

6 August 2018

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

By email: consumersafeguardsreview@communications.gov.au

Dear Sir/Madam

Consumer Safeguards Review (Part A) – Consumer Redress and Complaints Handling

Community Legal Centres Queensland welcome this opportunity to make a submission to the Department of Communication and the Arts (**Department**) on its *Consumer Safeguards Review in the Telecommunications Industry* (the **Review**). The purpose of this submission is to discuss Part A of the *Telecommunication Consumer Safeguards Review (Consultation Paper)*, with the key focus being on Proposal 2 concerning the replacement of the TIO with some other form of External Dispute Resolution (**EDR**) body.

About Community Legal Centres Queensland

Community Legal Centres Queensland is the state peak body that provides support and advocacy for the 33 independent, not-for-profit community legal centres operating across Queensland. For over forty years, Queensland's community legal centres have provided efficient, effective and impactful legal help to everyday Queenslanders, focusing on the needs of the most marginalized and disadvantaged people in our community.

Community Legal Centres Queensland helps the network of community legal centres keep informed, united and relevant. We help the community legal centres so they can provide effective, high quality services to communities across Queensland, ensuring that everyone has access to justice and fairness.

General comments

The Review is an important and timely opportunity to recognise that existing consumer protection mechanisms in the telecommunications market are failing Australians.

Large increases in complaints to the Telecommunications Industry Ombudsman (**TIO**) reveal the extent of community dissatisfaction in the provision of essential telecommunications services. In its 2016/17 Annual Report, the TIO reported a 41 per cent increase in complaints.

We broadly support the call for greater direct regulation of complaints handling procedures within telecommunications providers (Proposal 1), and generally support the recommendations by Consumer Action Law Centre (**Consumer Action**) and WEstjustice to this Review to improve direct regulation. We support their calls for the industry to move from self-regulation to direct regulation in a sector that now provides an essential service, and to ensure our consumer protections are fit for a fast-paced digital world.

We are strongly opposed to the proposal to replace the TIO with an ‘independent EDR body’ focused on complex complaints (Proposal 2). This will do little to fix the problems that stem from the self-regulatory framework and risks huge disruption, with scant detail on the purported benefits for consumers. We reject the implicit criticism in the Consultation Paper that consumers aren’t served by the TIO merely because of a perceived lack of independence. While there is room for improvement, we support the TIO and the well-established EDR model.

Restricting access to EDR (whether by the TIO or a new body) to ‘complex complaints’ would be a significant and unwarranted reduction in access to justice for telecommunications consumers. As Consumer Action and WEstjustice point out, this would leave thousands of Australians to navigate courts and tribunals, which are slow, expensive and largely inaccessible without legal representation, or simply abandon their dispute altogether.

Telecommunications and clients of community legal centres

Phone and internet services play a pivotal role in the accessibility and delivery of community legal services to the public. In March 2018, a report¹ illustrating the first-hand impact of phone and internet problems on community legal services was published in partnership with the TIO and Community Legal Centres Queensland.

Key findings:²

- **48%** of community legal workers hear clients with a **phone or internet problem every week**, with 20% for every 2-4 weeks and 17.6% monthly.
- **54%** of **clients do not know how to complain** of their phone or internet service problems
- 71% of clients access community legal services via phone services, and 6% through online resources.
- Clients have reported problems of mental health, debt, and the suspension of telecommunication services as a result of these phone or internet issues.

¹ Telecommunication Industry Ombudsman, *Understanding the Impact of Phone and Internet Issues in Queensland*, 5 March 2018, https://www.tio.com.au/data/assets/pdf_file/0003/254307/REPORT-Understanding-The-Impact-of-Phone-and-Internet-Issues-in-Queensland.pdf.

² Ibid.

These findings of phone and internet problems raises a large concern as to the accessibility and delivery of these vital legal services. This may be especially problematic for the vulnerable clients who live in rural regional and remote areas, where face-to-face legal advice and appointments are limited due to their geographic location.³

Peter's Story⁴

Peter* is a Disability Support Pensioner. He requested a 'non-contract' service which could be cancelled at any time without incurring a fee, which the service agreed to provide. After paying the required one-off start-up fee and the subsequently monthly fee, Peter then realised he could no longer afford the service. He phoned the internet service provider to cancel it, where the provider confirmed that the service would be disconnected and that he was not required to make further payment.

While the service was disconnected promptly, he received a series of Pending Disconnection Notices, Letters of Demand and 48-Hour Demand Letters demanding payment to 'finalise your debt.' Peter telephoned the provider and was repeatedly assured that the account was finalised and that no further payment was required. Yet, he received letters of demand from lawyers acting on behalf of the service provider demanding payment of additional amounts. He attempted to negotiate with the lawyers, which was unsuccessful.

Peter contacted Cairns Community Legal Centre, which sent correspondence to both the internet service provider and the lawyers acting on behalf of the internet service provider denying liability for the amounts sought. He continued to receive letters of demand from the provider, which continued to cause him anxiety.

The Centre prepared and lodged a Complaint to the Telecommunications Industry Ombudsman. The internet service provider then agreed to negotiate with the Centre to waiver the full amount sought, and provided written confirmation that no further payment was required.

The client was very grateful for the assistance which he received.

**Not their real name*

As phone and internet services are the primary means of accessing community legal services, it is important that telco consumers have adequate access to quality services and consumer complaint mechanisms. In light of these findings and the recent rise in level of complaints to the

³ See further Jeff Giddings and Barbara Hook, 'The Tyranny of Distance: Clinical Legal Education in "The Bush" (2002) *Journal of Clinical Legal Education* 64, 78.

⁴ Cairns Community Legal Centre works with client to disconnect internet' <http://communitylegalqld.org.au/news/success-stories/cairns-community-legal-centre-works-client-disconnect-internet>

TIO, the need to safeguard consumer rights and provide accessible complaint mechanisms for vulnerable members of the community becomes increasingly important.

Key Findings⁵

The common top reasons that have stopped clients from complaining about their phone or internet service:

1. They do not know they can complain
2. They do not know who to contact to complain
3. Lack of confidence
4. They do not understand their phone or internet contracts

Response to the Consultation Paper

Proposal 1: Direct Regulation

As WEstjustice and Consumer Action point out:⁶

industry self-regulation has failed to provide consumer safeguards appropriate to the provision of an essential utility service. Years of industry-dominated development and review of codes has resulted in a latticework of instruments that: are vaguely drafted,⁷ leave significant gaps in consumer protections;⁸ and are poorly understood by telco representatives and consumers alike.

Westjustice and Consumer Action endorse the recommendations of the Financial and Consumer Rights Council, that the Consumer Safeguards Review should identify policy implications of the telecommunications sector providing utility services, and make recommendations that will meet community standards regarding consumer rights in a utility sector, with a strong regulatory regime:

- Establishing and maintaining universal access to basic services;
- Establishing required performance standards, including compensation for service failures;
- Establishing strong, accessible and independent redress and complaints handling processes external to industry interests, along with meaningful enforcement mechanisms; and
- Establishing obligations to provide a wider range of meaningful assistance to customers in hardship.

⁵ Above n 1.

⁶ WEstjustice and Consumer Action Law Centre, *Consumer Safeguards Review (Part A) – Consumer Redress and Complaints Handling* (7 August 2018) 5.

⁷ See e.g. Clause 4.3.1 of the TCP Code (Sale Practices), particularly in relation to the requirement for ongoing monitoring.

⁸ E.g. Clause 6.2 of the TCP Code (Responsible provision of Telecommunications Products) requires a provider to conduct a 'credit assessment', which is defined as 'the process by which a Supplier determines the level of credit to be provided by it (if any) to a Consumer.' This credit assessment safeguard is, therefore, meaningless.

In addition, Consumer Action and WEstjustice recommend that the regulatory regime:

- Establish direct regulation and oversight of sales;
- Establish a meaningful process for assessing the suitability and affordability of telecommunications products; and
- Ensure fair remedies and appropriate penalties for breaches of these requirements.

We endorse this approach to regulation, to strengthen consumer protections.

Proposal 2: External Dispute Resolution

It appears that there is an underlying concern in the Consultation Paper about whether the TIO is sufficiently independent from industry. The consultation paper is unclear as to what guidelines and requirements are needed for an EDR scheme to be and be perceived as adequately 'independent'.

As Consumer Action and WEstjustice note:⁹

The fact that the TIO is industry funded body does not itself render the TIO an ineffective or non-independent external dispute resolution body. Rather, we consider the greatest impediment to the TIO in appropriately or efficiently resolving disputes has been the absence of strong, clear codes or appropriately empowered regulators within the telecommunications sector. Industry self-regulation has failed to empower its EDR body with a sufficiently robust set of rules.

The recent 2017 Independent Review¹⁰ of the TIO found that the TIO conforms to *Benchmarks for Industry-based Customer Dispute Resolution (EDR Benchmarks)*, which rely on the principles of accessibility, independence, fairness, efficiency, and effectiveness.¹¹ This independent review proposed 29 Recommendations relating to the effectiveness of the TIO's complaint resolution processes, systems and resources, approach to systematic issues, and stakeholder engagement.

The TIO's support of this review and their subsequent reform to its complaint handling procedures, systemic work and fee structures has demonstrated a willingness to engage with the review and its recommendation. Like other consumer advocates, we support these proposed improvements, and think that any wholesale changes would be premature until the review's recommendations are implemented and evaluated.

Absent any clear rationale for change, we consider abolishing the TIO would significantly disadvantage telco consumers. As Consumer Action and WEstjustice observe:¹²

Our general concerns about establishing a new body include that significant time and resources will be required to replace a model that already meets the necessary benchmarks. Were the body limited to

⁹ WEstjustice and Consumer Action, above n 6, 22.

¹⁰ Available online at https://www.tio.com.au/_data/assets/pdf_file/0005/253643/2017_0929-TIO-Report-Final.pdf.

¹¹ Available online at <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution/>

¹² WEstjustice and Consumer Action, above n 6, 25.

complex complaints, it would offer a reduced service to consumers, produce narrower complaints data, and remove a powerful incentive to industry to resolve straightforward complaints with consumers.

We support the role TIO plays as both an individual-based (reactive) and systemic (proactive) mechanism of relief and review for consumers. The 2018 report mentioned above is an example of how the TIO works collaboratively with organisations, such as ours, to investigate the issues vulnerable members of the community face. Through systemic review, the problems that affect the accessibility of legal services due to telco issues can be addressed and responded to.

Proposal 3 – Data Collection, Analysis and Reporting

This proposal, and the related questions in the Consultation Paper, are outside the expertise of this organisation, so we don't offer any comments.

Conclusion

It is vital for telco consumers to have accessible and effective avenues of complaint, to ensure that their consumer rights are safeguarded, and they have ready access to quality phone and internet services. For those reasons, we support stronger direct regulation, and the continued (and improved) role of the TIO as an effective external dispute resolution provider, and hope that the Review accepts these components of a regime of telecommunications consumer safeguards.

Yours sincerely



James Farrell OAM

Director

Community Legal Centres Queensland Inc.