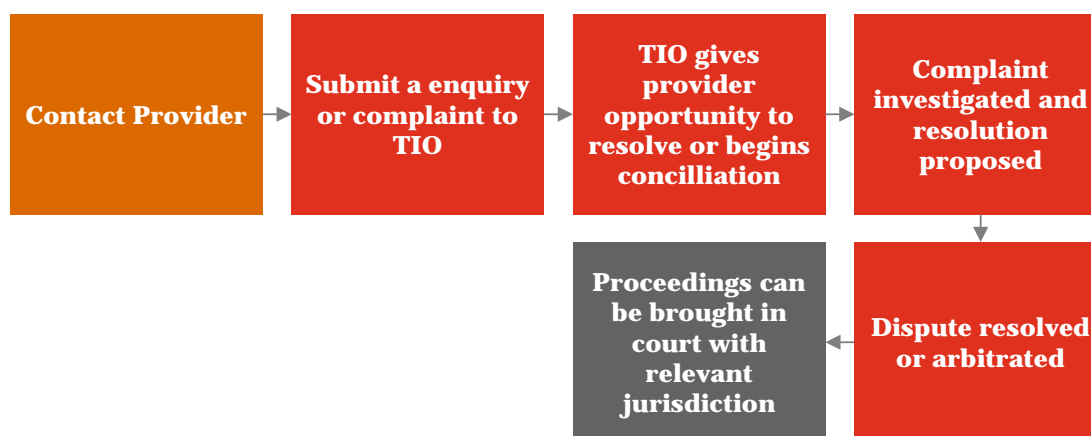
3 Communications Alliance Ltd (2017) Telecommunications Consumer Protections Industry Code, available at: [https://www.acma.gov.au/-/media/Networks/Regulation/pdf/TCP\\_code\\_C628\\_2015\\_incorp\\_Variation\\_No1\\_2017-pdf.pdf?la=en](https://www.acma.gov.au/-/media/Networks/Regulation/pdf/TCP_code_C628_2015_incorp_Variation_No1_2017-pdf.pdf?la=en).

4 Telecommunications (Consumer Protection and Service Standards) Act 1999, Part 6.

An independent review of the TIO was undertaken in 2017, as required under the TCPSS Act.<sup>5</sup> The review examined the effectiveness of the TIO’s complaint resolution processes, systems and resources; its approach to systemic issues in improving telecommunications practices; its ability to resolve disputes; and its engagement with stakeholders. Overall, the review’s report acknowledged the TIO’s role and successes in contributing to improved consumer outcomes in the telecommunications sector, but also made a number of findings and recommendations regarding the operation of the TIO. In particular, the review recommended the TIO take a stronger stance to support the regulatory framework and expand its role in investigating systemic issues. It also recommended that the TIO take further steps to understand its data and how it can be used to improve the consumer experience. The TIO has commenced the implementation of some of the recommendations and has indicated that it will continue to incorporate the findings of the review and its recommendations over the next year.<sup>6</sup>

### 1.2.2 Procedure

**Figure 1: Stylistic summary of the current framework in Australia**



The ACMA recommends that consumers raise complaints directly with their service provider in the first instance, and provides consumers with guidance on how to do so on its website. Where a complaint cannot be resolved directly with the service provider, the complaint can be escalated to the TIO. The TIO encourages consumers and providers to resolve disputes together by reaching a mutually acceptable outcome with minimal involvement from the Ombudsman. The TIO uses ADR procedures to assist consumers and service providers to resolve issues; these include referral, conciliation, investigation, and determinative resolution.

Matters raised with the TIO are classified as either an enquiry, or a complaint at one of four levels. Unresolved matters are escalated through the complaint levels until the matter is resolved.

Once a complaint is received by the TIO, the following procedures are taken:

- **Level 1** – complaint is referred to the provider’s contact to give the provider another chance to resolve the complaint.
- **Level 2** – complaint is conciliated by the TIO to facilitate a resolution agreed to by the consumer and provider.

<sup>5</sup> TCPSS Act, section 133A.

<sup>6</sup> TIO (2017) Telecommunications Industry Ombudsman Independent Review Report, available at: [https://www.tio.com.au/\\_data/assets/pdf\\_file/0005/253643/2017\\_0929-TIO-Report-Final.pdf](https://www.tio.com.au/_data/assets/pdf_file/0005/253643/2017_0929-TIO-Report-Final.pdf).

- **Level 3** – complaint is investigated to establish the facts and assess what is a fair and reasonable solution. During an investigation, the TIO can require the provider to send any information or documents it has that are relevant to the complaint, and the provider is obliged to give this information.
- For simple complaints regarding disputes of \$1,200 or less, the TIO may decide the resolution if the consumer and provider cannot agree.
- **Level 4** – complaint is investigated to further establish the facts and assess a fair and reasonable solution. Level four investigations typically follow from a level three investigation where the complaint was not resolved and involves amounts of over \$1,200, or the dispute is complex. If the complaint continues to remain unresolved, the TIO has the power to decide the resolution of the complaint.

When the TIO is satisfied that a complaint does not warrant further consideration, or when it stops handling a complaint, it will close the complaint. For level 1 complaints this occurs when the complaint has been registered and all relevant information has been included in the record. For conciliation at level 2, the complaint is closed when the consumer informs the TIO that they have accepted the provider's resolution.<sup>7</sup>

Following level 3 and 4 investigations, the TIO may close the complaint if the consumer does not provide the required information to the TIO within 20 business days from when the response to their complaint was sent. If the TIO decides the resolution of the complaint following an investigation, the complaint is closed once the consumer signs and returns the TIO Release Form and the provider has complied with the decision.<sup>8</sup>

A complaint may also be closed if a release form is not received from the consumer within 15 business days.

The TIO does, however, have the power to reopen a complaint if the consumer presents further information that the TIO believes warrants further consideration.

Prior to closing a level 3 or 4 complaint, the TIO will also assess whether there have been any breaches of industry codes and will report any confirmed code breaches to the ACMA.

Where a consumer is dissatisfied with the outcome of a TIO resolution, they can request the TIO to review its investigation. A review involves an independent assessment of the investigation by a senior TIO dispute resolution specialist who has never worked on that case.

Consumers are also under no obligation to accept any TIO decision or review outcome concerning their complaint, and remain entitled to take their complaint to another body – such as the Small Claims Tribunal in their State or Territory (for example, the Victorian Civil and Administrative Tribunal) – or to seek independent legal advice. Generally, parties must adhere to a tribunal's decision unless they are seeking to appeal on a point of law.<sup>9</sup>

### **1.2.3 Funding**

The TIO service is free of charge to consumers and is funded by participating service providers. Under current arrangements, the TIO's income is generated solely from telecommunications companies who are charged fees for the complaints resolution services in accordance with the TIO's ToRs – that is, service providers are only charged if the TIO receives a complaint from one of their consumers.

<sup>7</sup> TIO (2014) Closure, available at: <https://www.tio.com.au/about-us/policies-and-procedures/closure>.

<sup>8</sup> TIO (2014) Closure, available at: <https://www.tio.com.au/about-us/policies-and-procedures/closure>.

<sup>9</sup> VCAT (Accessed June 2018) Appeal a VCAT decision, available at: <https://www.vcat.vic.gov.au/steps-to-resolve-your-case/what-to-expect-after-the-final-hearing/appeal-a-vcat-decision>.

#### **1.2.4 Use of complaints data**

Complaints data can be used as an important diagnostic tool in assessing industry performance. It can also provide guidance to policy-makers and regulators about the need for interventions and where, if needed, these would best be targeted.

The TIO publishes annual and bi-annual reports on the complaints it receives, including the number of complaints, top complaint issues, top ten postcodes for complaints, state and territory breakdown and comparisons with previous reporting periods.

The TIO also provides complaints data to Communications Alliance Ltd to inform its quarterly 'Complaints in Context' reports which specify the number of new complaints lodged against participating service providers as a proportion of the total services those providers have in operation.<sup>10</sup> 'Complaints in Context' reports complaints data for Telstra, Optus, Vodafone, amaysim and Pivotel.<sup>11</sup>

#### **1.2.5 How disputes with wholesalers are settled**

The TIO typically operates on the basis that the service provider is responsible for the relationship with the consumer and for resolving complaints<sup>12</sup>. As a result, the TIO generally refers complaints to the retail service provider and requests for information are made directly to that company. Changes to the TIO's Terms of Reference in late 2017 strengthened its ability to tell another TIO member (not just the member against which the complaint was made) to provide information or documents relevant to a complaint within a given timeframe and to cooperate in helping to resolve a complex complaint.<sup>13</sup>

In instances where complaints made by a consumer about a retailer may, in fact, be regarding an issue caused by the wholesaler, the retailer is often required to manage the complaint with the wholesaler. Only in instances where the complaint arises due to direct contact between the consumer and the wholesaler or carrier will the TIO direct the complaint to that wholesaler or carrier.

#### **1.2.6 Options for consumer redress/compensation**

The TIO will first assist the consumer and service provider to come to a resolution between them. If a complaint cannot be resolved by referral, conciliation or investigation the Ombudsman or Deputy Ombudsman may decide the resolution of the Complaint.<sup>14</sup> A decision may be made at level 3 for disputes of less than \$1,200. Complaints regarding disputes of greater than \$1,200 must progress to a level 4 investigation before a decision can be made. The Ombudsman has the power to make a binding decision against a member organisation up to a value of \$50,000, or a recommendation up to \$100,000.<sup>15</sup>

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10 Communications Alliance Ltd (2018) Telecommunications Complaints in Context, available at: [http://commsalliance.com.au/\\_data/assets/pdf\\_file/0014/60017/Report-Jan-Mar-2018-v.02.pdf](http://commsalliance.com.au/_data/assets/pdf_file/0014/60017/Report-Jan-Mar-2018-v.02.pdf).

11 Communications Alliance Ltd (2018) Telecommunications Complaints in Context, available at: [http://commsalliance.com.au/\\_data/assets/pdf\\_file/0014/60017/Report-Jan-Mar-2018-v.02.pdf](http://commsalliance.com.au/_data/assets/pdf_file/0014/60017/Report-Jan-Mar-2018-v.02.pdf).

12 TIO (2017) Telecommunications Industry Ombudsman Independent Review Report, available at: [https://www.tio.com.au/\\_data/assets/pdf\\_file/0005/253643/2017\\_0929-TIO-Report-Final.pdf](https://www.tio.com.au/_data/assets/pdf_file/0005/253643/2017_0929-TIO-Report-Final.pdf).

13 TIO (2017) Telecommunications Industry Ombudsman Independent Review Report, available at: [https://www.tio.com.au/\\_data/assets/pdf\\_file/0005/253643/2017\\_0929-TIO-Report-Final.pdf](https://www.tio.com.au/_data/assets/pdf_file/0005/253643/2017_0929-TIO-Report-Final.pdf).

14 TIO (2016) Standard resolution methods and outcomes, available at: <https://www.tio.com.au/about-us/policies-and-procedures/standard-resolution-methods-and-outcomes>.

15 TIO (Accessed June 2018) About us, available at: <https://www.tio.com.au/about-us>.



## 2. Comparison to other countries

This section has been broken down into the following parts:

- initial complaints process
- ADR governance
- procedure
- fees and funding.

### 2.1 Initial complaints process

Most countries require telecommunication service providers to have processes for resolving disputes internally in the first instance. The process of raising a complaint and moving from internal dispute resolution to external dispute resolution, such as that provided by the TIO, varies between nations.

**Table 1: Comparison of initial stages of the complaints process**

	Australia	Canada	Germany	New Zealand	Singapore	South Korea	UK	USA	Australian Energy
Requirement for consumers to attempt to resolve issues with provider before accessing ADR	✓	✓	✓	✓	×	✓	✓	×	✓
Requirements for providers to have internal Complaints Handling process	✓	×	✓	✓	?	×	✓	×	✓
Requirement for providers to participate in an ADR scheme	✓	✓	×	×	×	×	✓	×	✓
Mechanisms to address complaints about wholesalers	✓	×	✓	✓	×	×	✓	×	✓

#### 2.1.1 Raising a complaint

In the majority of countries, the first step in the complaints handling process is for the consumer to approach their telecommunications provider with the problem so that it can be resolved directly with them. In many cases, the consumer is discouraged from submitting a complaint to an external dispute resolution body unless they have first approached their provider. This is the case in Australia, the UK, Canada, New Zealand and South Korea. For example, when submitting a complaint through the TIO website, consumers are required to confirm that they have contacted their telecommunications provider about the complaint. If they have not, they cannot progress with the online complaints process.<sup>16</sup>

This process is intended to facilitate a resolution directly between the consumer and service provider without the intervention or cost of a third party. In other countries such as the United States, while consumers are encouraged to take their issue directly to their provider, they are not, however, required to confirm that they have taken this step before submitting a complaint with the external dispute resolution body.

<sup>16</sup> TIO (Accessed June 2018) Submit a complaint, available at: <https://www.tioonline.com.au/consumers/new/>.



### **2.1.2 Complaints handling by the service provider**

Most countries considered in this paper require telecommunications service providers to have internal complaints handling procedures in place. These procedures outline processes for handling complaints and provide the consumer with information about escalating a complaint to an external complaints handling body (where available).

In the UK, the telecommunications regulator sets general conditions for communications providers to establish and maintain procedures for handling complaints and resolving disputes. Under the UK's Code of Practice for Complaints Handling, a communication provider must have complaints handling procedures that are transparent, accessible, effective and facilitate access to ADR. Similarly, in New Zealand, the members of the New Zealand Telecommunications Forum have a Customer Complaints Code 2016 that sets out the rights and obligations of providers and their consumers with regards to handling complaints. There are also requirements in Canada for providers to ensure consumers are aware of the free complaints resolution service provided by the Commission for Complaints for Telecom-Television Services.<sup>17</sup> Although less comprehensive than a consumer complaints code, there is also a requirement across all European countries for providers to inform consumers about their right to file a formal complaint and to provide them with information regarding initiating ADR processes.<sup>18</sup>

In the UK consumers must wait eight weeks from when they first raise a complaint with their provider or be provided with a deadlock letter from their service provider before they can take the complaint to the dispute handling body. In New Zealand, the process may be referred to the Telecommunications Dispute Resolution (TDR) when deadlock arises. This may occur when a referral number is provided or more than six weeks have passed since the complaint was submitted and no final response has occurred.<sup>19</sup> This is intended to allow the consumer to demonstrate that they have attempted to resolve the issue with their provider and that they were unable to reach a satisfactory resolution.

### **2.1.3 Compulsory alternative dispute resolution participation**

If a complaint cannot be resolved directly with the provider there is typically an external ADR process in place that can assist the parties to resolve their dispute. These may be led by government, industry or consumer bodies.

In Australia and the UK, telecommunications providers must be signed up to their respective ADR schemes. In Canada, providers are required to participate in the ADR body. If they do not participate, and a complaint is made against them that is within the mandate of the ADR body, the company must participate once it receives notification from the ADR body. The ADR scheme in New Zealand is industry-led as it is in Australia; however, it is not mandatory for all communications providers to be members. In practice the vast majority of New Zealand providers are part of that country's scheme, which covers 95 per cent of New Zealand's telecommunications consumers.<sup>20</sup>

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17 Commission for Complaints for Telecom-television Services (2018) Compliance monitoring, available at: <https://www.ctcs-cprst.ca/about-ctcs/participating-service-providers/compliance-monitoring/>.

18 EUROPA (2018) Informal Dispute Resolution for Consumers, available at: [https://europa.eu/youreurope/citizens/consumers/consumers-dispute-resolution/informal-dispute-resolution/index\\_en.htm](https://europa.eu/youreurope/citizens/consumers/consumers-dispute-resolution/informal-dispute-resolution/index_en.htm).

19 New Zealand Telecommunications Forum (2016) Customer Complaints Code, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/customer-complaints-code.pdf>.

20 New Zealand Telecommunications Forum (2016) Our Members, available at: <https://www.tcf.org.nz/industry/about-us/our-members/>.

At the other end of the spectrum, Singapore does not currently require service providers to be part of an ADR scheme and the only formal complaints process is through the Small Claims Tribunal. A consumer-led advocacy body, the Consumers Association of Singapore, is a non-profit NGO which arranges some optional ADR processes. This includes mediation which consumers and their providers may voluntarily engage in. However, this is expected to change as Singapore is in the process of introducing an ADR process for telecommunications services. The relevant legislation has been passed which enables the regulator to implement or approve a scheme. Consultations are ongoing to determine the specific structure of the body.<sup>21</sup>

#### **2.1.4 Complaints regarding wholesalers**

For most countries, the ADR scheme provides clear direction regarding how it deals with disputes between consumers and retail service providers. Where the issue results from a problem with the network operator or wholesaler, however, the process in many countries is unclear. In Australia, the TIO has the power to address complaints about retailers, and about wholesalers in some circumstances – for example, if the issue relates to a land access dispute or damage to property. Changes to the TIO's ToRs in late 2017 also enable it to request information from any member (not just the member against whom the complaint was made), including wholesale service providers, when resolving complaints. The changes also strengthen the obligation on all members of the supply chain to cooperate with TIO decisions.

Similar to Australia, New Zealand has a clear approach to dealing with complaints regarding wholesalers. The Telecommunications Dispute Resolution body receives and addresses complaints made against a Retail Scheme Member, but can also refer aspects of the complaint to Wholesale Scheme Members if required.

In comparison, the position in the UK is that only the communications provider (retailer) is responsible for fixing faults with broadband, landline, and mobile services. Even where the network is managed by another party, the consumer is only required to deal with their direct service provider.<sup>22</sup> How the retailer manages complaints where the operator is at fault is unclear.

## **2.2 ADR governance**

The governance arrangements for ADR processes addressing consumer complaints in the telecommunications industry vary significantly around the world. However, there are common design features and principles which are seen across systems.

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<sup>21</sup> Part 4C, *Telecommunications Act 1999*.

<sup>22</sup> Ofcom (2018) Broadband and landline faults and problems, available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/problems/broadband-landline-faults>.

**Table 2: Comparison of ADR body characteristics**

	Australia	Canada	Germany	New Zealand	Singapore	South Korea	UK	USA	Australian Energy
Single ADR body	✓	✓	✓	✓	✗	✓	✗	✗	✓
ADR body is private	✓	✓	✗	✓	✓	✗	✓	✗	✗
Consumer advocacy ADR body	✗	✗	✗	✗	✓	✗	✗	✗	✗
ADR body is part of the regulator	✗	✗	✓	✗	✗	✗	✗	✓	✗
ADR body is an industry organization	✗	✗	✓	✓	✗	✗	✗	✗	✓
ADR body is a government agency that is not the regulator	✗	✗	✗	✗	✗	✓	✗	✗	✗

Note: (✓) represents where a system employs a particular tool or element in any part of the dispute resolution process. Differences in the scope or application are discussed in the text below. (✗) represents where a system currently does not use this tool in its dispute resolution process.

The key differentiators in the structure of the bodies revolve around the number of ADR avenues and the design of the governance structure. Most jurisdictions have a single government approved or government-run body which undertakes the ADR process. The bodies can be led by consumer groups, industry, the regulator, or another government agency. For the purposes of this paper, where multiple bodies exist (for example where each state has their own system), these are considered a single body because each consumer will only have access to one avenue. Some countries have one body responsible for dispute resolutions, while others have multiple. In Australia, the TIO is the only body responsible for facilitating ADR of telecommunications disputes escalated from the service providers. In the UK, providers must be a member of one of two dispute resolution schemes.

Internationally, there is a mix of government regulators, government consumer agencies and private agencies with varying degrees of power relating to ADR processes. Australia is similar to the other countries investigated in this paper in its structuring of the TIO, the independent yet legislatively established dispute resolution body. The UK mandates that telecommunications providers are part of an external dispute mechanism. The regulators approve the bodies and review them to ensure they are still providing an appropriate process. This differs from alternative systems in which legislation or industry bodies determine the appropriate body. In New Zealand, the TDR is a private, industry-funded, and government regulated body which is operated by members at their expense to prevent escalation into litigation. It operates in a similar fashion to the UK and Australian systems, as well as the Canadian dispute resolution body, the Commission for Complaints for Telecom-Television Services. These systems are simplified in that there is a single body and they bring potential benefits from operating externally to the government.

South Korea, by contrast, employs a government-run consumer agency which has multiple layers to its dispute resolution process. Differently to most peer countries, the United States' regulator – the Federal Communications Commission – operates the dispute resolution mechanism.

In its current form, the Singaporean model is significantly different from other nations. This model enables consumers to access a variety of privately offered mediation services. These are organised by different bodies including a consumer protection non-profit, the Law Society, and the State Courts. While the State Courts have the power to compel those in dispute to engage in a form of ADR prior to coming to the Small Claims Tribunal, it is not a necessary element of the process. This model does, however, reduce the number of steps required to reach a binding decision. An ADR arrangement similar to that of Australia has been legislated and is in the process of being designed.

## 2.3 Procedure

ADR bodies in different countries use a range of processes to help consumers resolve disputes with their service providers. Common methods used include:

- **Mediation** – a process where participants, with the assistance of an independent person as the mediator, work together to reach a mutual agreement.
- **Conciliation** – a similar process to mediation, however, the conciliator’s role may be more directive and advisory.
- **Ombudsman services** – provide independent review and investigation services including managing ADR processes, investigating an issue, providing opinions and making recommendations.
- **Arbitration** – a process where the parties to a dispute present their views to an independent person (the arbitrator), who then makes a decision based on this information.
- **Investigation** – a process where an independent person collects information regarding the dispute, reviews the information and makes a decision to resolve the dispute.<sup>23</sup>

While ADR is common across countries, the governance, process and outcomes vary.

**Table 3: Comparison of ADR body characteristics**

	Australia	Canada	Germany	New Zealand	Singapore	South Korea	UK	USA	Australian Energy
A body arranges mediation	x	✓	✓	✓	✓	x	x	✓	✓
A body arranges conciliation	✓	x	✓	x	✓	✓	x	x	✓
A body has ombudsman services	✓	x	x	x	x	x	✓	x	✓
A body arranges arbitration	✓	x	✓	✓	✓	✓	x	x	✓
A body conducts investigations	✓	✓	✓	x	x	x	✓	✓	✓
A body awards financial compensation	✓	✓	x	✓	x	✓	✓	x	✓

Note: (✓) represents where a system employs a particular tool or element in any part of the dispute resolution process. Differences in the scope or application are discussed in the text below. (x) represents where a system currently does not use this tool in its dispute resolution process.

<sup>23</sup> Attorney-General’s Department (2012) Your Guide to Dispute Resolution, available at: <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/Your%20Guide%20to%20Dispute%20Resolution.pdf>.

A common theme is that the regulators have the power to conduct investigations to find facts about the complaints and the services provided, with the exceptions of New Zealand, Singapore and South Korea. The Consumer Association of Singapore oversees the ADR process and invites the two parties to discuss and reach an agreement, but they are not authorised to conduct an investigation.

## 2.4 Fees and funding

Funding attached to dispute resolution is often dependent on the governance of the responsible body in relation to industry and government.

**Table 4: Comparison of fees and funding**

	Australia	Canada	Germany	New Zealand	Singapore	South Korea	UK	USA	Australian Energy
Fees are charged to complainants	x	x	x	x	✓	x	x	x	x
Fees are charged to service providers	✓	✓	x	✓	✓	x	✓	x	✓
There is other government funding	x	x	✓	x	x	✓	x	✓	✓

Note: (✓) represents where a system employs a particular tool or element in any part of the dispute resolution process. Differences in the scope or application are discussed in the text below. (x) represents where a system currently does not use this tool in its dispute resolution process.

The vast majority of countries and industries considered in this paper provide consumers access to ADR services free of charge; only the proposed Singaporean ADR body charges fees to consumers to access external complaints handling processes (see Singapore section below).

ADR organisations are typically funded through fees charged to service providers. In Australia, the TIO is funded by participating service providers. Its income is generated solely from telecommunications companies who are charged fees for the complaints resolution services in accordance with the TIO ToRs. Service providers are only charged if the TIO receives a complaint from one of their consumers.<sup>24</sup>

The UK has a similar model to Australia; however, in addition to complaints-based fees, service providers are required to pay an annual subscription which is based on the type of business operated and the month in which the provider joins the scheme.<sup>25</sup> The Canadian model and the New Zealand model also include a complaints based fee and an annual fee to providers; however, the annual fee is dependent on the revenue of the service provider. In Canada, service providers with a total Canadian revenue of greater than \$10 million pay a fee proportional to the revenue reported to the ADR body by all providers within this category. Service providers with less than \$10 million in Canadian revenues pay a nominal annual

<sup>24</sup> Telecommunications Industry Ombudsman (2018) Funding, available at: <https://www.tio.com.au/about-us/funding>.

<sup>25</sup> Ombudsman Services (2018) Subscription and case fees, available at: <https://www.ombudsman-services.org/for-participating-companies/new-business/funding>.

fee.<sup>26</sup> In New Zealand, there are four tiers of subscription fees which are based on member revenue.

Where the dispute resolution body is part of a government agency, however, funding tends to be through other sources, rather than through membership and other provider fees. For example, the South Korean Consumer Agency is a government body that has statutory functions and funding sources. Similarly, the Federal Commission of Complaints in the USA is a government agency that is funded by regulatory fees collected by the agency.

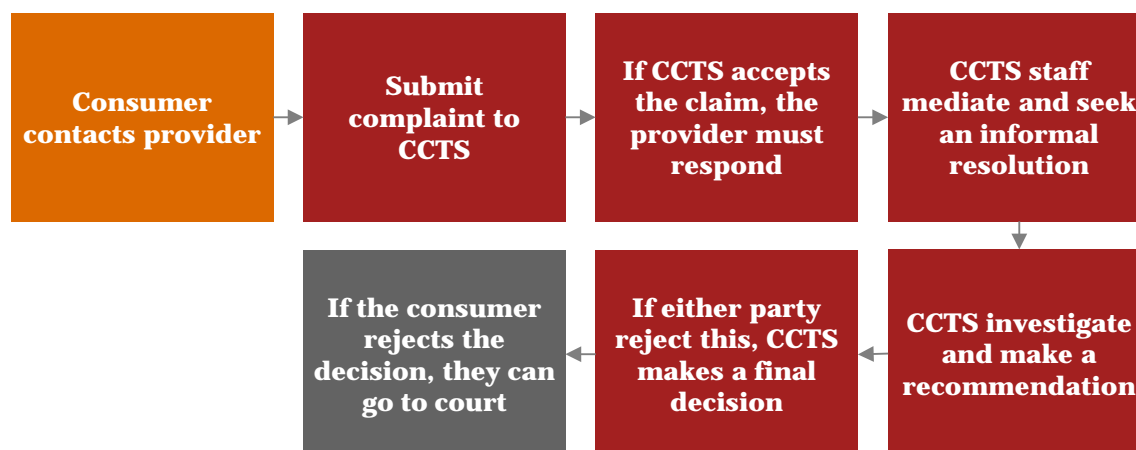
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<sup>26</sup> Commission for Complaints for Telecom-television Services (2018) Structure and funding, available at: <https://www.ccts-cprst.ca/about-ccts/governanace/structure-and-funding/>.

## 3. International models

### 3.1 Canada

Figure 2: Stylistic summary of the current framework in Canada



#### 3.1.1 Governance

In Canada, the Canadian Radio-Television and Telecommunications Commission (CRTC) acts as the main regulator of the telecommunications industry. It regulates and supervises broadcasting and telecommunications services (wireline and wireless) in the public interest. It is a specialised government agency established to develop, implement and enforce regulatory policies on the Canadian communication system. The CRTC also has some complaints handling functions which include addressing complaints about accessibility of telephone services and internet traffic management practices of internet service providers. For other complaints about telecommunications services, the CRTC typically directs consumers to the Commission for Complaints for Telecom-Television Services (CCTS).<sup>27</sup>

The main complaints handling body is the CCTS. This body was created in 2007 in response to a direction by the Canadian Government to the CRTC to create an independent, industry-funded agency to resolve consumer and small business complaints regarding telecommunications.<sup>28</sup> This Canadian ADR body is a private not-for-profit corporation incorporated under the *Canada Not-for-profit Corporations Act 2009*.<sup>29</sup> All companies that provide local telephone, long distance, internet and wireless services to Canadian consumers or small businesses are required to participate in the ADR body. If they do not participate and a complaint is made against them that is within the mandate of the ADR body, the company must participate once it receives notification from the ADR body.<sup>30</sup>

27 Commission for Complaints for Telecom-television Services (2018) How to make a complaint about your telephone service, available at: <https://crtc.gc.ca/eng/phone/plaint.htm>.

28 Commission for Complaints for Telecom-television Services (2018) A short history, available at: <https://www.ccts-cprst.ca/about-ccts/overview/a-short-history/>.

29 Commission for Complaints for Telecom-television Services (2018) Structure and funding, available at: <https://www.ccts-cprst.ca/about-ccts/governance/structure-and-funding/>.

30 Commission for Complaints for Telecom-television Services (2018) Non-compliant providers, available at: <http://www.ccts-cprst.ca/about-ccts/participating-service-providers/non-compliant-providers/>.



The ADR body helps consumers and small business (with a monthly bill of less than \$2500) with a range of complaints about products and services offered in the telecommunications sector including:

- phone and internet services
- compliance with contract terms
- billing disputes and errors
- service delivery
- credit management.

The ADR body is required to administer the mandatory code of conduct for service providers issued by the CRTC when investigating complaints. These include the Deposit and Disconnection Code 2011 and the Wireless Code 2013. The ADR body also tracks and reports publicly on service provider compliance with the codes.<sup>31</sup>

### **3.1.2 Procedure**

Before lodging a complaint with the ADR body, consumers must first try to resolve the problem with their service provider. All service providers have a responsibility to make their consumers aware of the free complaints resolution service provided by the ADR body, and are bound by the ADR body's Procedural Code 2017 when handling complaints. That is, the service provider is expected to cooperate with the ADR body when a consumer files a complaint by providing information as required and responding in the designated time frames.<sup>32</sup> Where the consumer is unable to resolve the complaint directly with their service provider, they are entitled to bring the complaint to the ADR body.

The ADR body will first undertake an assessment to determine whether the complaint falls within its mandate. It then collects all the information required for it to initiate the process. This is typically done through the use of its online questionnaire. If the complaint is outside its mandate it will seek to refer it to an appropriate organisation.<sup>33</sup>

Once the ADR body has accepted the complaint it will notify the service provider, who must attempt to resolve the matter with the consumer. The service provider is required to report back to the ADR body within 30 days regarding whether the complaint has been resolved. On receipt of the service provider's response, the ADR body evaluates whether the issue has been resolved to the consumer's satisfaction. If not, it assesses the likelihood of the complaint being resolved informally. If so, the complaint is assigned to an ADR body mediator to assist the parties to resolve the dispute.<sup>34</sup>

If a complaint cannot be resolved through informal processes it will be formally investigated by the ADR body to determine whether the service provider reasonably performed its obligations to the consumer. A complaint may be dismissed at any stage if it is found the service provider reasonably fulfilled its obligations. At the completion of the investigation, the ADR body may make a written recommendation for resolving the complaint which may include requiring a simple apology or explanation from the service provider or a

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31 Commission for Complaints for Telecom-television Services (2018) A short history, available at: <https://www.ctcs-cprst.ca/about-ctcs/overview/a-short-history/>.

32 Commission for Complaints for Telecom-television Services (2018) Compliance monitoring, available at: <https://www.ctcs-cprst.ca/about-ctcs/participating-service-providers/compliance-monitoring/>.

33 Commission for Complaints for Telecom-television Services (2018) Complaints process explained, available at: <https://www.ctcs-cprst.ca/for-consumers/complaints/complaints-process-explained/>.

34 Commission for Complaints for Telecom-television Services (2018) Complaints process explained, available at: <https://www.ctcs-cprst.ca/for-consumers/complaints/complaints-process-explained/>.

compensation payment. Both the consumer and the service provider have two days to consider the recommendation and determine whether to accept or reject it.<sup>35</sup>

If either party rejects the recommendation, it must provide reasons why to the ADR body so it can consider these when issuing its final decision. The ADR body may either maintain its recommendation or change it based on the reasons provided when it gives its final decision.

The consumer may either reject or accept this final decision. If the consumer accepts the final decision, it is binding on the service provider and must be completed. If the consumer rejects the final decision, the service provider is not required to do anything. However, the consumer retains all other legal rights and remedies to redress.<sup>36</sup>

### **3.1.3 Funding**

Operations of the ADR body are funded by participating service providers. The service provider is required to pay both an annual fee and a complaints based fee. The complaints-based fee is charged for each consumer complaint accepted by the ADR body.

Annual fees are dependent on the Canadian revenue of the service provider. Service providers with a total Canadian revenue of greater than \$10 million pay a fee proportional to the revenue reported to the ADR body by all providers within this category. Service providers with less than \$10 million in Canadian revenues pay a nominal annual fee.<sup>37</sup>

The service is provided free to consumers.

### **3.1.4 Use of complaints data**

The ADR body publishes its decisions on its website. This includes all decisions made by the ADR body where a complaint was not able to be resolved between the parties and the ADR body's recommendation was rejected. The decision is published in the language in which it was originally written and includes the original recommendation, objections to the recommendation, analysis and the final decision.<sup>38</sup>

The ADR body also collects data and reports on the number of complaints received about participating providers and the complaints resolved, as well as the most common issues by service type.<sup>39</sup> Detailed reporting of the types of issues raised in complaints are included in the annual report of the ADR body.

In addition, the ADR body publicly reports performance measures regarding the way it handles complaints. Key Performance Indicators reported included:

- answer phone calls within 120 seconds
- process written communications within three calendar days
- complaints concluded at the pre-investigation stage within 40 days of acceptance
- complaints concluded at the investigation stage within 60 days referral to investigations.

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35 Commission for Complaints for Telecom-television Services (2018) Complaints process explained, available at: <https://www.ctcs-cprst.ca/for-consumers/complaints/complaints-process-explained/>.

36 Commission for Complaints for Telecom-television Services (2018) Complaints process explained, available at: <https://www.ctcs-cprst.ca/for-consumers/complaints/complaints-process-explained/>.

37 Commission for Complaints for Telecom-television Services (2018) Structure and funding, available at: <https://www.ctcs-cprst.ca/about-ctcs/governance/structure-and-funding/>.

38 Commission for Complaints for Telecom-television Services (2018) Decisions, available at: <https://www.ctcs-cprst.ca/for-consumers/complaints/decisions/>.

39 Commission for Complaints for Telecom-television Services (2018) Performance report, available at: <https://www.ctcs-cprst.ca/codes-stats-and-reports/ctcs-reports/ctcs-performance-report/>.

### 3.1.5 How disputes with wholesalers are settled

In Canada, the CCTS is able to deal with complaints against wholesale providers as they are required to be participants of the ADR body. Mandatory participation in the CCTS has been in effect for the largest telecommunications service providers, including network carriers, since December 2007.

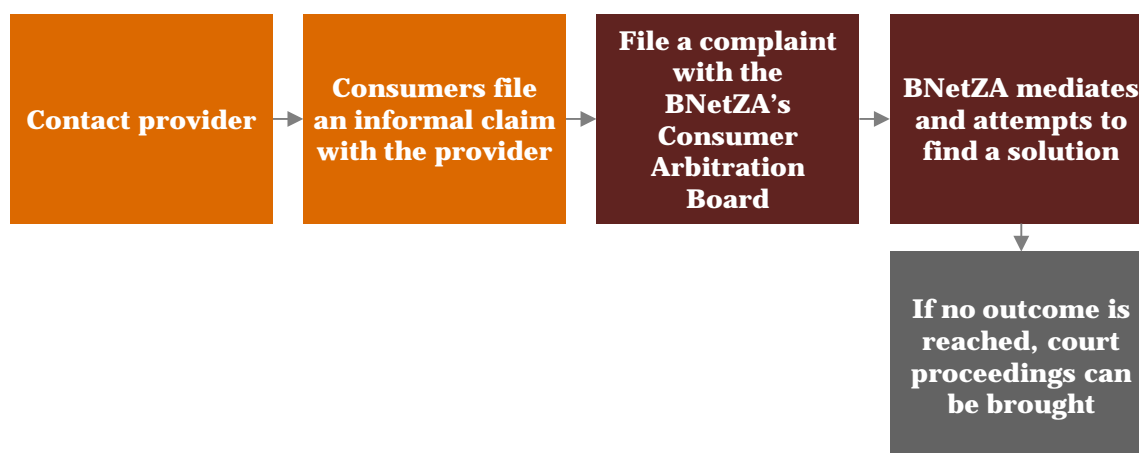
Participation in the CCTS for wholesale consumers or resellers of telecommunications services, however, has only recently been required. All telecommunications service providers in Canada providing services within the scope of the CCTS' mandate must be participants of the ADR process subject to the operation of a participation trigger mechanism. That is, where providers are not signed up to the ADR body and a complaint is made against them, the company must sign up within 30 days of being notified about the complaint.<sup>40</sup>

### 3.1.6 Options for consumer redress/compensation

Following an investigation, the ADR body can recommend the provider make an action or refrain from an action. For example, they may require correction of a billing error, connection or disconnection of a service or waiver of charges. The resolution may also involve an apology or an explanation. In some cases, the ADR body has the power to recommend the service provider make a payment to the consumer as compensation for any loss, damage, or inconvenience suffered, up to a maximum of \$5,000.<sup>41</sup>

## 3.2 Germany

Figure 3: Stylistic summary of the current framework in Germany



40 Canadian Radio-television and Telecommunications Commission (2016) Broadcasting and Telecom Regulatory Policy CRTC 2016-102, available at: <https://crtc.gc.ca/eng/archive/2016/2016-102.htm>.

41 Commission for Complaints for Telecom-television Services (2018) Complaints process explained, available at: <https://www.ccts-cprst.ca/for-consumers/complaints/complaints-process-explained/>.

### 3.2.1 Governance

In Germany, the Bundesnetzagentur (also called the Federal Network Agency) is the primary regulatory authority for the telecommunications industry; it also performs regulatory duties in the postal, rail, and energy industries.<sup>42</sup> The mandate for the Agency's decisions comes from the German *Telecommunications Act 1996* (German Act).<sup>43</sup>

The regulator is comprised of departments and ruling chambers. The departments perform central administrative and specialised functions such as economic and legal policy issues of regulation, while chambers are responsible for decision making with respect to regulation.<sup>44</sup> These arrangements are consistent with the legislative requirement of the European Union for regulatory decision-making mechanisms to be transparent and independent.

Within the regulator is the Consumer Arbitration Board – this is a mediation body which exists to resolve consumer level disputes with telecommunications service providers. It is unclear whether the Board is established under a ruling chamber.

### 3.2.2 Procedure

When making a complaint, consumers must first approach their service provider. If the issue is not resolved at this level, and the claim is for a breach of a right granted under the German Act, they may approach the Consumer Arbitration Board. This is undertaken on a voluntary basis by both parties. The dispute must not be the subject of a present lawsuit. The agency provides consumers (that are raising disputes with their provider) information on their rights, and advises consumers on the quality and completeness of evidence presented to support dispute resolution.

The regulator begins what is typically an eight week process of mediation which occurs by exchanging of written messages. Should the participants be unable to reach a mediated agreement they may then proceed to civil litigation.<sup>45</sup> As the ADR process is voluntary consumers also have the option to skip this process and begin litigation immediately.

### 3.2.3 Funding

The multi-sector regulator in Germany acts as an independent higher federal authority in scope of the Federal Ministry of Economics and Energy. As a government agency, the Bundesnetzagentur is funded by Germany's federal government.<sup>46</sup> The Bundesnetzagentur's dispute resolution services are provided free of charge for the parties in the dispute.<sup>47</sup>

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42 Bundesnetzagentur (Accessed June 2018) The Bundesnetzagentur's duties, available at: <https://www.bundesnetzagentur.de/EN/General/Bundesnetzagentur/About/Functions/>.

43 Telecommunications Act (Telekommunikationsgesetz, TKG) 1996, available at: <https://germanlawarchive.iuscomp.org/?p=692>.

44 Bundesnetzagentur (Accessed June 2018) Ruling Chambers, available at: [https://www.bundesnetzagentur.de/EN/Service-Funktionen/RulingChambers/RulingChambers\\_node.html](https://www.bundesnetzagentur.de/EN/Service-Funktionen/RulingChambers/RulingChambers_node.html).

45 Bundesnetzagentur (Accessed June 2018) Activity Report 2017 Consumer Arbitration Board Telecommunications, available at: [https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Verbraucher/Verbraucherschlichtung/taetigkeitsbericht\\_VS\\_2017.pdf?\\_\\_blob=publicationFile&v=3](https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Verbraucher/Verbraucherschlichtung/taetigkeitsbericht_VS_2017.pdf?__blob=publicationFile&v=3).

46 Bundesnetzagentur (2014) Regulation and competitiveness, available at: [http://chairgovreg.fondation-dauphine.fr/sites/chairgovreg.fondation-dauphine.fr/files/attachments/140926\\_Groebel\\_Annegret\\_0.pdf](http://chairgovreg.fondation-dauphine.fr/sites/chairgovreg.fondation-dauphine.fr/files/attachments/140926_Groebel_Annegret_0.pdf).

47 Bundesnetzagentur (Accessed June 2018) Activity Report 2017 Consumer Arbitration Board Telecommunications, available at: [https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Verbraucher/Verbraucherschlichtung/taetigkeitsbericht\\_VS\\_2017.pdf?\\_\\_blob=publicationFile&v=3](https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Verbraucher/Verbraucherschlichtung/taetigkeitsbericht_VS_2017.pdf?__blob=publicationFile&v=3).

### 3.2.4 How disputes with wholesalers are settled

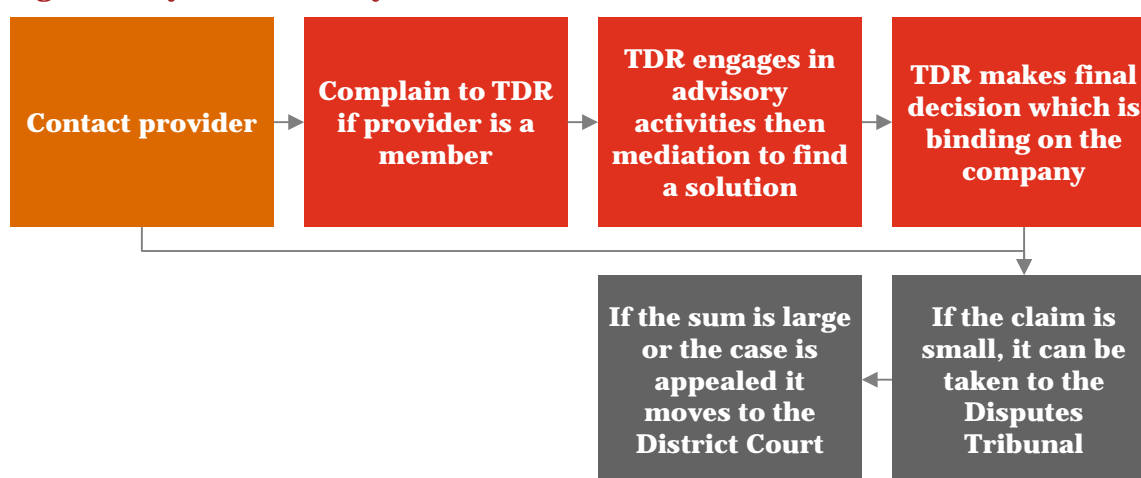
It is unclear from publicly available data whether consumers can make a direct complaint about a wholesaler or whether they have to rely upon the retailer to act on their behalf. The German regulator has the legal authority to take punitive action against a wholesale provider for a violation of the regulations. This includes the ability to stop wholesale providers from providing particular services.

### 3.2.5 Consumer redress and compensation

Given the body arranges only mediation, it cannot impose particular penalties upon participants. Arrangements between parties are entirely voluntary. Other breaches however can result in fines.

## 3.3 New Zealand

Figure 4: Stylistic summary of the current framework in New Zealand



### 3.3.1 Governance

The Telecommunications Forum (TCF) is an industry body that was founded in 2002 and is funded by its members. The TCF set up the Telecommunications Dispute Resolution (TDR) body.<sup>48</sup> Although not all service providers are members, its members provide service to 95 per cent of telecommunications consumers in New Zealand.<sup>49</sup> Under the New Zealand *Telecommunications Act 2001* (NZ Act), it is only mandatory for providers of fibre to the premises services to be members of a dispute resolution. The TDR mandate is driven by the requirements laid out in the NZ Act.

The Disputes Tribunal (an informal court where the complainant cannot be represented by a lawyer and there are no judges) was formed out of the *Disputes Tribunal Act 1988*. This is available to telecommunications consumers either as the next step from or alternative to the TDR process.

In New Zealand, the telecommunications market is regulated by the Commerce Commission,<sup>50</sup> which is not involved in the dispute management process.

48 New Zealand Telecommunications Forum (2018) Our Structure, available at: <https://www.tcf.org.nz/industry/about-us/our-structure/>.

49 New Zealand Telecommunications Forum (2016) Our Members, available at: <https://www.tcf.org.nz/industry/about-us/our-members/>.

50 New Zealand Commerce Commission (2018) Telecommunications, available at: <http://www.comcom.govt.nz/regulated-industries/telecommunications/>.

### 3.3.2 Procedure

The steps a consumer must take to lodge and progress a telecommunications complaint are as follows:

1. The consumer makes a complaint to the provider:
  - a. If they are unhappy with the outcome or no outcome is decided on within six weeks, consumers receive a reference number from the provider which they take to the TDR.<sup>51</sup>
2. TDR:
  - b. Consumers make an informal complaint to TDR (their provider must be a member of the scheme, otherwise they must progress to the Disputes Tribunal).
  - c. TDR checks the details with the consumer's telecommunications company and looks at possible resolutions.
  - d. TDR starts discussions with the consumer and their telecommunications company to attempt to get a resolution.
  - e. TDR makes a final decision which may include financial compensation (binding on the provider).
3. If the consumer is still unhappy and their claim is less than NZ\$15,000 (or NZ\$20,000 if the parties agree) they can take it to the Disputes Tribunal.
4. If the sum is greater than \$15,000 or the consumer would like to appeal the Tribunal's decision, the case can be appealed to the District Court.<sup>52</sup>

### 3.3.3 Funding

The TCF body is funded by its members. An annual subscription fee and a per-complaint fee is charged. No charges are levied on consumers for the ADR process. There are four tiers of subscription fees which are based on the total revenue of the member. The fees and tiers are set by the TCF.<sup>53</sup>

Should the complaint be escalated to the Disputes Tribunal due to either a deadlock or the provider not being a member of the TDR, there are a variety of fees which are levied, depending on the nature of the claim.<sup>54</sup>

### 3.3.4 Use of complaints data

The Commerce Commission compiles a report based upon data from a variety of agencies.<sup>55</sup> The consumer data is used to give a picture of issues concerning consumers and helps to inform its decision making, including the identification of priority issues for the following year. Telecommunications received the largest number of complaints in 2016-17 of all industries considered (including domestic appliance retail and motor vehicle retail and sales).

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<sup>51</sup> Telecommunications Dispute Resolution (Accessed June 2018) How the complaint process works, available at: <https://www.tdr.org.nz/making-a-complaint/how-the-complaint-process-works>.

<sup>52</sup> Disputes Tribunal of New Zealand (2017) Disputes, available at: <https://www.disputestribunal.govt.nz/>.

<sup>53</sup> Telecommunications Dispute Resolution (Accessed June 2018) Costs, available at: <https://www.tdr.org.nz/scheme-information/becoming-scheme-member/costs>.

<sup>54</sup> Disputes Tribunal of New Zealand (2017) Forms & Fees, available at: <https://www.disputestribunal.govt.nz/forms-and-fees/>.

<sup>55</sup> New Zealand Commerce Commission (2017) Consumer issues report, available at: <http://www.comcom.govt.nz/the-commission/consumer-reports/consumer-issues-report/>.



TDR collects data to identify the recurring issues for consumers, particularly those which impact upon a majority of telecommunications companies and their consumers. TDR will also approach members who experience frequent issues.<sup>56</sup>

### **3.3.5 How disputes with wholesalers are settled**

The TDR body can only process claims made against members. However, should a complaint be made against a Retail Scheme Member, aspects of it can be referred to the Wholesale Scheme Members if relevant.

The Disputes Tribunal, similar to other court-like systems, requires the consumer to identify the respondent when making an application. Accordingly, the consumer must decide if it is best to bring the action against the retail or wholesale provider.

### **3.3.6 Consumer redress and compensation**

The TDR body may award compensation to consumers based upon their claims against members. However, there are certain restrictions on the type of claim it can consider.<sup>57</sup> These include being unable to make claims for:

- loss of profits or indirect loss
- pain and suffering
- loss of business reputation
- inconvenience and mental distress
- costs involved in compiling or pursuing a complaint through the TDR process
- punitive damages.

The TDR will also only consider claims for up to NZ\$15,000.<sup>58</sup>

The Disputes Tribunal has the power to award damages, but only up to the limit of the tribunal's jurisdiction, which is for claims up to NZ\$15,000 (or \$NZ20,000 should both parties agree).

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<sup>56</sup> Telecommunications Dispute Resolution (Accessed June 2018) Recurring Issues, available at: <https://www.tdr.org.nz/about-tdr/recurring-issues>.

<sup>57</sup> New Zealand Telecommunications Forum (2016) Customer Complaints Code, available at: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/customer-complaints-code.pdf>.

<sup>58</sup> Telecommunications Dispute Resolution (Accessed June 2018) Types of disputed covered, available at: <https://www.tdr.org.nz/making-a-complaint/types-of-disputes-covered>.



## 3.4 Singapore

Figure 5: Stylistic summary of the current framework in Singapore



### 3.4.1 Governance

The Singaporean model for consumer dispute settlement in its current form involves little involvement by industry bodies or regulators. The industry regulator is the Info-Communications Media Development Authority of Singapore (IMDA).<sup>59</sup>

In 2016 it was proposed that an ADR mechanism would be implemented and run by the IMDA to reduce the current need to progress to the Small Claims Tribunal.<sup>60</sup> This is modelled on the ADR systems of other countries which are cheaper and less formal than a court or tribunal system. Development of the scheme has continued with a consultation period occurring in early 2018, however, the final details of the scheme and its jurisdiction have not yet been announced.

Within Singapore, there are multiple bodies which may conduct ADR, including the Consumers Association of Singapore. However, the lowest level body which can make and enforce binding decisions is the Small Claims Tribunal. This is an organ of the State Courts of Singapore within the national judiciary. It was established in 1985 as a method of providing a faster and less expensive method of resolving claims between consumers and suppliers.

All State Courts in Singapore reserve the option to refer a dispute to the State Courts Centre for Dispute Resolution before it moves to a trial.<sup>61</sup> The Small Claims Tribunal is less formal than higher courts in the system, and individuals are not represented by lawyers the hearings. The Tribunals hear claims not exceeding S\$10,000, although this limit can, however, be raised to S\$20,000 if both parties agree to it.<sup>62</sup>

### 3.4.2 Procedure

Under Singapore's current system, a consumer will usually follow this process to seek redress:

- The consumer first complains to the business.
- The consumer can then lodge a complaint with the Consumer Association of Singapore.

59 IMDA (2017) Regulations, Licensing and Consultations – Overview, available at: <https://www.imda.gov.sg/regulations-licensing-and-consultations/overview>.

60 IMDA (2016) Review Of The Telecommunications Act (Cap. 323) And Related Amendments To The Media Development Authority Of Singapore Act (Cap. 172), available at: [https://www.imda.gov.sg/-/media/imda/files/inner/pcdg/consultations/20160805\\_public-consultation-on-proposed-amendments-to-telecoms-act-and-mds-of-singapore-act/ta-and-mds-act\\_public-consultation-doc.pdf?la=en](https://www.imda.gov.sg/-/media/imda/files/inner/pcdg/consultations/20160805_public-consultation-on-proposed-amendments-to-telecoms-act-and-mds-of-singapore-act/ta-and-mds-act_public-consultation-doc.pdf?la=en).

61 State Courts of Singapore (Accessed June 2018) Overview of Alternative Dispute Resolution, available at: [https://www.statecourts.gov.sg/Mediation\\_ADR/Pages/Overview-of-Alternative-Dispute-Resolution.aspx](https://www.statecourts.gov.sg/Mediation_ADR/Pages/Overview-of-Alternative-Dispute-Resolution.aspx).

62 State Courts of Singapore (2017) About The Small Claims Tribunals, available at: <https://www.statecourts.gov.sg/SmallClaims/Pages/GeneralInformation.aspx>.

- The Consumer Association of Singapore will invite both parties to engage in mediation should they reach a deadlock. The main parties involved may then attend the mediation session and attempt to arrange a settlement agreement.
- If there is no agreement, the Consumer Association of Singapore will re-assess the arrangement or recommend other alternatives.
- The claim will then be filed with the Small Claims Tribunal which hands down a binding decision.

### **3.4.3 Funding**

The Consumer Association of Singapore is a non-profit organisation funded by membership fees. There are additional fees charged to parties when a complaint moves into mediation. The State Courts are partially funded by court fees which are charged to the applicants.

The proposed ADR body is expected to be self-sustaining with businesses and consumers (including small businesses) paying fees as complaints are put forward. The fees for eligible consumers are expected to start from S\$10 for mediation and S\$50 for adjudication.<sup>63</sup>

### **3.4.4 Use of complaints data**

It has been reported that the IMDA received approximately 2,000 complaints annually in the past two years relating to consumers' telecommunications providers.<sup>64</sup> The complaints data has been used to justify the development of the proposed ADR system, with a view to enabling a more effective method of mediation and then adjudication (where mediation is unsuccessful in resolving the dispute). Additionally, it will act as an incentive for providers to resolve disputes quickly.<sup>65</sup>

### **3.4.5 How disputes with wholesalers are settled**

Given the system escalates from optional mediation to a legally binding decision-making process, consumers can bring actions against whichever party they believe to be most appropriate.

### **3.4.6 Consumer redress and compensation**

The jurisdiction of the Small Claims Tribunal limits the size of the claim to S\$10,000. This limit can be raised to S\$20,000 if both parties agree to it. Additionally, in the telecommunications space, it will only consider claims arising from contracts for the sale of goods or services, or a legally binding infringement for damage to property.<sup>66</sup> Beyond this, consumers will need to move up within the court hierarchy.

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63 IMDA (2018) Consumer protection measures to be further enhanced through the Telecommunication and subscription TV Mediation-Adjudication Scheme, available at: <https://www.imda.gov.sg/about/newsroom/media-releases/2018/consumer-protection-measures-to-be-further-enhanced-through-the-telecommunication>.

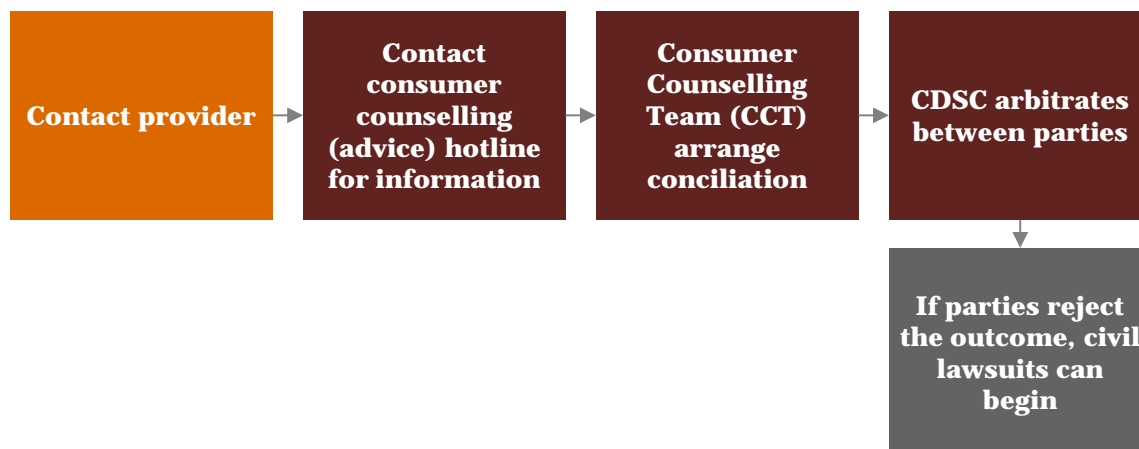
64 StraitsTimes (2018) New way to settle telco dispute resolution could kick in late this year, available at: <https://www.straitstimes.com/tech/new-way-to-settle-telco-disputes-could-kick-in-late-this-year>.

65 IMDA (2018) Consumer protection measures to be further enhanced through the Telecommunication and subscription TV Mediation-Adjudication Scheme, available at: <https://www.imda.gov.sg/about/newsroom/media-releases/2018/consumer-protection-measures-to-be-further-enhanced-through-the-telecommunication>.

66 State Courts of Singapore (2018) Before Filing A Claim, available at: <https://www.statecourts.gov.sg/SmallClaims/Pages/Before%20filing%20a%20claim.aspx>.

## 3.5 South Korea

Figure 6: Stylistic summary of the current framework in South Korea



### 3.5.1 Governance

In South Korea, the regulator responsible for the telecommunications sector is the Korea Communications Commission. The Commission is not responsible for direct consumer complaints but rather considers infringements of the laws (which includes broadcasting and telecommunications).

The body primarily responsible for the telecommunications consumer redress is the Korea Consumer Agency (KCA). This agency is not exclusive to the telecommunications industry as it handles consumer complaints from all sectors.

The KCA is the body through which consumers can seek redress and obtain legally binding decisions without resorting to the civil courts. This is a government body which was established in 1987 under the then Consumer Protection Act (now the *Framework Act on Consumers 2008*). It has various functions including consumer safety and redress, testing and inspections of standards and safety.<sup>67</sup>

### 3.5.2 Procedure

To seek redress, South Korean consumers will typically follow this process: <sup>68 and 69</sup>

1. A consumer must complain to the business first.
2. Should a deadlock arise, consumers then contact the 1372 Consumer Counselling Centre which is a hotline to provide advice on the options available to those who have experienced 'consumer damage'. This advice may be sufficient to negotiate a mutually acceptable outcome.
3. The issue can also be referred to the Consumer Counselling Team of the KCA to further assist negotiation and recommended conciliation when needed.

67 Korea Consumer Agency (Accessed June 2018) Purpose of Establishment, available at: [http://english.kca.go.kr/wpge/m\\_24/en4210.do](http://english.kca.go.kr/wpge/m_24/en4210.do).

68 Li, Grace (2015) A comparative study of the communications consumer redress scheme in Australia, Japan and Korea, available at: <https://telsoc.org/ajtde/2015-06-v3-n2/a14>.

69 Korea Consumer Agency (Accessed June 2018) Consumer Dispute Settlement Commission, available at: [http://english.kca.go.kr/wpge/m\\_19/en4300.do#effect](http://english.kca.go.kr/wpge/m_19/en4300.do#effect).

4. If the parties fail to accept the recommendation made by the Consumer Counselling Team within 30 days, the Consumer Dispute Settlement Commission can conduct 'mediation' and make a decision on the matter, however, the quasi-judicial nature of the outcome reflects a more arbitration-like arrangement.
5. If either party rejects the decision made by the Consumer Dispute Settlement Commission within 15 days, civil lawsuits will begin. Otherwise the decision is legally binding.

### **3.5.3 Funding**

The KCA, and its various organisations are all government bodies which have statutory functions and funding sources. The KCA receives funding from the Broadcast Communications Development Fund which is funded by government appropriations.<sup>70</sup> The KCA does not levy fees on consumers who complain or access its consumer counselling services. As part of the Agency, the Consumer Dispute Settlement Commission supports all parties to reach a common settlement at no additional cost.<sup>71</sup>

### **3.5.4 Use of complaints data**

The KCA tracks the number of consumer counselling cases it receives through its 1,372 Consumer Counselling Centre. In 2016 and 2017, cell phone/smart phone related complaints was the largest category.<sup>72</sup> This information can be used to assess enforcement priorities or future policy decisions.

### **3.5.5 How disputes with wholesalers are settled**

A central element of this process is the consumer counselling. A key component of this is the identification of the correct party against whom it is appropriate to take further action. It is unclear if the consumer counselling service records complaints which are caused by wholesalers as a complaint against a retailer, nor what the appropriate method of redress is.

### **3.5.6 Consumer redress and compensation**

Under the *Framework Act on Consumers* can seek compensation for damages through the dispute mechanism process.<sup>73</sup> This process has quasi-judicial implications and the jurisdiction to award damages as appropriate. This implies it has similar processes to a court whereby it determines facts and draws conclusions to form an official action.

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70 Korea Communications Agency (Accessed June 2018) Broadcasting Communications Development, available at: [http://kca.kr/open\\_content/en/work/activities9.jsp](http://kca.kr/open_content/en/work/activities9.jsp).

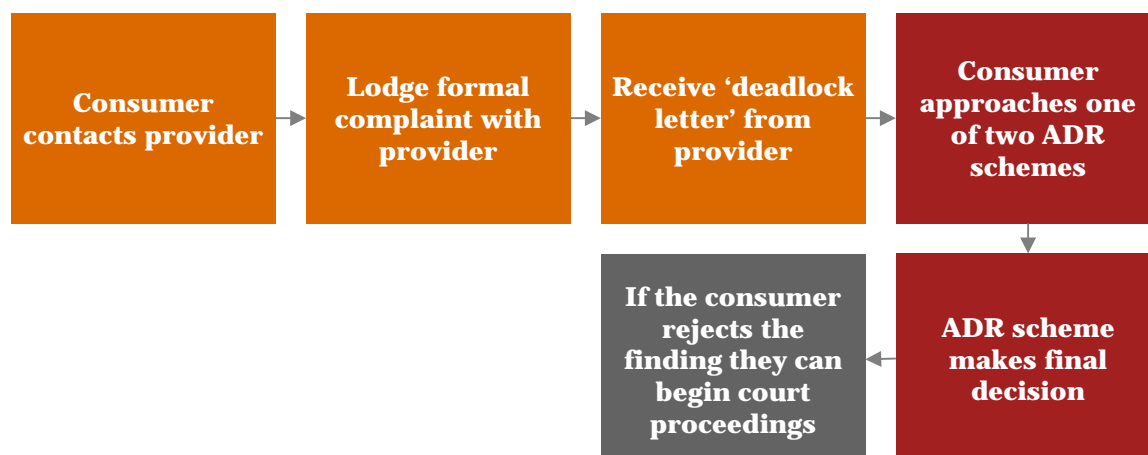
71 Korea Consumer Agency (Accessed June 2018) Consumer Affairs Centre, available at: [http://english.kca.go.kr/wpge/m\\_13/en3200.do](http://english.kca.go.kr/wpge/m_13/en3200.do).

72 Korea Consumer Agency (2017) Trends in 2017 Consumer Counselling, available at: [http://english.kca.go.kr/brd/m\\_11/view.do?seq=400](http://english.kca.go.kr/brd/m_11/view.do?seq=400).

73 Framework Act on Consumers, available at: [http://english.kca.go.kr/download/eng/laws/Framework\\_Act\\_on\\_Consumers.pdf](http://english.kca.go.kr/download/eng/laws/Framework_Act_on_Consumers.pdf).

## 3.6 United Kingdom

Figure 7: Stylistic summary of the current framework in the United Kingdom



### 3.6.1 Governance

The Office of Communications (Ofcom) is the independent regulator, competition authority and designated enforcer of consumer law for the UK communications industries. Its jurisdiction covers TV, radio, video-on-demand, fixed line telecoms, mobiles and postal services. It operates under a number of Acts of Parliament including the UK *Communications Act 2003* (UK Act) which is the primary legal instrument regulating the communications sector.

The UK Act requires Ofcom to set general conditions to ensure that communications providers establish and maintain procedures for handling complaints and resolving disputes between the provider and its domestic and small business consumers. Under the current requirements, service providers must have and comply with procedures that conform to the Ofcom approved Code of Practice for Complaints Handling. Complaints handling procedures must be transparent, accessible, effective and facilitate access to ADR.<sup>74</sup>

Additionally, providers are obliged to belong to and comply with relevant ADR schemes. Under the UK Act, Ofcom is required to ensure the availability of ADR procedures for domestic and small business consumers. Ofcom is also required under the ADR for Consumer Disputes (ADR Regulations) to ensure that any ADR Schemes approved under the UK Act also meet minimum standards under the regulations.<sup>75</sup>

There are currently two approved schemes authorised to deliver ADR services in respect of complaints regarding the telecommunications industry: Ombudsman Services and the Communications and Internet Services Adjudication Scheme.<sup>76</sup> These ADR schemes operate independently of Ofcom and must meet the approval criteria set by the UK Act and the requirements of the ADR regulations.

<sup>74</sup> Ofcom (2018) Codes of practice, available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/codes-of-practice>.

<sup>75</sup> Ofcom (2012) Review of Alternative Dispute Resolution Schemes, available at: <https://www.ofcom.org.uk/consultations-and-statements/category-3/adr-review-12>.

<sup>76</sup> Ofcom (2018) Dispute Resolution, available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/how-to-report-a-complaint/dispute-resolution>.

Areas of complaints covered by the ADR Schemes include:

- Mobile phones and smart phones (contract and pre-paid)
- Landline (fixed line) telephones
- Broadband internet including mobile broadband
- WiFi
- Dial up internet
- SMS texting services.

### **3.6.2 Procedure**

In the UK, ADR Schemes are used to handle consumer and small business complaints that cannot be resolved directly with the service provider. To initiate this process the consumer must first try to resolve the issue with the service provider. If after considering the consumer's complaint, or after eight weeks, the problem still has not been resolved the provider is required to issue a deadlock letter which states their final position to the consumer.<sup>77</sup> The consumer may then lodge a complaint with the ADR Scheme that their service provider belongs to (either the Communications and Internet Services Adjudication Scheme or Ombudsman Services).

The ADR scheme will assess the complaint and determine whether they have jurisdiction to hear it. It will then adjudicate on the dispute. The Communications and Internet Services Adjudication Scheme process operates on a 'documents only' basis. It will appoint an independent adjudicator to examine the documents provided by the consumer and the communications provider. Once it has assessed this information, the adjudicator will determine that the claim has been successful, partially successful or unsuccessful. If the consumer accepts the adjudicator's findings then the company must comply with the adjudicator's directions. If the consumer chooses to reject the finding, there is no impact on the company or the consumer, however, the case is closed and the decision is final.<sup>78</sup>

If the consumer rejects the decision then they are still entitled to seek redress via other means, which will largely be through the formal court system.<sup>79</sup> If the consumer is unhappy with the service provided by either the Communications and Internet Services Adjudication Scheme or Ombudsman Services, they may complain to either of those bodies and an independent assessor will look at the complaint. The assessor can only look at the administration of the original complaint, it cannot investigate or overturn the outcome of the complaint determined by the ADR scheme.

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77 Ofcom (2015) Making a complaint, available at: <https://www.ofcom.org.uk/advice-for-businesses/what-to-do-if-something-goes-wrong/making-a-complaint>.

78 Centre for Effective Dispute Resolution, About CISAS, available at: <https://www.cedr.com/consumer/cisas/resources/about-cisas/>.

79 Centre for Effective Dispute Resolution (Accessed June 2018) About CISAS, available at: <https://www.cedr.com/consumer/cisas/resources/about-cisas/>.



### 3.6.3 Funding

The ADR schemes are funded by the communications providers that are part of the scheme. An annual subscription is charged to participating companies, as well as a case fee for each complaint directed at that company.<sup>80</sup> Consumers are not required to pay a fee to lodge a complaint.<sup>81</sup>

### 3.6.4 Use of complaints data

Both ADR schemes were recently reviewed by Ofcom to ensure that they continue to offer accessible and efficient services to consumers. As part of the review, the ADR schemes are required to adopt a new process for reporting their performance to ensure consumers receive timely decisions on their cases.<sup>82</sup> Ombudsman services are currently working with Ofcom to publish quarterly statistics about the complaints accepted and resolved. The scheme has begun to publish a breakdown of the types of complaints received about larger communications providers. Additionally, it has started to provide more information about the outcome of investigations including the proportion of complaints upheld, not upheld or settled by the communications provider.<sup>83</sup> The Communications and Internet Services Adjudication Scheme also publishes information about the communications providers which participate in its scheme.

### 3.6.5 How disputes with wholesalers are settled

In the UK, only the retail communications provider is responsible for fixing faults with broadband, landline and mobile services. Even where the network is managed by another party, the consumer is only required to deal with their retail provider. For example, the provider may need to arrange for an engineer to carry out checks at the consumer's property, in this case, the engineer may be from the service provider or the network owner.<sup>84</sup>

### 3.6.6 Options for consumer redress/compensation

If the ADR scheme agrees with the complaint raised by the consumer, it can order the communications provider to fix the problem, make a payment to the consumer or take other practical steps. In some cases the result may be a simple apology; however, in certain cases, the ADR scheme may award up to £10,000 (although an amount of around £50 appears to be more common).<sup>85</sup>

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80 The Ombudsman Service Limited (2018) Subscriptions and case fees, available at: <https://www.ombudsman-services.org/for-participating-companies/new-business/funding>.

81 Centre for Effective Dispute Resolution (Accessed June 2018) Guidance, available at: <https://www.cedr.com/consumer/cisas/customers/guidance/>.

82 Ofcom (2017) Review of Ofcom's approval of alternative dispute resolution schemes, available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0018/108207/Review-of-ADR-Schemes-2017.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0018/108207/Review-of-ADR-Schemes-2017.pdf).

83 The Ombudsman Service Limited (2018) Complaints data, available at: <https://www.ombudsman-services.org/for-consumers/complaints-data>.

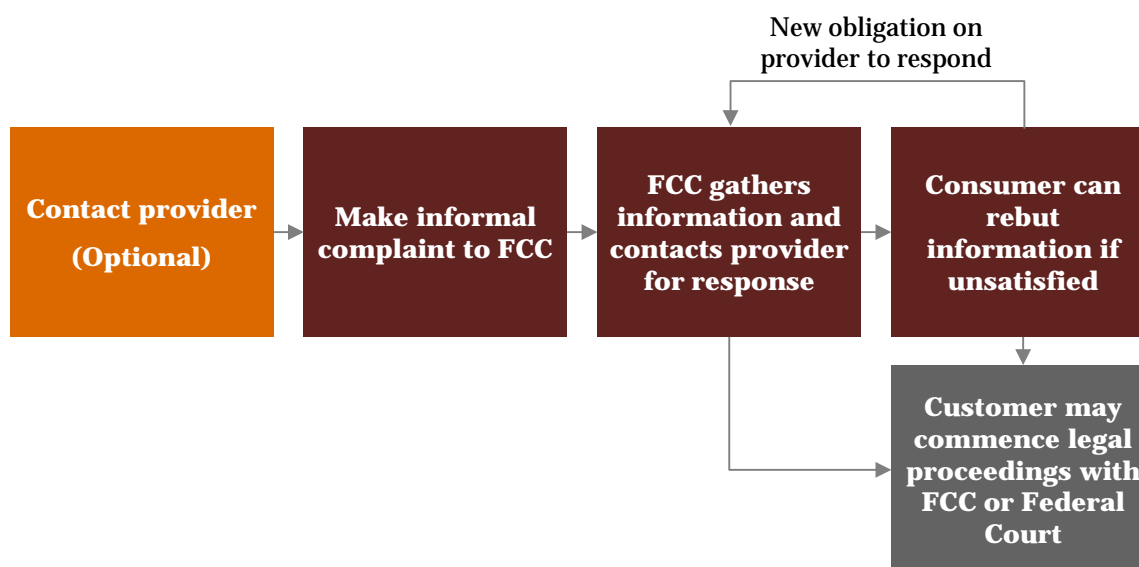
84 Ofcom (2015) Broadband and landline faults and problems, available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/problems/broadband-landline-faults>.

85 Ofcom (2018) Dispute Resolution, available at: <https://www.ofcom.org.uk/phones-telecoms-and-internet/how-to-report-a-complaint/dispute-resolution>.



## 3.7 United States of America

Figure 8: Stylistic summary of the current framework in the USA



### 3.7.1 Governance

In the USA, telecommunications services are governed at the federal level primarily by the USA *Communications Act 1934*, (USA Act) which provides a national framework for governing telecommunications services and competition in the telecommunications market. It also gives the Federal Communications Commission (FCC) authority to issue rules, regulations, and orders in relation to telecommunications services.<sup>86</sup>

The FCC is responsible for enforcing the USA Act as well as its own rules and regulations through enforcement actions and the adjudication of disputes involving regulated parties.<sup>87</sup> In particular, the Consumer Inquiries and Complaints Division of the Consumer and Governmental Affairs Bureau within the FCC provides informal mediation and resolution of individual informal consumer inquiries and complaints, in relation to a wide range of issues including telecommunications services and billing issues.<sup>88</sup>

The role of the Division is to:

- receive, review and analyse complaints and responses to informal consumer complaints
- maintain manual and computerised files that provide for tracking and maintenance of informal consumer inquiries and complaints
- mediate and attempt to settle unresolved disputes
- coordinate with other bureaus and offices to ensure that consumers have access to accurate and up-to-date information.

<sup>86</sup> Jenner & Block LLP (2018) Communications: regulation and outsourcing in the United States: overview, available at: [https://uk.practicallaw.thomsonreuters.com/6-620-5752?navId=7BF76506046521EF962BB770598FAB08&comp=pluk&transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/6-620-5752?navId=7BF76506046521EF962BB770598FAB08&comp=pluk&transitionType=Default&contextData=(sc.Default)).

<sup>87</sup> Federal Communications Commission (Accessed June 2018) Enforcement, available at: <https://www.fcc.gov/enforcement>.

<sup>88</sup> Federal Communications Commission (Accessed June 2018) Consumer and Governmental Affairs Bureau, available at: <https://www.fcc.gov/general/consumer-and-governmental-affairs-bureau>.

### **3.7.2 Procedure**

Consumers are able to file informal complaints with the FCC through their Consumer Complaint Centre. They are first encouraged to try to resolve the issue directly with their provider. Once the complaint has been lodged with the FCC, consumers receive a confirmation email that their complaint has been received as well as periodic updates regarding the status of the complaint. Consumers may also be required to provide additional information.<sup>89</sup>

Once all the information has been collected, the FCC then notifies the company identified in the complaint, who must respond within 30 days to both the FCC and the consumer. Once a response is received from the provider, the FCC reads the response and determines whether it is sufficient.<sup>90</sup> If it is, then the complaint is closed.

If the consumer believes that the response from the provider was insufficient, they may send additional, rebuttal information to the FCC. The FCC will then review the information and assess whether it is sufficient to send to the provider, which then triggers a new obligation to respond.

If the consumer is still unsatisfied by the provider's response then they may bring a lawsuit for damages in a United States District Court or may elect to file a legal action at the FCC, where the Commission will resolve the complaint in a manner similar to a court proceeding.<sup>91</sup>

### **3.7.3 Funding**

The FCC is funded by regulatory fees collected by the agency. The fees are collected from licence holders and certain other entities (eg cable television systems) and deposited into a Federal Communications Commission account.

It is free for consumers to file informal complaints through the FCC's Consumer Complaint Centre. If a consumer wishes to file a formal complaint, there is a \$225 filing fee.<sup>92</sup> Formal complaint proceedings are similar to court proceedings and parties are typically represented by lawyers or experts in communications law. As a result, the overall cost of a formal complaint can be significant.

### **3.7.4 Use of complaints data**

The Consumer and Complaints division collects complaints data to keep oversight of the issues consumers are experiencing. Individual informal consumer complaint data detailing complaints filed with the Consumer Help Centre is published by the FCC online through the Open Data portal.

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89 Federal Communications Commission (Accessed June 2018) How the FCC Handles Your Complaint, available at: <https://consumercomplaints.fcc.gov/hc/en-us/articles/202752940-How-the-FCC-Handles-Your-Complaint>.

90 Federal Communications Commission (Accessed June 2018) Filing a Complaint Questions and Answers, available at: <https://consumercomplaints.fcc.gov/hc/en-us/articles/205082880-Filing-a-Complaint-Questions-and-Answers>.

91 Federal Communications Commission (Accessed June 2018) Taking Legal Action, available at: <https://www.fcc.gov/reports-research/guides/taking-legal-action>.

92 Federal Communications Commission (Accessed June 2018) Filing a Complaint Questions and Answers, available at: <https://consumercomplaints.fcc.gov/hc/en-us/articles/205082880-Filing-a-Complaint-Questions-and-Answers>.

The collective data received is reviewed by the FCC and can lead to investigations by the Enforcement Bureau. This works as a deterrent to companies regulated by the FCC.<sup>93</sup>

### **3.7.5 How disputes with wholesalers are settled**

The FCC primarily deals with issues relating to telecommunications service and billing issues, which are typically related to retail service providers. Issues that are better dealt with by another area of the FCC, for example, systemic breaches of regulation, are referred to the relevant bureau or office such as the Enforcement Bureau. Issues that are outside the scope of the FCC, and are dealt with at a state level by public utility commissions, include the burial of telephone or cable wires and no dial tone to local phone service.

### **3.7.6 Options for consumer redress/compensation**

Typically, filing an informal complaint with the FCC will result in a resolution of the complaint and may include refunds or credits to the consumer. The informal complaints process, however, does not award any additional damages to the consumer. If a consumer is seeking an award of financial damages then they are required to file a legal action at the FCC or in a United States District Court.<sup>94</sup>

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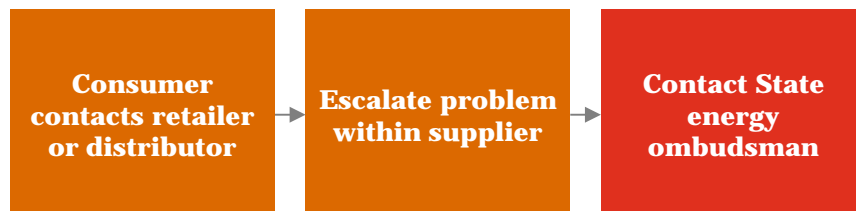
93 Federal Communications Commission (Accessed June 2018) Filing a Complaint Questions and Answers, available at: <https://consumercomplaints.fcc.gov/hc/en-us/articles/205082880-Filing-a-Complaint-Questions-and-Answers>.

94 Federal Communications Commission (Accessed June 2018) Complaints about telecommunications issues, available at: <https://www.fcc.gov/reports-research/guides/complaints-about-telecommunications-issues>.

## 4. Domestic utilities

### 4.1 Australian utilities (electricity and gas)

**Figure 9: Stylistic summary of the current framework in the electricity, water and gas industries in Australia**



#### 4.1.1 Governance

The Australian energy market is somewhat fragmented with a national regulator, the Australian Energy Regulator (AER), being responsible for implementing decisions made by the Australian Energy Market Commission. This is a body established by the Council of Australian Governments to consider market development and make rule changes which impact the national energy market. The AER is established in legislation under the *Australian Competition and Consumer Act 2010*<sup>95</sup>. The AER has an independent board and shares staff, resources and facilities with the Australian Competition and Consumer Commission (ACCC).

States and Territories have different bodies which are responsible for resolving disputes between consumers and their energy providers. These bodies are separate from the regulator. They include:

- Energy and Water Ombudsman Queensland
- Energy and Water Ombudsman NSW
- ACT Civil and Administrative Tribunal
- Energy and Water Ombudsman Victoria
- Energy Industry Ombudsman South Australia
- Energy Ombudsman Tasmania
- Ombudsman NT.<sup>96</sup>

#### 4.1.2 Procedure

The AER provides guidelines for deciding whom to lodge the complaint with under different circumstances. The consumer should contact their retailer for complaints regarding issues such as incorrect billing, difficulty paying a bill, supply disconnection, marketing, salespeople, and where the terms and conditions of the contract have not been explained properly. Otherwise, the consumer should contact their distributor if the complaint is related to the functioning of the meter, when electricity or gas stops working (eg due to blackouts or bad supply), and for any emergency such as fallen electricity poles or gas leaks.

<sup>95</sup> Australian Energy Regulator (Accessed June 2018) Energy Industry Regulation, available at: <https://www.aer.gov.au/industry-information/energy-industry-regulation>.

<sup>96</sup> Australian Energy Regulator (Accessed June 2018) Making a Complaint, available at: <https://www.aer.gov.au/consumers/making-a-complaint#contacting-energy-ombudsman-schemes>.

If the consumer is unable to resolve the issue with their distributor or the retailer, they can contact the Energy Ombudsman Scheme in their state or territory. Some Territories do not have these schemes implemented such as in the Australian Capital Territory where the ACT Civil and Administrative Tribunal is the escalation body.

The pre-requirements and the processes for filing complaints with an ombudsman service in different states or territories are largely similar. The complaint or enquiry can be lodged via telephone, fax, letter, email or on the Ombudsman Scheme's website.<sup>97</sup> For example, should a consumer be unable to resolve the issue with their provider, typically the Ombudsman will begin an investigation. If the provider fails to resolve the issue or the consumer wants additional support, the Ombudsman can speak to the provider. Consumers can typically contact the Ombudsman at any time if they want independent advice.

Different bodies have different powers – for example, the NSW body is able to negotiate a settlement and the South Australian Ombudsman able to issue binding decisions.<sup>98</sup>

### **4.1.3 Funding**

The AER is a government-funded body that regulates the Australian energy markets and networks under the national legislation and rules in eastern and southern Australia and networks in the Northern Territory. As an industry-based scheme, each Ombudsman is funded by the industry members (distributors and retailers). Other schemes, such as the ACT Civil and Administrative Tribunal, are government bodies and receive funding through government appropriations.

### **4.1.4 How disputes with wholesalers are settled**

The AER recommends that a consumer should contact their retailer or distributor as soon as the problem occurs. The consumer should provide all necessary details and evidence when they raise the issue with the distributor or retailer. The consumer can contact the relevant Ombudsman (or in the case of the ACT the ACT Civil and Administrative Tribunal) as the next step in the dispute resolution.<sup>99</sup> The Ombudsman then either initiates an investigation of the complaint, asks the provider to resolve the problem directly, or facilitates a negotiation between the consumer and provider.

### **4.1.5 Consumer redress and complaints**

Depending on the jurisdiction, the Ombudsman may be able to negotiate a settlement, or in some cases, make a binding decision to resolve a case, and the consumer has the right to decide whether or not to accept the decision. If the consumer accepts the decision, the provider is bound to abide by the decision made by the Ombudsman. The AER can issue infringement notices, where it finds a civil penalty provision has been breached under the national energy law. The AER actively analyses the data received from State bodies to monitor compliance in the market.

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97 Energy and Water Ombudsman NSW (Accessed June 2018) How we investigate complaints, available at: <https://www.ewon.com.au/page/making-a-complaint/how-we-investigate-complaints>.

98 Energy and Water Ombudsman SA (Accessed June 2018) How we can help, available at: <http://www.ewosa.com.au/index.php/about/how-we-can-help>.

99 Australian Energy Regulator (Accessed June 2018) Making a Complaint, available at: <https://www.aer.gov.au/consumers/making-a-complaint#contacting-energy-ombudsman-schemes>.

**[www.pwc.com.au](http://www.pwc.com.au)**