

ACMA submission to DoCA Consumer Safeguards Review

Part A: Redress and Complaints Handling

AUGUST 2018

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Contents

Introduction	2
Context	3
TIO scheme	4
Proposal 1—Industry complaints handling	5
Introduction	5
Form of regulation	6
ACMA’s complaints-handling rules	6
Complaints Handling Standard	7
Proposal 2—External dispute resolution	9
Introduction	9
General principles of an effective EDR scheme	10
Functions of an effective EDR scheme	10
Foundations of an effective EDR Scheme	13
Proposal 3—Data collection, analysis and reporting	17
Introduction	17
New rules to improve transparency around complaints	18
Medium to longer-term complaints reporting	18
Conclusion	19

Introduction

The Australian Communications and Media Authority (ACMA) is Australia's regulator for telecommunications, radiocommunications, broadcasting and some online content. Our strategic intent is to make communications and media work in Australia's public interest. The ACMA's regulatory roles include ensuring that consumer, citizen and audience safeguards are efficient, effective and reflect community standards.

The ACMA is the primary sector-specific regulator for communications with responsibility for industry codes and standards, oversight of several important consumer safeguards, as well as reporting requirements under the Telecommunications Act 1997. This places the ACMA in the strong position of being able to comment on the regulatory and practical implications of any proposed changes to the telecommunications consumer safeguards regime.

The ACMA welcomes the opportunity to comment on the first of three consultation papers for the Consumer Safeguards Review (Review) and looks forward to engaging with the Department of Communications and the Arts (DoCA) to implement new consumer safeguards that are fit for purpose in a contemporary telecommunications environment.

In summary, our submission:

- > outlines the existing role of the ACMA in relation to complaints handling and redress—with a particular focus on new complaints-handling rules that commenced on 1 July 2018
- > supports the need for any new arrangements to incentivise the swift resolution of complaints directly between consumers and their telecommunications providers (providers), without the need for escalation to an independent External Dispute Resolution (EDR) scheme such as the Telecommunications Industry Ombudsman (TIO)
- > reinforces the importance of transparency and the availability of complaints data and information to the ACMA (and other regulators) to better inform its regulatory activities
- > supports the continued need for a free and independent EDR scheme, which provides consumers with a single telecommunications complaint escalation service
- > recommends that such an EDR scheme would be significantly enhanced by the ACMA being provided with powers to enable it to oversee it.

Overarching note

In the paper, we have used the term TIO/TIO scheme to refer to the current body and model for dealing with escalated consumer complaints. We have used the term EDR when discussing the principles underpinning an effective and efficient EDR scheme.

Context

As the sectoral regulator, the ACMA closely monitors complaints trends. At an overarching level, escalated complaints to the TIO have very recently been on an upwards trajectory (see Table 1 below).

Table 1: TIO complaints compared to services in operation

	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17
Total TIO new complaints	197,682	193,702	158,389	138,637	123,935	111,949	158,016
Total services in operation (millions) ¹	39.82	40.64	40.51	40.2	40.27	41.07	42.1

Source: ACMA communications reports and TIO annual reports.

There were 158,016 new complaints made to the TIO during 2016–17. This represents an increase of 41.1 per cent from 2015–16, with more than 40 per cent of complaints being about internet services. Despite this increase, the number of complaints made to the TIO was significantly lower compared to 2010–11 when complaints peaked at 197,682. At the time, there were also 2.28 million fewer services in operation in the market than there are today (42.1 million in 2016–17 compared to 39.82 million in 2010–11).

In the first six months of 2017–18, 84,914 complaints were received by the TIO. This represented a 28.7 per cent increase compared to the same period in 2016–17.

While escalated complaints data provides important insights into trends and systemic issues, it is limited in the insights it can provide about the underlying issues driving those complaints. Escalated complaints data only indicates what the consumer perceives the issue to be, rather than its root cause or the responsible party in the supply chain. A more detailed understanding of the type, incidence and causes of these issues is required to develop appropriate responses, including potential regulatory interventions.

The limitations of escalated complaints data led to the ACMA undertaking a program of work to build our understanding about the issues consumers were facing when moving to and using services delivered over the National Broadband Network (NBN). Information collected through consumer research, an industry information-gathering exercise and compliance activities have been used to supplement complaints statistics to enhance our understanding of the nature and extent of the problems. This evidence then informed the ACMA's development of a suite of new measures designed to improve the consumer experience. These measures, which include enhanced complaints-handling arrangements, are discussed later in this submission.

¹ Total Australian services in operation includes fixed-line and mobile services, as at 30 June.

TIO scheme

The Telecommunications (Consumer Protection and Service Standards) Act 1999 (TCPSS Act) sets out the legislative framework for a single scheme (known as the TIO scheme) to investigate, make determinations and give directions relating to consumer complaints about carriage services.

Following consultation with the ACMA and the TIO, the Minister for Communications has the power to make standards with which the scheme must comply. The legislative framework also includes a requirement that there are regular independent reviews of the TIO scheme.² The first [independent review](#) of the TIO scheme was completed in 2017.

The ACMA has a legislated role in enforcing compliance with the TIO scheme. Under the TCPSS Act, the ACMA may direct a carrier or carriage service provider (CSP) to join the TIO scheme. Carriers or CSPs may apply to the ACMA for an [exemption](#) from the scheme. The ACMA also enforces carrier and CSP compliance with determinations issued by the TIO.

In 2017–18, the TIO referred six companies to the ACMA for failing to join the TIO scheme, resulting in the ACMA initiating six investigations. At 30 June 2018, one of the six providers had joined the TIO scheme. Two of the six providers satisfied the ACMA that they were not required to join the TIO scheme and the remaining three providers were no longer trading or had sold their customer base. For 2017–18, the TIO did not refer to the ACMA any potential non-compliance issues with either the scheme or other rules.

² See section 133A of the TCPSS Act.

Proposal 1—Industry complaints handling

Outline of proposal:

Telecommunications providers must have, and maintain, complaints-handling policies that detail their processes and procedures for handling customer complaints in compliance with the governing rules.

Underpinning principles:

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

Principle 2: Consumer safeguards are best delivered through direct regulation

ACMA's overarching response to this proposal:

The ACMA is supportive of Principle 1. It considers that industry should have responsibility to look after its customers, including providing quality services to them.

In regard to Principle 2, the ACMA considers that regulatory interventions should be fit-for-purpose and may take the form of self, co and direct regulation, or a mix of any of these forms.

Following ongoing consumer detriment and rising complaints statistics, the ACMA formed the view that direct regulation was required in relation to handling of complaints.

The ACMA's overarching commentary on this proposal:

- A) Highlights the ACMA's recent direct regulatory interventions in relation to complaints handling and our proposed compliance and education approach.
- B) Reinforces the importance of retail providers being able to secure 'reasonable assistance' from upstream (wholesale) providers along a vertically unintegrated supply chain to enable consumer complaints to be quickly and effectively resolved.

Introduction

The importance of telecommunications services to both social and economic activity in Australia has increased significantly over recent years. Consumer expectations and reliance on these services has also increased.

We consider there is a need to create an environment in Australia where there are strong incentives for providers to themselves handle telecommunications-related complaints swiftly and effectively, without the need for escalation to the TIO (or an EDR).

Recent evidence has suggested this is not the case. As part of our industry information-gathering exercise, we compared escalated complaints data (about services delivered by providers over the NBN) from the TIO to internal complaints data from selected providers. During Q2 2017 (the time frame when the data was collected), we found there was a high ratio of internal complaints to escalated complaints. At that time, approximately one in four internal complaints to the selected providers (about services delivered over the NBN) were escalated to the TIO.

This is one of the reasons why the ACMA recently introduced, and is actively enforcing, new complaints-handling rules.

We note there is a strong relationship between complaints-handling rules and other consumer safeguards, many of which will be explored in parts B and C of DoCA's Review. Any new proposals contained in Part B and Part C of this Review should link to, and reinforce, the outcomes of Part A.

Form of regulation

Regulatory interventions to implement consumer safeguards may take the form of self-regulation, co-regulation or direct regulation. For example, in the general area of telecommunications regulation, examples of each of these are as follows:

- > self-regulation — Communications Alliance's External Telecommunication Cable Networks Code
- > co-regulation — Communications Alliance's Local Number Portability Code and Rights of Use of Numbers Code
- > direct regulation — the ACMA's Customer Service Guarantee Standard and Complaints Handling Standard.

The appropriate form of regulation will vary according to the circumstances, and will be influenced by:

- > the number of market players
- > the degree of competition in the market
- > the degree of homogeneity of products and services in the market
- > the degree of common interest in the industry
- > the incentives for compliance
- > the degree of consumer detriment
- > the speed of change in the environment.³

The optimal regulation for particular circumstances may involve a mix of these different forms of regulation; for example, mobile premium services are regulated by the co-regulatory Mobile Premium Services Code and through direct regulation in the form of the Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1) and Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2).

The ACMA considers that regulation should be fit-for-purpose, using the most effective form of regulation for the circumstance.

ACMA's complaints-handling rules

The ACMA agrees that a more robust regulatory environment and greater visibility of complaints-related consumer safeguards benefits consumers—as evidenced by its introduction of new consumer-focused rules in recent months.

On 1 July 2018, two new complaints-handling rules came into effect, replacing existing complaints handling obligations under Chapter 8 of the Telecommunications Consumer Protections Code 2015 (TCP Code). These new rules are:

³ See the ACMA's occasional paper, 'Optimal conditions for effective self- and co-regulatory arrangements' available at <https://www.acma.gov.au/-/media/Regulatory-Frameworks-and-International-Engagement/Report/PDF/Optimal-conditions-for-effective-self-and-co-regulatory-arrangements-2015-edition.pdf?la=en>

- > the [Telecommunications \(Consumer Complaints Handling\) Industry Standard 2018](#) (Complaints Handling Standard)
- > the [Telecommunications \(Consumer Complaints\) Record-Keeping Rules 2018](#), which requires retail providers to report data about the complaints they receive to the ACMA, so these can be monitored.

Complaints Handling Standard

The Complaints Handling Standard⁴, made by the ACMA on 4 June 2018 in response to a Ministerial direction of 20 December 2017, specifies the processes retail providers must follow in handling complaints from their customers. The standard, which commenced on 1 July 2018, obliges retail providers to have, and comply with, a written complaints-handling process that meets minimum standards, including:

- > an internal process for prioritising complaints that is clear, accessible and transparent for consumers
- > a description of how escalated complaints must be managed
- > a dispute resolution process, which provides a consumer with the right to escalate a complaint to the TIO after the provider has been given a reasonable opportunity to resolve a complaint, and which includes details about how a consumer can contact the TIO
- > providing that a consumer's telecommunications service cannot be cancelled for the sole reason that the consumer was unable to resolve the complaint directly with the provider and pursued options for external dispute resolution.

Providers must also:

- > acknowledge all consumer complaints within two working days
- > use their best efforts to resolve complaints on first contact
- > otherwise, resolve complaints within 15 working days.

Reasonable assistance arrangements

The ACMA's new Complaints Handling Standard requires that upstream wholesale providers in the supply chain provide reasonable assistance to retail providers when resolving consumer complaints.

Any new interventions in parts B and C of this Review should support the principle that retail providers are able to secure assistance to quickly resolve issues where upstream wholesale providers have a role in that resolution. The ACMA considers there would be value in having enforceable wholesale service standards (especially for fault rectification), to give retail providers confidence that they can effectively manage consumer complaints.

⁴ On 20 December 2017, the Minister for Communications directed the ACMA to make industry standards under section 125AA of the Telecommunications Act 1997, imposing requirements on certain carriers and CSPs in relation to the services they provide, to improve consumer experiences with services supplied using the NBN. In accordance with the direction, the ACMA made three industry standards, including the Complaints Handling Standard.

Compliance and education activities

As the NBN rollout is reaching its peak, early and consistent compliance with the new rules is essential to protect consumers. The ACMA has commenced monitoring industry compliance with its new complaints-handling rules and, where necessary, will actively enforce compliance with the new rules from the start. It has also committed to regularly reporting on its [NBN consumer experience work program](#), including compliance activities and enforcement outcomes.

The ACMA has an educational program targeting specific consumer demographics and industry about the [ACMA's five new rules](#). In late July 2018, the ACMA and Communications Alliance held industry tune ups to brief industry on the new rules, including the complaints-handling rules.

Proposal 2—External dispute resolution

Outline of the proposal:

An external dispute resolution (EDR) 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.

Principles underpinning the proposal:

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

Principle 4: Governance and public accountability

Principle 5: Appropriate institutional arrangements

The ACMA's overarching response to the proposal:

The ACMA supports the three principles underpinning Proposal 2. Feedback on some elements of the proposal draws upon the ACMA's experience in monitoring and enforcing compliance with the existing TIO scheme. It should be noted that the EDR functions outlined in this response are already being undertaken, to varying degrees, by the existing TIO scheme.

The ACMA's commentary on the proposal:

- A) Affirms the need for a single EDR scheme that is free and easy for consumers to access.
- B) Affirms the need for an EDR scheme whose decision-making processes and administration are independent from participating organisations.
- C) Sets out what the ACMA considers to be the key functions and foundations of an effective EDR scheme.
- D) Identifies some gaps and deficiencies in the current TIO scheme and suggests enhancements, such as improved oversight of the scheme by the regulator, that would assist the ACMA in its role and incentivise providers to handle complaints themselves in the first instance.

Introduction

The ACMA considers there is a need for a single, independent EDR scheme, which is free and easy for consumers to access.

Drawing from Treasury's benchmarks for industry-based customer dispute resolution⁵, our response to this proposal sets out a model for the key functions and foundations of an effective EDR scheme.

The ACMA notes that the current TIO scheme was the subject of a recent independent review and the TIO is in the process of implementing the recommendations from that review. The ACMA made a submission to that review and several key points from that submission are included below.

⁵ The Treasury, Benchmarks for Industry-based Customer Dispute Resolution available at https://static.treasury.gov.au/uploads/sites/1/2017/06/benchmarks_ind_cust_dispute_reso.pdf.

General principles of an effective EDR scheme

The EDR should provide a ‘one-stop-shop’ service for consumers with escalated telecommunications-related complaints.⁶ The ACMA supports a single EDR model and considers that having multiple EDR schemes could potentially result in:

- > consumers being confused about which EDR to use
- > an inconsistent experience for consumers in the way their escalated complaints are handled and resolved by different EDRs
- > an inconsistent experience for providers that are subject to the EDR scheme in the determinations they are potentially issued by different EDRs
- > lost opportunities to deliver economies of scale or further administrative efficiencies (particularly in relation to scarce technical skills)
- > consumer and industry education activities being duplicated and/or being inconsistent between each EDR
- > making it much more complex for relevant regulators to collect and compare standardised complaints data and information from each EDR.

Further, the ACMA considers that the effectiveness of an EDR scheme is sufficiently important that minimum standards for its operation should continue to be set out in, and be enforceable through, legislation.

Functions of an effective EDR scheme

The ACMA considers there are four key functions that an effective EDR scheme dealing with telecommunications issues should perform (see Figure 1 below):

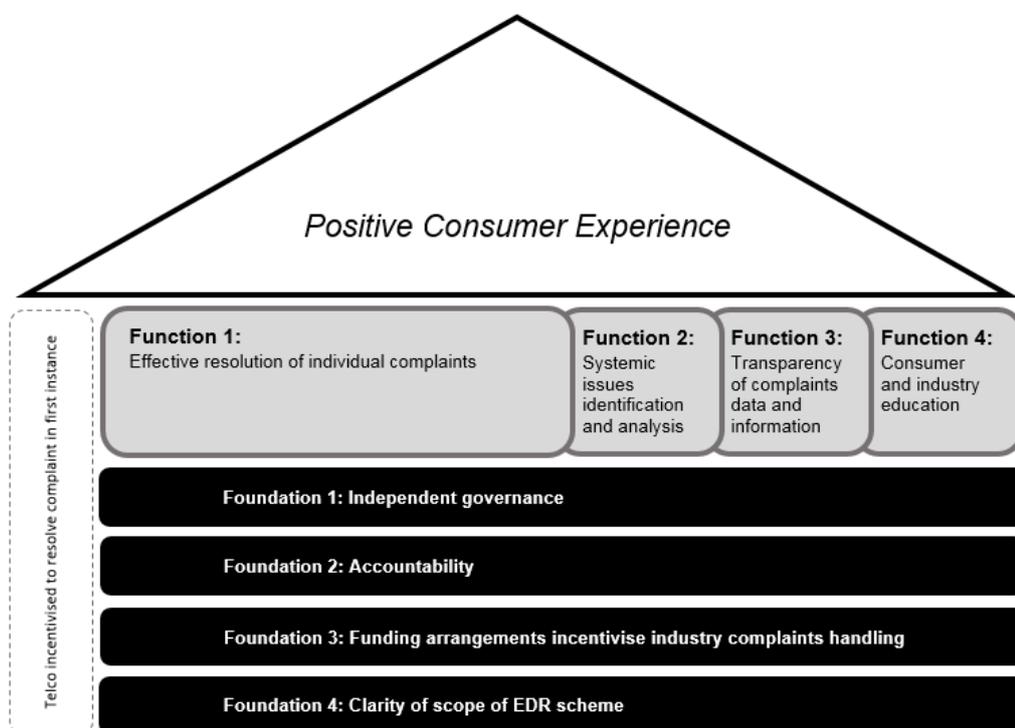
1. effective individual complaints dispute resolution capability
2. systemic issues identification and analysis
3. providing transparency of complaints data and information
4. consumer and industry education and outreach.

We note that the emphasis an EDR places on each of these four functions is dependent on a range of factors, including its funding model and broader consumer safeguards (including those that will be considered in parts B and C of the Review).

In addition, any future consumer safeguards will play an important role in aligning expectations between consumers and providers, including about available remedial actions (for example, compensation).

⁶ The ACMA notes there are other models internationally where multiple escalated complaints-handling bodies are ‘accredited’ by the regulator (for example, in the United Kingdom). Further, in the Australian financial services industry, we note that multiple EDR schemes—the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal—were recently coalesced into the Australian Financial Complaints Authority.

Figure 1: An effective EDR scheme



Function 1—Effective resolution of individual complaints

Complaints-handling arrangements (including regulatory settings and the funding model for an EDR scheme) should incentivise a provider to resolve a complaint itself in the first instance, rather than the complaint being escalated to the EDR scheme. These arrangements should also be supported by other effective consumer safeguards (such as connection and fault rectification safeguards) to minimise the need for a consumer to escalate their complaint to the EDR.

An EDR scheme should aim, where appropriate, to resolve an individual's specific problem. We note that achieving this aim may not need any attribution of fault. It should provide swift outcomes, contrasted with the longer time frames that generally apply to administrative law or judicial outcomes.

We consider the Review should consider enhancements to the current TIO scheme to incentivise industry complaints handling and limit the number of providers that only fully engage in resolving a consumer's complaint following a referral from the TIO. The Review may also wish to consider enhancing existing referral arrangements to incentivise providers to deal with complaints in the first instance. For example, this could include:

- > some types of complaints (such as urgent matters or complaints where the provider has already exceeded the resolution time frame under the Complaints Handling Standard) not being referred to the provider for a final attempt to resolve if a consumer has already made a complaint
- > reducing the time period a provider has to resolve a referred complaint before a consumer can return to the TIO for assistance.

An EDR scheme should be able to direct a provider to undertake remedial action and/or provide compensation to a consumer where appropriate. However, there needs to be a clear distinction between the outcomes of an EDR scheme and the accompanying regulatory regime.

An EDR scheme should be consumer-facing and focused on resolving individual escalated complaints. This contrasts with a regulatory regime, which is focused on developing rules to address systemic issues that have been identified across the telecommunications industry with a regulator enforcing compliance with those rules. A regulatory regime may also provide for penalties for non-compliance, subject to administrative law and natural justice protections. However, as a general principle, we consider an EDR scheme should complement existing arrangements for compliance and enforcement by the regulator.

Function 2—Systemic issues identification and analysis

It is critical in a dynamic telecommunications industry that emerging systemic issues are identified, considered and, where necessary, addressed by the party or parties best placed to improve consumer outcomes. The ACMA notes this was an area identified for improvement in the TIO's independent review.

An effective EDR scheme must be adequately resourced and have the necessary capability to identify systemic issues relevant to consumers, in terms of a particular provider as well as across the telecommunications industry.

The EDR should have sophisticated systems and processes in place to enable complaints data to be analysed to identify systemic issues and trends.

The extent to which an EDR undertakes systemic investigations depends on the approach to regulation within the sector. For example, where consumer safeguards are delivered through co-regulation, there would be value in the EDR undertaking such investigations to provide industry with feedback on its practices and the effectiveness of co-regulatory rules.

Where consumer safeguards are delivered through direct regulation, it would be more appropriate for an EDR to refer systemic issues that appear to involve non-compliance to the relevant regulator for investigation. Issues that are not covered by the existing rules should also be referred to the regulator for consideration of whether the rules need to be amended or whether new rules are required.

Under either scenario, it would be valuable for the EDR to leverage its systemic issue analysis capability to actively contribute to policy and regulatory processes, such as consultation on draft regulations, code reviews and government policy processes. A sound systemic issues analysis capability also assists government and regulators to better understand those issues, appropriately target interventions, and ensure existing and new safeguards are fit for purpose.

Function 3—Providing transparency of complaints data and information

An effective EDR scheme should have sophisticated systems and processes to collect and report on its complaints data and information. While the collection of complaints data should not be the primary role of an EDR, the information collected through resolving individual complaints provides important intelligence about areas of current consumer detriment. When shared with regulators, industry and policy makers, this information better informs their activities, which in turn, results in improved outcomes for consumers.

We consider it would be valuable for an EDR, in consultation with relevant stakeholders, to develop a series of data 'early warning' indicators that, when triggered, necessitate prompt notification to the relevant regulator. For example, these could include a certain percentage increase in a given complaint type or an increase in high-risk complaint types pre-identified by a regulator.

We note that the minister currently has powers under the TCPSS Act to make standards about the TIO scheme. There may be merit in the regulator, as part of an oversight role for the EDR scheme (discussed in more detail below), having the power to issue directions to the EDR or make record-keeping rules about EDR complaints information, including facilitating such an early warning indicator system.

Function 4—Consumer and industry education

An effective EDR should have an outreach role in educating industry and consumers about the existence and operation of the EDR scheme.

Consumers

The ACMA considers that the most appropriate—and timely—approach to awareness raising about the EDR scheme is via providers. This is reflected in the ACMA’s new Complaints Handling Standard, where a provider’s complaints-handling process must include details about how a consumer can contact the TIO.

The EDR’s outreach activities should complement, and not duplicate, activities undertaken by individual providers. The ACMA considers that one area of focus may be consumers in vulnerable circumstances who may face particular challenges in resolving complaints directly with their providers.

The views of consumers should also be sought to inform the operation of the EDR scheme. Currently, nearly 90 per cent of complaints are referred back to providers by the TIO without the complaints returning to the TIO. If a future EDR scheme retains this type of referral system, the ACMA considers that the EDR should perform a regular consumer survey to find out whether these complaints have been successfully resolved and if not, why consumers have not taken any further action.

Industry

The ACMA considers that the EDR should regularly communicate with industry about its role, operation and activities. These activities should be focused on providing participants with transparency about how the EDR makes its decisions and may include guidance notes or information specifically targeted at new members of the EDR scheme. Where appropriate, the EDR should also publish determinations about individual complaints (the last TIO determination was published in June 2014⁷). The ACMA considers that publication of determinations provides clarity and transparency about the EDR’s decision-making processes. Further, transparency about how the EDR makes its decisions and issues determinations could assist providers to improve their own internal complaints-handling processes.

Foundations of an effective EDR Scheme

The ACMA considers there are four key foundations of an effective EDR scheme:

1. independent governance
2. accountability
3. funding arrangements incentivise industry complaints handling
4. clarity of purpose and scope of EDR scheme.

⁷ <https://www.tio.com.au/publications/determinations>

Foundation 1: Independent governance

We consider that any EDR should operate in a way that is independent—and perceived by the community, and especially by complainants, as independent—of any parties who may have a vested interest in the operation and outcomes of the scheme. In practice, we consider that governance arrangements should ensure that the processes and decisions of the EDR scheme are (and are perceived to be) objective and unbiased.

Foundation 2: Accountability

We consider an EDR scheme should be accountable to those parties who are served by its existence and operation—that is, carriers, CSPs, consumers, landowners and occupiers.⁸ At a minimum, an EDR body should provide regular, publicly available reporting about its operations and activities. Such reporting is likely to be of particular interest and value to industry, organisations representing consumers, relevant regulators, and government.

The ACMA considers that legislated five-yearly reviews of the overall effectiveness and efficiency of an EDR scheme in serving its stated purpose should continue. Such reviews would also be valuable in assessing whether those parts of the legislative and regulatory framework that intersect with the management and operation of the EDR scheme are supporting optimal outcomes. In line with recommendations for improved oversight arrangements of the EDR scheme below, it is suggested that the ACMA undertake these periodic reviews.

Foundation 3: Funding arrangements incentivise industry complaints handling

In line with the principle underpinning cost recovery arrangements, the parties that create the demand for the EDR scheme (that is, the providers of the services that are generating the consumer complaints) should fund it. Accordingly, the ACMA considers that industry should continue to fund the scheme.

The ACMA considers that future funding arrangements should be structured to provide:

- > A significant incentive for providers to resolve complaints internally in the first instance. For example, by establishing minimum case fees at a level that is substantially above the average internal cost of a provider handling a complaint.
- > A minimum level of funding to ensure essential functions—including the four key functions described above—continue to be adequately resourced. This recognises the important role the EDR has in minimising both the numbers of complaints and level of ongoing consumer detriment, irrespective of peaks and troughs in the number of escalated complaints it receives over time.

⁸ Under the Telecommunications Code of Practice 1997, objections by owners or occupiers of land relating to entry onto the land by a carrier may, under specified circumstances, be handled by the TIO. We consider that any EDR scheme should continue handling these types of objections.

Foundation 4: Clarity of purpose and scope of EDR scheme

The ACMA considers that the purpose and scope of the EDR scheme needs to be clear, particularly for:

- > oversight arrangements
- > the nature of the complaints it handles
- > the providers that are covered by the scheme (criteria and requirements)
- > the powers to enforce compliance with the scheme.

Oversight arrangements

The ACMA considers that any EDR scheme is enhanced through appropriate oversight arrangements by the regulator. The ACMA currently does not have such a role in relation to the TIO scheme.

Oversight by the regulator can provide greater confidence that the scheme is working effectively for consumers. It can also ensure that systemic issues being identified through the EDR scheme can be quickly and efficiently notified to the regulator for its consideration and any potential intervention.

Such oversight arrangements would include the ACMA, as the sectoral regulator, being provided with specific powers to oversee, direct and review the EDR scheme. This would include the ability to issue directions relating to the functions of the EDR scheme ensuring alignment of the EDR's operations with overarching 'design' principles for the scheme, and funding of the scheme.⁹

The ACMA would also be provided with enhanced information gathering powers to gather information from the EDR scheme to inform its regulatory role. This could also include the ability for record keeping rules to apply to the EDR scheme. Finally, the ACMA would be responsible for the periodic review of the scheme to ensure it remains effective and efficient.

While the ACMA would have oversight, the scheme would remain independent and the ACMA would have no role in the handling of individual complaints.

The ACMA considers that these arrangements would promote a more coherent and holistic approach to consumer protection in the telecommunications sector.

Nature of complaints handled

Notwithstanding our view that the EDR scheme should incentivise the resolution of complaints directly between the provider and the consumer in the first instance, we consider there should be minimal impediments for a consumer to escalate their complaint to the EDR body, if they believe the provider's internal complaints-handling process has not achieved a satisfactory resolution. We recognise that achieving a balance between these objectives may be difficult. However, we also consider it would be unsatisfactory if consumers abandoned their complaints (or found it necessary to resort to expensive legal processes) due to impediments in escalating a complaint to the EDR.

⁹ These powers could be similar to those provided to the new Australian Financial Complaints Authority under Division 2 of Part 7.10A of the *Corporations Act 2001*.

As part of the five-yearly legislated reviews of the overall effectiveness and efficiency of an EDR scheme, we consider the scope and nature of complaints handled by the EDR should also be considered.

The ACMA is supportive of the EDR scheme being empowered to draw providers other than the retail provider (that is, 'upstream' providers such as NBN Co or other wholesale providers) into the process of resolving a consumer's complaint. Such obligations are already specified in the ACMA's new Complaints Handling Standard. However, we consider this ability will become increasingly important as commercial arrangements for the supply of telecommunication services become more complex.

Scheme participants

Consumers and small businesses need to have confidence that an EDR scheme is capable of handling complaints about all providers offering services.¹⁰ The ACMA considers there should be a continuation of the principle that all providers are subject to the TIO scheme (that is, 'members' of the scheme) unless they are granted an exemption by the ACMA. Since 2001, the ACMA has granted 21 exemptions from the TIO scheme.

Enforcement powers of the scheme

We consider an EDR scheme may be effective only to the extent that industry participants comply with determinations made by the EDR. Currently, enforcing determinations issued by the TIO can be time-consuming and costly. This can lead to a complainant's issue continuing to be unresolved for an unreasonable period of time. Determinations are also only enforceable when a provider is trading in the industry. There have been a number of historical cases where a provider has exited the industry and existing legislative arrangements do not provide any remedies for the impacted consumers.

Where a provider does not comply with an EDR-issued determination, there would be benefit in considering whether the ACMA should have the power, where warranted, to:

- > direct a provider to provide redress to the consumer (even if a provider has left the industry)
- > withdraw the licence of a non-compliant carrier.

¹⁰ This principle should also apply to all carriers that enter land, where this may be subject to an objection by the land owner or occupier.

Proposal 3—Data collection, analysis and reporting

Outline of proposal:

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.

Underpinning principles:

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

The ACMA's overarching response to proposal:

The ACMA is supportive of Proposal 3 and the principle underpinning it.

The ACMA's commentary on this proposal:

- A) Highlights the importance of detailed complaint information that identifies problem areas, points to trends and measures of industry performance, being made readily available to relevant stakeholders. In line with Principle 6, this information should also inform timely, evidence-based interventions by industry, consumers and government.
- B) Notes the ACMA's recent activities to obtain complaints-handling data from providers with a view to publishing derived performance information.
- C) Suggests there is value in improving complaints information-gathering and reporting arrangements in the medium term. This includes better aligning the data collection framework and the publication of a single complaints-handling report or table covering both internal and escalated complaints information.

Introduction

Regulators, the government, industry and consumers benefit from access to appropriate data and information that provides transparency of telecommunications industry performance. Complaints data has traditionally been used as one metric to identify areas of consumer detriment in the telecommunications industry.

As a regulator, there are various ways that the ACMA can obtain such data and information, including through consumer research, formal ongoing record-keeping requirements and statutory information requests made under the Telecommunications Act 1997. The ACMA also receives regular reporting from the TIO about escalated complaint numbers.

The ACMA recently focussed on data collection, analysis and reporting when it sought to gain a deeper understanding of the problems consumers faced when moving to and using the NBN. In August 2017, we announced a detailed industry information-gathering exercise (using statutory information-gathering powers), to enable us to better understand the type, incidence and causes of these problems.

In addition to the industry information-gathering exercise, we also used a range of other initiatives to better understand NBN-related issues, including consumer research, a compliance assessment of NBN-related web content and critical information summaries across NBN retail service providers, and use of the TIO's complaints data.

New rules to improve transparency around complaints

Improving the ongoing flow of complaints data and information to the relevant regulator(s) is important because it assists in identifying areas of consumer detriment, obtaining the necessary evidence to inform awareness raising and targeted compliance activities, and contributing to any revised or new regulatory initiatives that may be required.

New record-keeping rules recently made by the ACMA, effective from 1 July 2018, require medium and large-size providers¹¹ to report complaints data to the ACMA on a quarterly basis. The first complaints reports, covering the three-month period 1 July 2018 to 30 September 2018, are due to the ACMA by 30 October 2018. The ACMA anticipates it will publish information derived from these reports.

Amendments proposed in the version of the TCP Code currently out for public comment, will mandate the broader participation in Communication Alliance's *Complaints in Context* reporting beyond the current five participating providers. If this proposed amendment is included in the final code put to the ACMA for registration, we would consider this an encouraging development by industry that complements our new complaints rules.

Both the ACMA's anticipated reporting and Communication Alliance's *Complaints in Context* reports will be published on a quarterly basis. The ACMA also annually reports on the TIO scheme, including the TIO's complaint statistics, in its annual communications report.

Medium to longer-term complaints reporting

Improved transparency of telecommunications industry complaints can assist consumers when they are deciding between retail providers. Our consumer research shows that 50 per cent of households consider positive consumer reviews when selecting an NBN provider and/or plan.

In the medium to longer-term, the ACMA considers there would be significant benefit in:

- > Improving the data collection framework so that data collected by providers and an EDR scheme is consistent and can be directly comparable to the greatest extent possible. To achieve this, the ACMA may require additional powers enabling it to request the TIO to report specific data to it.
- > Publishing both internal and escalated complaints data in a single user-friendly report or comparison/league table. This would:
 - help consumers to choose between providers based on an assessment of the quality of a provider's internal complaints-handling ability
 - provide increased transparency of provider performance, which in turn, may incentivise providers to place greater emphasis on good customer service and complaints-handling practices, particularly for those providers that have not invested in these areas in recent years.

While we consider the ACMA could publish this report, we do not consider that this should replace the TIO reporting on its own complaints data or performance.

¹¹ Providers with 30,000 or more services in operation on the last day immediately preceding a record-keeping period must provide information to the ACMA under the new complaints record-keeping rules.

Conclusion

The ACMA appreciates the opportunity to contribute to Part A of DoCA's Review and welcomes the opportunity to further discuss its submission with DoCA.