

13 May 2013

Mr John Stanton
Chief Executive Officer
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**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

Dear Mr Stanton

Review of the Calling Number Display Code (ACIF C522:2007)

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with this opportunity to contribute to the review of the Calling Number Display (CND) Code.

We enclose our submission on the CND Code for consideration of the Working Committee tasked with this review. We have highlighted in our submission specific issues which the TIO would like to see considered in the review of the CND Code. These include:

- An overview of TIO complaint statistics
- Obligations relating to CND and CND blocking in the Customer Service Guarantee (CSG) Standard
- The relationship between the CND Code and other industry codes and legislation
- Voice services over the National Broadband Network, and
- CND and CLI blocking for mobile services.

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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*calls from mobile phones may incur charges



Telecommunications Industry Ombudsman

Telecommunications Industry Ombudsman – Submission on the Calling Number Display Code Review

May 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. Our services are provided at no cost to consumers.

For most complaints we receive, we establish the issues in the dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at their 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 on a service provider 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, 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 response to the review of the Calling Number Display Code

The TIO welcomes the opportunity to comment on the review of the Calling Number Display Code (the CND Code).

Australian citizens value their privacy. Recent changes to privacy related legislation around the protection of personal information mean that it is timely to revisit the provisions of the CND Code and review its effectiveness in the current climate.

The TIO considers that the CND Code remains an important part of the telecommunications regulatory framework, including through enhancing the privacy and security of telecommunications consumers.

In this submission, we have focused our comments on the following:

1. TIO complaints data and complaint issues that are relevant to Calling Number Display (CND) and Calling Line Identification (CLI), and
2. Specific issues for consideration in the review of the CND Code:
 - (a) Obligations relating to CND and CND blocking under the Customer Service Guarantee (CSG) Standard
 - (b) The relationship between the CND Code, other industry codes and legislation
 - (c) Voice services over the National Broadband Network (NBN), and
 - (d) CND/CLI blocking for mobile services.

We trust that the information in this submission will assist in the review of the CND Code with the view to updating and strengthening the protections in the CND Code.

Complaints to the TIO

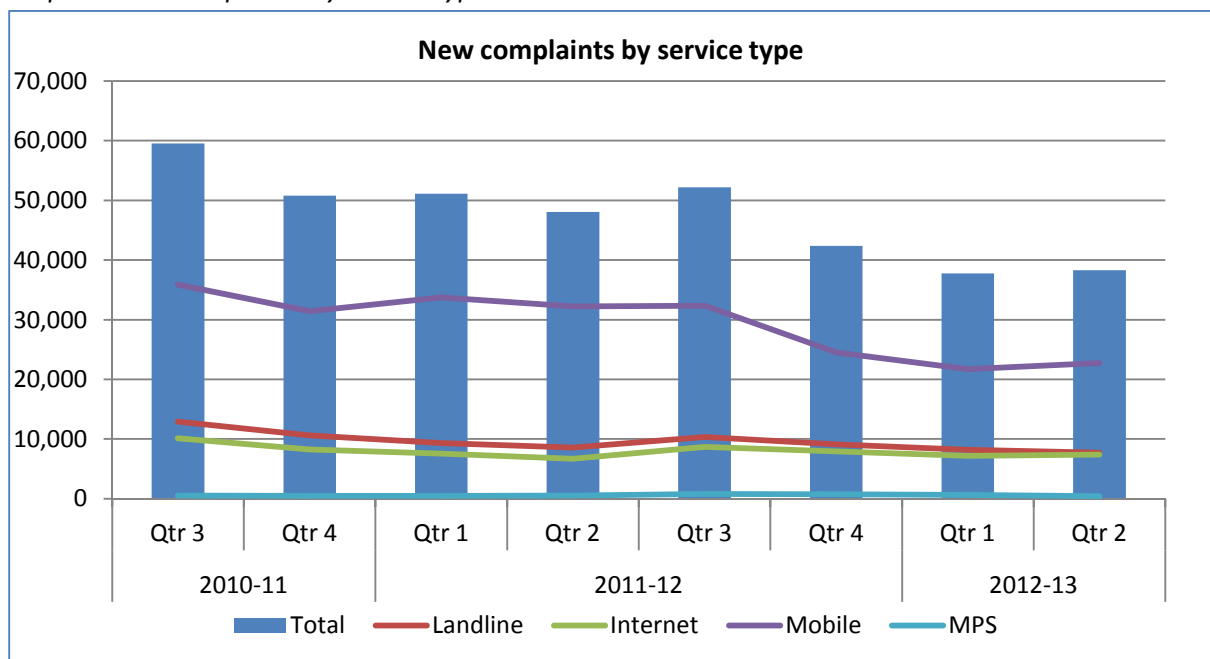
Overall trends for new complaints

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 two quarters of 2012-13, we have recorded more than 76,000 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 the past eight quarters up to quarter 2 of 2012-13.¹

Graph 1: New complaints by service type



New landline and mobile complaints

While the TIO has seen an overall increase in new complaints regarding mobile services over recent years, new complaints regarding landline services have declined. This reflects the changing usage patterns of telecommunications users who are now more likely to take up new and emerging technologies related to mobile services and forgo traditional landline services.

¹ Details of TIO complaints data for the full financial year 2011-12 are available in the TIO’s 2012 Annual Report at http://www.tio.com.au/data/assets/pdf_file/0011/107975/TIO-2012-Annual-Report.pdf. Details of TIO complaints data for quarter 2 of 2012-13 were released in the February edition of TIO Talks at http://www.tio.com.au/data/assets/pdf_file/0011/127865/TIO-Talks_No1_2013_FINAL.pdf.

The TIO generally sees an increase in new complaints about landline services during the third quarter of any given financial year due to extreme weather conditions. Quarter 3 of 2011-12 was no exception with an increase of 21% over the prior quarter. However, new complaints regarding landlines then declined over the next three quarters with decreases of 11.8%, 10% and 6.1% respectively in quarter 4 of 2011-12, and in quarters 1 and 2 of 2012-13.

New complaints about mobile services are the main source of consumer complaints received by the TIO. However, we have seen a decline in these new complaints since January 2011, with a significant drop of 24% between quarters 3 and 4 of 2011-12. New complaints about mobile services have averaged around 23,000 each quarter in the first two quarters of 2012-13.

Issues for new landline complaints

New complaints regarding landline services can present a variety of issues. From quarter 3 of 2011-12 to quarter 2 of 2012-13, issues regarding customer service and billing and payments made up 23% and 21% respectively of all issues we recorded for new landline complaints. Complaint handling issues (14.5%), credit management issues (10.4%), fault issues (9.8%) and contract issues (9%) also featured prominently throughout the same period.

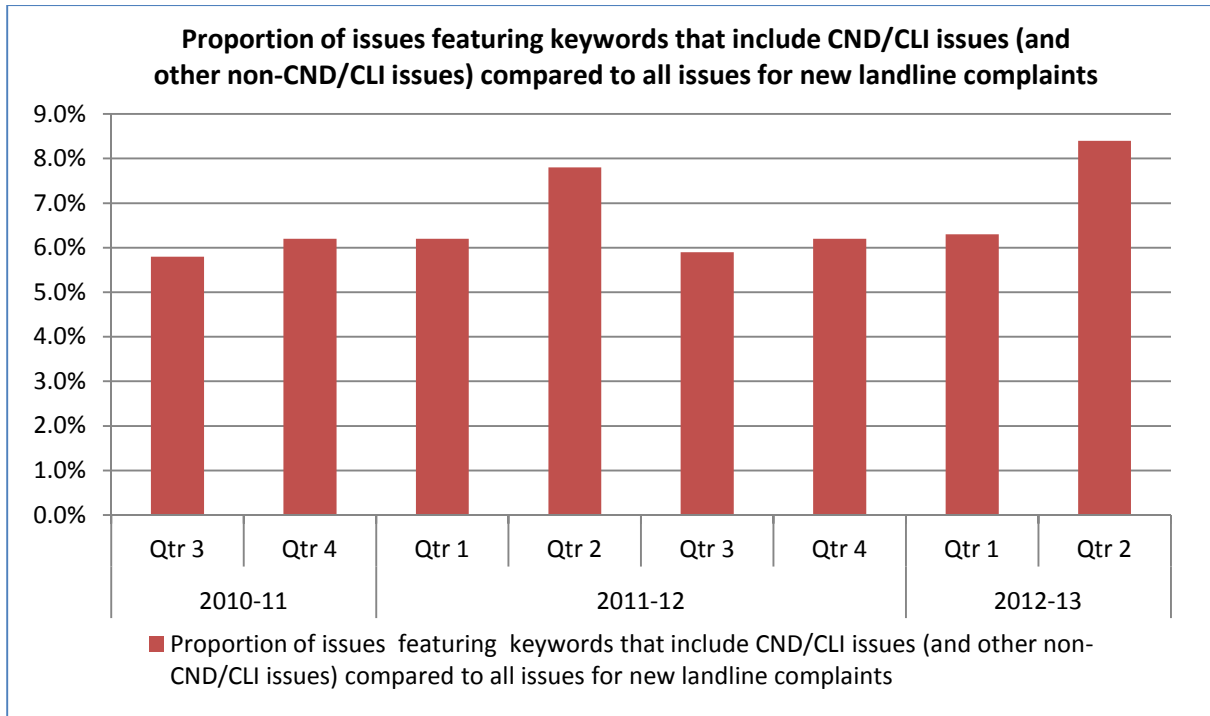
While the TIO does not capture new complaint issues about CND and CLI with specific keywords, they fall under an umbrella category of “enhanced call features” and are captured in the following manner:

- **BILLING AND PAYMENTS > Disputed Recurring Charges > Service Charges**
Complaint about the imposition or calculation of service charges on a customer's account (includes monthly access fees, line rental, recurring charges for enhanced features)
- **CONNECTION > Delay: in-place service > Enhanced Call Feature**
Complaint about a delay in connecting an enhanced call feature such as call waiting, call forwarding, CND and CND blocking
- **FAULTS > Delay: CSG service > Enhanced Call Feature**
Complaint about the length of time taken to rectify a fault with an enhanced call feature
- **PRIVACY > Customer Personal Information > Disclosure: silent number**
Complaint about the disclosure of an unlisted number, including where a provider representative has allegedly abused their access privileges to obtain this information for their own use

As such, we are able to provide some information of the CND and CLI issues identified in new complaints using the above keywords – although we note that these keywords also capture other issues not related to CND and CLI matters.

Graph 2 shows the proportion of issues captured under these keywords compared to all issues recorded for all new landline complaints over the past eight quarters up to quarter 2 of 2012-13.

Graph 2: Proportion of issues featuring keywords related to CND/CLI issues compared to all issues for new landline complaints. Important note: these keywords also capture issues not related to CND/CLI issues



CND Code Review: Issues for consideration

Obligations relating to CND and CND blocking in the Customer Service Guarantee (CSG) Standard

CND and CND blocking are enhanced call handling features under the CSG Standard. Their inclusion in the CSG Standard reflects the importance with which they are regarded by consumers and the community. The CSG Standard sets out performance standards and timeframes for activation and repair of CND and CND blocking features in relation to standard telephone services. Non-compliance with these performance standards means that service providers have to provide affected consumers compensation, calculated in accordance with the CSG Standard.

However, information about compliance with the performance standards and eligibility for compensation under the CSG Standard are not included as part of the information requirements in Chapter 4 'Providing Customer Information' of the CND Code.

As the CSG Standard sets out legislated performance standards for activation and repair of CND and CND blocking features and regulates compensation to consumers for non-compliance, the CND Code should include information about this as a requirement in Chapter 4 of the CND Code. This means that if a consumer requests CND or CND blocking, their provider must tell them about the legislated performance standards for connection and fault rectification, and the consequences of non-compliance including compensation that may be payable under the CSG Standard.

Case Study 1 illustrates how the lack of information about performance standards for the connection or repair of CND and CND blocking does occur in complaints to the TIO – with potentially serious consequences to the consumer.

Case Study 1:

The consumer claimed she moved house and requested a silent number (including CND blocking). This was because the consumer was providing evidence to a parliamentary inquiry and prior to moving house she had received unwelcome calls. The consumer claimed the provider had advised her of the price for the silent number and because she agreed to this, she believed that the silent number feature would be activated. It appears that the consumer was not informed about the activation timeframes for the silent number.

The consumer claimed she started to receive hang up calls. She contacted her provider to find out why this was occurring and found out that her number was still a listed number. The consumer claimed that she complained to the provider that her number was supposed to be a silent number. The consumer also claimed that the provider was unable to confirm whether her number had been printed in the white pages directory, nor did it attempt to address her concerns that her privacy may have been breached.

In referring the consumer's complaint to the provider's senior level of resolution for a final opportunity to resolve the matter, the TIO provided information about the performance standards and compensation under the CSG Standard. The consumer was advised to return to the TIO if her complaint was not resolved by this referral within ten working days. The consumer did not return to the TIO.

The relationship between the CND Code, other industry codes and legislation

We receive a number of complaints every year relating to consumers claiming they are receiving unwelcome communications, many from telemarketing companies (see **Case Study 2**). If the consumer claims they are on the Do Not Call Register, we refer these consumers to the operator of the Do Not Call Register to make a complaint.

However, we are also contacted by some consumers who claim that while they have silent numbers, they continue to receive calls from telemarketers. These consumers believe that their provider has breached their privacy by passing on their information to telemarketers.

In our experience it is very rare that a provider will have breached these consumers' privacy. In these instances, we give the consumer a preliminary explanation that a silent number may not preclude them from receiving communications they perceive as being unwelcome, including telemarketing calls. It is also our experience that these consumers can sometimes receive these calls by way of robo or auto-diallers and the calling party may actually have no information about the consumer except for their telephone number.

To reduce understandable concerns, it may be preferable that the CND Code requires a provider to tell consumers who request CND/CLI blocking or silent numbers that while their phone numbers will not be sent during calls and suppressed or not listed in directories, they may still receive phone calls relating to telemarketing. Making this information a requirement under Chapter 4 of the CND Code will enable consumers to make educated decisions on whether CND/CLI blocking and silent numbers will actually fulfill their needs.

In addition, Chapter 4 of the CND Code could contain a requirement for providers to give consumers information about its obligations under any other industry codes or legislation if these are relevant. For example, if a consumer inquires about CND/CLI blocking or a silent number because they want to prevent unwelcome communications, the provider should explain its obligations under the Handling of Life Threatening and Unwelcome Communications Code and provide information to the consumer about the Do Not Call Register.

Case Study 2

The consumer claimed to have a landline with his service provider and that he paid for a silent number and caller ID. The consumer claimed that he had been receiving up to ten phone calls a day from telemarketers and this had been ongoing for about three weeks.

The consumer claimed he raised his complaint with his provider. He claimed his provider advised that it could not assist him. The consumer also claimed he is on the Do Not Call Register. The consumer claimed he asked his provider about changing his service number to stop the calls and was advised there would be a fee for this.

The consumer was referred to the provider's senior level of resolution and advised to return to the TIO if the matter was not resolved within ten working days. As the consumer was concerned about his privacy he was also referred to the Office of the Australian Information Commissioner and to the Do Not Call Register. The consumer did not return to the TIO.

Voice services over the National Broadband Network (NBN)

The TIO has not yet received any complaints from consumers regarding CND or CLI connection or faults on NBN services because only a limited number of consumers have switched to the NBN.

However, past experience suggests that when consumers transfer to a new provider or upgrade to a new technology, enhanced call features can sometimes be removed inadvertently.

In the previous review of the CND Code a great deal of consideration was given as to how Voice of Internet Protocol (VoIP) providers should comply with the obligations. It was determined that many providers could not and that these providers should comply as best they could while at the same time being clear with consumers on how to work around any limitations to protect their privacy.

The Australian Communications and Media Authority's (ACMA) 2011-12 Communications Report indicated that there are 4.34 million consumers using VoIP services at home in Australia, which is an

increase of 20.6% from the previous financial year². These figures strongly illustrate the growth of VoIP as an alternative to a fixed line voice service and suggest further increases of this service as the NBN continues to be rolled out.

This information suggests the need to again consider the issue as part of the CND Code review; consumers should ideally have the same privacy protections regardless of the technology being used to deliver the service.

CND/CLI blocking for mobile services

While the current CND Code obligations mostly relate to standard telephone services, it does make mention of information to be provided to consumers seeking privacy related features on mobile services. This information includes the timeframes for activation (see for example, clause 3.4.1 of the CND Code) and blocking codes that consumers can use on a call by call basis (see for example, clause 4.1.1(h) of the CND Code).

Consumers can stop sending across their mobile number on a call by call basis by using a block code and many smart phones contain inbuilt functionality to block caller ID. However, for some consumers, a permanent CLI blocking may be a more appropriate solution for their needs – see for example, **Case Study 3** below.

With the number of landline services decreasing (only 10.44 million Australians use a fixed telephone service in 2011-12)³ and mobile services increasing (30.20 million services in use in Australia in 2011-12, which is an increase of 3.1% from the previous financial year)⁴, it is appropriate and timely that the CND Code review consider whether mobile services should be more specifically included in the obligations under the CND Code.

Case Study 3

The consumer claimed he requested CLI blocking on his mobile service because he was witness to a murder and would be giving evidence. The consumer claimed the provider agreed to apply blocking, however shortly after the CLI was showing again.

The consumer claimed that on raising this with the provider it contacted him via email to advise the blocking had been applied, however the consumer disputed this and sought permanent CLI blocking.

The consumer was referred to the provider's senior level of resolution and advised to return to the TIO if his complaint was not resolved to his satisfaction within ten working days. The consumer did not return to the TIO.

² [ACMA Communications Report 2011 – 12](#), Number of services, page 19.

³ [ACMA Communications Report 2011 – 12](#), Number of services, page 19.

⁴ [ACMA Communications Report 2011 – 12](#), Number of services, page 19.

Conclusion

We welcome the opportunity to provide our comments on the review of the CND Code. The review should consider the harmonisation of obligations across legislation and industry codes, as well as the development of new technology and services that may require the expansion of the scope of the CND Code. We believe that in light of the issues outlined above, the review should recommend that the CND Code be updated and strengthened.