



Consumer Safeguards Review: Part A: Redress and Complaints Handling

Submission by the Australian Communications Consumer Action
Network to the Department of Communications and the Arts

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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1. Introduction

ACCAN thanks the Department for the opportunity to comment on proposals for future redress and complaints handling arrangement in telecommunications.

We are pleased that the Consumer Safeguards Review has commenced, as we have been in discussion with the Department about this for some time and see a genuine need for reforms in some areas. In particular, ACCAN has previously articulated the need for wholesale service standards reforms so that there are clear obligations for telecommunications wholesalers to meet timeframes for connections, fault repairs and appointment keeping, as well as network reliability performance benchmarks. Independent oversight of these measures is required to ensure that essential telecommunications services are delivered at a consistent standard for all consumers, and to assist consumer understanding of how their services should perform, and what their rights are should performance fall short. These measures are needed to restore public trust in wholesale networks, and encourage consumers to take up services with confidence. There is broad support and agreement amongst retail service providers that these reforms are needed as a priority. As noted in the Department's consultation paper (the consultation paper), service outages, and delays in connections and repairs have been major issues complained about to the TIO in the last 18 months¹. Our proposed wholesale reforms would significantly address these core issues, and assist in preventing problems from arising in the first instance.

The ACMA recently introduced a suite of new industry standards that provide for greater oversight and enforcement by the regulator. The Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (CHS) and accompanying Record Keeping Rules are part of these new regulatory tools and have only come into force from July 1 2018. The ACMA consulted widely during the development of both instruments. In light of this, ACCAN questions the timing of this review given the time and effort put into developing the CHS and Record Keeping Rules, whose effectiveness is yet to be properly tested.

¹ Consultation paper, p.3 <https://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-consumer-redress-and-complaints-handling>

2. Executive Summary

Our submission starts from a first principles approach by examining the reasons why better regulation of consumer safeguards may be warranted in the Australian telecommunications market.

Our early work on quantification of the losses experienced by consumers in telecommunications suggests these are substantial and ACCAN is working on developing this evidence base further. ACCAN considers there is a case for sector specific regulation in telecommunications due to market failures caused by:

- Information asymmetries between consumers and service providers;
- Limited competition, as a function of market concentration;
- The externalising or shifting of costs of dispute resolution.

ACCAN is supportive of the adoption of a risk based approach to regulation, with intervention occurring where the expected losses to consumers outweigh the expected costs of regulatory intervention.

The consultation raises a number of specific issues which ACCAN supports – we acknowledge that the current legislative framework supports self-regulation in the first instance, and consider that there are weaknesses in this arrangement. Customer service is a major issue of underlying concern in the telecommunications industry, exacerbated by the NBN switchover. Consumers are incurring substantial losses as a consequence. The complexity of the industry, and of products offered, contributes significantly to the information asymmetry experienced by consumers. We also agree that complaints data is of critical importance, and that currently the TIO is the only source of complaints information. ACCAN strongly supports the new ACMA Record Keeping Rules, and considers it vital that the information collected by the ACMA be published to assist consumers to choose providers with fewer complaints.

Industry based customer dispute resolution principles must be central in a review of redress and complaints in any context. These are well established and have guided the recent independent review of the TIO. We are encouraged by the early response to issues raised by the TIO, but at the same time consider there is scope for some improvements in current

arrangements. The TIO is well recognised and well regarded, and we do not support proposals to replace it with an alternative EDR body, and nor do we support measures that would impinge on the ability of consumers to seek external redress.

ACCAN has considered closely the proposals and issues examined in the Department's consultation paper, and we have made a number of recommendations for future approaches and actions.

2.1. Recommendations

Recommendation 1: *That government recommit to ongoing sector-specific regulation of telecommunications that is targeted to address market failure, protect consumers and proportionate to the risk of detriment faced by consumers.*

Recommendation 2: *That government commit to funding research into the harm faced by consumers and small business through market failure, in order to provide an evidence base to inform policy development and best practice regulatory intervention.*

Recommendation 3: *ACCAN recommends that the definition in the Complaints Handling Standard be reconsidered and amended to align with that in the international complaints handling standard.*

Recommendation 4: *The ACMA should closely monitor industry compliance with the Complaint Handling Standard to ensure that consumers have access to information about internal and external dispute resolution, and that complaints are resolved within the timeframes given in the Standard.*

Recommendation 5: *Where a complaint cannot be resolved at first contact, RSPs should, where possible, promote the use of a nominated complaint manager as a co-ordinating point of contact for customers for the life cycle of their complaint.*

Recommendation 6: *The ACMA should closely monitor compliance to the Complaint Handling Standard to ensure providers are following the requirements for complaints that involve multiple parties.*

Recommendation 7: *That ACCAN's outstanding recommendations made to the ACMA in the Complaints Handling Standard consultation be reconsidered and adopted.*

Recommendation 8: *That government support the adoption of a ‘no-wrong-doors’ approach to dispute resolution.*

Recommendation 9: *That government does not adopt measures that would impinge on the ability of consumers to seek redress from the EDR.*

Recommendation 10: *That the TIO publish detailed quarterly complaints data, that includes, in addition to data currently published, details of how complaints and referrals are resolved; the number of inquiries received; and complaints by postcode.*

Recommendation 11: *That the TIO continue to publish its own complaints data, and that the ACMA publish industry complaints metrics collected under the new Record Keeping Rules.*

3. First principles regulation of consumer safeguards in telecommunications

ACCAN supports the development of best practice regulation that is evidence based, targeted and proportionate to the harm faced by consumers. The principles of best practice regulation are well established and have been outlined by the OECD and the Department of Prime Minister and Cabinet.²

The development of robust evidence based regulation that fully accounts for the costs to consumers faced through poor customer service, delays, disconnection and poor information is essential to promoting the long term interest of consumers and improving the market for telecommunications services.

Evidence of consumer loss

In the field of telecommunications, the quantification of the losses faced by consumers has been inadequate, which has led to underestimates of harm and in some instances a failure to regulate. ACCAN is developing further refined measures of the end user consumer losses attributable to market failure, however early estimates indicate that on a conservative basis consumers are facing detriment through:

- Direct economic loss, in terms of forgone services or lower quality services;
- For small businesses loss of income and commercial opportunities;
- For individuals seeking rectification or redress, wasted time.

We have done some preliminary analysis of consumer loss in our submission on the proposed ACMA Line Testing Determination, where we estimated that the cost to consumers associated with loss of service due to disconnections was likely to be within a minimum range of between \$3.6 to \$5.5 million.³

² Organisation for Economic Co-operation and Development 2012, *Recommendation of the Council on Regulatory Policy and Governance*, Paris; Department of Prime Minister and Cabinet 2014, *The Australian Government Guide to Regulation*.

³ ACCAN 2018, *Submission to the Telecommunications Service Provider (NBN Line Testing) Determination*, Sydney.

Similarly ACCAN has quantified the losses to consumers that could accrue as a result of inadequate competition resulting in a 0.5% increase in prices in either the fixed line (\$51.5 million) or mobile markets (\$110 million).⁴ We have also estimated losses for consumers on congested wireless towers, with these consumers currently paying in the order of between three to six times what they would be ordinarily willing to pay for a congested service were they adequately informed.⁵

ACCAN is developing more refined measures of the total loss to consumers that arises due to slow customer service or dispute resolution. For many consumers this represents a major cost in terms of wasted time, which on the basis of our early estimates is at least \$5.7 million for consumers who sought redress at the TIO level. On the basis of our survey results, only 3% of individuals escalate their complaint to the TIO level, which would indicate that across the population a conservative estimate of the costs to consumers would be \$190 million in time wasted.

For small businesses the costs associated with disconnection or poor services can be significant, and significant losses can arise due to forgone revenue and income. The costs associated with problems switching over to the nbn alone have been estimated at an average of \$9000, according to a recent NSW Business Chamber survey.⁶ Although a small sample, the results of the survey accord with the information ACCAN has received from consumers many of who have lost \$3000-\$4000 in income as a result of disconnections.

The lack of adequate information when developing regulation is not a particularly new problem, or one that is unique to the field of telecommunications regulation. The problem of poor information, and the absence of essential economic information when assessing the merits of regulation, has been well documented internationally,⁷ and in Australia.⁸

⁴ ACCAN 2018, *Submission to the Telecommunications Competition Notice Guidelines consultation*, Sydney.

⁵ ACCAN 2018, *Submission to the Regional Telecommunications Review*, Sydney.

⁶ NSW Business Chamber 2018, *NBN and telecommunications survey*, Sydney.

⁷ Cecot, C., Hahn, R., Renda, A. & Schrefler, L. 2008, 'An evaluation of the quality of impact assessment in the European Union with lessons for the US and the EU', *Regulation and Governance*, vol. 2, no. 4, pp. 405–24; Hahn, R. 1998, 'Government Analysis of the Benefits of Regulation', *Journal of Economic Perspectives*, vol. 12, no. 4, pp. 201–10; Hahn, R., Burnett, J., Chan, Y., Mader, E. & Moyle, P. 2000, 'Assessing the quality of regulatory impact analyses', *The Harvard Journal of Law and Public Policy*, vol. 23, no. 3, pp. 859–86; Hahn, R. & Dudley, P. 2007, 'How well does the US government do benefit-cost analysis?', *Review of Environmental Economics and Policy*, vol. 1, no. 2, pp. 192–211; Hahn, R. & Hird, J. 1991, 'The Costs and Benefits of Regulation: Review and Synthesis', *Yale Journal of Regulation*, vol. 8, no. 1, pp. 235–78; Hahn, R. & Tetlock,

3.1. First principles appraisal of the case for better regulation

ACCAN believes that on a first principles basis, there continues to be a case for sector-specific regulation of telecommunications, and consequently consumer safeguards above and beyond those set out in general laws such as the Australian Consumer Law. A first principles approach entails identifying whether a market failure exists, considering regulatory objectives, assessment of potential policy options and implementation of that policy option which maximises benefit to the public.

3.1.1. What is the problem?

The problem in the telecommunications sector is that an abundance of market failures exist which provide a strong rationale for regulatory intervention. Market failure arises when the free market does not deliver efficient allocation of goods and resources. In the Australian telecommunications sector, causes of market failures include:

- Information asymmetries between consumers and service providers;⁹
- Limited competition, as a function of market concentration;
- The externalising or shifting of costs of dispute resolution.

3.1.2. Information asymmetries and consumers

The telecommunications marketplace is characterised by a number of information asymmetries between consumers and service providers. These asymmetries stem in part from the incentives that service providers have to raise the complexity or cost of information in areas such as contracting as well as the genuinely higher information costs for consumers that arise due to the technical complexity associated with providing services. The existence of information asymmetries in the telecommunications and digital sphere are well documented in both Australia and internationally.¹⁰

The existence of information asymmetries has led to in recent months to the adoption of:

P. 2008, 'Has economic analysis improved regulatory decisions', *Journal of Economic Perspectives*, vol. 22, no. 1, pp. 67–84.

⁸. Productivity Commission 2012, *Regulatory Impact Analysis: Benchmarking*, Canberra, p. 11.

⁹. Akerlof, G. 1970, 'The Market for "Lemons" Quality Uncertainty and the Market Mechanism', *Quarterly Journal of Economics*, vol. 84, no. 3, pp. 488–500.

¹⁰. Organisation for Economic Co-operation and Development 2018, *Improving Online Disclosures with Behavioral Insights*, OECD Digital Economy Papers, Paris.

- The *Telecommunications (NBN Consumer Information) Industry Standard 2018*
- The *Telecommunications Service Provider (NBN Service Migration) Determination 2018*

These regulations have respectively addressed problems associated with information asymmetries in contracts, and secondly the material information asymmetries present between consumers and service providers concerning whether an NBN service that they are being sold can actually be provided. These asymmetries were leading to a material erosion of trust on the part of consumers, and emerging signs indicated that they were affecting consumers' rate of take up of the NBN as well as their willingness to pay – to the detriment of both consumers and the wider market. In a free market, it is a fundamental principle that contracts signed between parties are honoured and that services contracted to be provided actually be provided. Where this precondition fails to be met a market cannot achieve efficiency or promote the public interest.

Historically the existence of information asymmetries has led to the implementation of a variety of regulations aimed at ensuring consumers are appropriately informed about the terms and conditions of services that they are seeking to purchase.

3.1.3. Concentration, competition and consumer outcomes

Australia has a highly concentrated communications market with three entities (Telstra, Optus and Vodafone) accounting for almost 100% of the mobile market¹¹ and the four largest providers delivering services to 96% of residential premises.¹² Although concentration is but one of many indicators relevant in assessing the potential for anti-competitive activity, it is accepted the level of concentration in the Australian communications market is well in excess of those observed in competitive markets that work well.¹³

The way in which concentration affects market functioning and consumers outcomes is best described by Professor Stephen King:

¹¹ Minifie, J. Chisholm, C. & Percival, L. 2017, *Competition in Australia: too little of a good thing?* Grattan Institute.

¹² ACCC, *Communications Sector Market Study Final Report 1.3*, April 2018

¹³ (Healey & Nicholls 2017, p. 56) note that a HHI score in excess of 1000 indicates a concentrated market, with scores in excess of 2000 indicating a high level of concentration. The *Communication Sector Market Study Report* (ACCC 2018) found HHI values of: 3500 for fixed broadband services; 4500 for fixed voice services and 3100 for mobile phone services, indicating extremely high levels of concentration in these markets.

Market shares and concentration interact with competition through the structure of the market. All other things being equal, increased concentration due to an increase in the market share of a single firm will tend to increase that firm's ability to raise its profits by raising its own prices, lowering its service levels or otherwise engaging in less competitive activity. (King 2009, p. 265)¹⁴

The lack of competitive pressure associated with this market structure has been identified as a potential driver of excess prices for data and voice services and led to 'extraordinarily high' returns being achieved.¹⁵ A lack of competition has also been reflected in poor service quality outcomes and a high incidence of complaints from consumers who have faced poorer outcomes than could be reasonably expected in a competitive market.¹⁶

The high level of complaints reflects the current market structure, with very limited competition in some sub-markets (e.g. entry level services and regional fixed lines services) which has led to poor outcomes for consumers and as a consequence higher complaints. Although competition within some sub-markets appears to be improving (for instance mobile), poor customer service outcomes will continue to exist in the absence of stronger competition.

The concentration present in the Australian telecommunications sector allows for firms to exercise market power to set prices in excess of competitive levels or provide services of a lesser quality than would arise in a competitive market. The exercise of market power to the detriment of consumers is a manifestation of a market failure and provides an additional rationale for the specific regulation of the telecommunications sector.

ACCAN is not suggesting that at the present moment that there is clear conduct that would amount to anti-competitive behaviour in the telecommunications market, but rather that limited competitive pressures are leading to less than ideal outcomes for consumers. Moreover, a concentrated market reflects a level of risk that merits appropriate and ongoing

¹⁴. King, S. 2009, 'The 2008 ACCC merger guidelines: how and why have they changed', *UNSW Law Journal*, vol. 32, no. 1, pp. 263–74

¹⁵. Minifie, J. Chisholm, C. & Percival, L. 2017, *Competition in Australia: too little of a good thing?* Grattan Institute, p. 31.

¹⁶. ACMA (Australian Communications and Media Authority) 2018, *NBN Consumer Experience Residential Research Snapshot*; TIO (Telecommunications Industry Ombudsman) 2018, *2016-2017 Annual Report*.

regulatory scrutiny as well as sector-specific regulation to curtail the potentially significant losses that would accrue from anti-competitive conduct or less than perfect competition.

3.1.4. What is the objective?

The objective of regulatory intervention should be to maximise social welfare, which ACCAN believes is best achieved by improving consumer outcomes and providing incentives to service providers to offer competitive services and products. Achieving this objective entails implementing tailored policy interventions that address the fundamental sources of market failure and consumer detriment.

ACCAN believes there is a continued role for regulatory intervention to promote consumer outcomes and consumer welfare.¹⁷ Intervention is justified where the benefits associated with doing so exceed the costs in social and economic terms.¹⁸

3.1.5. What are the options?

One option in any first principles assessment of regulatory reform is to do nothing and leave regulatory settings in place.¹⁹ In some instances this may represent the best option given that costs are inherently entailed in changing existing regulatory settings and transitioning to a new form of regulation.

As part of considering this option, it is important to examine the suitability of existing settings. At the present moment the regulatory framework in place is one of co-regulation or industry self-regulation.²⁰ A framework of self-regulation is appropriate where the risk posed to consumers from industry misconduct is low and where self-regulation of technical aspects of the industry is more effective or less costly than direct government regulation.

A notable issue associated with industry self-regulation is industries have incentives to withhold critical information in order to produce regulatory solutions that favour its

¹⁷. At an economic level this would be described as being achieved through the attainment of allocative, productive and dynamic efficiency.

¹⁸. This is known as the net benefits test and was articulated in Hicks, J 1939, 'The Foundations of Welfare Economics', *The Economic Journal*, vol. 49, no. 196, pp. 696-712; and Kaldor, N 1939, 'Welfare Propositions of Economics and Interpersonal Comparisons of Utility', *The Economic Journal*, vol. 49, no. 195, pp. 549-552.

¹⁹. Department of Prime Minister and Cabinet 2014, *The Australian Government Guide to Regulation*.

²⁰. Ayers, I. & Braithwaite, J. 1995, *Responsive Regulation: Transcending the Deregulation Debate*, 1st edn, Oxford University Press, New York.

members.²¹ Another problem associated with self-regulation or co-regulation is the potential for industry to capture regulators, by taking over much of the development of policy and regulation.²² Where regulators have limited internal capacity or technical expertise concerning specific matters the scope for this to occur is greater.

Self-regulation or co-regulation represents the lowest level of government intervention within a sector, within the responsive regulatory framework.²³ The regulation of a sector within this framework escalates as a function of conduct, and as firms engage in inappropriate conduct the level of regulation should increase.²⁴ This approach is outlined in the Department's Redress and Complaints consultation companion paper.²⁵ It can be argued that this approach has led to the current system of co-regulation in telecommunications in Australia, and has failed to produce regulatory outcomes that promote the interests of consumers. Under the principles of the model, there is now a need for a regulatory response by government to address the material detriment that is occurring, and the evidentiary threshold for moving beyond a co-regulatory approach has been met.

As noted in above if the responsive regulatory framework approach were taken in the context of anti-competitive behaviour, the costs to consumers and the economy would be exceptionally high. Although the level of competition has increased considerably since deregulation, an improvement from a monopoly scenario to one with some level of competition does not diminish the considerable scope for anti-competitive behaviour that remains. Where the problem at hand is an information asymmetry, the economic damage that accrues may be material if these asymmetries shift consumer perceptions of the quality of a service, and in some instances may take years for reputations and trust to recover.

Accordingly, ACCAN supports the adoption of risk-based regulation, with intervention occurring where the expected losses to consumers outweigh the expected costs of regulatory intervention. In the context of an exceptionally concentrated marketplace, this is currently

²¹. Quirk, P.J. 2014, *Industry influence in federal regulatory agencies*, vol. 84, Princeton University Press.

²². Stigler, G.J. 1971, 'The Theory of Economic Regulation', *The Bell Journal of Economics and Management Science*, vol. 2, no. 1, pp. 3–21.

²³. Ayers, I. & Braithwaite, J. 1995, *Responsive Regulation: Transcending the Deregulation Debate*, 1st edn, Oxford University Press, New York.

²⁴. Ibid, p. 35-40.

²⁵ <https://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-consumer-redress-and-complaints-handling>

manifested through the sector-specific regulation set out in the *Competition and Consumer Act 2010* (Cth) (Part XIB) which provides a framework for rapid intervention.

Where information or evidence is insufficient to support a clear determination in favour of or against regulation, ACCAN believes that further investment in the development of the evidence base is required. In the short term such investments may entail costs, but given the potentially material long term costs associated with failing to regulate market failures this investment is justified. For example, it is currently unclear as to the extent to which modems are contributing to less than optimal services experienced by consumers, an issue which will be resolved through research being undertaken by the ACMA.

More broadly ACCAN believes there is a continued role for regulatory interventions in a variety of environments to support competitive outcomes and promote consumer interests. Regulators need the right instruments to ensure they can counter these well-established dangers in regulating the market.

Recommendation: 1: That government recommit to ongoing sector-specific regulation of telecommunications that is targeted to address market failure, protect consumers and proportionate to the risk of detriment faced by consumers.

4. Specific issues raised in the consultation paper

ACCAN supports many of the observations in the consultation paper regarding problematic elements in current telecommunications consumer safeguards.

4.1. The current legislative framework supports industry self-regulation in the first instance, and allows for regulatory intervention as a last resort.

Industry codes have been the predominant mechanism for setting out the rules governing the relationship between retail providers and their customers, particularly the Telecommunications Consumer Protections Code. The ACL also plays a fundamentally important overarching role in the telecommunications sector, but does not negate the need for sector specific rules. The development of telecommunications codes is largely led by industry, as permitted by Part 6 of the Telecommunications Act.

These arrangements may have been appropriate at a time when the telecommunications industry was transitioning from being a government run monopoly to a privatised and competitive market. However, ACCAN does not believe they are appropriate to support the delivery of today's essential telecommunications services.

The body originally set up by the industry to develop industry codes was the Australian Communications Industry Forum (ACIF). The concept and intention of ACIF was to provide a neutral forum for the development of initiatives to support competition and protect consumer interests²⁶. In 2006 ACIF transitioned into Communications Alliance, an industry peak organisation 'formed to provide a unified voice for the Australian communications industry'. The vision of Communications Alliance is to be 'the most influential association in Australian communications, co-operatively initiating programs for industry development, innovation and growth'. Communications Alliance has maintained the code development

²⁶<https://www.budde.com.au/Research/Australian-Communication-Industry-Forum-ACIF>

function, and the ACMA is satisfied that Communications Alliance represents sections of the telecommunications industry, consistent with the Telecommunications Act ²⁷.

The ACMA is required to ensure that public interest considerations do not impose undue financial and administrative burdens on the industry²⁸ in exercising its powers to register codes.

Furthermore, to meet the test for a registerable code, the ACMA needs to be satisfied that the industry association has published a draft and invited comments by the industry, the public, the ACCC, the TIO and where appropriate the OAIC. The industry body is required to give consideration to any submissions received. If these tests are met, then the ACMA must register the code.

ACCAN considers there are weaknesses in these arrangements that have contributed to high levels of consumer complaints and consumer detriment.

1. The industry forum approach to code and guideline development is predominantly one of risk mitigation and management; this allows for industry to use the system opportunistically to its own advantage.
2. Industry resistance to change on the basis of undue financial and administrative burdens which are costed by industry has become entrenched, and the ACMA has accepted industry costings at face value.
3. The industry body is required to give consideration to public submissions, but has no obligation to adopt any recommendations.
4. The test that the ACMA is required to ensure public interest considerations do not impose financial and administrative burdens on industry is inappropriate, and inconsistent with established best practice approaches to regulation. The fundamental test for determining whether a regulatory measure should be adopted is whether it results in a net benefit in societal welfare, not whether it imposes regulatory costs.²⁹

ACCAN believes that in assessing the merits of regulation or registration of an

²⁷ Telecommunications Act 1997, Section 112 (1) Statement of regulatory policy

²⁸ TA 1997, Section 112 (2)

²⁹ This is known as the net benefits tests and is reflected in best practice regulation standards set out the Department of Prime Minister and Cabinet's *The Australian Government Guide to Regulation* and originally articulated in Hicks, J 1939, 'The Foundations of Welfare Economics', *The Economic Journal*, vol. 49, no. 196, pp. 696-712; and Kaldor, N 1939, 'Welfare Propositions of Economics and Interpersonal Comparisons of Utility', *The Economic Journal*, vol. 49, no. 195, pp. 549-552.

industry code, that the fundamental test should remain one of net benefit and consequently that reforms to the Act are required.

These arrangements have resulted in a situation where consumer interests are secondary. This ultimately does not serve the community well, contributes to perceptions of the ACMA being a less effective regulator, and results in lowered public expectations and levels of trust in the telecommunications industry.³⁰ It is accordingly incumbent on the government to address any underlying structures and arrangements that may promote this outcome.

4.2. Customer service.

ACCAN agrees that customer service in the telecommunications industry is a major problem and has been for many years. ACCAN is frequently contacted by consumers who recount poor customer service experiences, and there is a plethora of commentary on social media reflecting the same concerns. This led us to commission our *Can You Hear Me?* survey³¹ in order to quantify customer service experiences, both good and bad, and identify better performing providers (**Box 1**).

Box 1. Can You Hear Me?

ACCAN's *Can You Hear Me?* research found consumers were experiencing long wait times to connect to the right person/area to handle their issue; an average of 3 phone transfers before getting the right team; an average of 13 days to get an issue resolved (with even simple issues like updating contact details taking 11.3 days), that customers initiated an average of 2.6 contacts to talk to their provider about an issue; over half (58%) said they needed to provide details of their issue on subsequent contacts with their provider; people found it difficult to find information about how to complaint with their provider (55%) and few found the experience of making a complaint easy. Very few went to the TIO (3%), but nearly a quarter wanted to do so.

³⁰. Stigler, G.J. 1971, 'The Theory of Economic Regulation', *The Bell Journal of Economics and Management Science*, vol. 2, no. 1, pp. 3–21.

³¹ <http://accan.org.au/our-work/research/1523-can-you-hear-me-ranking-the-customer-service-of-australia-s-phone-and-internet-companies>

³⁰. https://www.acma.gov.au/-/media/Research-and-Analysis/Research/pdf/Research-snapshot_NBN-pdf.pdf?la=en, p10.

³¹. <https://annualreport.tio.com.au/#complaints/18>.

The transition to the NBN with all its attendant problems, necessitating mass customer migration and engagement with RSPs, has put pressure on an industry that was already performing poorly in customer service and complaints handling, and amplified its weaknesses.

At the same time, the NBN migration and subsequent poor performance has given consumers substantial cause for complaint, as has been amply demonstrated. ACMA research published in March 2018 found that 49% of households connected to the NBN in the preceding 12 months reported drop outs, 28% service outages, and 33% slow data speeds (36% in the evening).³⁰

The degeneration of legacy networks is also driving high levels of complaints due to poorly performing fixed line voice services, slow fault repairs, and increasing difficulty in the supply of equipment. Landline phone services accounted for 26.5% of complaints to the TIO in 2016-17, and Telstra landline complaints increased from 17,587 in 2015/16 to 24,044 in 2016/17.³¹

Costs of poor customer service and poorly performing services for consumers

For consumers, poor customer service and slow dispute resolution processes lead to unnecessary detriment through:

- Direct economic loss, in terms of forgone services or lower quality services;
- For small businesses loss of income and commercial opportunities;
- For individuals seeking rectification or redress, wasted time.

ACCAN has done a rough calculation of the economic value of the time wasted by consumers and small businesses in seeking redress by using existing economic models of congestion (for time similarly wasted in traffic) or through existing cost assessment measures used for bureaucracy.

Our *Can You Hear Me?* research found that respondents who contacted their provider by phone (66%) spent on average 1.2 hours on the call before connecting to the right

person/team. The economic cost of the time consumers spend on seeking redress can be quantified as:

Time x a given valuation of period of time (wage rate)

An estimate of the opportunity cost of this time from an economic standpoint is what an individual would otherwise be paid for their time. To be very conservative, we have taken the minimum wage rather than average wages, which results in a figure of \$18.

In 2016-17 approximately 158,000 consumers complained formally to the TIO, an action that they would not have undertaken unless the expected benefits associated with escalating their dispute outweighed the cost of pursuing a dispute. On the basis of ACCAN's CYHM research, it is clear that the number of individuals that escalate their complaint to this level is a fraction of all affected consumers.

If the approximately 158,000 individuals who escalated their dispute were taken as the minimum population of affected consumers, and on average they spent between 1 to 2 hours pursuing their complaint, then the implied economic loss to society as a result of poor customer service (for wait times alone) is approximately \$5.7 million for 2016-17. However, given that the rates of complaint are low (based on our research the rates are 3%), the wage rate we have used is not the average, and the time frames are in keeping with experience (and excludes outliers) then it is reasonable to assume this estimate is a significant understatement of the total economic loss attributable to time wasted.

We acknowledge that further research is required to fully quantify the economic loss associated with time wasted in the telecommunications sphere through customer service delays, but these calculations are indicative of a considerable burden carried by telecommunications customers.

Recommendation 2: *That government commit to funding research into the harm faced by consumers and small business through market failure, in order to provide an evidence base to inform policy development and best practice regulatory intervention.*

4.3. Industry complexity; diversity of products and wider choice; information asymmetry.

We agree that the industry has become considerably more complex, both as a result of evolving from a government run monopoly to a competitive market, and due to the fact that multiple parties are frequently involved in the delivery of services (for example wholesaler (NBN), aggregator (Telstra), and retailer (Southern Phone)). For consumers, this has made resolving a service problem increasingly complex and more time consuming. At the same time, the array of products on the market has expanded exponentially, with consumers choosing between a variety of home voice services, mobile options and fixed broadband, sometimes bundled in different combinations.

As indicated above, information asymmetry in the telecommunications sector is significant. The complexity of products offered by the industry is a major contributor to this. We welcome Telstra's recently announced proposals to simplify its products³² as a positive recognition of this problem, but we have concerns that information asymmetry will be perpetuated as it may be used to support existing structures and interests.

Examples of areas where it can be difficult for consumers to evaluate whether a contract is good for them were identified in our submission to the ACCC Communications Sector Market Study consultation³³. These include:

- The length of the plan – many services are available on varying lengths; 1, 10, 28, 30, 90, 365 day billing periods or by calendar months. This can make it difficult to compare plans. The availability of a range of periods can be extremely important for consumer and may meet some consumers' needs, such as those who use services infrequently or do not have coverage for periods at a time. However, the difficulty in comparing these services on an equivalent basis is likely to impact consumers' decisions on which service to choose. They may believe that it is the cheapest service available, but when other plans are calculated over the same period it may not be the

³² <https://www.telstra.com.au/aboutus/media/media-releases/Telstra-sets-new-strategy-to-improve-customer-experience-simplify-structure-and-cut-costs>

³³ <http://accan.org.au/about/staff-members/our-work/submissions/1329-telecommunications-market-study>

best choice. For example, a number of providers have switched to 28 day periods. Over a year this adds an additional month of service that consumers need to pay for.³⁴

- Various introductory offers, for example bonus data for the first month, or free trials for streaming services. This can be confusing for consumers who think the promotion price is ongoing or who forget to re-evaluate once the promotion is over. For example, the first free months to a subscription service.³⁵
- The unit cost per GB of data. Some RSPs offering NBN on non-unlimited plans display the cost of the plan per GB, but this is not consistent across the sector. We believe this is a very useful comparison tool for consumers, similar to the unit pricing that was introduced for supermarkets in 2009/10.

Comparator websites such as Whistle Out and Finder are useful tools and can assist, however they can also obfuscate and further entrench competitive imbalances due to a number of factors that influence how products and services are presented. For example there may be a number of ‘behind the scenes’ factors that influence how products and services are presented, such as:

- Inducements
- Preferential treatment
- Algorithms
- Sales quotas
- Commercial relationships between comparator websites and telco service providers.

ACCAN has been supportive of and provided feedback on the ACCC guidance to comparator website operators.³⁶ This guidance was centered on greater transparency around how comparisons were conducted and commercial relationships that may exist. However, ACCAN remains concerned comparison sites do not adequately disclose the commercial relationships they have with providers of the products they cover. Poor practice in this area

³⁴. ACCAN, 2016. What ‘28 day months’ mean for you. <https://accan.org.au/hot-issues/1174-what-28-day-months-mean-for-you>

³⁵ .Musolino, V & Ogle, G, 2016, Analogue entitlements in a digital age: Preliminary data briefings on income support and the digital divide. Australian Communications Consumer Action Network, Sydney.

³⁶ ACCC, Comparator websites - A guide for comparator website operators and suppliers, August 2015, available at <<https://www.accc.gov.au/system/files/CSBS%20-%20Comparator%20web%20sites%20project%20-%20Industry%20Guidance%20-%20final.pdf>>.

may be picked up by existing consumer protections which prevent misleading and deceptive conduct. However, the arm's length relationship between comparator websites and the services compared, as well as limited information about how comparisons are conducted creates barriers for adequate enforcement. Traditionally product comparisons have been the core business of consumer organisations, with standards in place to maintain independence and transparency. However, the current business model for comparator websites is reliant on advertising and commission based selling. This can come into direct conflict with the interests of consumers.

4.4. Complaints data

TIO complaints data is very important as an indicator of the volumes of complaints that are escalated to the EDR body. However, ACCAN has consistently maintained that TIO data is not a substitute for data about complaints made by customers directly to their telecommunications provider. We know that only a small group of complainants are sufficiently persistent to progress a complaint to the TIO (3% in our recent survey, out of 24% wanting to do so³⁷), and that the volumes of complaints dealt with by the industry must be of significantly greater magnitude. As an indication, 51% of all respondents (8,907) to our survey (prior to screening out non-qualifiers) had contacted their provider with a question or problem in the 12 months prior to March 2018.

While the industry Complaints in Context data is useful, and we welcome the initiative to broaden participation in the draft Telecommunications Consumer Protections Code³⁸, as the basic input is TIO complaints data, it is similarly limited.

The ACMA's new Telecommunications (Consumer Complaints) Record Keeping Rule (RKR) is a welcome development and strongly supported by ACCAN³⁹. The RKR will enable the ACMA to effectively monitor complaint trends and levels, and inform policy development. Having access to more than just the escalated complaints statistics reported on

³⁷ <http://accan.org.au/our-work/research/1523-can-you-hear-me-ranking-the-customer-service-of-australia-s-phone-and-internet-companies>

³⁸ http://www.commsalliance.com.au/__data/assets/pdf_file/0006/60666/EXPLANATORY-STATEMENT-TCP-Code-Public-Comment-2018.pdf

³⁹ <http://accan.org.au/our-work/submissions/1503-acma-complaints-handling-standard-and-record-keeping-rules>

by the TIO will provide an accurate reflection of the health of the industry. Gas and electricity providers have been required to report on internal complaints statistics for a number of years, and this has been welcomed by industry players as an opportunity to build consumer trust. However, the RKR does not go far enough because:

- It is not binding on all providers, only those with 30,000 or more services in operation. It should be broadened to cover all providers selling services to consumers and small businesses
- It should cover more than the top three complaint types, and reporting of complaint types should require more detail.
- It should require reporting of total numbers of complaints resolved as well as received.

Importantly, ACCAN remains concerned that at this stage it is unclear whether the ACMA will be publishing the data it receives from the industry under the RKR. It is fundamentally important that it does so, as if this information is not publically available the benefits to consumers will be considerably lessened. Publication of this data will inform consumer decision making, as it will guide consumers to providers with the fewest complaints, and allow market forces to drive better industry performance.

4.5. Industry based Customer Dispute Resolution Principles and the TIO

ACCAN strongly supports the benchmark principles for customer dispute resolution revised by the government in 2015⁴⁰. A review of redress and complaints in telecommunications must be guided by these well developed and widely acknowledged principles, namely accessibility; independence; fairness; accountability; efficiency; and effectiveness.

We note that the TIO independent review in 2017 took account of these principles in its consultation paper, and final report. ACCAN's submission to the independent review identified areas for improvement - improved complaint handling; more consumer outreach

⁴⁰ <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution/>

and engagement especially with vulnerable consumer groups; measures to improve consumer understanding of TIO processes; improved data collection, analysis and reporting; and greater transparency about the interaction of the ACMA and TIO in relation to systemic issues identified by the TIO. The TIO has subsequently introduced measures to address some of these concerns. The new funding model is designed to assist in management of fluctuations in workload that can strain TIO resources and make for frustrating consumer interactions with front line investigations staff. The new complaints handling processes for ‘inquiry referrals’ and ‘referrals’ has also just been introduced, designed to increase efficient handling of complaints and reduce delays experienced by consumers. In relation to systemic issues, the TIO has recently published a paper identifying the systemic issue of loss of telephone numbers migrating to NBN, with recommendations for service providers. We are encouraged by these initiatives, but also consider that there are areas for improvement that we discuss in our response to the proposals for reform below.

Proposal 1:

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.

Preliminary comments:

ACCAN strongly agrees with the principle underpinning Proposal 1. Telecommunications providers must have primary responsibility for resolving customer complaints and for taking care of their customers by putting in place efficient, fair, readily available and accessible complaint handling processes. Effective internal dispute resolution (IDR) can help to identify systemic problems within a provider (or the industry at large) and thus minimises the need for escalation to an external source. Whilst the ability to take a complaint to EDR is vital for consumers, the process can be lengthy and frustrating and most consumers prefer to have their provider resolve a complaint at first contact or within a timely manner without needing to go to EDR.

The reliance on telecommunications services by modern consumers is increasing rapidly, and telecommunications have become more and more essential to participation in society, and this necessitates a reappraisal of how the industry is dealing with its customers. Consumers should not have to jump through hoops or experience long, frustrating processes to get an issue resolved by their provider.

Issue 1: *How can telecommunications service providers be encouraged to deal with and resolve their customer complaints without the need for recourse to external escalation?*

Direct regulation

The requirements for complaint handling formerly set out in the TCP Code were unsuccessful in binding providers to fair and efficient complaint resolution. IDR has been difficult for customers to access in the first place and can be very time consuming. ACCAN's recent customer service survey revealed that over half (55%) of respondents who looked for information about how to lodge a complaint with their provider said the information was

difficult to find⁴¹. Results also demonstrated that customers spend a long time seeking a resolution. For respondents who had received a resolution at the time of the survey, the average time it took was 13 days⁴². However for those whose issue remained unresolved at the time of the survey they had spent an average of 60 days to date seeking a resolution⁴³, well beyond the timeframes set out in the TCP Code and CHS.

The unacceptably high rates of complaints ending up with the TIO illustrate the frustration experienced by telecommunications consumers when trying to have their complaints resolved through IDR. The TIO's 2017 Annual Report demonstrated a 41.1% increase in complaints from the previous year⁴⁴. The July-December 2017 six month update complaint data showed further increases in complaints across all services, indicating systemic issues across the board that need to be addressed⁴⁵.

Providers must therefore be legally bound to handle and resolve complaints from their customers. The recently implemented CHS provides the ACMA with greater regulatory oversight and enforcement with regards to industry complaint handling. ACCAN would like to see the ACMA adopt a strong enforcement culture to ensure this Standard works the way it should and provides industry with the necessary incentives to resolve customer complaints. In a time where the reliance on and use of telecommunications services is greater than ever, consumers require proactive regulation with the ACMA willing and able to hold industry accountable to breaches of the CHS. Strong enforcement action should drive compliance across the industry, and improve outcomes overall.

Defining complaints

ACCAN considers that the definition of a complaint used in the telecommunications industry needs tightening. It currently allows for generous interpretation by providers and has allowed for inconsistent recognition, handling and reporting of complaints. Some providers only consider a customer issues or expression of dissatisfaction to be a complaint when it is lodged via formal complaint channels or the customer explicitly states they are making a complaint. The definition of a complaint formerly in the TCP Code and now used in the CHS reads:

⁴¹ ACCAN 2018, Can You Hear Me?: https://accan.org.au/Can%20You%20Hear%20Me_v6_accessible.pdf, figure 36.

⁴² Ibid, figure 46

⁴³ Ibid, figure 7

⁴⁴ TIO 2017, 2016-2017 Annual Report: http://www.tio.com.au/_data/assets/pdf_file/0018/250911/Telecommunications-Industry-Ombudsman-Annual-Report-2017.pdf, p.28

⁴⁵ TIO 2018, July-December six month update: <https://sixmonthupdate.tio.com.au/#goals>

complaint means an expression of dissatisfaction made to a carriage service provider by a consumer in relation to its telecommunications products or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected by the consumer.

It does not include an initial call to request information or support or to report a fault or service difficulty unless a consumer advises that they want that call treated as a complaint, and does not include an issue that is the subject of legal action.

In our submission⁴⁶ to the ACMA on the CHS ACCAN expressed concern at the second paragraph of this definition, arguing that it is inconsistent with the first paragraph. When a consumer contacts their provider about a fault or issue with their service this is inherently an expression of dissatisfaction and should be treated as a complaint.

Conversely, the international complaint handling standard AS/NZS10002:2014⁴⁷ defines a complaint as an:

‘Expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.’

ACCAN considers this definition more in line with a natural consumer understanding of a complaint. Many people would assume that by communicating a problem or dissatisfaction with their service, they are in fact lodging a complaint even if it is not through an official complaints channel. The international standard also places an obligation on providers to handle all customer problems and dissatisfaction to the same standards as they would a ‘formal’ complaint.

Recommendation 3: *ACCAN recommends that the definition in the CHS be reconsidered and amended to align with that in the international complaints handling standard.*

Issue 2 : *What barriers currently exist that prevent providers from addressing consumer complaints at the first point of contact or through an internal escalated process?*

⁴⁶ ACCAN 2018: http://accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf, pp.9-10
⁴⁷ Standards Australia and Standards New Zealand 2014: Guidelines for complaint management in organizations, p.6

ACCAN sees several barriers standing in the way of effective complaints handling by industry.

Culture

ACCAN's experience is that the industry can be slow to adapt to new ways of handling customer complaints fairly and efficiently. The cost to business of altering internal processes or changing fundamental elements of complaint management such as timeframes and staff training is commonly considered to be too great. We would like to see a cultural shift, with industry seeing the benefit of putting customer interests first.

A strong compliance culture needs to be enforced by the ACMA to shift the industry's attitudes towards customers and complaints management. ACCAN expects that the CHS will help to drive this shift.

Customer service needs to improve

Telecommunications consumers are frequently frustrated by poor customer service from their provider. ACCAN's recently released research⁴⁸ demonstrating the lived experience of customer service provided by the telecommunications industry shows that people are waiting for long periods to talk to a customer service representative and to have enquiries or issues resolved, even those that are simple such as changing contact details. The following results are particularly concerning:

- It takes on average 13 days⁴⁹ and 2.6 contacts⁵⁰ to resolve an enquiry or complaint (based on resolved cases only).
- For cases still unresolved at the time of the survey the average time spent seeking a resolution increased to 60 days⁵¹.
- Even for simple enquiries such as changing a plan or updating contact details takes time (10.4 and 11.3 days respectively)⁵²

⁴⁸ ACCAN 2018, Can You Hear Me?: http://accan.org.au/Can%20You%20Hear%20Me_v6_accessible.pdf

⁴⁹ See Figure 46 in the report

⁵⁰ See Figure 69 in the report

⁵¹ See Figure 46 in the report

⁵² See Figure 10 in the report

- To contact a provider by phone requires waiting 1.2 hours⁵³ on average before reaching the right person to talk to.
- Providers are failing to keep adequate records of customer issues and enquiries with 58% of respondents saying they were required to re-provide information on average 3.7 times⁵⁴. 26% of these people had to repeat the information of their case more than five times⁵⁵.
- 55% of respondents who said they looked for information about how to lodge a complaint said it was difficult to find⁵⁶. Only 18% of respondents who lodged a formal complaint with their provider found the process easy⁵⁷.
- Respondents were particularly critical of their provider keeping them proactively informed, providing a timely resolution, and the knowledge of customer service staff⁵⁸

These results provide evidence that consumers are having a difficult and incredibly frustrating experience in both trying to get through to their provider in the first instance, receiving updates and adequate information, and having their enquiry or issue resolved in a timely manner. It is also no surprise that of the 158,016 complaints that the TIO received in the 2016-17 financial year, almost 49% of those identified customer service as an issue. It is evident that poor customer service is a key issue driving telecommunication consumers to take a complaint to EDR, as the processes for dealing directly with their provider are failing to meet customer needs. Internal processes for managing customer enquiries are creating barriers to efficient complaint handling by providers.

ACCAN is advocating for industry to adopt stronger requirements and benchmarks for customer service in the TCP Code. This includes:

- Reducing time spent by customers waiting for a resolution to an enquiry/complaint
- Reducing average wait times to speak to customer service staff via phone, email, live chat, social media etc
- Increasing first contact resolution

⁵³ See Figure 16 in the report

⁵⁴ See Figure 27 *ibid*

⁵⁵ See Figure 28 *ibid*

⁵⁶ See Figure 36 *ibid*

⁵⁷ *Ibid*

⁵⁸ See page 8 *ibid*

- Improving record keeping
- Improving training and performance of customer service staff

A TCP Code that is stronger in these areas, alongside a stronger compliance culture and better oversight by the ACMA, would create greater incentives for industry to handle customer complaints through their internal processes.

Further to this, it is vital that the ACMA closely monitors industry compliance with the CHS. Particular areas of concern relevant to the CHS revealed by ACCAN's survey are:

1. Difficulties finding information about how to lodge a complaint - 55% of those who either wanted to or had lodged a formal complaint with their provider found it difficult to find information on how to do so.
2. Difficulties finding information about the TIO from RSPs - the survey found 48% of those who lodged or wanted to lodge a complaint with the TIO found it difficult to find the information needed from their provider.
3. The finding that customers considered their providers to have discouraged them from going to the TIO is concerning (32% of those who had escalated their issue internally or gone to the TIO, higher for Amaysim and Optus customers; lower for Telstra).
4. Lengthy timeframes for unresolved issues - respondents with unresolved complaints/issues had been seeking resolution for an average of 60 days (2 months).

ACCAN has identified the following measures to improve complaints handling as a result of our research findings:

- That RSPs review their practices and improve their performance in providing clear and easily accessible information to assist customers to lodge internal complaints, and external complaints with the TIO;
- That RSPs desist from dissuading customers from escalating complaints to the TIO if the customer wishes to exercise this right;
- That RSPs ensure that they are resolving complaints and issues within the timeframes set out in the Standard;
- That the ACMA prioritise monitoring and enforcement of compliance with the above requirements of the Standard in its 2018-19 work program.

Consumer information

Further to the above, providing key information to consumers about complaint handling processes is a vital factor in ensuring they can get easy access to IDR. This includes providing readily available (on the home page of websites, on bills and customer communications etc) information about how to contact a provider. This information should include details for different departments and how to directly contact complaint handling teams.

The ACMA's Complaint Handling Standard sets out specific rules about the availability and accessibility of providers' complaints handling processes. Industry compliance with these obligations is the first step in ensuring complaints are properly handled by industry. Unfortunately consumers often have difficulty tracking down complaints team contact details. Some providers are not even complying with the requirements to allow consumers to make complaints via different methods and provide the contact details for each of these methods, as set out in 8(1)(h) and 8(1)(j) of the Complaint Handling Standard⁵⁹. For example, Optus, the industry's second biggest provider, does not provide an email address to send a complaint to⁶⁰.

***Recommendation 4:** The ACMA should closely monitor industry compliance with the Complaint Handling Standard to ensure that consumers have access to information about internal and external dispute resolution, and that complaints are resolved within the timeframes given in the Standard.*

Staff training and empowerment

An important element of improving customer service is providing customer service staff with adequate and ongoing training. It is important that providers are empowering their staff to handle and resolve complaints, where possible on first contact, by providing the necessary training and putting in place systems and processes that are easy to use and follow. Many customer service/complaints handling staff do not have the authority and/or knowledge to make decisions about complaint resolution or escalation. This can result in significant

⁵⁹ Providers must allow consumers to make a complaint 'by telephone, letter, email and online', and provide the 'telephone number, email address and web address where a consumer can make a complaint'

⁶⁰ <http://optus.intelliresponse.com/index.jsp?interfaceID=1&requestType=NormalRequest&source=100&id=1409&question=Complaint+and+compliments>

consumer frustration and stress at not being able to progress an issue or complaint beyond frontline staff.

Another issue frequently reported by consumers to ACCAN is that customer service staff are unable to access records of previous interactions with a customer. This includes their ability to access and recognise Authority to Act documents. This significantly inhibits their ability to efficiently handle complaints.

Offshore customer service centres

ACCAN considers that the use of offshore call centres to manage customer service enquiries and complaints can create significant barriers to the resolution of complaints at first contact or via a provider's internal dispute resolution processes. The telecommunications industry in Australia is complex and undergoing significant change and this presents unique issues. Further, Australia's geography presents issues for telecommunications consumers (particularly those who live in rural and remote areas) that are often not experienced in other parts of the world.

To expect offshore call centre workers to be knowledgeable about the unique elements of the Australian telecommunications landscape is unrealistic. However, without this understanding it makes it very hard for these workers to resolve certain complaints that are driven by factors distinct to Australia. As such, ACCAN thinks that the use of offshore call-centres must be minimised.

In 2015 Vodafone opened a new customer care centre in Hobart⁶¹ that has helped the provider decrease customer complaints and provide improved service⁶². It is likely that this contributed to Vodafone being ranked highly in ACCAN's Can You Hear Me? customer service survey, second only to Virgin which is no longer in operation⁶³.

Multi-tiered internal dispute resolution

⁶¹ Vodafone 2015: <https://www.vodafone.com.au/media/customer-care-officially-opened>

⁶² Vodafone 2018: <https://www.vodafone.com.au/media/vodafone-contact-centre-proposed-restructure>

⁶³ ACCAN 2018: <http://accan.org.au/hot-issues/1525-can-you-hear-me-ranking-the-customer-service-of-australia-s-phone-and-internet-companies>

As identified in ACCAN's submission⁶⁴ to the ACMA's consultation for the CHS, the practice of multi-tiered internal dispute resolution by larger providers is very frustrating for consumers. When consumers are required to make multiple contacts to a provider, the process can become complicated, frustrating and time consuming. Consumers, and/or their authorised representatives, are frequently passed between different teams when trying to have a complaint resolved. Consumers are not properly informed about the role of each team and who has authority to fix the issue, and often they are provided with contradictory information regarding their issue. For example, consumers can deal with an Escalated Complaints Team, a Special Assistance Team, a High Risk Team, Credit Management teams and so on, without being properly informed about the distinction between the roles of these teams. This situation is exacerbated further when there are multiple entities involved in the supply chain.

To ensure a streamlined and easy complaints handling process for consumers, it would be ideal for RSPs to aim to provide customers with the contact details for a nominated complaints handling representative who will be their point of contact for their complaint. Consideration should be given to including a requirement that where a complaint is not resolved at first contact, the customer is provided with contact details for a customer service staff member who can guide their complaint through internal processes, and be the anchor point of contact for the customer.

Recommendation 5: *Where a complaint cannot be resolved at first contact, RSPs should, where possible, promote the use of a nominated complaint manager as a co-ordinating point of contact for customers for the life cycle of their complaint.*

Issue 3: *How should responsibility for resolving consumer complaints involving multiple parties in the supply chain be achieved or enacted?*

Part 6 (Reasonable assistance) of the ACMA's CHS sets out clear requirements for complaints that involve multiple parties and the obligations for making and responding to requests for information and assistance in resolving complaints. These sections apply to all parties that may be responsible in the resolution of a complaint. .

⁶⁴ ACCAN 2018:
http://accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf, pp.8-9

It remains to be seen how effective these rules will be for managing complaint resolution that involves multiple parties across the supply chain. Consumers should never have to deal with anyone beyond the retailer with which they have a contractual relationship for their service. It is frustrating and confusing for consumers to deal with multiple parties during complaint resolution. ACCAN is pleased that beyond the CHS, the review of the TCP Code has resulted in the inclusion of a requirement that telecommunications providers who include third party charges on customer bills must directly handle all enquires and complaints made to it about the third party charges.

Providers must take primary responsibility for reaching a resolution with their customers. Where there are multiple parties, for example cases where nbn or the carriage service provider may be involved, the RSP must be responsible for liaising with the other parties and communicating the outcomes to consumers.

Recommendation 6: *The ACMA should closely monitor compliance to the Complaint Handling Standard to ensure providers are following the requirements for complaints that involve multiple parties.*

Issue 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?*

ACCAN submitted to the consultation process for the ACMA's CHS. We made several suggestions to improve the Standard to ensure consumers have a smooth and efficient experience when they make a complaint. Whilst we welcome the implementation of the CHS not all of our recommendations were adopted and we consider there is still room for improvement. In particular, ACCAN would like to see the following elements of the CHS improved:

- Timeframes for complaint handling processes such as acknowledgement, resolution and implementation are minimised. ACCAN thinks the timeframes set out in the CHS are too generous, particularly for simple complaints, and contribute to high numbers of complaints ending up with the TIO.

- Definition of ‘complaint’ is amended to remove ambiguity and ensure all customer issues and dissatisfaction are treated as complaints
- Complaint handling information and processes are accessible, readily available and simple

A full list of the recommendations made to the ACMA for the Complaint Handling Standard can be found on page 6 of our submission⁶⁵.

Recommendation 7: That ACCAN’s outstanding recommendations made to the ACMA in the Complaints Handling Standard consultation be reconsidered and adopted.

Issue 5: *What do consumers need to know about their provider’s complaint handling policies and procedures?*

The provision of customer information about complaint handling policies and procedures must be underpinned by the principles of availability, accessibility, transparency, and simplicity. Information must also be provided in a timely manner. Consumers need to know, at a minimum:

- Where to find information about complaints policies and procedures
- How to lodge a complaint via available methods (phone, online, email, in store etc)
- Contact details for the provider’s dedicated complaints teams (phone, email, post etc)
- Timeframes for complaint handling, resolution and implementation (as set out in the CHS)
- How a customer can use/nominate an advocate/authorised representative to lodge a complaint (including how to provide an authority document)
- Basic information about a provider’s internal complaints hierarchy and network
- How to escalate a complaint within the provider’s complaint processes
- How to escalate a complaint to external dispute resolution, including details about the TIO
- How to access key services to lodge a complaint such as translators or the National Relay Service

⁶⁵ ACCAN 2018:
http://accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf, p.6

Issue 6: *When and how should consumers be made aware of a provider's complaint handling policies and procedures?*

Consumers must be made aware of their right to lodge a complaint with their provider at the time of contracting. Customer contracts should include a reference/link to the provider's complaint handling policies and procedures to ensure awareness from the outset. Beyond this, providers must ensure that complaint handling policies and procedures are made available to customers:

- On request by a customer (over the phone, via email, live chat, in store, and any other method of communication offered by the provider)
- Via a link on the home page of the provider's website, and a link on the customer's online account and bills
- In store
- When a customer makes contact with their provider raising an issue or expressing dissatisfaction, or wanting to lodge a complaint
- When a provider makes the decision to restrict, suspend or disconnect a customer's service for any reason
- When a provider decides to take credit management action
- When a provider takes action or is aware of issues that may impact a customer (service faults, delays, issues etc)

Where a customer is verbally made aware in the first instance of complaint handling policies and procedures, they must also subsequently be provided with written information.

Issue 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?*

Adequate training for staff is a vital element in ensuring that customers have their complaints handled efficiently and fairly and that internal complaint management and resolution complies with the requirements set out in the CHS. ACCAN considers that all customer-facing staff should be trained in the basic requirements for complaint handling in order to be able to record a complaint, resolve at first contact where possible, and refer customers to the

team best positioned to handle a complaint. Internal complaint handling policies and procedures must be set out in a clear and simple manner to ensure staff comprehension.

Staff must receive ongoing training in complaints handling that includes:

- Information about systemic and common complaints and the appropriate resolutions
- Information about any changes to complaint handling systems and processes
- Information about any changes in the complaint handling hierarchy

To ensure staff training is effective, ongoing monitoring of complaints data, staff interactions with customers, and record keeping, must be undertaken to identify gaps in staff training and knowledge. Complaint handling systems must be easy for staff to access and use and should be regularly reviewed to ensure they meet staff and customer needs and support an efficient complaints handling process.

Engaging with the ACMA and the TIO is a useful way to ensure complaints handling training is adequate. The ACMA is currently engaging with providers to help them in the transition to the new rules. We understand that the TIO also offers complaints handling training for providers, and this should be utilised by providers where appropriate.

Proposal 2:

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.

ACCAN supports the principles set out in the issues paper as consistent with best practice principles for external dispute resolution processes. At the present moment ACCAN believes that the operation of the TIO is largely consistent with benchmarks for industry dispute resolution and the TIO is: accessible; independent; fair; accountable; efficient and effective.⁶⁶

Issues for comment

Issue 1: Should the current Telecommunications Industry Ombudsman (TIO) be transformed to an independent external dispute resolution (EDR) body for handling complex complaints?

ACCAN does not support the proposal that the TIO be transformed into an independent external dispute resolution body for the resolution of complex complaints. There are several concerns we have regarding the proposal including:

The transformation would reduce the avenues for consumers to seek redress;

The transformation would diminish the capacity of a new EDR body to identify systemic problems as it would focus on complaints that were complex and therefore atypical;

There are considerable costs associated with reforming existing arrangements and transforming the TIO into a body for complex complaints, and little evidence to indicate that there would be material offsetting benefits in doing so. For many consumers the proposed changes would result in materially worse outcomes as they would be deprived of independent, accessible and effective dispute resolution.

⁶⁶. Treasury 2015, *Benchmarks for Industry-based Customer Dispute Resolution*, Canberra.

ACCAN does not support constraining the accessibility of independent dispute resolution to only those consumers that have complex complaints and is aware that many ‘simple’ disputes have been resolved only through the investigative efforts of the TIO and that this has facilitated both positive outcomes for consumers and the identification of defects in internal processes for industry.

Issue 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?*

ACCAN supports the expansion of the TIO’s current program of identifying systematic complaints and analysis of the root causes of recurring issues. There is a need for greater accountability and transparency concerning how the TIO identifies and investigates systemic issues, and what its processes are for reporting systemic issues to industry and regulators.

ACCAN’s members have reported that the TIO has been ineffective in dealing with systemic issues. The general impression is that the same issues keep arising with the same RSPs and it is unclear what the TIO is doing to ensure that RSPs are following its advice and addressing systemic issues. However, it must be acknowledged that little improvement in systemic issues is not solely attributable to the TIO as the regulator and industry also have large roles to play, particularly when the TIO is unable to find a solution.

The TIO needs to commit to identifying, monitoring, and resolving systemic issues and to do this should be given increased powers to compel service providers to address systemic issues. The TIO also needs to work more closely with and apply more pressure to the regulator when it is unable to change industry behaviour.

We note that the TIO recently has commenced publishing Systemic Insights reports⁶⁷. ACCAN welcomes this step, and encourages the TIO to continue to identify and publish recommendations regarding systemic issues as it is in a unique position to do so. However, the regulator and industry should be required to respond to systemic issues identified by the

⁶⁷ <https://www.tio.com.au/publications/news/systemic-insight-loss-of-telephone-numbers-during-migration-to-the-nbn>

TIO, setting out plans to address problems, and follow up with evaluations of the success of measures implemented.

Issue 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?*

Historically the incentives in place for service providers to invest in quality customer service and appropriate internal dispute resolution processes have been poor. However recent changes to the charging structure at the TIO more closely link the costs associated with resolving complaints to those service providers that are driving the generation of complaints.

These reforms are at an early stage, and although there are grounds for optimism, ACCAN believes continued scrutiny will be required in order to ensure that the incentives embedded in existing charging structures are sufficient to drive investment in dispute resolution processes in the first instance. Where the costs associated with external review of disputes are lesser than the costs for service providers to invest in quality customer service and internal dispute resolution processes it is unlikely that there will be a material decline in the number of complaints going to the TIO or improvements in customer service.

The adoption of the *Telecommunications (Consumer Complaint Handling) Standard 2018* by the ACMA should drive material improvements in the experience of consumers, if fully implemented by service providers and appropriately enforced by the ACMA. The monitoring and enforcement of the standard will be essential in driving better consumer outcomes and providing appropriate incentives to industry to resolve disputes in the first instance.

ACCAN considers that the full implementation and enforcement of the standard should encourage service providers to take all practical steps to directly resolve disputes. As a recent reform ACCAN believes that this standard be given the opportunity to be implemented, and that the impacts on outcomes be measured prior to seeking further reforms to arrangements.

Issue 4: *What process should be followed before a consumer lodges a complaint with the EDR body?*

ACCAN believes that consumers should attempt to resolve the dispute with their service provider in the first instance before lodgement of a complaint with the TIO. However ACCAN is aware that in some instances service providers have failed to provide consumers sufficient information to adequately pursue their rights through internal dispute resolution processes or at the TIO.

We would support a ‘no-wrong-doors’ approach to lodgement of complaints with the TIO and consequently would not support the creation of any administrative or procedural requirements that raise costs for consumers. A ‘no-wrong-doors’ approach is commensurate with best practice dispute resolution, and consistent with the principle of accessibility set out by Treasury.⁶⁸

Recommendation 8: That government support the adoption of a ‘no-wrong-doors’ approach to dispute resolution.

Issue 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 procedure?*

The TIO currently has processes in place to address complaints made to it where a consumer has not gone through the internal dispute resolution process of their service provider, and often encourages consumers to attempt resolution through these processes in the first instance where it is appropriate to do so. ACCAN believes that the current arrangements in place are adequate and does not consider that there is a need for further specification and does not support the introduction of barriers or obligations on consumers to undertake actions prior to seeking redress at the TIO.

Caution should be taken when considering measures that may raise the cost of seeking redress for consumers. Consumers and small businesses often face significant costs when seeking to enforce their rights against communication service providers which can dull the incentive for these parties to seek compensation.⁶⁹ The significance of these costs to

⁶⁸. Treasury 2015, *Benchmarks for Industry-based Customer Dispute Resolution*, Canberra.

⁶⁹ Kaplow, L. 1986, ‘Private versus Social Costs in Bringing Suit’, *The Journal of Legal Studies*, vol. 15, no. 2, pp. 371–85; Shavell, S. 1982, ‘The social versus the private incentive to bring suit in a costly legal system’, *Journal of Legal Studies*, vol. 11, no. 2, pp. 333–9.

consumers have been recognized more broadly, and have led to a finding by the Productivity Commission in favour of the establishment of a super-complaints process to allow for peak consumer bodies to initiate proceedings on behalf of consumers.⁷⁰

Recommendation 9: *That government does not adopt measures that would impinge on the ability of consumers to seek redress from the EDR.*

Issue 6: *What processes 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?*

ACCAN believes that the current practice of the TIO working with providers to resolve the complaint is appropriate in most circumstances. However where there is evidence of poor conduct and where consumers are facing material and ongoing detriment as a result of delayed resolution that it is appropriate for the TIO to move forward in the resolution of the complaint. This is consistent with the principle of efficiency as set out by Treasury as part of its benchmarking of industry dispute resolution processes.

The TIO should have processes to refer all instances where it identifies a provider has not followed its internal complaint handling procedures to the ACMA. This will assist the ACMA to determine whether the provider is compliant with the Complaint Handling Standard, and with any relevant provisions in the Telecommunications Consumer Protections Code.

⁷⁰. PC (Productivity Commission) 2017, *Consumer law enforcement and administration*, Canberra, p. 21.

Proposal 3:

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.

Issues for comment:

Issue 1: *How often should the EDR body provide complaints data to the ACMA for analysis and reporting (e.g. monthly, quarterly)?*

The TIO currently provides complaints data to the ACMA and other stakeholders on a monthly basis. This is an appropriate arrangement and we see no reason why this should change. The TIO currently publishes high level complaints data twice yearly – in its annual report and for the July-December period in the first quarter of the calendar year.

However, we do consider there is scope for improvement in TIO public reporting. It would be useful if the TIO published more granular data on a quarterly basis, as was previously practice. We would also like to see reports published within a tighter timeframe than is currently the case, and consider that the TIO should be properly resourced to do so.

The current reports provide only limited information and analysis about complaints. More transparency would be useful not only to assist in identifying systemic issues, but would also provide guidance for RSPs to improve. ACCAN finds TIO data highly valuable for our work, however we have the following suggestions for improvements:

- Provide detail on how each complaint reported on was resolved, including referrals to industry
- Provide the number of enquiries received each month
- Provide a breakdown of complaints by postcode each month

Recommendation 10: *That the TIO publish detailed quarterly complaints data, that includes, in addition to data currently published, details of how complaints and referrals are resolved; the number of inquiries received; and complaints by postcode.*

Issue 2. *Are there any unforeseen issues or unintended consequences of the proposal for a centralised repository and reporting of industry complaint information?*

ACCAN does not support an arrangement where an escalated complaint handling body (whether it be the TIO or an alternative EDR agency) is prevented from directly publishing its own data. For this reason we would not support an approach where the TIO/EDR agency reported to the regulator only. Such an approach would be inconsistent with the principle of accountability for industry based customer dispute resolution. As articulated by Treasury⁷¹, the underlying principle of accountability is that the agency publishes final determinations and information about complaints. This is important to maintain public trust and confidence in the EDR agency, both on the grounds of transparency and accountability, but also as an independent body.

However, we agree that the TIO should not be the only source of complaints information, consistent with our comments above. The ACMA has an important role to play in publishing industry complaints metrics collected under the Record Keeping Rules, and it should also refer to published TIO complaints data to gain a broader view of how industry is dealing with its customers. Both are important standalone components.

Recommendation 11: *That the TIO continue to publish its own complaints data, and that the ACMA publish industry complaints metrics collected under the new Record Keeping Rules.*

⁷¹ <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution/>