

# Transfer of services

A transfer takes place when a consumer moves an existing service from one telecommunications provider to another.

Complaints we commonly receive about transferring a service include claims that:

- a transfer is taking longer than it should
- a service was transferred without the account holder's knowledge or consent
- the implications of a transfer were not fully explained in advance
- part of a bundled service was transferred but the other parts were not
- a transfer took place during a cooling off period
- a consumer was not told when a transfer was complete.

This position statement applies to complaints about changing providers. It does not apply to complaints about:

- changing services but keeping the same provider, for example moving from a pre-paid to post-paid service
- relocating a service to a new property
- switching from one type of telecommunications infrastructure to another, for example changing from copper to fibre optic cabling
- changes to contracts, for example changing the account holder of a service.

There are usually two providers involved in a transfer. In this statement we refer to them as the **gaining** and **losing provider**.

The **gaining provider** is the provider the consumer's service is transferred *to*.

The **losing provider** is the provider the consumer's service is transferred *from*.

For complaints involving selling practices or lack of informed consent see our position statement [Pre-sale information or conduct](#).

## Laws and codes of practice

The following laws and codes of practice are relevant to transfer of services.

- [Telecommunications Numbering Plan 2015](#)
- [Competition and Consumer Act 2010, Schedule 2 The Australian Consumer Law](#)
- [Local Number Portability Code 2013](#)
- [Mobile Number Portability Code 2009](#)
- [Telecommunications Consumer Protections \(TCP\) Code 2015](#)
- Industry Guideline: [Customer Authorisation 2015](#)

## Our approach

When we deal with transfer complaints, we consider the law, good industry practice, and fairness in all the circumstances.

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### The law

With some exceptions, rules in the [Telecommunications Numbering Plan](#) are intended to make sure a service is transferred in a timely manner, and a customer's right to use a number is not infringed by a transfer.

The [Australian Consumer Law](#) sets out obligations for **unsolicited consumer agreements** - agreements made by unsolicited negotiation, either in person or over the phone. These obligations include that a provider must not supply or charge for goods or services during a 10 business day cooling off period. This means a service should not be transferred until after the cooling off period is over.

The consumer and provider can also agree to extend the cooling off period past 10 business days.

### Good industry practice

The [Local Number Portability Code](#) and [Mobile Number Portability Code](#) set out the operational process and timeframes for transferring landline and mobile services.

The [Telecommunications Consumer Protections Code](#) includes the following rules for transfers.

The gaining provider must take all reasonable steps to make sure the consumer is authorised to transfer the service, and gives consent to the transfer.

The provider's sales representatives must be trained to promote and sell its products in a fair and accurate manner. Information given to the consumer before they agree to the transfer must be clear, accurate, free of material omissions, relevant, current, and timely. It must include:

- the identity of the gaining provider
- the transfer is subject to validating that the service can be transferred
- if the consumer's service will be interrupted during the transfer
- what type of equipment would be compatible with the new service

- the terms and conditions of any equipment bought from the gaining provider to use with the new service
- the consumer may have to pay exit fees to the losing provider, and there may be other consequences too
- how to make a complaint about the transfer process
- any other terms and conditions of the transfer.

The gaining provider must make sure the transfer details it collects from the consumer are accurate.

If the service cannot be transferred the gaining provider must tell the consumer, and explain what this means for the consumer as well as other options that may be available.

The gaining provider must keep the consumer informed of any changes to the transfer process which may affect the consumer, or changes to when the transfer will be completed.

The gaining provider must tell the consumer when the transfer is complete, preferably on the day it happens, otherwise within 5 working days.

### Guidelines

The Industry Guideline [Customer Authorisation](#) sets out the minimum requirements for information a gaining provider should collect from a consumer and to demonstrate the consumer has authorised a transfer.

### TIO view

Both providers involved in a transfer should be committed to transferring the service as soon as practicable, and deal quickly with any problems that may arise.

The losing provider should not:

- prevent a transfer because of outstanding debt
- take back a transferred service without the informed consent of the person authorised to transfer the service.

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The consumer should be kept informed throughout the transfer, especially when there are problems causing a delay. The gaining provider should tell the consumer the reasons behind any delay, and what is being or must be done to complete the transfer.

When a consumer wants to transfer bundled services, and the gaining provider is or should be aware that one or more of the bundled services cannot be transferred, the gaining provider should, before taking any action, contact the consumer to explain what this means for the consumer as well as other options that may be available.

A consumer should dispute an unauthorised transfer as soon as practicable after finding out about it.

If the consumer disputes the transfer with the gaining provider, the gaining provider should contact the losing provider to arrange for the transfer to be reversed. The consumer should generally not need to contact the losing provider unless the plan they were on is no longer available.

If the consumer disputes the transfer with the losing provider, the losing provider should help the consumer reverse the transfer.

### Dealing with a dispute

To assess a complaint we may ask for information from the consumer and the providers. Initially we will talk to the consumer and the gaining provider. However, when the information we collect shows the losing provider may have contributed to the cause of the consumer's complaint, we may then contact the losing provider.

#### Transfer delays

- What type of service is being transferred?
- Is there an industry standard timeframe for transferring this service?
- What was the agreed transfer date?
- What information has been given to the consumer during the transfer process?

- Was there a delay? What caused it? For example:
  - Was the transfer delayed because the losing provider would not release the service?
  - Did the consumer contribute to the delay in any way?
- What has been done to fix the problem causing the delay?
- What is the effect of the delay?

We may ask for:

- a copy of any signed transfer authority form or full recording of the consumer's verbal consent
- copies of relevant communications between the consumer and the providers, including any call recordings.

#### Unauthorised transfers

- Who is the account holder of the service?
- Who gave permission to transfer the service?
- When did the consumer find out their service had been transferred?
- When did the consumer complain about the transfer?
- Did the gaining provider transfer a service without the account holder's informed consent?
- Did the losing provider take back a transferred service? Was this done with the consumer's informed consent?
- Was the service transferred during a cooling off period?
- Can the consumer be put back into the same position as before?

We may ask for:

- a copy of any signed transfer authority form or full recording of the consumer's verbal consent
- any evidence that the consumer tried to cancel the transfer, such as emails, faxes, or phone bills showing calls to the provider

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- copies of relevant communications between the consumer and the provider, including any call recordings
- copies of bills from both providers to compare charges.

### Outcomes

#### Transfer delays

If we think a provider contributed to a transfer delay, outcomes may include that provider:

- explaining why a transfer cannot go ahead
- taking any action required to complete the transfer
- waiving or crediting extra charges the consumer may have incurred because of the delay.

If the losing provider is still charging the consumer during a transfer delay it may also be appropriate that the consumer is compensated by the provider responsible for the delay for the difference between the two providers' rates.

When the delay has been lengthy it may be appropriate for the gaining provider to let the consumer cancel the transfer and exit the contract without exit fees.

#### Unauthorised transfers

If our view is that a transfer was not authorised, depending on the circumstances remedies may include the gaining provider:

- transferring the service back to the losing provider immediately. The consumer should generally not need to contact the losing provider unless the plan they were on is no longer available. If the consumer's plan is no longer available the gaining provider should address any detriment
- covering any extra fees charged by the losing provider because of the transfer.

We generally expect that when a service was knowingly transferred (that is, the transfer was not because of an administrative or system error) without authorisation, the consumer should not be charged for the service. The gaining provider should waive unpaid charges and refund any charges already paid.

If a consumer has lost their number because of an unauthorised transfer we expect the providers to organise returning the number to the consumer where possible.

If a consumer has unreasonably delayed contacting a provider to complain about an unauthorised transfer we may consider them responsible for some or all of the charges.

**Effective date:** 11 March 2016

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