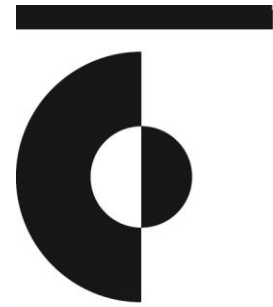


30 September 2013

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000



**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

Dear Mr Sims

Consultation paper: Broadband performance monitoring and reporting in the Australian Context

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with the opportunity to contribute to the ACCC's consideration of a broadband performance monitoring and reporting program.

We enclose our submission for consideration by the ACCC. This submission sets out:

- a) an overview of TIO complaints data and issues relevant to internet performance
- b) our response to the questions in the ACCC's Consultation Paper, to the extent these are relevant to the TIO's experience, and
- c) case studies in Appendix A.

We trust that the information in this submission will assist the ACCC in its consideration of a Broadband Performance Monitoring and Reporting Program.

If you require any further information, please contact David Brockman, the TIO's Executive Director – Industry, Community and Government, on 03 8600 8700.

Yours sincerely

Simon Cohen
Ombudsman

"... providing independent, just, informal and speedy resolution of complaints"

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**Telecommunications Industry
Ombudsman:
Submission on the ACCC Broadband
Performance Monitoring and Reporting
Program**

September 2013



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About the TIO

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide an independent alternative dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the service provider is given an opportunity to resolve the complaint with its customer.

We are independent of telecommunications companies, consumer groups and government.

For most complaints we receive, we establish the issues in dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at the relevant telephone or internet service provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. Around 90% of complaints we receive each year are resolved at this stage of the process.

Where the consumer and service provider do not reach an agreement at this early stage, the TIO becomes more directly involved by seeking to conciliate an agreed resolution between the parties. Around 7% of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are escalated for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding determinations up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

We record complaints according to service types – internet, mobile, landline and mobile premium services (MPS), and by the types of issues that these complaints present. These issues include connection delays and fault repair, credit management disputes, contractual disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one issue. Some complaints can involve multiple issues – for example, a complaint about a delay in rectifying a faulty landline service may also involve a claim that the consumer's complaint about this fault was not acknowledged or escalated (a complaint handling issue).

Further information about the TIO is available at www.tio.com.au.

TIO submission on the ACCC Broadband Performance Monitoring and Reporting Program

The TIO welcomes the opportunity to comment on the proposed Broadband Performance Monitoring and Reporting Program outlined in the ACCC's Consultation Paper dated 14 August 2013.

Consumers of internet services typically distinguish between providers on the basis of price and 'word of mouth'. They may have some understanding of the internet technologies available to them, depending on their circumstances or location (for example, ADSL2+, HFC, fibre, or mobile broadband) although this may be limited. Comparative qualitative information about different internet technologies and performance can help consumers make informed decisions and set their expectations when choosing an internet service.

As such, we welcome the initiative of the ACCC in considering the development of a Broadband Performance Monitoring and Reporting Program.

We set out in this submission:

- a) an overview of TIO complaints data and issues relevant to internet performance
- b) our response to the questions in the ACCC's Consultation Paper, to the extent these are relevant to the TIO's experience, and
- c) case studies in **Appendix A**.

We trust that the information in this submission will assist the ACCC in its consideration of a Broadband Performance Monitoring and Reporting Program.

Complaints to the TIO

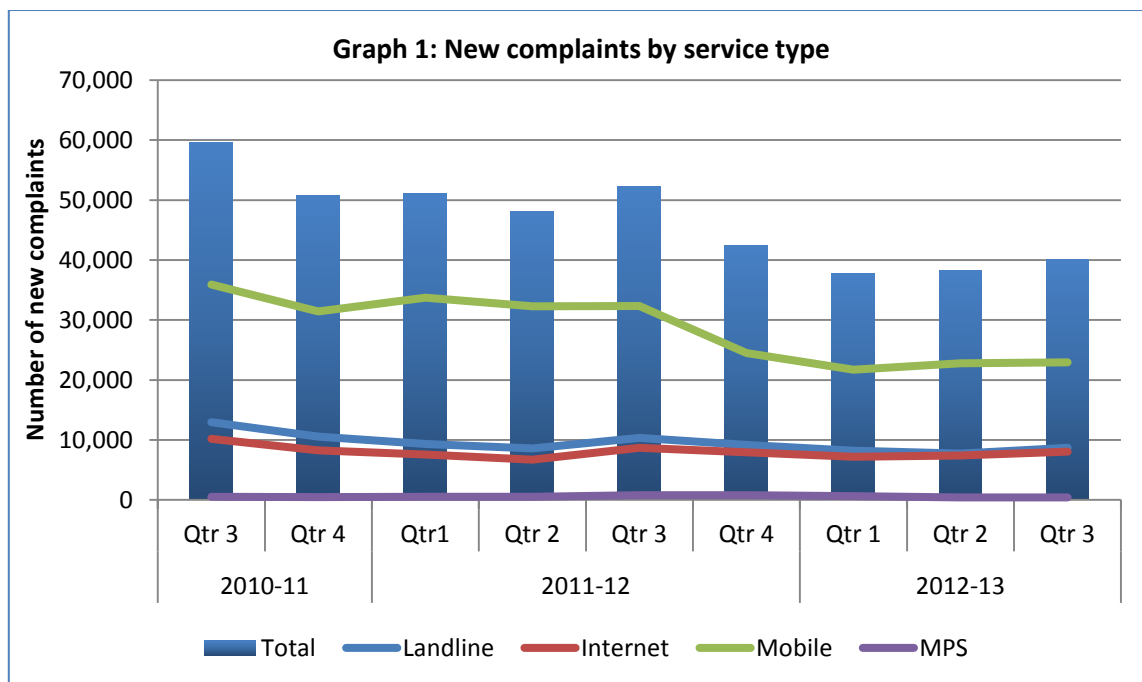
Overall trends for new complaints

When a consumer – residential or small business – contacts us about an expression of grievance or dissatisfaction about a matter within the TIO's jurisdiction that the service provider has had an opportunity to consider, we record this as a 'new complaint'.

The TIO recorded and handled around 193,702 new complaints from small business and residential consumers in 2011-12. This compares with 167,772 new complaints recorded during 2009-10 and 197,682 in 2010-11. Over the first three quarters of 2012-13, we have recorded around 116,000 new complaints.

The graph below shows the breakdown of new complaints recorded by the TIO by service type – internet, landline, mobile and mobile premium services (MPS) – over nine quarters up to March 2013.¹

¹ Details of TIO complaints data for quarter 3 of 2012-13 was released in the June edition of TIO Talks at http://www.tio.com.au/data/assets/pdf_file/0011/127865/TIO-Talks_No1_2013_FINAL.pdf. Details of TIO complaints data for 2012-13 will be released in October 2013.



Main issues for new complaints

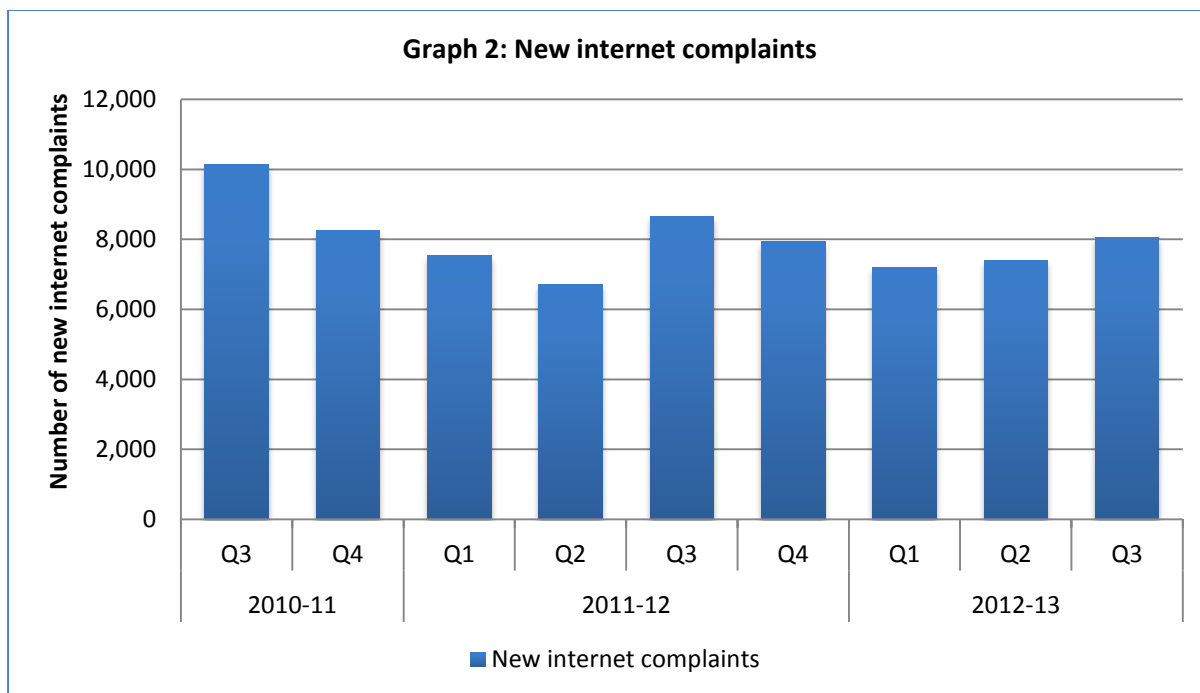
We record new complaints by the types of issues that these complaints present. These issues include connection and fault repair delays, credit management disputes, privacy issues, contractual or transfer disputes, customer service/complaint handling issues and billing disputes.

From January 2011 through to the end of March 2013, customer service and billing and payments issues formed 24% and 19.1% respectively of the issues we recorded for new complaints across all service types. Issues relating to faulty services formed 17.9% while issues regarding complaint handling and contract disputes made up 14.5% and 9.6% respectively.

New internet complaints

After a substantial decrease in the number of new internet complaints over the four quarters from January 2011, we have seen some fluctuations in more recent quarters. Most recently, we have seen an increase of 11.7% in the number of new internet complaints over the first three quarters of 2012-13.

Graph 2 illustrates the number of new internet complaints recorded by the TIO over nine quarters up to quarter 3 of 2012-13.



Issues for new internet complaints

General trends

The TIO receives complaints about a broad range of internet services including:

- fixed internet services such as ADSL, HFC, and fibre services, and
- non-fixed internet services such as mobile broadband and satellite services.

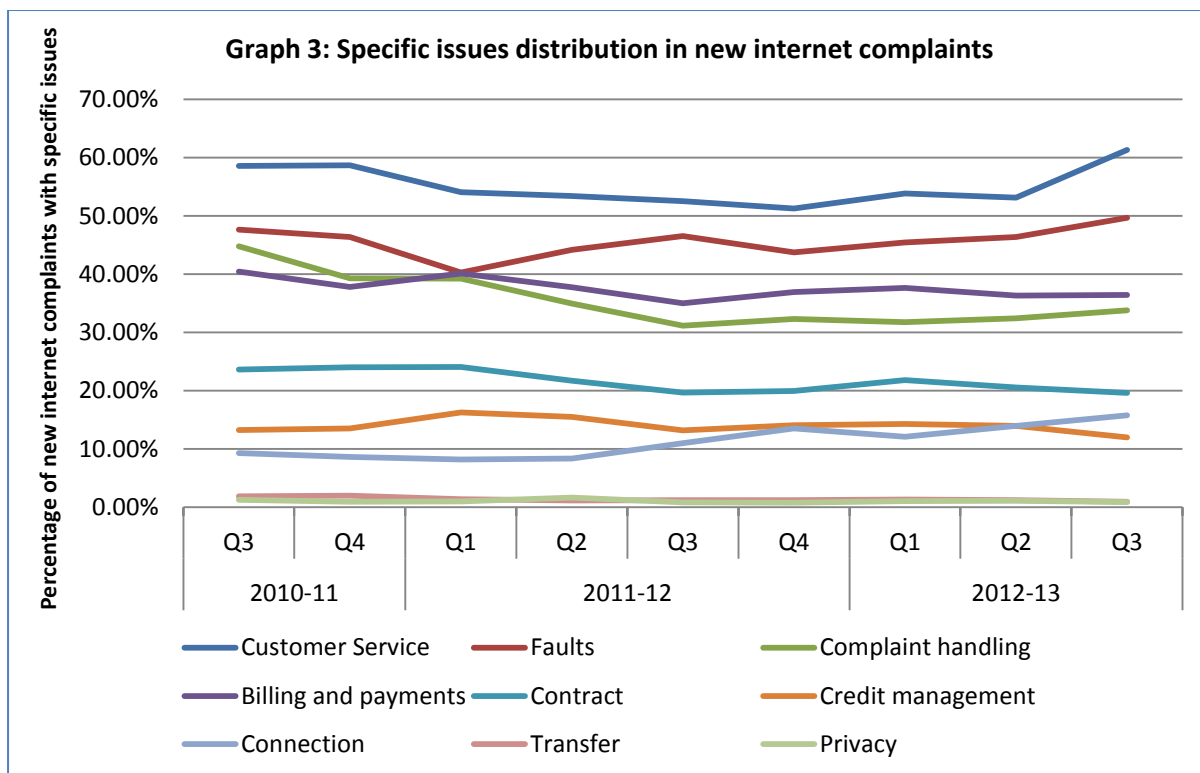
We capture new complaints for internet services depending on the issues identified in the matter.

Over the period January 2011 to March 2013, customer service and faults issues have consistently been associated with a significant number of new internet complaints.

On average, 56.1% of new internet complaints recorded in the first three quarters of 2012-13 have a customer service issue. Further, 47.2% of new internet complaints recorded in the first three quarters of 2012-13 have a fault related issue.

We have seen an increase of 25.6% in the number of new internet complaints with a customer service issue in quarter 3 of 2012-13 compared to the previous quarter. We have also seen a 16.5% increase in the number of new internet complaints with a fault issue in quarter 3 of 2012-13 compared to the previous quarter.

Graph 3 illustrates the proportion of new internet complaints with a specific complaint issue over nine quarters up to March 2013.



Internet customer service issues

We record a number of customer service related issues which are often associated with a consumer being dissatisfied with the response from or assistance given by a provider. We capture customer service issues under a number of categories including:

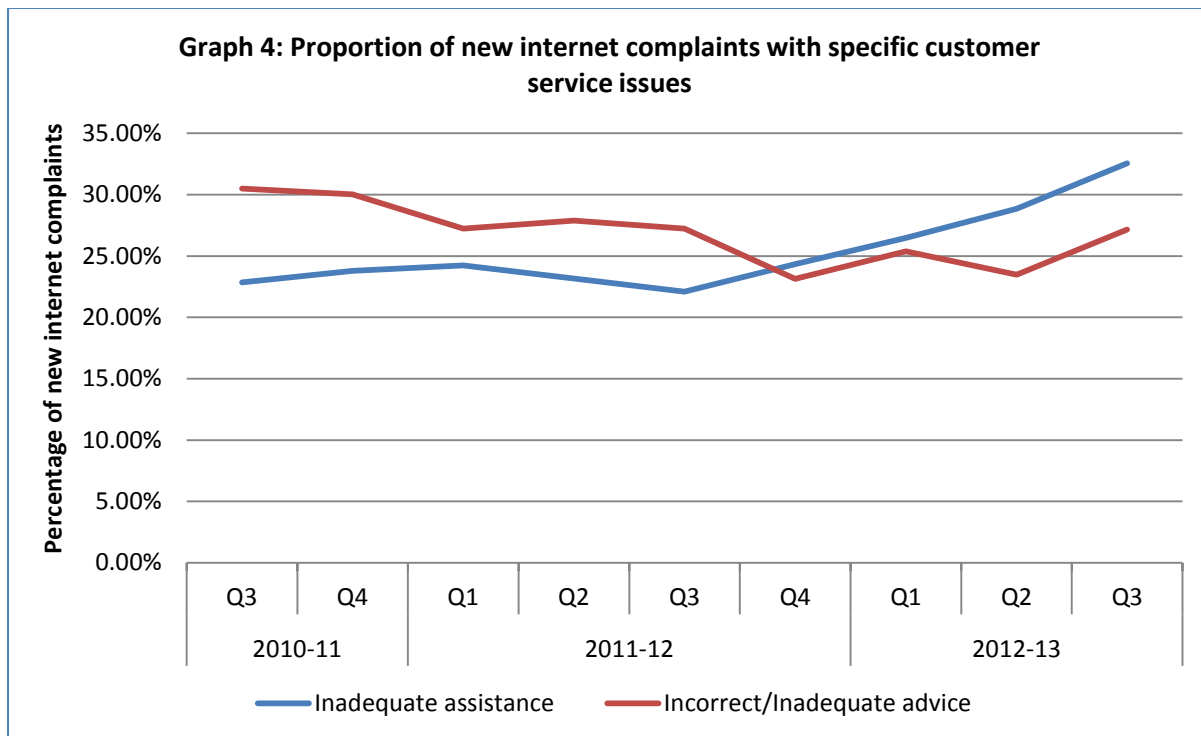
- *Inadequate assistance*: for example, where a consumer complains about inadequate assistance when dealing with customer service
- *Incorrect/inadequate advice*: for example, where a consumer complains about the advice given to them by a provider, and
- *Failure to action request*: for example, where a provider may not have actioned a request made by a consumer.

Other categories such as *discourtesy* and *lengthy wait time* are also used to capture issues about customer service.

Since quarter 3 of 2010-11, inadequate assistance and incorrect/inadequate advice issues have featured as the most common customer service issues relating to new internet complaints. These two issues were associated with 29.4% and 25.4% respectively of all new internet complaints in the first three quarters of 2012-13.

These issues are often associated with complaints about internet performance (see below), as well as concerns about information or assistance provided regarding pricing, plan details or other internet related issues.

Graph 4 illustrates the proportion of new internet complaints that contain the two main customer service issues (inadequate assistance and incorrect/inadequate advice) recorded by the TIO over nine quarters up to March 2013.



Internet performance issues

We use specific keywords to capture a variety of internet fault issues, some of which are expressly related to performance. We capture issues about internet performance using the following keywords:

- *Dropouts*: for example, where a consumer complains about a delay in rectifying drop outs on an internet service
- *Slow data speed*: for example, where a consumer complains about the data transfer speed on a fixed or mobile internet service. This will typically arise where a consumer complains that the speed of their service is lower than their expectations set at the point of sale or against information from their provider
- *Coverage*: for example, where a consumer has complained about poor coverage on a mobile, wireless, or satellite internet service. This includes 3G or long term evolution (LTE or 4G) mobile networks. It does not apply to fixed line internet services such as HFC, fibre, or ADSL services.

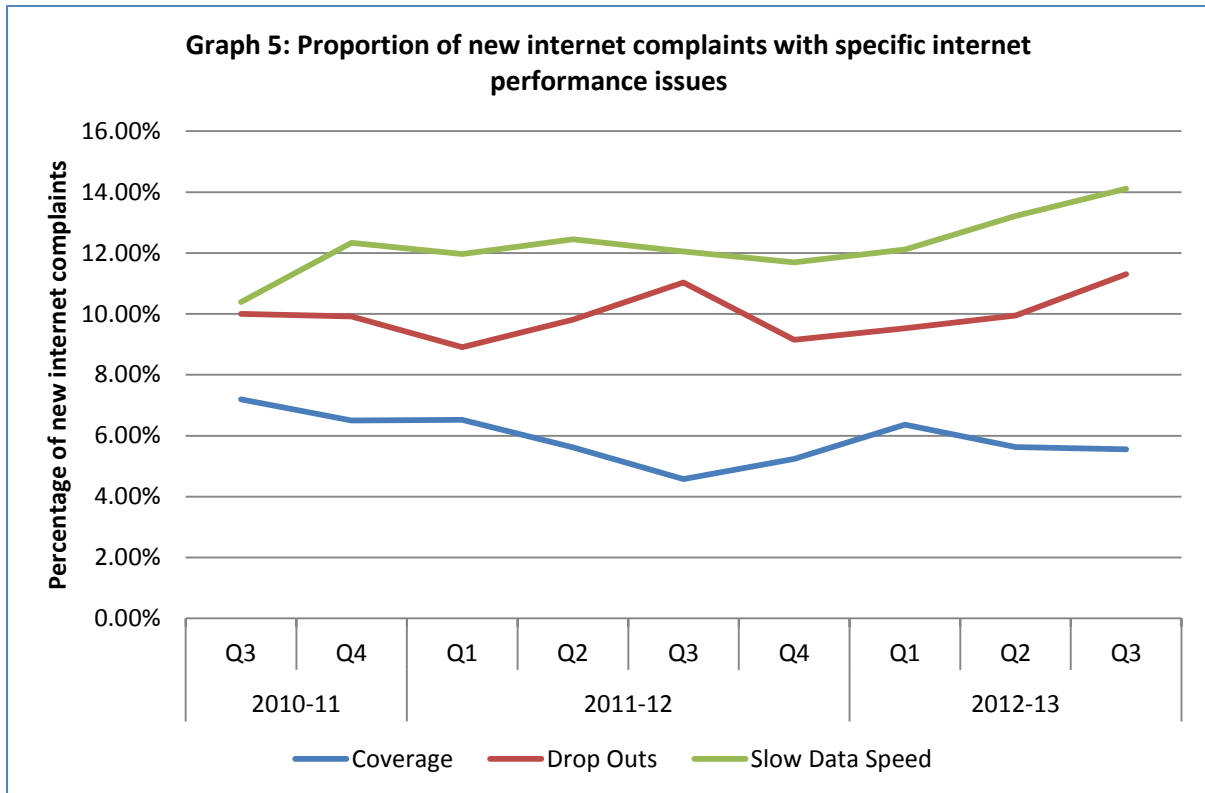
New internet complaints about slow data speeds often also involve issues relating to drop outs. These two issues were associated with 13.2% and 10.3% respectively of all new internet complaints recorded by the TIO over the first three quarters of 2012-13. We have observed an increase in these two issues in recent quarters. While the proportion of coverage issues associated with new internet complaints remains significant, this category has seen a slow decline since January 2011.

Common themes reported by consumers complaining about internet performance issues include (see case studies in **Appendix A**):

- speeds different to those which have been represented at the point of sale or through advertising
- fluctuations in the speeds experienced at certain times of the day (on and off-peak times), and

- variations in what are considered to be acceptable speeds based on the technology in use (e.g. ADSL vs. ADSL2+, mobile broadband, satellite, etc).

Graph 5 illustrates the proportion of new internet complaints with specific internet performance issues over nine quarters up to March 2013.



Responses to specific questions in the ACCC Consultation Paper

The ACCC seeks responses to the questions posed in the Consultation Paper relating to monitoring and reporting on broadband performance. We outline below our responses to those questions that are relevant to our experience.

Testing methodology

Q1. Do you agree that a probe-based testing methodology would be the most reliable and accurate approach for the Australian context?

Q2. If you consider an alternative approach preferable, what approach do you prefer and why?

We understand that not all consumers have access to high speed broadband services, or services that may adequately withstand the bandwidth requirements for appropriate testing. We consider that the impact of testing on consumer services will differ depending on the capacity of the service.

Regardless of the methodology used, we suggest that:

- consumers should be well informed of any limitations such testing may have on their services
- testing should not disrupt a consumer's ability to use their service as intended. Importantly, consumers should continue to receive services that remain fit for purpose under the Australian Consumer Law, and
- clarification should be given to the relevant providers on how testing will be conducted and if consumers have issues with any aspects of the testing, how those issues may be addressed.

Services to be monitored and reported on

Q3. What services should be included in the ACCC's proposed performance monitoring and reporting program? In particular:

a) Do you agree that the ACCC should monitor ADSL, HFC, and NBN-based broadband services?

The ACCC has highlighted that ADSL and HFC broadband technologies comprise 96% of all fixed-line broadband services. For this reason, these services should be included in any proposed performance monitoring and reporting program.

Fibre-based services including those offered over the rollout of the National Broadband Network are likely to increase. Although they currently represent a small percentage of active broadband services, it will remain important to include these technologies in any broadband performance monitoring program in addition to existing fixed broadband services.

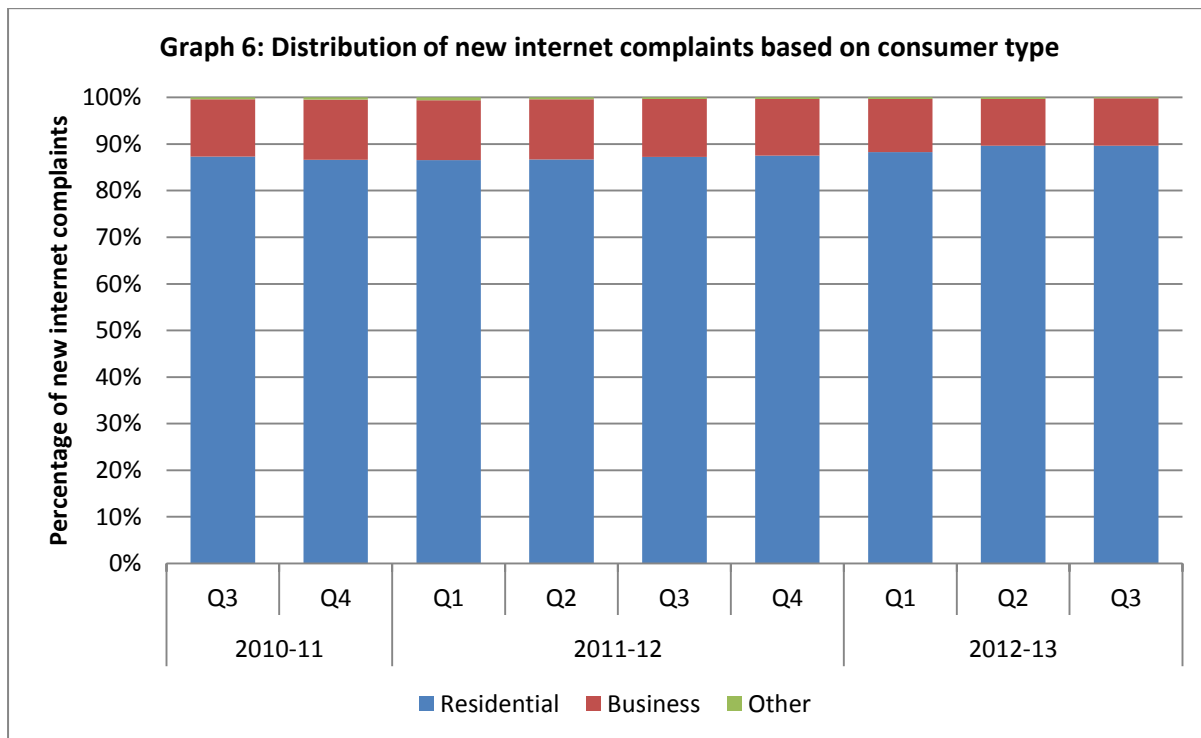
We suggest that Fibre-based broadband services including NBN-related services be covered by the program.

b) Do you agree that the ACCC should monitor small business broadband services?

We receive and investigate complaints from both individual and small business consumers. We assess whether a business can be considered 'small' by considering a number of factors including: the number of employees, annual turnover, the nature of the business, the way the business is structured or managed, and the issue in dispute.

Small businesses represent on average around 11.9% of consumers who complain to the TIO each quarter.

Graph 6 illustrates the distribution of new internet complaints we have recorded based on the consumer type over nine quarters up to March 2013.



*Data set 'Other' includes less than 1% of new complaints received from community, government, charity, or undisclosed entities.

Although the proportion of complaints received from small businesses is significantly less than from residential consumers, the impact from these issues can be significant (see **case study 3** below). Small businesses – more so now than ever before – are reliant on their internet services to communicate and transact with their suppliers and customers.²

Given this, we consider the inclusion of small business broadband services as a vital element of any proposed performance monitoring program.

c) *Are there any other services which you consider should be included in the proposed program?*

Satellite services

Complaints about satellite services form a small component of our new internet complaints each quarter. As the rollout of the NBN progresses, satellite services will form an important proportion of all internet services. In light of this, we suggest that the existing interim satellite services, and in future, any NBN long term satellite service, should also be included as part of the program.

² The Australian Bureau of Statistics (ABS), in its annual [IT Use and Innovation in Australian Business](#) survey revealed that over 2011-12, 93.7% of small businesses (5-19 employees) had internet access. Of these small businesses, 99.5% regarded broadband internet as their main type of connection. Further, 65.2% had placed orders via the internet, with 34.3% receiving orders via the internet. Internet income also rose to \$33.2billion from \$31.1billion in 2010-11.

Mobile broadband

Some of the internet performance related issues received by the TIO are attributed to internet coverage issues from non-fixed broadband services (see **case study 4** below). Over the first three quarters of 2012-13, 5.8% of new internet complaints had an internet performance issue in relation to coverage; this equates to around 440 new internet complaints per quarter. This excludes coverage issues directly associated with new complaints about mobile services, which can include internet performance related issues.

Given the challenges associated with the monitoring of these services, we suggest including mobile broadband services in the future. This may require consideration of international developments such as the studies expected to be published by the Independent regulator and competition authority for the UK communications industries (Ofcom) in 2014.³

We also acknowledge the work initiated by the Australian Communications and Media Authority (ACMA) in early 2013 regarding the performance of mobile telecommunications services. We consider the implications of the work being undertaken by the ACMA and its contributors will have a positive impact on the user experience for consumers. To this end, we suggest stakeholders engaged in this discussion monitor any developments that result.

Regions

Q4. How should the ACCC determine the regions to monitor as part of any program? In particular:

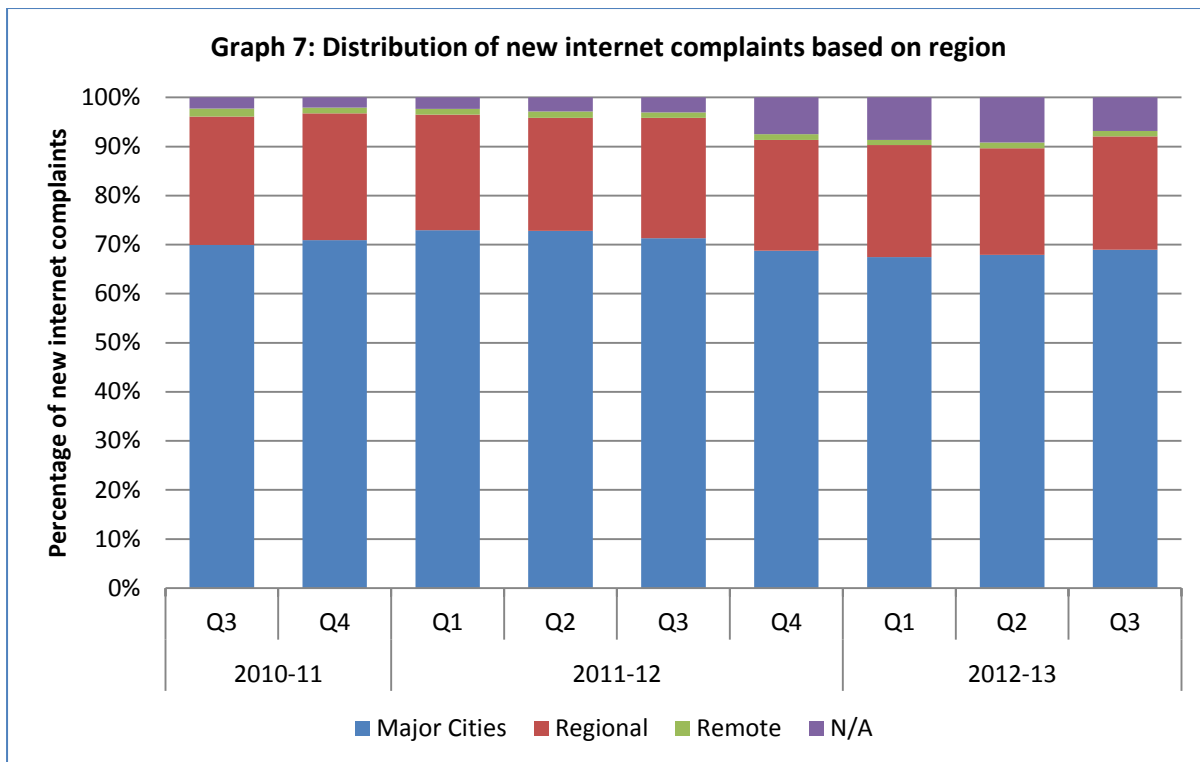
a) Would you consider State or Territory regions which encompass rural and regional areas outside of each major city would be sufficient to provide information to consumers living in these areas on the performance of broadband services?

Of the new internet complaints that we recorded over the period January 2011 to the end of March 2013, 22.58% were received from consumers in regional areas, with a further average of 1.1% received from consumers in remote areas.

Given the representation of regional and rural consumers in our complaint data, we suggest that the ACCC consider monitoring these areas as part of its proposed program.

Graph 7 shows the distribution of new internet complaints by their region over nine quarters up to March 2013.

³ It will be important to monitor the methodology used by Ofcom in its performance monitoring of mobile broadband services, particularly in light of the technical challenges. See also <http://media.ofcom.org.uk/2013/03/14/average-uk-broadband-speeds-hit-double-figures/>.



*N/A data indicates complaints data which does not have associated post code information

Internet service providers

Q5. How should the ACCC determine which ISPs to monitor for ADSL and NBN-based services? For example:

- Should the ACCC monitor the largest ISPs by total market share in the Australian fixed-line broadband market?
- Should the ACCC monitor the largest ISPs by market share for each technology?
- Should the ACCC monitor the largest ISPs by market share for each region?

We acknowledge the benefits in monitoring the largest ISPs by total market share for each technology. However, our data indicates that whilst market share is a key contributor to the number of complaints received by the TIO that are associated with issues of internet performance, one does not necessarily follow the other. Furthermore, not all providers will be adequately represented across all technologies. For example, if a particular ISP has a relatively small market share but offers a specific type of technology in a particular region, an ongoing performance issue with this type of technology may reflect more significantly in our complaints data.

We suggest that testing and monitoring under the program should be on the basis of market share per technology and if practicable, by region. As the program matures, we suggest that consideration be given to include other parameters as may be appropriate.

Speed tiers

Q8. Do you agree the ACCC should test both ADSL1 and ADSL2+ services?

Q9. Should the ACCC test specific speed tiers for HFC and NBN-based services or should it test services falling within particular speed ranges? Please explain if and why you prefer a particular approach.

We agree that in any performance monitoring program, the ACCC should test both ADSL1 and ADSL2+ services as both services continue to be offered to consumers in Australia.

As the NBN rollout progresses, the concept of speed tiers will become an increasingly prominent issue for consumers to differentiate between providers, service types and plans. It is important therefore, that consumers are informed before making decisions. In particular, without a regulated minimum internet speed requirement, publicly available information about what speeds are typically achievable between service providers will be beneficial for consumers. It will also assist providers to better understand the average speed throughputs achievable from their customers' premises.

We acknowledge the challenges involved with monitoring all available speed tiers. We agree that at least in the initial stages, monitoring the highest available speed tiers may give the best indication of whether a provider's network is congested, particularly during peak times. We suggest that an important consideration of testing specific speed tiers is the advertised speed tiers by internet providers in Australia.

Sample size

Q10. What is the minimum number of probes which would be required to provide robust results on the broadband performance likely to be experienced by consumers acquiring a particular ISP package or offering in a particular region (i.e. per sample set)?

Q11. Which of the variables (ISP, geographic region, speed tier or size of each 'sample set') is most important and why?

We suggest that any assessment of sample size should ensure the adequate representation of the variables outlined in question 11. For example, it is important that:

- regional and remote consumers are adequately represented
- network operators and resellers are adequately represented (such as satellite providers), not purely by market share and according to the sample set, and
- measured speed tiers are relevant to the particular sample set.

Metrics

Q12. What information regarding download and upload data transfer rates (or speeds) would be most useful for ISPs and for consumers? In particular:

a) Do you agree that the ACCC should monitor both peak and off-peak data transfer rates?

We receive complaints associated with internet performance that involve concerns about the level of degradation on a service during peak times.

On this basis, we suggest that it would be beneficial for the ACCC to consider comparative off-peak and on-peak monitoring to allow consumers to assess the possible effects of increased usage on a particular network.

Reporting

Q14. What do you consider is the best approach to reporting on broadband performance in Australia? In particular:

a) How often should the ACCC report on the results of its broadband performance testing?

b) Do you agree that the ACCC should provide detailed observations, commentary or analysis on the results of testing?

We suggest that the ACCC consider the following factors when developing its approach to reporting on broadband performance in Australia:

- clear and simple information that is easily navigable
- regular reports that ensure the data remains accurate and relevant
- transparent information about the providers that have been monitored
- information about the nature of testing methods used and under what circumstances certain speeds were achieved
- aggregating the information based on geographical location (this may assist with the identification of possible congestion in certain areas)
- any important qualifications on the data (e.g. that the results are not a guarantee or expected average, that results may vary depending on consumer equipment, location, server constraints – e.g. local or international, etc.), and
- ensure that the information does not unfairly prejudice against a particular provider if discrete events (for example, a natural disaster or network outage) has impacted on the performance of the service during the reporting period.

Appendix A: Case Studies

The following case studies demonstrate the range of issues experienced by consumers relating to internet performance.

Case study 1

The consumer claimed that they experienced extremely slow data speeds and dropouts on their cable internet service. After requesting further assistance from their provider, they were advised to increase their plan to a premium speed option and were told that this would address the issues. After upgrading their plan, they continued to experience the same issues. The provider subsequently acknowledged that it appeared that there was congestion at the consumer's exchange.

The consumer asked their service provider to either address the speed and dropout issues, or to otherwise release them from their contract without cancellation fees.

The provider has since offered to release the consumer from the contract without cancellation fees and has also offered a refund of a proportion of service charges incurred during the period that the consumer was not able to fully use their service. The consumer has advised that they are satisfied with the resolution.

Case study 2

The consumer claimed that they signed onto a satellite internet service on the advice that they would receive an acceptable service. They experienced regular dropouts with the service not working for certain periods of time. They contacted their service provider and performed trouble shooting without resolution. The consumer requested that the service be fixed and to be reimbursed for the service charges they have paid during the periods that they were not able to fully use their service. If the service could not be fixed, then the consumer requested the cancellation of the service without cancellation fees.

The service provider conducted further investigation and acknowledged that there appeared to be an issue with the consumer's equipment which was subsequently replaced. However, the consumer continued to experience speed issues and advised that they were dissatisfied with the representations from their service provider about the speeds they would experience on the satellite service.

As a resolution to the complaint, the service provider agreed to cancel the service without cancellation fees upon the return of all equipment. It also offered to waive a proportion of charges incurred by the consumer. The consumer advised that they were satisfied with this resolution.

Case Study 3

The consumer – who is a director of a small business – claimed that he was experiencing extremely slow speeds which were a fraction of the speeds that were advertised by his provider. As a result of the slow speeds, he was incurring ongoing business loss.

The consumer requested that the provider address the speed issues, and to also compensate him for business loss incurred as a result of him not being able to use the full extent of the service advertised.

The provider responded through a conciliation conducted by the TIO and acknowledged that there appeared to be an over-subscription in the consumer's area. However, it did advise that there were plans to upgrade the exchange in the coming months, but with no firm commencement date.

In the interests of reaching a resolution, the provider offered a credit of half of the consumer's service charges as well as requesting that the consumer send further particulars in relation to the business loss that they claimed to incur. It also offered to transfer the consumer to an ADSL1 service from their ADSL2 service, which would be slower, but would not be impacted by congestion.

The consumer accepted the resolution and agreed not to pursue compensation for business loss, as long as he could continue to work closely with his service provider should any further issues arise.

Case study 4

The consumer signed up for a mobile phone and mobile broadband tablet service. At the point of sale, they were advised that they would have good coverage across the country. They have since experienced poor coverage at their residential address, as well as in other areas. As a result, they experienced slow data speeds. The consumer relied on the information provided to them at the point of sale to set their expectations around the quality of service.

The consumer requested cancellation of the service and was advised by their provider that they would be charged a cancellation fee.

The complaint was conciliated through the TIO and after further discussions between the consumer and the provider, a resolution was reached. The provider offered to release the consumer from the contract without cancellation fees upon the return of all equipment.