



Australian Government

Department of Communications and the Arts

Consumer Safeguards Review

Part A / Redress and Complaints Handling
Consultation paper

July 2018



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Consumer Safeguards Review

The Consumer Safeguards Review (Terms of Reference at Appendix A) will be conducted in three parts and aims to ensure that consumers:

1. Can access an effective complaints handling and redress scheme that provides transparency and accountability of telecommunications providers for their performance (**Part A**);
2. Have reliable telecommunications services, including reasonable timeframes for connections, fault repairs and appointments (**Part B**);

3. Are able to make informed choices and are treated fairly by their provider in areas such as customer service, contracts, billing, credit/debt management and switching providers (**Part C**).

This consultation paper is seeking your views on proposals to reform **Redress and Complaints Handling (Part A)**.

Have your say

The Government welcomes submissions from individuals, businesses, peak bodies and other interested organisations on the matters outlined in this consultation paper and the proposals for reform.

Submissions will be accepted until 5:00pm on Friday, 3 August 2018 via:

Email to consumersafeguardsreview@communications.gov.au

Post:

Consumer Safeguards Review
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

All submissions will be published on the Department's website unless a need for confidentiality is indicated.

Visit the Department of Communications and the Arts' website www.communications.gov.au for more information on the Review and the consultation process.

Introduction

Consumers are increasingly reliant on communications services. We expect that voice and internet services will be easy to connect and reliable, and that when things go wrong our service provider will resolve problems quickly. When this doesn't occur, we expect that simple, easy-to-navigate safeguards will be in place to assist us.

This paper, *Consumer Redress and Complaints Handling*, sets out the problems and complexities that consumers face when navigating current regulatory and institutional arrangements and proposes reforms to address these problems.

Current legislative & regulatory framework

The consumer protection framework, including complaints handling and redress mechanisms is complex, involving several different policy agencies, regulators, and industry (individual providers and representative bodies).

The *Telecommunications Act 1997* (Tel Act) and the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) establish the legislative and regulatory framework. The framework encourages industry self-regulation in the first instance. This has seen most consumer complaint and service issues addressed primarily through industry codes such as the *Telecommunications Consumer Protections (TCP) Code*, which is developed by industry body *Communications Alliance* and monitored by the *Australian Communications and Media Authority (ACMA)*.



In some instances there is use of more direct regulation, such as the Customer Service Guarantee (CSG)¹. More detail can be found in the companion background paper Current Telecommunications Safeguards and Regulatory Environment at www.communications.gov.au/consumer-safeguards-review.

INSTITUTIONAL ARRANGEMENTS

There are two national regulators with responsibility for telecommunications consumer matters:

- > the Australian Competition and Consumer Commission (ACCC), which is responsible for general competition and is the whole of economy consumer regulator under Australian Consumer Law; and
- > The Australian Communications and Media Authority (ACMA), which has responsibility for industry specific consumer regulation.

In addition, the Telecommunications Industry Ombudsman (TIO) Scheme is established under Part 6 of the TCPSS Act, and telecommunications carriers and carriage service providers are required to enter into the TIO Scheme (though the ACMA may grant exemptions from this requirement). The TIO currently provides an independent dispute resolution service for residential and small business consumers who have unresolved complaints about their telephone or internet service.

The TIO is industry owned and industry funded. It is governed by a board comprised of industry and consumer representatives as well as independent directors and an independent chair. The Board is responsible for appointing an Ombudsman (who manages the day to day operations). The Minister responsible for Communications and the Minister responsible for Consumer Affairs (i.e. the Assistant Minister to the Treasurer)² currently have a limited oversight role in the appointment of the chair, and do not have influence over the TIO's day-to-day operations or strategic direction. However, the Minister for Communications has powers under the TCPSS Act to determine standards to which the TIO Scheme must comply (see Section 128 (8)(9)(10).



1 The *Telecommunications (Customer Service Guarantee) Standard 2011* requires telephone companies to meet minimum performance requirements including in relation to connection and fault repair timeframes, and to provide customers with financial compensation when these are not met. The CSG Standard is available at www.legislation.gov.au/Series/F2011L0041

2 www.consumerlaw.gov.au/consumer-affairs-forum/members/

The problem

Service outages, delays in connections and repairs, incorrect billing and a lack of responsiveness to these issues by telecommunications providers has resulted in an increasingly high number of consumer complaints reported to the TIO in the last 18 months. The TIO's 2016/17 Annual Report stated that 158,016 complaints were received by the Ombudsman³. This was a 41.1% increase on the previous year. Total complaints had been declining since a peak reached in 2012-13, but are now again approaching the 2012-13 levels.

These complaint levels do not compare favourably with telecommunications dispute resolution schemes in other jurisdictions. For example, the New Zealand Telecom Dispute Resolution service received 2,252 complaints in the 2016–17 reporting year⁴, while the equivalent Canadian telecommunications complaints scheme received 9,097 complaints for the same period.⁵

The top complaint issue reported to the TIO is customer service. Consumers are frustrated with the lack of effective consumer care and their inability to satisfactorily resolve complaints raised directly with their service provider. By the time a consumer escalates a complaint to the TIO, they have already spent some time trying to resolve the matter directly with their provider and may experience further frustration with the time taken to reach an outcome through the TIO's complaint handling process. This consumer experience is further compounded as, after the complaint is accepted by the TIO, the TIO typically asks the customer and their service provider to have a further final attempt to resolve the complaint before any conciliation, investigation or other formal dispute resolution action by the TIO can commence.

Regulatory settings

The primary responsibility for addressing complaints has largely rested with industry. Industry is responsible for developing rules of conduct through codes which are registered and monitored by the ACMA. The ACMA also has the power to make an industry standard in the event that there is no industry code made following a request, or if the code in force is found to be inadequate. Compliance with standards is mandatory.

There are a number of problems inherent in the current Australian telecommunications complaints resolution regime, which are not present in other countries' and sectors' models (further detail on other jurisdictions can be found in the companion paper *International and Sectoral Comparisons of Redress and Complaints Handling Models for Consumers and Small Businesses*, at www.communications.gov.au/consumer-safeguards-review).

- > The Australian system is almost totally reliant on industry accountability and self-regulation in an environment where there is little or no restraint on market entry and exit.
- > The controls on industry behaviour are largely contained within industry codes, monitored by a regulator required to give industry every opportunity to remedy its own behaviour.
- > The independent Telecommunications Industry Ombudsman is owned and funded by industry.

Industry self-regulation has been generally successful in governing technical matters (such as number portability). However, in an environment where consumers are faced with multiple choices of networks, services and devices, together with industry supply chains that are becoming increasingly complex, it has proven problematic for self-regulation to deliver adequate outcomes for consumers seeking redress or alternative complaints handling arrangements.

3 www.tio.com.au/_data/assets/pdf_file/0003/254937/Telecommunications-Industry-Ombudsman-Six-Month-Update-Jul-to-Dec-2017.pdf

4 www.tdr.org.nz/news/2017-tdr-annual-report

5 www.ctcs-cprst.ca/wp-content/uploads/2017/11/CCTS-Annual-Report-2016-2017.pdf

Dispute resolution processes

The vast majority of consumer complaints received by the TIO are currently referred back to the service provider to encourage resolution directly between the provider and the consumer – either as an Enquiry Referral if the consumer has not previously contacted the provider about the complaint, or a Referral if the consumer has previously contacted the provider and given it an opportunity to resolve the complaint. If, in the consumer's view, the issue remains unresolved after being referred from the TIO, the consumer can then return to the TIO to escalate the complaint through the TIO's further complaint handling levels. In July 2018, the TIO instituted a new approach to how it handles complaints⁶ at these further levels.

Fewer than 10% of complaints referred back to the service provider as Enquiry Referrals or Referrals are returned by the consumer to the TIO for escalation. It is generally assumed that these matters that do not return to the TIO (that is 90% of all complaints that are referred back to the service provider) are resolved but there is not a process in place to confirm this. It is therefore likely that some proportion of these complainants may either give up or take the matter elsewhere.

The significant volumes of complaints assumed to be resolved at Enquiry Referrals or Referral level raises an important question – why are service providers not directly resolving the consumer's issues when they are first raised by the customer? One explanation could be that it is easier, and perhaps more cost-effective, for providers to allow some issues to go to the Ombudsman in the first instance rather than be addressed by the provider. The Ombudsman has noted⁷ that a key question for industry (and in practice this is for every individual provider) is whether industry invests in paying the TIO to handle and manage consumer complaints, or, alternately, invests those same funds in improving industry's own service delivery and internal complaints processes.

6 www.tio.com.au/about-us/policies-and-procedures#pt5

7 www.tio.com.au/_data/assets/pdf_file/0006/254922/Judi_Jones_CommsDay_Final.pdf

Accountability and responsibility of providers

Increasing complexity of industry structures and telecommunications products can make it difficult for consumers to determine the cause of the problem they are experiencing. Consumers are often given conflicting or incorrect advice from providers about which party in the supply chain is responsible, or an incorrect diagnosis of the root cause of the issue. Impasses in resolving issues can therefore arise because of disagreements about which party is responsible. This can result in the 'handballing' of complaints between industry participants, as well as frustration and delays for consumers seeking resolution.

The independent review of the TIO undertaken in 2017 recommended that the TIO amend its Terms of Reference to enable the joining of a telecommunications provider as a party to a complaint against another service provider. The TIO is taking steps to address this recommendation and make the necessary adjustments to enable it to fully investigate issues that may involve multiple providers – such as issues that arise for consumers as a result of complications between wholesale and retail providers.

Further consideration needs to be given to how industry complaints-handling and redress measures apply across the supply chain binding all parties to the responsibility to address consumer complaints.

TIO structure and funding

The TIO is an industry-based ombudsman scheme funded solely by fees levied on its members.

Telecommunications providers pay a fee to the TIO when a complaint is escalated to the TIO from one of its customers. The funding system was intended to act as an incentive for service providers to keep complaints made to the TIO to a minimum. However, the high number of complaints being escalated to the TIO, rather than being resolved by service providers, suggests that the existing approach to fees may not provide the desired incentive.

From 1 July 2018, the TIO implemented a new fee structure comprising an annual membership fee as well as case based fees. The membership fee is based on a provider's relative share of complaints referred to all providers in the previous calendar year. The case based fee for each complaint is determined by the stage at which the complaint is closed.

Data collection, analysis and reporting

Complaints data helps assess industry performance and identify systemic issues and root causes. The data can also provide insights and guidance to policy makers and regulators about the need for interventions and where these would best be targeted.

There are mixed views as to whether the TIO is best placed to perform the data collection and analysis function effectively.

The collection of data and analysis of root causes of complaints is currently secondary to the TIO's core purpose of resolving individual complaints.

The complaints data collected by the TIO is only a partial set of overall complaint data. It represents only those complaints escalated to the TIO, and not all complaints made about telecommunications services directly to service providers.

An ACMA information gathering exercise in December 2017 highlighted the lack of transparency across industry about the numbers of complaints received by individual providers. This lack of availability of data increases reliance on the TIO data, as this is the only publicly available information about overall industry performance and trends in meeting the needs of its customers. The ACMA's *Telecommunications (Consumer Complaints) Record-Keeping Rules* (Record Keeping Rules) will assist in this regard, as providers are now required to report complaints data to the ACMA on a quarterly basis and the ACMA has noted its intention to publish this data on its website.

As the TIO is an industry-owned entity, there are also protocol and legal issues hindering its ability to share information with policy makers and regulators.

In other jurisdictions – for example New Zealand – data collection and analysis is not considered a core function of the external dispute resolution (EDR) body and is more often seen as a regulatory function which enables centralised data collection from a number of sources, including the EDR body. This allows more comprehensive root cause analysis of complaints and broader industry performance data.



The new rules and standards

Industry complaint handling rules form part of a broader industry code. Under these rules, suppliers are required to document their complaints handling process and make it available to staff, consumers, former customers, and other stakeholders in a summary form that is concise and free of charge. The ACMA is responsible for enforcing compliance with these rules.

From July 2018, new complaints-handling rules started to better protect telecommunications consumers. These include: the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (Complaints-Handling Standard)* –

which require service providers to comply with rules specifying how complaints must be managed, including time frames for response and resolution; and the Record Keeping Rules noted above, which require service providers to report overall complaints data to the ACMA on a quarterly basis.

These new rules require industry to take greater responsibility for the management of complaint handling processes, and provide greater accountability and transparency in how complaints are managed across industry. The proposed reform model outlined in this paper builds on these new rules.



Proposals for reform

Proposal 1: Industry complaints handling

Telecommunications Providers must have and maintain complaint handling policies which detail their processes and procedures for handling customer complaints in compliance with the governing rules.

- > The new ACMA Complaints-Handling Standard establishes binding rules for providers' complaint handling. The Standard specifies that providers must have a complaints-handling process and sets out minimum requirements for how it is accessed, timeliness, and transparency. The Standard also details how the providers' processes should be managed, including an approach to resolution, prioritisation and escalation, including to external dispute resolution (if needed).
- > The ACMA has enforcement powers to compel compliance with the regulated requirements.
- > It is proposed that in order to demonstrate the ability to comply, providers must have complaints handling policies, and associated processes and procedures, which the ACMA may audit for compliance purposes.
- > Assessment of these policies will assist the ACMA in determining whether the provider's processes and procedures meet the core regulated requirements, and ensure providers are working to an adequate level of complaint handling performance.
- > Providers will be required to make their policies transparent and publicly available so that consumers have a clear understanding of how their provider will manage their complaint and are better able to navigate the complaints handling and escalation process.
- > It will be open to industry to be innovative, over and above the baseline requirements, as a point of differentiation in a competitive landscape.

These proposals are based on the following principles:

Principle 1: Industry should have responsibility for taking care of its customers

Consumer complaints should, as far as possible, be resolved at the point of first contact with their telecommunications provider. To support this, providers should implement quality assured complaint handling systems and processes to manage complaints raised by consumers. These processes should be compliant with the ACMA's Complaints-Handling Standard and should include transparent and accessible internal escalation processes.

Principle 2: Consumer safeguards are best delivered through direct regulation

Based on overseas and domestic experience, effective baseline consumer safeguards are best delivered through clear and direct regulatory arrangements which require industry to deliver services and customer support in line with consumer expectations.

These direct regulatory arrangements involve the appropriate rules and standards being developed, owned and enforced by the regulator. The ACMA's current work to make an industry standard for complaints-handling is an example of a direct regulatory arrangement.

Issues for comment

1. How can telecommunications service providers be encouraged to deal with and resolve their customer complaints without the need for recourse to external escalation?
2. What barriers currently exist that prevent providers from addressing consumer complaints at the first point of contact or through an internal escalated process?
3. How should responsibility for resolving consumer complaints involving multiple parties in the supply chain be achieved or enacted?
4. Should there be additional rules in the ACMA's Complaints-Handling Standard compelling providers to make every effort to resolve customer complaints before the consumer escalates the matter to an external dispute resolution body?
5. What do consumers need to know about their provider's complaint handling policies and procedures?
6. When and how should consumers be made aware of a provider's complaint handling policies and procedures?
7. How will providers ensure their own staff are trained in the complaint handling policies and procedures and will be supported by appropriate complaint handling systems?

Proposal 2: External Dispute Resolution

An External Dispute Resolution body, independent of industry, should be established to deal with complex complaints that are unable to be resolved directly between customers and their providers. Consideration will need to be given to the appropriate governance arrangements to support the body, with its independence being a guiding principle.

- > The External Dispute Resolution (EDR) body should only accept a complaint once it is satisfied that the matter was unable to be adequately addressed by the service provider's complaint-handling processes, and has gone through the provider's required internal escalation processes.
- > When complaints are brought to it, the body should therefore ensure it has clear line of sight over the provider's internal dispute resolution and complaint handling processes, including the reasons why the referred complaint has been unable to be resolved by the provider.
- > The EDR body's remit should enable it to deal with complaints across the end-to-end supply chain – e.g. wholesale and retail providers, as appropriate, to resolve the matter.
- > It should also resolve disputes in a way that ensures the relevant retail or wholesale provider is held accountable, including when third parties in the supply chain are involved.
- > The EDR body will be established with independent reporting and funding mechanisms, providing it with the independence needed to be an adjudicator on disputes between providers and customers. The body should report transparently on its own performance and effectiveness.
- > As the final arbiter of a dispute in a no-cost forum for the consumer, the independent EDR body should also have the power to compel providers to take remedial or redress actions to resolve complaints where appropriate, which could include financial compensation to consumers or the ability to issue fines or other forms of remedy depending on the case.
- > In concert with the above, the EDR body will be expected to provide advice to the regulator when it identifies areas of potential industry non-compliance.
- > The operational and institutional arrangements should ensure the body can work closely with the regulator in regard to transfer of information and referral of issues.
- > The EDR body's operations should be funded by providers, with the level of funding apportioned based on the number of complaints received about each provider.

These proposals are based on the following principles:

Principle 3: Consumers have an independent avenue for resolution and/or redress

Where matters cannot be resolved between consumers and providers, there should be a third party body, independent of industry that is sufficiently empowered to resolve these disputes.

Principle 4: Governance and public accountability

There should be public visibility and accountability for performance in resolving complaints – including fairness

and transparency in the External Dispute Resolution body's setting of its priorities, decision making and governance arrangements.

Principle 5: Appropriate institutional arrangements

The External Dispute Resolution body will need to work closely with the regulator in regard to transfer of information and referral of issues. This should be done in a way that ensures clear and distinct lines of responsibility between the regulator and the dispute resolution body.

Issues for comment

1. Should the current Telecommunications Industry Ombudsman (TIO) arrangements be transformed to an independent External Dispute Resolution (EDR) body for handling complex complaints?
2. In addition to resolving complex complaints, should the independent EDR body be proactively engaged in driving industry improvements, identifying systemic complaints and analysing root causes or recurring issues?
3. Should the charging structure for complaints lodged with the EDR body be structured to encourage providers to exhaust all practical steps to directly resolve the complaint with the consumer before referring to the EDR body? How can this be achieved?
4. What process should be followed before a consumer lodges a complaint with the EDR body?
5. What process should the EDR body follow in the event it receives a complaint from a consumer where the consumer has not followed the provider's complaint handling procedures?
6. What process should the EDR body follow in the event it receives a complaint from a consumer where the provider has not followed its own complaint handling procedures?

Proposal 3: Data collection, analysis and reporting

Responsibility for collection of data relating to industry performance and complaints should be transferred to the ACMA. The ACMA will publish reports detailing analysis of this data, as well as including complaints data in its annual communications report.

- > The ACMA will collect complaint and other relevant data from providers and the EDR body in accordance with the proposed record keeping rules.
- > As the independent EDR body's focus will be on resolving disputes between customers and their providers, the data obtained as a by-product of this function would be regularly provided to the ACMA for analysis and reporting.
- > The ACMA, as the communications sector regulator, has the power to enforce industry compliance with the Complaints-Handling Standard and associated Record Keeping Rules. Through the data collected directly from industry via these new rules, as well data and advice provided to it by the EDR body, the ACMA will be able to assess the effectiveness of service providers' complaints-handling processes and the overall regulatory settings.
- > Complaints data should be collected and reported in a way that helps industry participants to appropriately focus their business improvement and consumer experience strategies. The data collected will also form an important evidence base for the ACMA when considering actions to improve industry performance and the customer experience.

These proposals are based on the following principle:

Principle 6: Complaints data collection, analysis and reporting should drive improved outcomes

Collection, analysis and reporting of complaints data should be able to pinpoint where consumer safeguards are not working. This should feed into improvements in complaint handling processes, drive better industry performance, and better allow industry and government to understand and resolve systemic issues.

Reporting of complaints data should also be properly contextualised and done in a way that is robust, consistent, and not open to misinterpretation. The ACMA's public reporting of this data will provide consumers and industry stakeholders with visibility of this valuable information.

Issues for comment

1. How often should the EDR body provide complaints data to the ACMA for analysis and reporting (e.g. monthly, quarterly)?
2. Are there any unforeseen issues or unintended consequences of the proposal for a centralised repository and reporting of industry complaint information?
3. Do the proposals in this paper address the major issues of concern with the current arrangements regarding complaints and complaints handling? If not, what additional measures could be included?
4. What considerations should be taken into account in implementing the proposals outlined in this paper, including practical timeframes for implementation?
5. Are there any other issues that should be brought to the Government's attention?

Appendix A

Terms of Reference

Telecommunications Consumer Safeguards Review

The Australian telecommunications industry has undergone extensive transformation over the last two decades, driven by new technologies, increased competition, rapidly changing consumer preferences and the rollout of the National Broadband Network (NBN). With the NBN due to be completed by 2020, it is timely to examine consumer safeguards and to ask what protections are required for consumers within this new environment.

The Consumer Safeguards Review (the 'Review') will develop the next generation of consumer safeguards. It will be conducted by the Department of Communications and the Arts in three stages and will report progressively to the Minister for Communications over the course of 2018. The full review will be completed by the end of 2018. The Review will make recommendations on the level of consumer safeguards required so that telecommunications (voice and broadband) customers:

1. **Part A** – Have access to effective consumer redress and complaint handling mechanisms, including:
 - a. The most appropriate complaints handling, resolution and redress model; and
 - b. Whole of system complaints data collection, analysis and reporting that provides transparency and holds industry accountable for its performance.
2. **Part B** – Have reliable telecommunications services that allow customers to carry out everyday activities, including:
 - a. Effective consumer protections that ensure:
 - i. reliability and performance of the underlying telecommunications networks;
 - ii. connections, faults repairs and appointments are performed within reasonable timeframes;
 - b. The form these protections should take (e.g. service level standards) and the appropriateness of penalties, compensation or other recourse.
3. **Part C** – Are able to exercise informed choice in selecting services and are treated fairly, including with respect to sales and customer service; contracts, billing, credit and debt management; and switching providers.
4. In formulating its advice and recommendations, the Review will have regard to:
 - a. the need for regulatory or institutional reform;
 - b. the types of service to which safeguards should apply;
 - c. existing consumer protection frameworks (e.g. Customer Service Guarantee, the Telecommunications Consumer Protections Code and Australian Consumer Law);
 - d. the Telecommunications Reform Package (including provisions that enable the Minister to make standards for a Statutory Infrastructure Provider) currently before the Parliament;
 - e. whether interventions should be targeted at the wholesale or retail parts of the market;
 - f. scope for innovation and for industry players to transparently differentiate their level and quality of services; and
 - g. retail and wholesale competition in the provision of services.

Appendix B

Overview of Proposed Future Framework



