

12 May 2015

Mr John Stanton  
Chief Executive Officer  
Communications Alliance Limited  
PO Box 444  
MILSONS POINT NSW 1565

Dear Mr Stanton

**Proposed changes to the Calling Number Display Code (proposed Calling Number Display Industry Guideline DR G522:2015)**

Thank you for the opportunity to respond to proposed changes to the Calling Number Display (CND) Code.

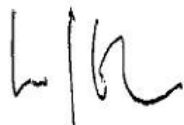
Our submission in response to the proposed changes to the CND Code is enclosed. In this submission, we comment on the following:

1. An overview of Telecommunications Industry Ombudsman (TIO) complaints data relevant to CND and Calling Line Identification (CLI). We request that the submission is not published until the public release of the TIO Talks for Quarter 3, of 2014-15.
2. The proposed conversion of the CND Code obligations into industry guidelines. We recommend against this course of action.
3. Proposed changes that reduce consumer protections:
  - the removal of obligations relating to informed consent
  - the removal of obligations relating to information provision, and
  - the removal of the obligation not to charge for CND blocking or enabling.We recommend retaining these obligations in the CND Code.
4. Existing gaps in the CND Code as highlighted in our submission dated 13 May 2013 on the CND Code Review. We remain of the view that these areas are important considerations and recommend them to the Working Committee for its further deliberation. A copy of our submission dated 13 May 2013 is attached.

We trust our comments will assist the Working Committee in its consideration of the proposed changes to the CND Code.

If you require further information, please contact David Brockman, the TIO Executive Director – Industry, Community and Government on 03 8600 8700 or by email ([david.brockman@tio.com.au](mailto:david.brockman@tio.com.au)).

Yours sincerely



Simon Cohen  
**OMBUDSMAN**

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\* calls from mobile phones may incur charges



# **Proposed changes to the Calling Number Display Code**

**Submission to Communications Alliance**

**May 2015**

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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 per cent 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 seven per cent of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are progressed 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 decisions 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 and landline – and by the types of issues that these complaints present. These issues include connection delays and fault repair, credit management disputes, contractual disputes, privacy 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 progressed (a complaint handling issue).

Further information about the TIO is available at [www.tio.com.au](http://www.tio.com.au).

## Proposed changes to the Calling Number Display Code

We welcome the opportunity to respond to the proposed changes to the Calling Number Display (CND) Code.

The CND Code is an integral part of the co-regulatory privacy framework that specifically applies to the telecommunications industry. The CND Code confers privacy and security obligations on providers for the benefit of telecommunications consumers. It sets out clear rules for providers to follow, and protects consumers who want to block or display their personal information when making or receiving voice calls.

We are pleased to see the proposed extension of the CND Code obligations to 'voice services' that include a mobile service. This is a significant improvement to the existing arrangements under the CND Code.

A key structural change proposed by the Working Committee/Communications Alliance is the conversion of the CND Code obligations to industry guidelines (the draft CND Guideline). The focus of our submission is this structural change and the content changes proposed in the draft CND Guideline.

In this submission, we comment on the following:

1. An overview of TIO complaints data and complaint issues relevant to Calling Number Display (CND) and Calling Line Identification (CLI).
2. The proposed conversion of the CND Code obligations into industry guidelines.
3. Proposed changes that reduce consumer protections:
  - the removal of obligations relating to informed consent
  - the removal of obligations relating to information provision, and
  - the removal of the obligation not to charge for CND blocking or enabling.
4. Existing gaps in the CND Code:
  - information about compliance with performance standards and compensation relating to CND and CND blocking under the Customer Service Guarantee Standard
  - information about the relationship between the CND Code, other industry codes and legislation, and
  - requiring providers to ensure that consumers have the same privacy protections as they currently have for their voice service regardless of the technology used to deliver the service.

We also include case studies in the **Appendix**. While the case studies included broader privacy aspects, we have highlighted in the header of each case study the particular CND aspects that are relevant to this submission.

We trust the information in this submission will assist the Working Committee/Communications Alliance in its consideration of the proposed changes to the CND Code.

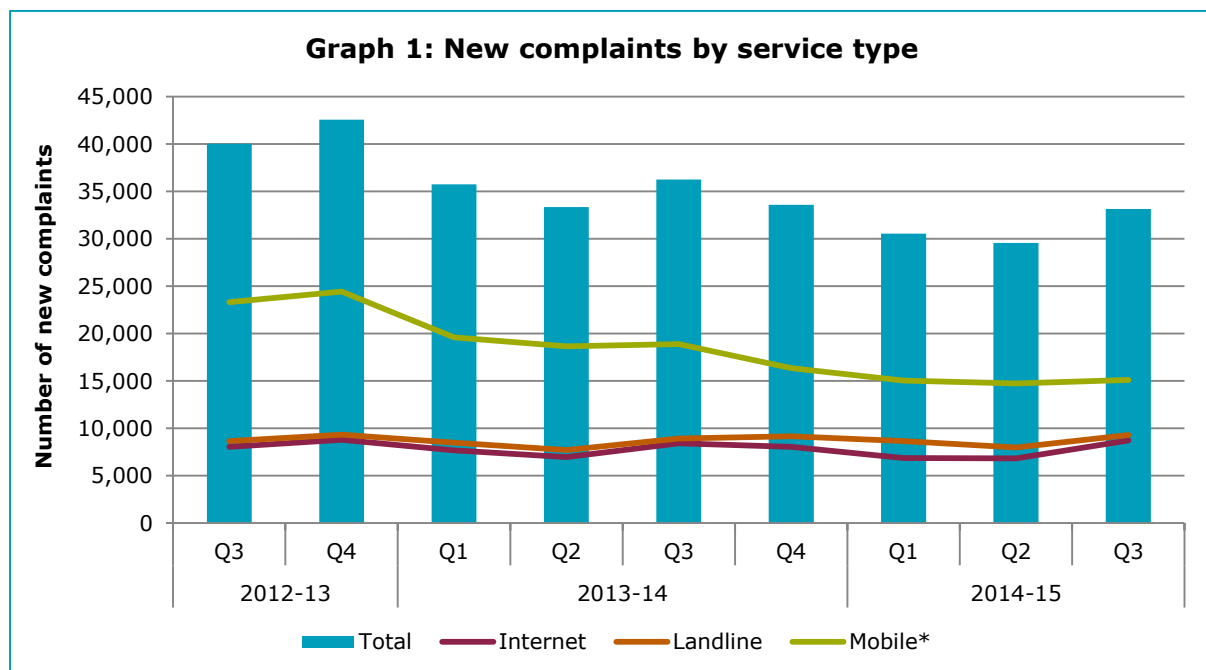
## Complaints to the TIO

### Overall trends in new complaints

The TIO recorded and handled 138,946 new complaints from small business and individual consumers in 2013-14. This compares with 158,652 new complaints in 2012-13 and 193,702 new complaints in 2011-12. In the first three quarters of 2014-15, we recorded more than 90,000 new complaints.

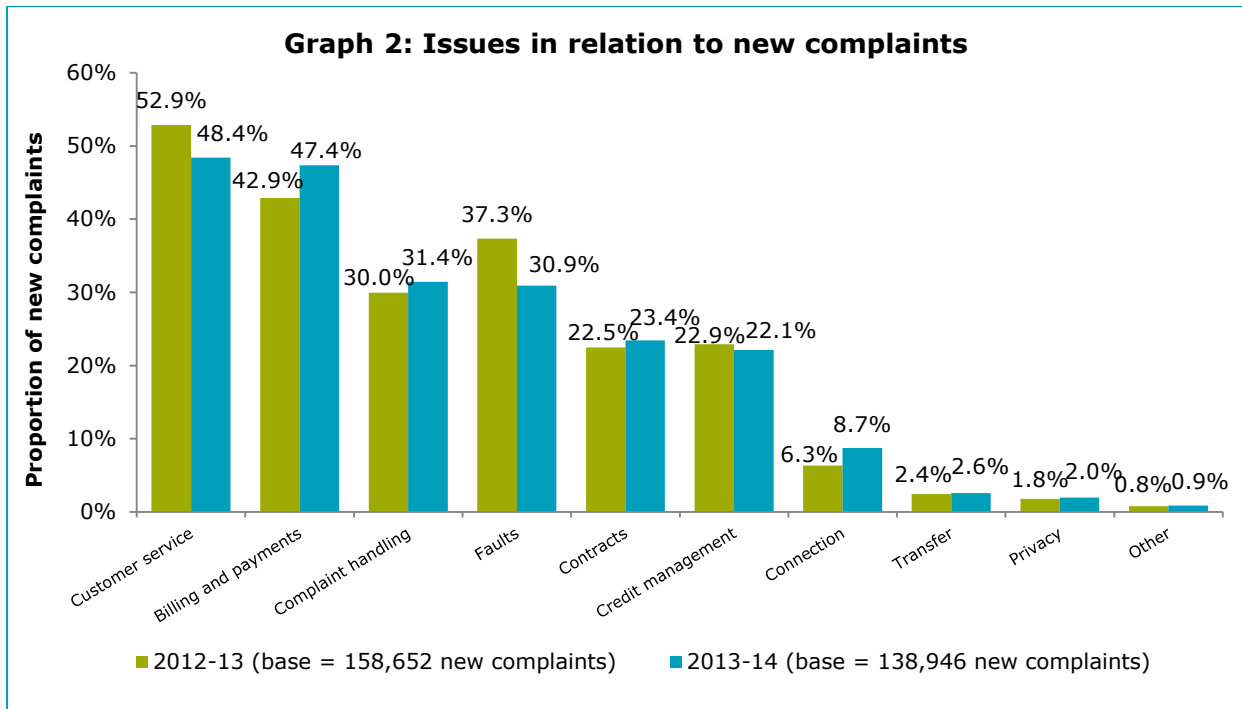
**Graph 1** presents new complaints by service type – internet, landline and mobile (including mobile premium services) – over the past nine quarters up to quarter 3 of 2014-15. New complaints about mobile services form on average 52.4 per cent of all new complaints to the TIO, followed by landline new complaints (averaging 25.1 per cent) and internet new complaints (averaging 22.5 per cent).

The TIO generally sees an increase in new complaints about landline services during the third quarter of any given financial year due to seasonal weather conditions. Quarter 3 of 2014-15 was no exception with an increase of 16.7 per cent over the previous quarter. Except for these seasonal fluctuations, landline new complaints recorded by the TIO have remained steady over the past nine quarters.



\* Mobile premium service related issues have been incorporated under the category of Mobile

**Graph 2** shows issues in relation to new complaints for the 2012-13 and 2013-14 financial years. Across new complaints received by the TIO in 2013-14, and leaving out secondary complaint issues of complaint handling and customer service, complaints relating to billing and payments are proportionally the largest reason for new complaints.



### Landline new complaint issues relevant to CND and CLI

New complaints regarding landline services can present a variety of issues. These include billing and payment issues, customer service, faults and connection issues, credit management, contracts and privacy issues.

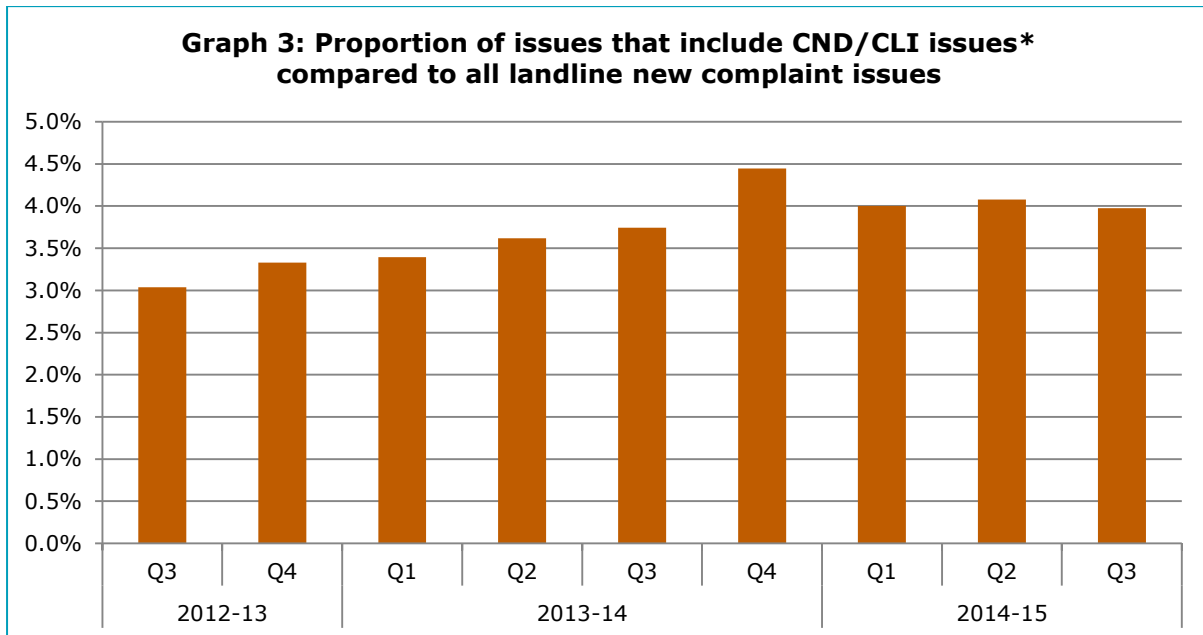
While the TIO does not capture complaint issues about CND and CLI using specific complaint categories, they fall under an umbrella category of “enhanced call features”. These issues are captured using the following TIO keywords:

- **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 or silent number*

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

**Graph 3** shows the proportion of issues captured under these keywords compared to all issues for landline new complaints recorded over the past nine quarters. These issues form on average, three to four per cent of all landline new complaint issues each quarter.





\*These issues include issues that may not be related to CND/CLI issues

## Proposed conversion into an industry guideline

A key structural change proposed is the conversion of the CND Code obligations into a voluntary industry guideline – the new draft CND Guideline.

The CND Code contains a number of important safeguards that enhance privacy protection for consumers when using a voice service. These safeguards include, for example:

- ensuring consumers have the choice of blocking CND on a permanent basis and on a per call basis for each voice service (clause 3.1.1 of the current CND Code)
- offering CND blocking on an unconditional basis that operates across all networks (clause 3.1.2 of the CND Code)
- ensuring a voice service which has an unlisted entry carries a permanent line block (clause 3.2 of the CND Code)
- implementing permanent line block if a consumer with an unlisted entry changes their number (clause 3.6.1 of the CND Code) or if they change from a listed entry to an unlisted entry (clause 3.6.2 of the CND Code)
- ensuring consumers are able to make an informed choice at the point of sale if the provider is not able to support, for technical reasons, CND blocking on permanent basis and/or on a per call basis, including releasing the consumer from contractual obligations without early termination fees if the provider is no longer able to support these features (clause 3.8 of the CND Code)
- giving consumers information about CND and CLI in clear terms and on an ongoing basis, so that they can make properly informed decisions about their voice service and how to protect their privacy and security (clause 4.1.1 of the CND Code).

The CND Code consolidates obligations and gives clear examples of required provider conduct (or, conversely, unacceptable conduct) in a telecommunications specific context. These obligations, if complied with, would ensure a fair degree of compliance with general legal obligations under legislation such as the Privacy Act 1988. As referenced in

a recent determination by the Privacy Commissioner<sup>1</sup>, the CND Code places obligations on providers to protect CLI or block CND when facilitating the delivery of calls, and confers important privacy protections on consumers.

Non-compliance with the important obligations in the CND Code, even in a small number of instances, can lead to substantial detriment for consumers. This is more so for those consumers in high risk situations or professions, and who as a result of the provider's non-compliance, face threats to life or safety, or high costs to relocate or take measures to protect their safety.

We continue to receive complaints of this nature – see case studies **case studies 1, 2** and **3** in the **Appendix**. Some complaints have also resulted in systemic investigations for non-compliance with legislative and code obligations relating to privacy – see **case study 5** in the **Appendix**. As noted earlier, while the case studies included broader privacy aspects, we have highlighted in the header of each case study the particular CND aspects that are relevant to this submission.

The proposed conversion of the CND Code into a voluntary industry guideline may result in reduced consumer safeguards and less diligent industry practice.

The proposed CND Guideline does not have the same standing and compliance requirements as current CND Code obligations. If the consequences for non-compliance are reduced, this may result in reduced incentives for compliance.

For these reasons and given the importance of the arrangements in the CND Code, we recommend retaining the obligations in the Code as code obligations. This includes retaining the existing obligations in Chapter 6 of the CND Code.

## **Proposed changes that reduce consumer protection**

### **Removal of obligations relating to informed consent**

The proposed removal of a number of clauses relates to consumer choice and informed consent, for example, clauses 3.4.1 and 3.8.1 of the CND Code.

Properly informed consent is a critical element that protects consumers by ensuring they have knowledge of what they are agreeing to. Information provided to consumers about services that is clear, easy to understand and not onerous to digest is an obvious initiative to help consumers make informed decisions about the services they wish to purchase. While the concept of informed consent is important for all consumers, it is of particular significance as regards consumers' privacy.

We recommend retaining the provisions in Chapter 3 that ensure consumers are told about the CND and CLI features associated with their voice service, so that they can make fully informed decisions that protect their privacy.

### **Removal of obligations relating to information provision**

The proposed removal of a number of clauses relates to the provision of information, for example, clauses 3.3.2, 3.5.2(a), 4.1.1 and 5.2.3 of the CND Code. In particular, clause 4.1.1 of the CND Code requires providers to give their customers a range of specific information on an ongoing basis, and in clear terms.

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<sup>1</sup> See [Ben Grubb and Telstra Corporation Limited](#) [2015] AICmr 25, 1 May 2015.

The Explanatory Statement to the draft CND Guideline suggests that these clauses are proposed to be removed in light of the Customer Information Provisions (CIP) Policy Framework and the commitment to remove duplication between operational codes and the Telecommunications Consumer Protections (TCP) Code.

It is unclear how the proposed changes are consistent with the push/pull requirements at different stages of the customer information corridor as outlined in the CIP Policy Framework. It is also unclear how the obligations in the CND Code overlap or replicate existing information provision obligations in the TCP Code. The information provision obligations in the TCP Code are either too general or do not expressly relate to CND/CLI issues. For example:

- Although clause 3.2.1 in the TCP Code imposes a general obligation on providers to provide clear, accurate, relevant and current information to consumers in a timely manner, the lack of specific obligations to do this at particular points in the consumer-provider relationship may result in uncertainty for providers and reduced protections for consumers.
- The existing Critical Information Summaries obligations in the TCP Code (clauses 4.1.2 and 4.1.3 of the TCP Code) do not expressly require providers to give information to consumers about the availability or non-availability of silent numbers or CND blocking, at the point of sale or when signing up for a voice service. Although some providers do include this information in their Critical Information Summaries, others do not.

Consumers – particularly those with privacy and security concerns – are less likely to have their specific information needs met in a consistent way across all providers, without the protections in the CND Code.

We recognise that there may be opportunities to streamline the information requirements, for example, by the development of a single document that all providers can use to satisfy the key requirements in Chapter 4. We encourage the Working Committee to reconsider this aspect, so as not to reduce consumer protections.

### **Removal of obligation not to charge for CND blocking or enabling**

The proposed removal of clauses 3.5.1 and 3.5.2 of the CND Code is on the premise that by converting the Code to a Guideline, the obligation not to charge for blocking or enabling CND cannot be mandated. This does not properly explain the rationale for removing an important accessibility feature of CND blocking or enabling, namely the availability of this feature at no charge to consumers.

We recommend retaining this obligation in the CND Code.

### **Existing gaps in the CND Code**

In May 2013 when the CND Code was last reviewed, we highlighted a number of specific areas where protections could be enhanced. These are:

- including information in the CND Code about compliance with performance standards and compensation relating to CND and CND blocking under the Customer Service Guarantee Standard
- including information in the CND Code about the relationship between the CND Code, other industry codes and legislation, and

- requiring providers to ensure that consumers have the same privacy protections as they currently have for their voice service regardless of the technology used to deliver the service.

A copy of our submission dated 13 May 2013 is attached. See also the case studies in the **Appendix** to this submission.

We remain of the view that these areas are important considerations and recommend them to the Working Committee for its further deliberation.

## Appendix: Case studies

### Case study 1 – CND blocking not implemented when silent number service migrated to the National Broadband Network; payment of compensation for failure to activate CND blocking

The consumer contacted the TIO in late 2014. The consumer told us that his privacy had been breached by his provider when it published his silent number and personal details in online directories two years in a row. The consumer told us that the provider had given him compensation for the online privacy breach, but had not explained how the breach had occurred. The consumer told us that he later discovered that his home address details had been published in print directories, associated with a different telephone number. The consumer was concerned that his original privacy breach had not been remedied.

We referred the consumer to the provider's senior level of complaint resolution and asked him to return to the TIO if the complaint remained unresolved.

The provider contacted the consumer and also provided us with its response. The provider told us it had now investigated the consumer's complaint and informed him of its findings. The provider said it was willing to assess the consumer's claim for further compensation if he could substantiate how the disclosure put him at risk, or caused financial loss.

The consumer contacted the TIO and asked for his complaint to be progressed to conciliation, as he was not satisfied with the provider's response.

At conciliation, the provider explained that when the consumer's service migrated onto the National Broadband Network, his telephone number (previously unlisted) became listed. This was caused by line block and override not being enabled, as this enhanced call handling feature had dropped off the new order. The provider also explained that it had previously calculated the consumer's entitlement for a Customer Service Guarantee (CSG) payment for the enhanced call handling feature not being enabled, at around \$2,000, which the consumer had accepted.

The provider offered the consumer a further CSG payment of nearly \$900. The provider also apologised for the error, and gave the consumer an explanation as to how his home address details might have been disclosed in the print directories.

Although the consumer still had some concerns about how the disclosure had occurred, he accepted the outcome and we closed the complaint.

### **Case study 2 – CND blocking not enabled; impact of disclosure on consumer’s privacy; payment of compensation for failure to activate CND blocking; payment of compensation for breach of privacy**

The consumer contacted the TIO in late 2014. The consumer told us that her provider had published her silent number and personal details in print and online directories. The consumer told us that she is a senior officer in the police force and needed to ensure that her personal details are kept private. The consumer sought compensation from the provider for the privacy breach, so that she could increase security measures at her property.

We referred the consumer to the provider’s senior level of complaint resolution and asked her to return to the TIO if the complaint remained unresolved.

The consumer returned to the TIO and told us that the provider offered to cover the cost of installation of security cameras and grilles on doors and windows at her property. However, the provider refused to pay for the cost of the more secure fencing. The provider offered however, to cover relocation costs should the consumer move house. The consumer could not relocate as her partner was gravely ill.

We progressed the complaint to conciliation. During conciliation, the provider informed the TIO that a security adviser had attended the consumer’s property and advised that enhancements to the consumer’s security costing about \$18,000 were reasonable. It also advised the consumer was entitled to a Customer Service Guarantee (CSG) payment of \$1,500 for the enhanced call handling feature associated with the consumer’s silent number not being enabled.

The provider also agreed to the consumer’s request to pay for the cost of more secure fencing, on provision of a reasonable quote for this cost. The consumer accepted this offer in resolution of her complaint. We closed this complaint and told the consumer to return to the TIO if there were any further issues with the undertaking made by the provider.

### **Case study 3 - CND blocking not implemented when silent number service migrated to the National Broadband Network; impact of disclosure on consumer’s privacy; payment of compensation for breach of privacy**

The consumer contacted the TIO in early 2014. She told us that her privacy had been breached by her provider because it had published her silent number in print and online directories. The consumer told us that she was hiding from an abusive ex-partner and that her provider had told her to go to the police. The consumer also told us that she did not have enough money to stay in a hotel as an interim measure.

We referred the consumer to the provider’s senior level of complaint resolution as an urgent complaint and asked her to return to the TIO if the complaint remained unresolved.

The consumer returned to the TIO a few days later. She said her provider told her it would remove her details from any directory listing within twenty four hours, but this had not happened. The consumer told us she called the directory and was told it had no record of the provider contacting it to remove the listing. The directory agreed to

remove the listing for her. The consumer's provider also told her it could not assist her further and the police are responsible for her safety.

The consumer told us that on speaking to the police about her fears, she was told it would take about half an hour for the police to despatch someone to her house for assistance. The consumer told us she had started to receive phone calls from numbers she does not know, and feared answering any calls. The consumer told us she felt she had no choice but to move house, and incurred significant costs doing so.

The consumer told us that she has always had a silent number, however, when her provider migrated her service from copper to fibre, she was given a new service number, which became listed in the directories.

We progressed the complaint to conciliation. We drew the provider's attention to the concern that it may not have complied with its industry obligation to ensure silent number status carried over when a change of service number occurred. We also drew the provider's attention to the privacy and security risk faced by the consumer and her need to relocate to new premises.

The provider contacted us and said it was willing to reimburse the consumer's relocation costs; however it asked the consumer to provide evidence of the risks to her safety and to substantiate her relocation costs. The provider indicated its willingness to accept a statutory declaration from the consumer.

The consumer told us she would provide a statutory declaration to the provider and we advised her to return to us if she was not satisfied with its response. The consumer did not return to the TIO and we closed the complaint.

#### **Case study 4 – Adequate information for consumer about limitations of CND blocking or silent number features; interrelationship with other legislation or codes**

The consumer contacted the TIO in late 2014. The consumer told us he had been with his provider for a number of years and had been paying for a silent number. The consumer told us that he was receiving phone calls from telemarketers and other parties. On questioning these callers as to how they got his phone number, he was told they had purchased a block of numbers from his provider and that his number was in this block.

The consumer told us that as he was paying a premium for a silent number to protect his privacy, it was inappropriate for his provider to sell his phone number to third parties. The consumer wanted an apology from his provider and a payment of \$5,000 in compensation for the privacy breach.

We referred the consumer to the provider's senior level of complaint resolution and asked him to return to the TIO if the complaint remained unresolved.

The consumer returned to the TIO and told us he had not been contacted by his provider. He also wanted an assurance from the provider that it would not disclose his silent number to third parties.

We progressed the complaint to conciliation. At conciliation the provider told us that it does not sell silent numbers to third parties or telemarketing companies. The provider told us it had suggested the consumer register his number on the Do Not Call Register

to reduce the number of telemarketing calls he received. The provider did not offer the consumer any compensation as it had not breached his privacy.

The consumer was not satisfied with the response provided by the provider. We explained to the consumer that we would need evidence that the provider had sold his phone number details to telemarketers, in order to further investigate the complaint. The consumer did not provide this evidence and we closed the complaint.



## **Case study 5 – Systemic investigation into: disclosure of personal information associated with silent numbers, removal of CND blocking without notice; CND blocking not implemented when silent number service moved to another network; impact of disclosure on consumer’s privacy**

### ***Background***

Over a period of six months, we received a number of privacy complaints from customers of a provider regarding the unauthorised disclosure of silent numbers. Consumers were concerned that their details had been published in directories, disclosed by directory services and sold to telemarketers or charities. Consumers also told us that their CND blocking had been removed without notice.

Consumers also told us that the provider’s initial response had included an apology, a refund of silent line charges and relocation assistance for consumers who could substantiate a threat.

We raised an issue of interest with the provider given the serious consequences of the alleged privacy breaches especially the risk to personal safety for some consumers.

### ***The provider’s response***

When the provider met with the TIO, it confirmed a commitment to customer privacy and presented multiple responses to the alleged breaches.

The provider advised it had introduced additional education and training for call-centre staff to ensure understanding of the provider’s privacy obligations. It had also implemented new computer system prompts to educate customers about its use of their personal information.

The provider also outlined its approach to minimising human error including the constant review of privacy complaints to identify processes that have led to personal information disclosure. Solutions to these problems include the automation of some processes or the inclusion of a pop-up warning on staff computers. The provider emphasised that it was unable to prevent some circumstances that may concern customers, such as when numbers are removed from quarantine and the new user receives calls for previous users, and scam calls that are initiated by an auto-dialler.

The provider also told us that it had set up a specialist team to respond to serious privacy complaints relating to domestic abuse. It explained that its computer systems would identify key words and recommend that staff members refer certain matters to this team. The provider also told the TIO that it provided advice and access to services for families subject to domestic abuse situations.

The provider later told us that it was implementing a number of continuing projects including an internal privacy awareness campaign, manual checks of new service requests to catch possible errors, improved scripts, updated internet information about the directories’ publication, warnings about impending directories publication for listed numbers and the introduction of a new call screening product.

### ***TIO assessment***

The TIO was satisfied with the provider’s response and the demonstrated efforts to address its customer’s silent number concerns. The provider also agreed to provide regular updates to the TIO about the projects it is working on to address these privacy issues. As a result, we closed the systemic investigation.

13 May 2013

Mr John Stanton  
Chief Executive Officer  
Communications Alliance Limited  
PO Box 444  
MILSONS POINT NSW 1565



**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**

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

**Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787**

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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](http://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

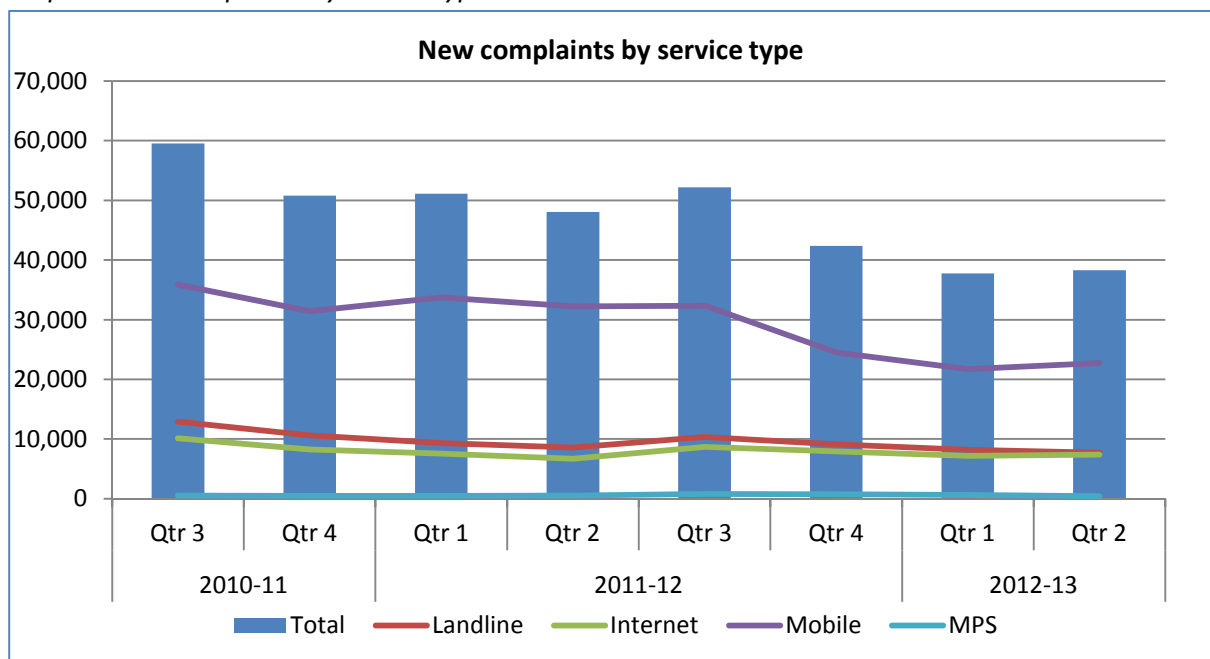
### Overall trends for new complaints

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.<sup>1</sup>

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.

<sup>1</sup> 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](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](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.

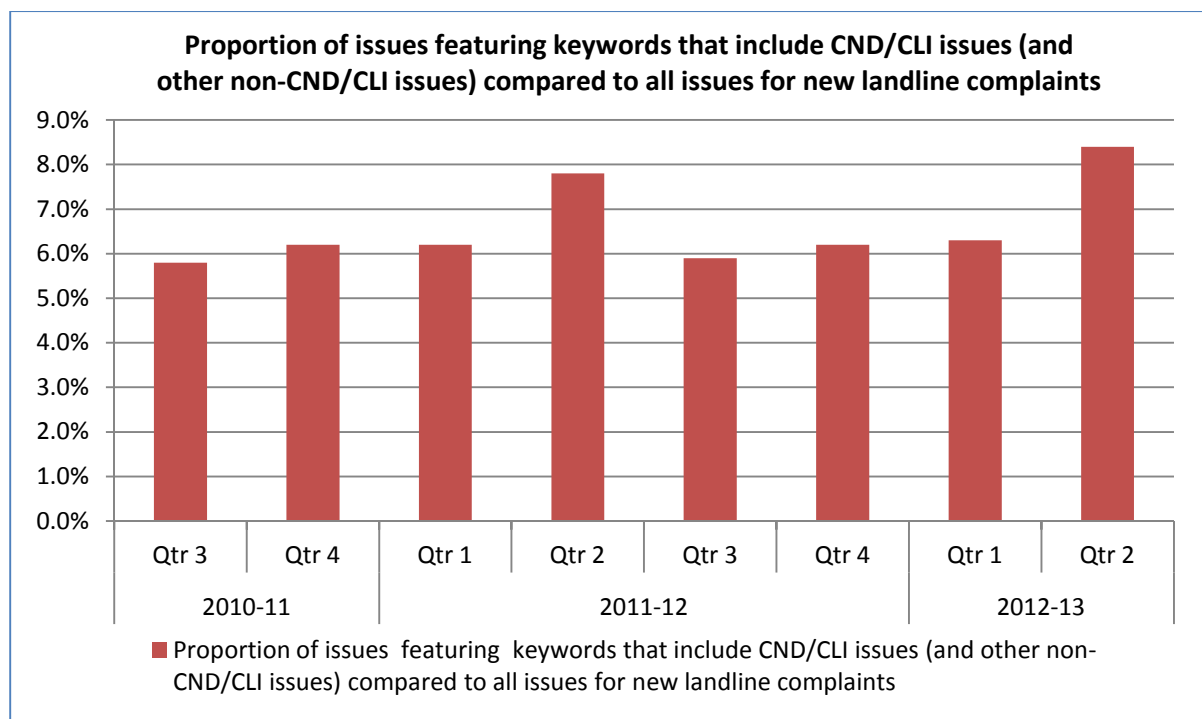
While the TIO does not capture new complaint issues about CND and CLI with specific keywords, they fall under an umbrella category of “enhanced call features” and are captured in the following manner:

- **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 year<sup>2</sup>. 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)<sup>3</sup> 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)<sup>4</sup>, 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.

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

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

<sup>4</sup> [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.