



6 August 2018

Senator The Hon. Mitch Fifield
Minister for the Arts
Minister for Communications
Parliament House ACT 2601

Dear Minister,

RE: Consumer Safeguards Review

Communications Alliance and the Australian Communications Consumer Action Network (ACCAN) are writing to provide you with some joint commentary in relation to Part A (Redress and Complaints Handling) of the Consumer Safeguards Review (review), ahead of our individual submissions.

We warmly welcome the long-awaited review and share Government's desire to ensure that consumers are protected by appropriate safeguards when using telecommunications services.

While industry and consumer organisations may not always agree on aspects of telecommunications regulation and complaint handling, both our organisations share concerns regarding some of the statements and proposals put forward in the consultation paper, that imply the dismantling and replacement of the Telecommunications Industry Ombudsman (TIO).

Independence of the TIO:

The consultation paper suggests that the TIO is "owned" by the telecommunications industry and that a lack of independence is a "problem inherent in the current Australian Telecommunications complaints resolution regime". The paper raises the question as to whether the TIO "arrangements [ought to] be transformed to an independent External Dispute Resolution (EDR) body"; thereby implying that the current arrangements lack independence.

Communications Alliance and ACCAN reject the suggestion that the TIO is not independent. While funded by industry user fees, the governance structures of the TIO make it a fiercely independent organisation. The TIO Board consists of an independent chair, two independent directors, three directors with consumer experience and three directors with industry experience. The TIO has also addressed this issue in its public response to the consultation

paper (<https://www.tio.com.au/about-us/consumer-safeguards-review>). We would also like to echo the TIO's reasons as to why the TIO is not "owned" by industry, i.e. the TIO is a not-for-profit company, membership of which is compulsory under legislation and non-compliance with the requirements can result in enforcement action by the Australian Communications and Media Authority (ACMA). The members of the scheme (carriage service providers) are not shareholders, nor do they receive payments or profits/dividends.

Accordingly, the companion paper (prepared by PwC) to the consultation paper correctly describes it as "an independent statutory corporation" and an "independent yet legislatively established dispute resolution body".¹

Transformation of the TIO:

The consultation paper puts forward for consideration a number of proposals that would deconstruct the current TIO arrangements, or indeed the body itself, and a subsequent re-constitution of a new, supposedly improved and more independent, EDR regime.

Unfortunately, no case has been presented as to why such drastic measures would be required. We note that the proposals for reform of the TIO partly rest on inaccurate descriptions of the current TIO arrangements and suggest 'alternative' arrangements that are either already in place and/or could be achieved through an 'evolution' of the existing regime.

The suggested reforms also fail to recognise that the TIO has only recently undergone an independent review and is still in the process of implementing the recommendations resulting from that review.

Powers of the TIO/EDR body:

The consultation paper also discusses the option of providing an EDR body with the power to compel providers to pay compensation and to issue fines for providers.

With regard to the former, we note that the TIO can already make binding decisions up to a value of \$50,000 or a recommendation of up to \$100,000, allowing it to "compel providers to take remedial or redress actions [...] which could include financial compensation".

Regarding the proposal to grant an EDR body the ability to issue fines, we believe that this function more appropriately rests with the regulator and/or the courts.

Data collection, analysis and reporting:

The consultation paper makes a number of suggestions around the collection and reporting of complaints data.

We agree that the TIO ought to collect accurate, consistent, contextualised and sufficiently detailed complaints data, and that this data ought to be reported on in a timely manner to allow industry, consumer organisations, Government and regulators to flexibly address any systemic issues that may become visible through aggregated complaints data. The reporting of such data ought to occur through the (independent) TIO rather than the ACMA.

¹ p. 4 & p. 8, *Telecommunications Consumer Safeguards, International and sectoral comparisons of redress and complaints handling models for consumers and small business*, 3 July 2018, Department of Communications and the Arts and PwC

We note that the current TIO practice of publishing complaints data only on a half-yearly basis and with a significant delay (of more than four months) does not assist with achieving the objective put forward in the paper of "help[ing] industry participants to appropriately focus their business improvement and consumer strategies". We strongly recommend a publication of detailed TIO complaints data on a quarterly basis and with only minimal delay.

Importantly, while we see problems with these aspects of the consultation paper, we would also like to acknowledge that the team undertaking the review has been highly consultative. We have each had multiple opportunities to discuss a range of issues, ideas and options with the team. This has given us optimism that we will be able to work collaboratively within the review process in pursuit of positive outcomes.

We look forward to further engaging with your Office and the Department of Communications and the Arts on this important review and we welcome any questions that you or your advisers may have.

Yours sincerely,



John Stanton
Chief Executive Officer
Communications Alliance



Teresa Corbin
Chief Executive Officer
Australian Communications Consumer
Action Network (ACCAN)

cc: Mr Michael Mrdak, Secretary, Department of Communications and the Arts
Ms Judi Jones, Telecommunications Industry Ombudsman