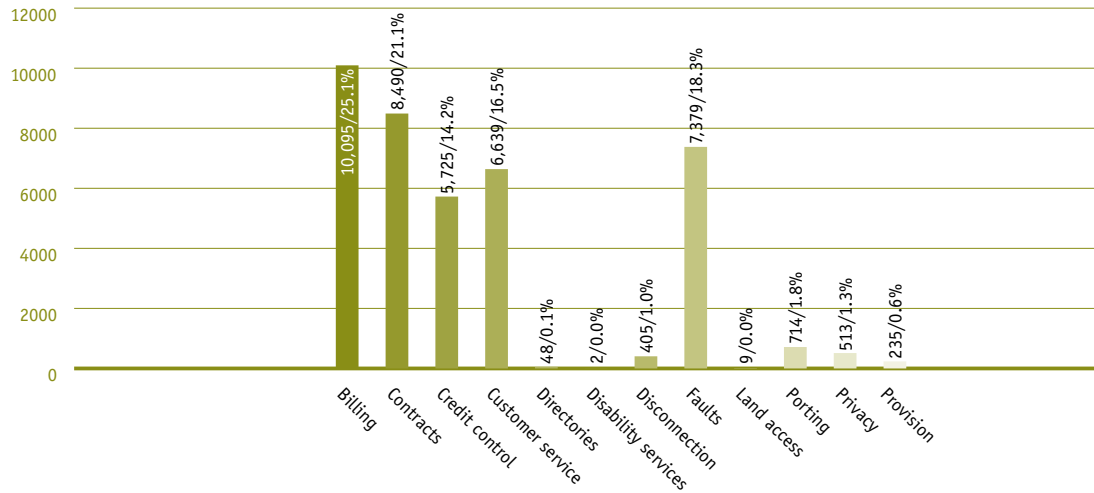


## Overview – 40,254 issues raised

Customer service complaints trebled. This can mainly be attributed to a small number of members, with a high proportion relating to the failure of members to action requests and to inadequate or incorrect advice given at the point of sale and/or from customer service departments.



## Overview – 40,254 issues raised

Mobile service complaints grew more than the other two principal categories in 2004/05 (up by 87.5% to 40,254). For the first time, in the March quarter 2005, mobile complaints exceeded those for landlines: 42.9% of all complaints, against 41.6% for landlines. The order was reversed in the June quarter and there were more landline complaints than those for mobiles over the full year.

The rapid increase in mobile complaints was broadly based with substantial rises across most categories, largely but not wholly due to the growth of the mobile market, with the number of mobile handsets now exceeding that of landline services.

Billing complaints more than doubled — from 4,756 to 10,095 — with the most significant contributor to this category being complaints about premium-rate SMS services. Fault issues also doubled from 3,692 to 7,379, with a very high number — 2,936 — about 3G services.

In 2004/05, the TIO commenced a second systemic investigation of Hutchison 3G Australia about the high number of fault complaints received about 3G. The TIO also raised concerns with Hutchison 3G Australia about its compliance with ACIF's *Complaint Handling Code*. These investigations have only just been finalised and the matters have been referred to ACMA for consideration.

Customer service complaints trebled to 6,639. Again, this can mainly be attributed to a small number of members, with a high proportion relating to the failure of members to action requests and to inadequate or incorrect advice given at point of sale and/or from customer service departments.

Credit control complaints continued the upward trend reflected in the last two reports, with a further increase of 60.5%. Complaints reflect issues with providers' debt recovery practices and the continued difficulties some customers have making appropriate payment arrangements.

Complaints about the porting of mobile service numbers more than doubled to 714; most of the issues recorded in this category relate to delays.

Directories complaints also more than doubled, from 20 complaints to 48. Most were associated with errors in *White Pages* listings.

Privacy and provisioning complaints almost doubled. The privacy complaints reflect a growing concern in the community about telemarketing of goods and services, including telecommunications services.

Notably, complaints about contracts increased at a lower rate than other categories, with an increase of 48.5%. Half of these complaints related to incorrect or inaccurate advice provided at the point of sale.

There were nine land access issues logged under mobile services. These were complaints about the establishment of low-impact facilities associated with mobile phone services. Most land access complaints, including those associated with mobile network facilities, are logged under Landline Services. For comments on land access complaints, please see page 37

## Billing 10,095 issues raised

### Access and connection fees

Complaints about access and connection fees rose almost one-third, from 669 to 866.

The most common type of complaint was about disputed access fees. The TIO expects increases in this category in the next financial year as many mobile providers are now offering fixed-price plans which include the cost of calls to a specified value.

### Premium-rate SMS, information, sex and chat lines

Complaints about premium-rate SMS, information, sex and chat lines increased almost exponentially from 132 to 1,807. The huge increase is due to the increased popularity of premium-rate SMS services and what appears to be a current lack of regulation of these services.

Many complainants have said they have trouble resolving complaints about disputed premium-rate SMS. They allege that providers often refer them to the "content provider", but that their complaints often remain unresolved after they make that contact. Many complainants allege that they have been unable to unsubscribe to these services, cannot contact the content provider, or do not have their calls returned.

Under the ACIF *Billing Code*, service providers are responsible for the verification of all charges, including those from third parties. It is the TIO's view that mobile providers should take responsibility for third party services and should be able to stop premium-rate SMS being sent by content providers if a customer requests it.

### Calls to mobiles

Complaints about disputed calls made from one mobile service to another mobile service increased by 57.4%, from 881 to 1,387.

### Early termination fees

Customers who terminate their mobile service before the contract expires may be charged an early termination fee. Commonly, complainants say they have been charged a full early termination fee despite being only a couple of months from the end of their contract.

Complaints about these fees rose by half, from 1,004 to 1,530. This type of complaint has been steadily increasing, which is not altogether unexpected given the substantial growth in the mobile market. The TIO's view, as explained in the position statement *Early Termination Fees for Mobile Contracts*, is that a fee should reflect a genuine pre-estimate of loss to the member as a result of the unexpired contract, and not be a penalty imposed on the customer, the latter being unrecoverable as a matter of law.

Left to right  
Nadia Tracy, Enquiry Officer  
Lee Herath-Perera, Enquiry Officer  
Bryan Spier, Enquiry Officer  
Sasha Rudakov, Enquiry Officer  
Lisa Karu, Enquiry Officer



### CASE STUDY — Premium-rate SMS

#### The complaint:

The complainant claimed that he had been billed for premium-rate SMS services. He said he had attempted, without success, to unsubscribe to the service and denied ever having subscribed in the first instance.

#### TIO response:

The TIO raised a complaint with the member, requesting that it respond to the complainant's allegation — that he was being billed for charges for a premium service that he claimed never to have subscribed to — and cited a possible breach of Clause 7.3.1 of the ACIF *Billing Code*. Clause 7.3.1 relevantly provides that the supplier of a service must ensure that the charges on its bill are able to be verified by the customer as being what he or she asked to receive.

#### The outcome:

It was the member's position that all of the disputed premium-rate SMS charges were valid on the grounds that the service had been requested by the complainant's daughter and therefore, correctly provided to the complainant's mobile service. However, it waived all disputed charges without any admission of liability.

The member claimed that, on each occasion when the complainant contacted it about receiving the disputed premium-rate SMS, it advised the complainant to contact the content provider to unsubscribe to the service. The member believed it had complied with Clause 7.3.1 of the *Billing Code* given that the complainant's daughter had subscribed to the service.

### Contracts 8,490 issues raised

Mobile contract complaints increased by almost half from 5,719 last year. These now account for 21.1% of all mobile complaints.

Most contract complaints (3,990, or 47%), related to incorrect advice provided at the point of sale. The steady increase is consistent with the increasing take up of mobile technology.

In investigating such complaints, the TIO will have regard to the *Consumer Contracts Guideline* and the *Prices, Terms and Conditions Code* to determine whether all relevant information was presented to the customer in a clear and understandable way so as to enable them to make an informed decision.



Left to right  
Bernie Wise, Investigation Manager  
Danny Whelan, Investigation Officer  
Anthony Beaumont, IT Manager

## CASE STUDY – Legal capacity to contract

### The complaint:

An officer of the state Public Trustee contacted the TIO on behalf of a couple who had entered into 18 mobile contracts over a six-week period, incurring a debt of \$14,000.

The officer claimed that, about four years earlier, she had told the provider that she was managing the couple's financial affairs, as they suffered from medical conditions which impaired their capacity to make reasoned financial decisions. She argued that the contracts were void due to the complainants' impaired legal capacity. The provider did not accept this.

### TIO response:

The TIO asked the provider to confirm whether it was aware that the Public Trustee had been appointed to act for the complainants at the time of approving the mobile applications. It also queried whether the provider had adhered to its own internal policies in allowing the complainants to enter into so many contracts over such a short period, and asked what credit checks the provider had conducted before allowing the complainants access to such a large amount of credit.

### The outcome:

The provider claimed that it had conducted full credit checks and that, at the time of the applications, there were no outstanding debts on any of the accounts. It advised that its normal policy was to allow only three "mobile repayment options" per account, but that it had exercised its discretion to exceed this limit. It could not provide any reasons for exercising this discretion.

In relation to the validity of the contracts, the provider initially argued that there is a legal presumption that all adults have legal capacity. However, it eventually accepted evidence from the complainants' treating psychiatrist that they did not have sufficient legal capacity. The provider also acknowledged that it had been sending the complainants' landline bills to the Public Trustee since June 2000 and therefore should have been aware of the Public Trustee's appointment.

In resolution, the provider agreed to waive its right to pursue the outstanding debt, provided that the complainants returned any handsets they still had in their possession. The provider advised that the debt would remain on its systems and on the complainants' credit files as a guard against them incurring further debts.

## Credit control 5,725 issues raised

Credit control complaints rose 60.5% and, as with landline complaints, the main categories were debt recovery, payment arrangements and disconnections.

Complaints about payment arrangements increased by 104% to 799. As with landline complaints, it is the TIO's experience that many complainants are disconnected because they have not been able to negotiate a realistic arrangement with their provider. Significantly, though, and unlike with landline disconnections, complainants whose services have been disconnected for outstanding mobile account balances and who are bound by a contract will often be liable for cancellation fees.

The effect of these fees is simply to worsen the customer's position. Evidence also suggests that, because some service providers offer inflexible and unrealistic payment arrangements, they actually contribute to the subsequent disconnection of service.

Complaints about "overcommitment" also rose significantly, from 107 to 314. Although there is no single identifiable reason for the increase, the TIO suspects that the increased availability of premium-rate SMS services is a factor. These products can easily cause a complainant's bill to increase dramatically and demonstrate the need for capping of accounts.

### Customer service 6,639 issues raised

Complaints rose by 145% with the largest sub-category relating to failure to action a customer's request (42.4%), followed by inadequate or incorrect advice provided (38.7%). Complaints were also received regarding discourtesy, lengthy wait times, failure to escalate complaints and failure to respond to correspondence.

There was a concern by some customers of 3G services about handset and network faults associated with the 3G technology, that they were getting inadequate advice and were finding it difficult to contact a call centre or the right department.

### Directories 48 issues raised

Very few mobile users bother to seek a directory listing and these complaints make up only 0.1% of the mobile total.

Just over half of the complaints received – 27 – were about incorrect *White Pages* entries. It is likely that complaints in this area will increase as mobile phones become one of the main tools for business.

### Disability services 2 issues raised

The telecommunications needs of people with disabilities are often different from those of able-bodied people and these needs must be recognised in order to provide the best possible service.

The Short Message Service (SMS) has been particularly welcomed by the deaf community. The TIO received one complaint from a deaf woman whose mobile service provider advised her that only one prepaid plan would now be available for her. The complainant argued that this new plan was unfavourable for someone who did not make calls and only used SMS.

This complaint was resolved at level 1, and the TIO was not required to decide whether the change was discriminatory.

The TIO reviews and analyses complaints involving people with disabilities in accordance with its *Disability Action Plan*, which has been registered with the Human Rights and Equal Opportunity Commission. The plan is available at <http://www.tio.com.au/publications/dap/dap.pdf>.



## Disconnection 405 issues raised

This category relates to delays in customer-requested disconnection and errors in disconnection, and accounts for 1% of total mobile complaints.

Two systemic investigations were initiated during 2004/05 in relation to mobile disconnection issues (See Systemic Issues, page 56)

One investigation concerned complaints from a number of SIMplus customers, who claimed that when they called to request disconnection of their service they were told that an account manager would call them back. They were either not called back or their services were not disconnected. As a result of this investigation SIMplus agreed to alter its policy such that it would disconnect a service if it were unable to contact a customer back and backdate charges to the date of the request.

Another investigation was conducted following a complaint from a B Digital customer that they could not disconnect their service in the middle of a billing cycle. Following this investigation B Digital agreed to change its procedures by adjusting its billing system and accepting disconnection requests without notice in the future.

Consumers, of course, should be aware that if they have a term contract and request "early" disconnection, they will almost certainly be liable for early termination fees.

## Faults 7,379 issues raised

As noted in the overview, faults complaints rose dramatically from 3,692 to 7,379 and now represent almost one-fifth of all mobile complaints.

These complaints cover three broad categories: handset, coverage and network issues. Complaints are logged in accordance with the manner in which they are presented by complainants. This often means that complaints are logged according to symptom, rather than cause. For example, a customer may complain that their handset is faulty but the cause may be network or coverage related.

Hutchison's 3G (3) and CDMA (Orange) networks accounted for a little over 60% of all fault complaints. While the TIO is mindful of the problems experienced with new technologies, it was sufficiently concerned about the number of complaints to again investigate these and related customer service complaints as systemic issues. The TIO considered that it did not have sufficient technical expertise to reach a conclusive view as to whether the number and nature of these faults, which involved several handsets and more than one manufacturer, indicated a network performance problem and accordingly referred the matter to ACMA.

Left to right  
*David Stephens*, Enquiry Officer  
*Daniela Ruiz*, Administration Officer  
*Molly O'Brien*, Community Liaison Officer  
*Kayla Thomas*, Finance Officer  
*Carmel Cumberbatch*, Enquiry Officer

### CASE STUDY — Faulty handset

#### The complaint:

A customer said she had signed up for a new mobile phone on a two-year contract. She stated that her handset was turning on and off abruptly, not responding, and that it would often make calls to random numbers. She said that her friends often could not call her, even when her handset appeared to be switched on.

The customer claimed that this was the fifth replacement handset provided by the company and that the last four had suffered similar problems. She complained that, every time the handset was repaired or replaced, all of her data – such as messages, contacts and ringtones – was wiped. The complainant wanted to cancel her contract, as she believed the service would never work.

#### TIO response:

The TIO raised a formal complaint against the carrier and asked whether the handsets involved had a history of these kinds of faults. The TIO was concerned that the handset was bundled with a contract carrying a substantial “early exit fee”, and that the complainant believed she had not been provided with a working service.

#### The outcome:

The carrier said the handsets were generally reliable but that it no longer sold the handset concerned. It offered to replace the complainant’s handset with a more expensive model of a different brand, or to allow the complainant to leave the contract without penalty. The complainant left the contract and changed her number to a different service provider.

### Porting 714 issues raised

Mobile number portability (MNP) is the ability to change service providers while retaining your number. Complaints more than doubled from 290 to 714.

Most complaints (63%) related to delays in the porting process. A further 21.6% related to unauthorised ports. Unauthorised porting may be due to an administrative error or to a complainant not being aware that they are entering a contract with a different provider. The proportions of these types of complaints were similar to last year.



Left to right  
*Julia Cornwell,*  
Systemic Complaints Officer  
*Marianne Bois,* Investigation Officer  
*Phil Waren,* Policy and Research Officer  
*Astra Taurins,* Personal Assistant

## Privacy 513 issues raised

Complaints about mobile privacy rose by 91% (268 complaints), echoing general concern in the community about increased telemarketing of goods and services including telecommunications services.

One of the TIO's new reporting categories is complaints about repeated telemarketing from mobile service providers, with 24 complaints this year. Complaints about the handling of "nuisance" (now called "unwelcome") calls include unwelcome calls from the same telemarketer. These increased from 97 to 159. Complaints about spam from mobile service providers increased from five to 22, with complaints about the adequacy of advice from mobile providers about handling spam also increasing from 10 to 21.

We now also report on complaints about the way mobile service providers handle customer reports of "life-threatening" calls. There were five such complaints this year. A life-threatening call means the use of a telecommunications service connected with an event actually or potentially perilous to human life. This may include a person being seriously injured, a bomb threat, an extortion demand, a kidnapping or a threat to public safety.

Other new categories of mobile privacy complaint included those about service providers' collection, storage and/or disposal of personal information (19 complaints), and about the accessibility and accuracy of personal information held by service providers (102 complaints).

We received 140 complaints about disclosure of customer personal information, a 52.2% increase on last year's 92 complaints. Mobile service providers must scrupulously train staff to maintain the privacy of customers' personal information.

Many disclosure complaints involved claims that unauthorised parties — for example, spouses or other close parties — gained access to account information. Three high-level TIO complaints involved claims that representatives of mobile telecommunications service providers facilitated unauthorised access of third parties to account information, with such a breach proven in one instance.

## Provision 235 issues raised

This category, which accounts for just 0.6% of total mobile complaints, includes provisioning delays due to a handset not being delivered or a service not being activated, and number allocation issues.

An example of complaints received in this category relates to a promotion in a major metropolitan publication offering a free SIM card. Complaints were received due to infrastructure and staffing issues experienced by the provider, which delayed services being activated. The majority of these complaints were resolved directly between the complainant and the provider after the TIO's referral of the complainant to the provider's senior level complaint handling area.