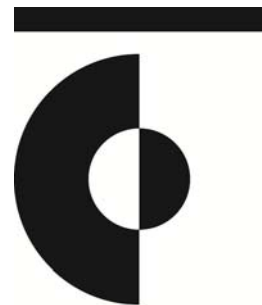


5 May 2014

Manager, Regulatory Frameworks Section
Regulatory Futures Branch
Australian Communications and Media Authority

[REDACTED]



**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

Dear Sir or Madam

ACMA proposals for reductions in telecommunications reporting requirements

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to respond to the consultation by the Australian Communications and Media Authority (the ACMA) on its proposals for reductions in industry reporting requirements and consumer information provision obligations in the telecommunications sector. Our submission is enclosed.

We have focussed our submission on those reporting areas that are most relevant to our dispute resolution and industry improvement functions:

1. Mobile premium services consumer information obligations in the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)* (the MPS Barring Determination), and
2. Telecommunications annual performance reporting under section 105 of the *Telecommunications Act 1997* (section 105 reporting information).

[REDACTED]

Yours faithfully

A handwritten signature in black ink, appearing to be 'S. Cohen'.

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 – Proposals for reductions in telecommunications reporting requirements

May 2014



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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 determinations up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

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

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

TIO submission on proposals for reductions in telecommunications reporting requirements

The TIO welcomes the opportunity to respond to the consultation by the Australian Communications and Media Authority (the ACMA) on its proposals for reductions in industry reporting requirements and consumer information provision obligations in the telecommunications sector.

We have focussed our submission on those reporting areas that are most relevant to our dispute resolution and industry improvement functions:

1. Mobile premium services consumer information obligations in the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)* (the MPS Barring Determination), and
2. Telecommunications annual performance reporting under section 105 of the *Telecommunications Act 1997* (section 105 reporting information).

We set out in this submission, TIO complaints data about mobile premium services (MPS), as well as relevant case examples in the **Appendix**. The data and case examples highlight the continuing need for consumers to be given adequate information about mobile premium services barring and complaint resolution at particular points in the service lifecycle so as to minimise consumer detriment.

We also outline our views on particular categories of the section 105 reporting information where these continue to provide useful information for the TIO, industry and the community.

We trust that the information in this submission will assist the ACMA in its consideration of the industry reporting requirements and consumer information provision obligations in the telecommunications sector.

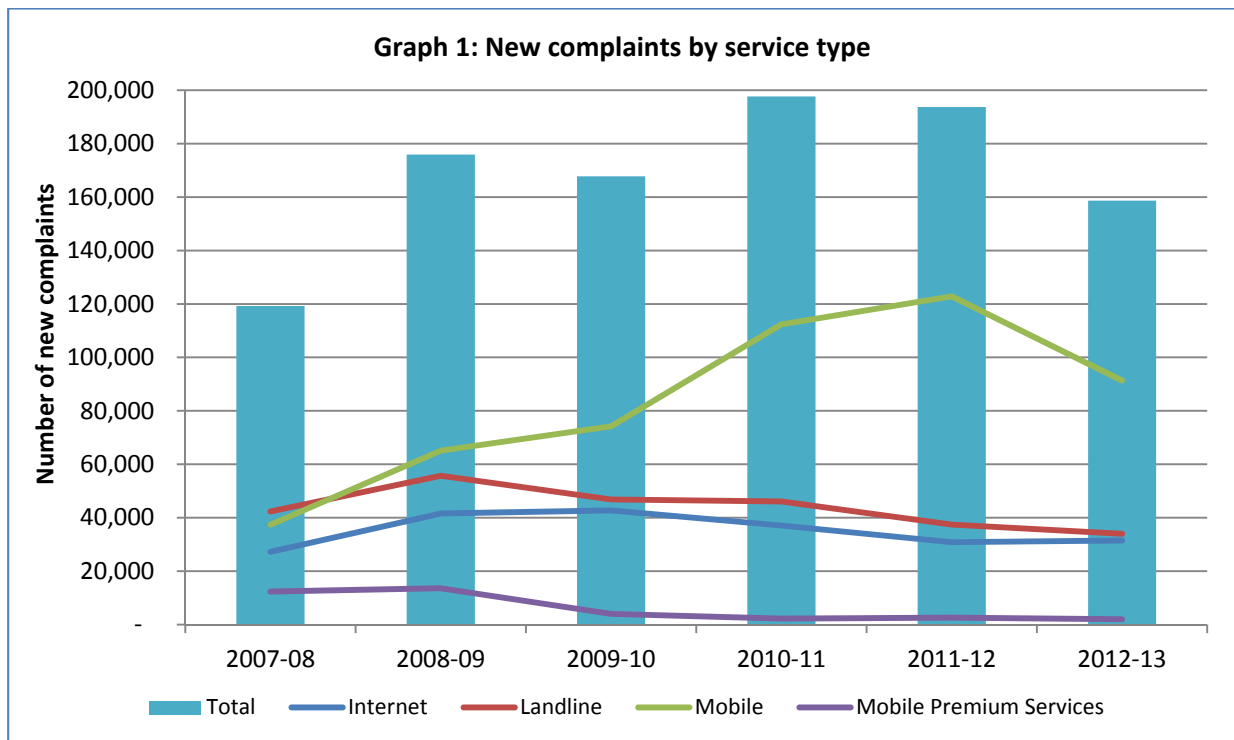
Complaints to the TIO

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 158,652 new complaints from small business and residential consumers in 2012-13. This compares with 167,772 new complaints recorded during 2009-10, 197,682 in 2010-11 and 193,702 in 2011-12. Over the first two quarters of 2013-14, we have recorded around 69,000 new complaints.

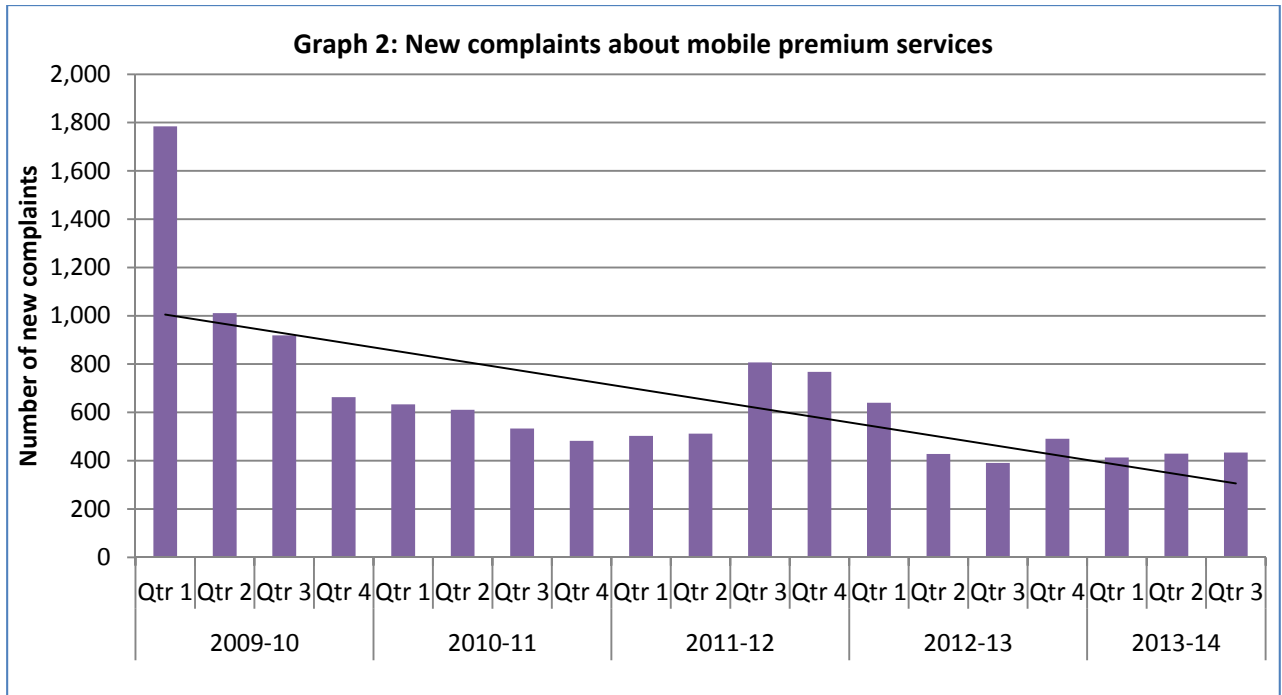
Graph 1 shows the breakdown of new complaints recorded by the TIO by service type – internet, landline, mobile and mobile premium services (MPS) – over the past six years.



New complaints about mobile premium services

From a high of over 13,000 new complaints in 2008-09, we have seen a positive and substantial decrease in new complaints about MPS since 2009-10 when the predecessor of the current MPS Code was introduced followed by the MPS Barring Determination. This decrease stabilised at around 2,000 new complaints each year over the past three financial years. Over the first three quarters of 2013-14, we have recorded around 1,200 new complaints about MPS.

Graph 2 illustrates the decreasing number of new complaints to the TIO about MPS since 1 July 2009 when the predecessor of the current MPS Code was introduced followed by the MPS Barring Determination in 2010. This decrease has stabilised over the past six quarters, with an average of around 430 new complaints about MPS per quarter.

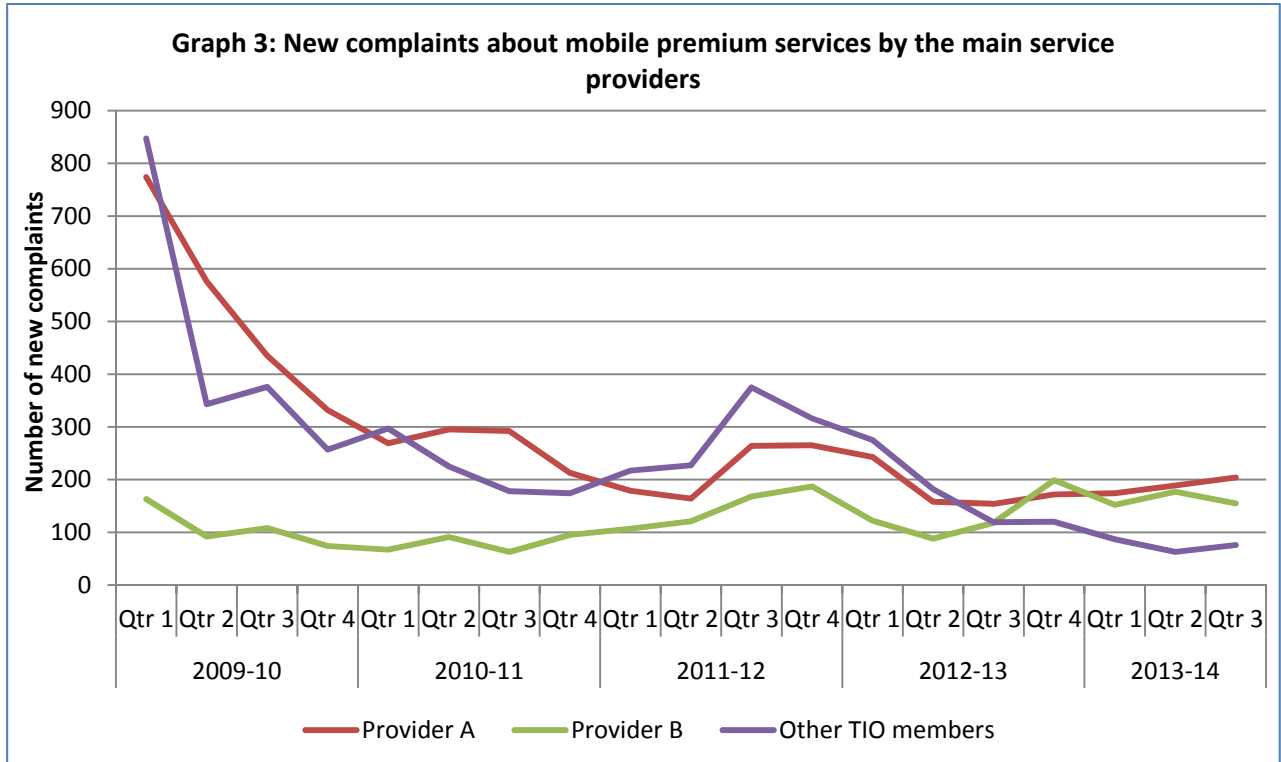


MPS new complaints by service provider

As highlighted above, we have seen a positive and substantial decrease in new complaints about MPS across the industry.

However, we have seen a recent increase – as indicated in Graph 3 – in MPS new complaints for two of the main service providers over the past six quarters, compared to a reducing trend for all other service providers. MPS new complaints for Provider A increased by around 32.5 per cent in Quarter 3 of 2013-14 compared to Quarter 3 of 2012-13, while Provider B’s MPS new complaints increased by around 31.4 per cent over this same period. This contrasts with a decrease of 36.1 per cent in MPS new complaints for all other providers over the same period.

These two providers were each respectively responsible for around 44 per cent and 37 per cent of MPS new complaints to the TIO in the first three quarters of 2013-14.



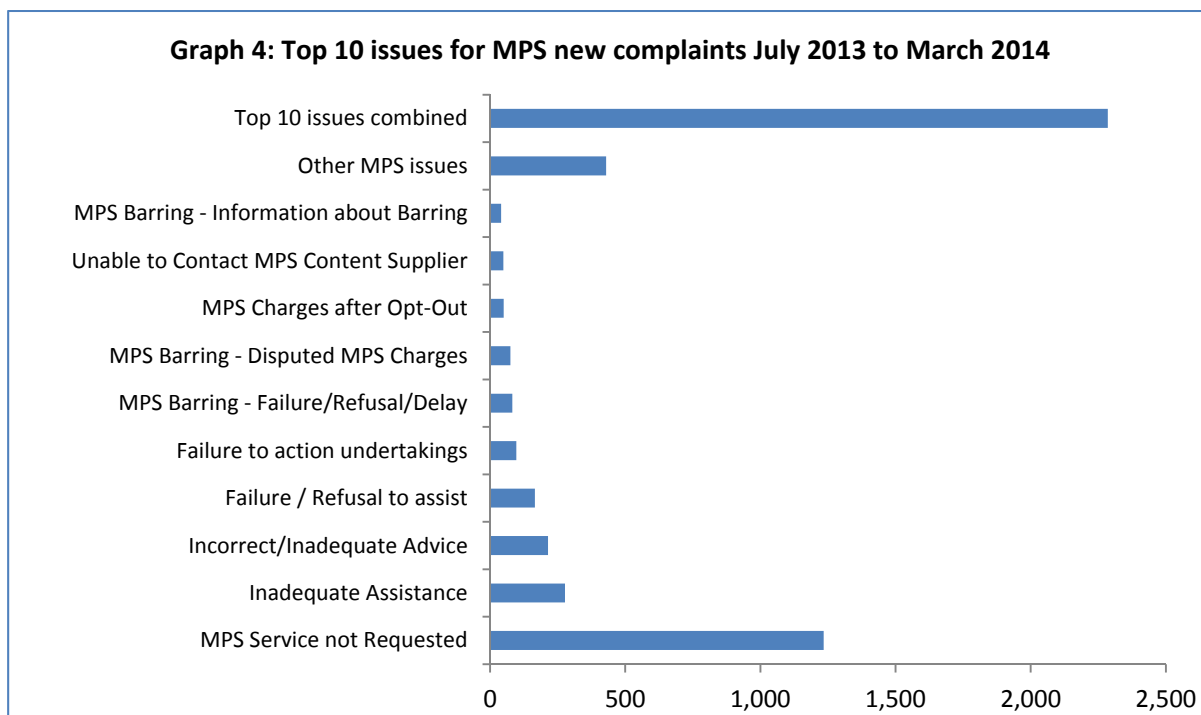
Issues for MPS new complaints

The primary issue that consumers have continued to report to the TIO over the past six quarters remains disputed charges about MPS that consumers say they have not requested or consented to – forming around 43 per cent of all issues for MPS new complaints. This type of complaint issue has consistently remained the top issue about mobile premium services since 1 July 2009, although absolute complaints about this issue have reduced very substantially over the past four and a half years.

Other complaint issues across the last six quarters relate to the alleged refusal or failure of carriage providers and content suppliers to:

- provide adequate assistance or advice to consumers about their MPS problems
- assist with resolving their MPS problems
- action the undertakings they make to resolve complaints, or
- apply MPS barring as requested.

Graph 4 illustrates the top 10 issues for MPS new complaints over the past three quarters (July 2013 to March 2014).



MPS issues underlying complaints to the TIO

Complaint handling obligations

Our analysis of MPS complaints in preparation for this submission indicates that consumers consistently reported they were told by their telecommunications service provider that MPS was not the provider’s responsibility. Consumers reported being advised by their service provider that it was ‘just passing the charges on’ or to go to the content provider if they wanted a refund of the disputed MPS charges. A number of these complaints were only resolved through TIO conciliations.

Case examples 1 – 3 in the **Appendix** illustrate this issue.

These examples suggest front line practices by some service providers or their staff that are: at odds with obligations under the MPS Barring Determination and the MPS Code; and inconsistent with obligations of the Telecommunications Consumer Protections (TCP) Code, which apply to service providers in addition to the obligations in the MPS Barring Determination and the MPS Code.

Point of sale information about MPS and opt-in requests

As indicated above (see Graph 4), the primary issue that consumers have continued to report to the TIO remains disputed charges about MPS that consumers say they have not requested or consented to.

These complaints suggest the information provided to some consumers is still not sufficient to ensure they truly understand MPS. Consumer complaints suggest that the lack of awareness around MPS may, on some occasions, be a result of providers not complying with the MPS point of sale information rules and opt-in rules.

Case examples 4 – 7 in the **Appendix** highlight a range of consumer experiences that demonstrate a lack of knowledge on the part of the consumer about how they were subscribed to an MPS service,

and suggest a continued need for obligations on service providers to give appropriate information to consumers about matters such as what MPS are, the opt-in rules, how to monitor MPS expense and how to bar an MPS service – so that consumers can make active, informed decisions about MPS.

MPS Barring

Case examples 8 – 10 in the **Appendix** illustrate some of the experiences by consumers and providers with MPS barring.

We continue to receive some complaints where consumers state that service providers have denied that barring can be applied to a mobile service and subsequently a consumer has incurred MPS charges that they dispute. A possible reason for these disputes is that service providers are not offering barring to consumers at point of sale or shortly after commencement. If service providers are consistently meeting the obligations of the MPS Barring Determination to provide information, it would likely further reduce and more effectively resolve complaints about disputed MPS charges.

Mobile premium services consumer information obligations

Proposed change

The ACMA proposes repealing sections 11 and 12 of the MPS Barring Determination. Section 11 of the MPS Barring Determination sets out what information must be provided to customers about MPS, including barring solutions and complaint resolution. Section 12 sets out the occasions on which the information must be given.

We set out our response to this proposed change against the context of TIO complaints data about mobile premium services and the issues we continue to see in these complaints, as outlined above.

Information provision is a fundamental part of consumer protection

As noted above, new complaints to the TIO about MPS have reduced substantially since 2009-10 and have remained relatively stable over the past three years.

One cause of the decrease in MPS new complaints has been a successful co-regulatory response comprising the MPS Barring Determination, the MPS Code and industry initiatives such as the '19 SMS' website. A further cause is likely to be the reduced consumer demand for these products.

The MPS Barring Determination and the MPS Code continue to provide important consumer protections in the mobile premium services sector.

In its consultation paper, the ACMA states that the most significant consumer protections in the MPS Barring Determination are those that require service providers to make a barring facility available to their customers. Providing consumers with information about the MPS Barring Determination is an important aspect of this protection.

Consumers need to know that the barring facility is available to them and how to avail themselves of this facility, as a right not known (and therefore not able to be exercised) is, in effect, no right. Information about barring is particularly important at critical points in the life cycle of the

consumer's service when there is a higher risk of inadvertently subscribing to MPS or incurring MPS charges.

The Explanatory Statement to the MPS Barring Determination was clear about its original rationale for including the consumer information obligations. It stated that in making the MPS Barring Determination, the ACMA's objectives include giving information to customers about barring all premium SMS and MMS services. In this regard the Explanatory Statement provided that:

The take-up of barring of access to all premium SMS and MMS services by mobile phone customers is dependent upon adequate customer awareness of this capability. The Mobile Premium Services Determination includes requirements for the provision of information about premium SMS and MMS barring to potential customers and customers at various points in the life cycle of a mobile service, including when they are especially likely to be receptive to receipt of such information.

We acknowledge the cost to industry of the current information provision obligations under the MPS Barring Determination, and that these costs may be disproportionate. However we also recognise the importance of good quality consumer information playing a key role in preventing disputes.

To balance the needs of consumers and industry, we suggest that a reduction in (rather than a removal of) consumer information provision obligations in the MPS Barring Determination may achieve both the consumer protection and red-tape reduction objectives. This approach could include consumer information obligations about MPS barring targeted at particular critical points in the life cycle of the consumer's service. For example, barring information could be provided by the service provider at the following stages:

- when a consumer first contracts for or renews a mobile service capable of receiving premium services, or requests the removal of MPS barring – this would equate to informed consent
- when a consumer is first billed for a premium service – this is a key point in consumer/service provider relationship, and
- when a consumer first disputes an MPS charge – this will prevent an escalation of the dispute or further complaints.

For the reasons outlined above, and based on complaints we continue to deal with, we suggest consideration be given to retaining section 11 of the MPS Barring Determination. We also suggest that section 12 of the MPS Barring Determination be reviewed to reduce the instances when providers need to provide information about barring to consumers. We support the continued retention of the obligations under subsection 12(6) of the MPS Barring Determination.

Telecommunications annual performance reporting under section 105 of the Telecommunications Act 1997

Proposed change

The ACMA proposes an interim reduction in the section 105 reporting information provided by industry for the ACMA's 2013-14 *Communications Report*.

Usefulness of the section 105 reporting information

Reducing the scope of the data requested from industry will lessen the regulatory burden on telecommunications service providers

We have only minor comments for consideration about the information collected under section 105 and the TIO's current use of it.

An important part of the TIO's role is to provide data and analysis to stakeholders, including industry, consumer interest groups, regulators and the community. Most of this information is derived from our complaints data, but we also use information from other sources, and we rely on the ACMA's *Communications Report*.

In particular, as part of our recent work to contextualise TIO complaints data, we use the industry wide data sets reported in the ACMA's *Communications Report* to contextualise TIO complaints by services in operation (SIOs). The impetus for our work on contextualising TIO complaints data comes from calls by industry, regulators and community groups to provide more meaningful information about TIO complaints. Our first public report about this was the [TIO Talks in March 2014](#). After this publication, we received advice from a number of stakeholders about the importance of this initiative.

The ACMA's *Communications Report* is the TIO's only source for industry wide SIO counts for particular categories.

An important data set proposed to be removed from the section 105 reporting information for 2013-14 is VoIP services in operation. This information is used by the TIO for the purposes of contextualising TIO complaints data. We would ask that this be considered in deciding whether this data continues to be collected.

In addition, we use the following data sets in the ACMA's *Communications Report*, in our research and analysis of TIO complaints:

- priority assistance connections and fault repairs
- requests for and supply of equipment to people with a disability.

These data sets provide valuable information about services that relate to vulnerable consumers and would be difficult to source elsewhere.

We therefore ask that, in considering whether these data sets continue to be collected, the ACMA take into account the importance of providing stakeholders with information about the state of services for these vulnerable consumers.

Appendix: MPS Case Examples

Complaint handling practices of service providers

Case example 1

Consumer A sought the TIO's assistance about a \$3 MPS charge that appeared on his bill each month and his service provider had not been able to fix. He claimed to have never requested MPS.

When the TIO provided referral to a senior level within the service provider, Consumer A claims he was given a \$20 credit and was told the issue was between him and the content supplier. He went to the content supplier's website where he input his phone number to cancel the subscription but the website said it did not recognise his number. He then attempted to call the content supplier, but despite several calls he had never been able to speak to anyone.

Consumer A tried to return to his service provider for assistance but once again it referred him to the content supplier rather than undertake to resolve the complaint itself.

After Consumer A returned to the TIO and we commenced conciliation, the provider offered a refund of all MPS charges incurred to date and to apply MPS barring on his service.

Case example 2

Consumer B contacted his carriage provider to query why his last two bills were high and was told that \$143.88 of the charges were for an MPS subscription. Consumer B said that he had never heard of or signed up for the content service, and accordingly refused to pay the \$143.88.

Consumer B claims that his carriage provider told him that he would need to contact the content supplier. When he did this he was told by the content provider that he had given them authorisation to charge his account. Consumer B insisted that he had not done so.

The content supplier was unwilling to resolve the complaint so Consumer B contacted his carriage provider. He says his carriage provider would not assist either and instead referred him back to the content supplier.

Consumer B contacted the TIO because the \$143.88 has been referred by his carriage service provider to a debt collection agency. Consumer B has not contacted the TIO after referral to a senior level within the service provider.

Case example 3

Consumer C wished to know why he was getting higher than expected bills and discovered he was being charged for MPS.

Consumer C told the TIO that when he called his service provider to complain he was told that 'the charges have nothing to do with us' and was given the number for a USA-based content provider. When he contacted the content provider it told him that it could not provide evidence he subscribed to MPS. He claims he then went back to his service provider who declined to refund him the amount in dispute.

When the TIO referred the complaint back to Consumer C's provider at Level 1, the provider offered to waive \$205 of the disputed MPS (total in dispute was \$513.60). Consumer C was still receiving the disputed MPS despite having been told when he first complained to his provider that the unwanted MPS would be blocked.

When the TIO progressed the complaint for conciliation, the service provider responded with an offer to refund the disputed charges in full and to apply MPS barring.

Point of sale information and opt-in rules

Case example 4

Consumer D says she received a message on WhatsApp (free messaging mobile application) on her mobile and that it said the following:

"Last 10 minutes left.

Would you like a free one year WhatsApp membership?

Type OK and send it SMS to SHORTCODE from your mobile phone.

WhatsApp Account: XXXXXXXXXX."

Consumer D says she followed these instructions but instead of re-subscribing her to WhatsApp (which she knew was free), she started being charged for her messages.

Consumer D contacted her carriage provider about these charges and asked for these charges to be stopped. It was then that she found out that she had been signed up to a quiz subscription by a content provider. Her carriage provider sent her a number to call the content provider, which she did. The content provider emailed the consumer and said they would refund her money but she did not hear from them again.

After referral to a senior level within the carriage provider by the TIO, the carriage provider offered to refund the premium charges and applied MPS barring.

Case example 5

Consumer E sought the assistance of the TIO in relation to \$300 of MPS charges. She says that in July 2013 she entered an online trivia competition on her computer and was asked to enter her mobile number before competing (which she assumed was so she could be contacted if she won). Consumer E then proceeded to receive and answer the trivia questions by way of her computer.

According to Consumer E, the terms and conditions did mention mobile charges were applicable but she thought this did not apply to her because she was playing from a computer rather than a mobile handset. She then received various text messages. After sending STOP in July 2013 she claimed she received an opt-out confirmation message, but she said the MPS continued until August 2013. When she contacted her carriage provider to dispute the MPS charges, it advised her that 'they are just passing on the charges as the charges are not their charges'.

After referral to a senior level within her provider by the TIO, Consumer E returned with her complaint unresolved as her provider had asked her to deal with the content provider.

During the TIO conciliation, the provider offered to refund most of the disputed MPS charges, as it

had sent her the \$30 expenditure notifications. The provider also offered to apply MPS barring.

Case example 6

Consumer F called her provider to query her higher than usual bills and discovered she was being charged over \$200 for MPS. Consumer F claims she never subscribed to the MPS, but that she did fill out some details online for her son's soccer club and this required her to enter her mobile number. Consumer F claims that after this she began to receive messages about a competition to win a car, but she never responded and deleted the messages as soon as they came.

Consumer F claims her carriage provider agreed to credit her \$119 but said she had to call the content providers herself for any further refunds. She claims that one content provider promised her a cheque and the other promised a 50% discount, but neither of these promises were followed through with. No explanations were provided by her carriage provider or content provider as to how she had been subscribed for the MPS.

After the TIO referred the consumer to a senior level within her carriage provider, her provider offered to unsubscribe her from all MPS, apply MPS barring and refund all MPS charges.

Case example 7

Consumer G approached the TIO for assistance because he said he was being harassed by debt collectors about mobile service charges related to MPS fees that he could not afford.

Consumer G said his sole income is a disability pension. In addition to being signed up to a \$100 per month plan, he unwittingly signed up to a dating service without understanding it was MPS and would cause him to be charged \$800 in excess of his plan. Consumer G claimed the MPS charges were more than he could afford, and when he could not keep up the repayments his service was disconnected and contract termination fees applied. After this he was threatened with legal action, contacted 5-8 times per day by debt collectors and eventually default listed.

After the TIO progressed the complaint for conciliation, the service provider agreed to recall the debt from the debt collector, waive the outstanding charges and remove the default listing.

MPS barring

Case example 8 (presented in the consumer's own words)

"My son's phone number has been charged for content purchases through a 3rd party which he did not sign up for. Since day number 1, I have contacted my service provider to have these charges clarified and there is no-one that can or will assist me. One month I am told we can bar content purchases, which never happened because I was billed over and over again. The next time I was told I these were premium texts which were also barred against the number – that never fixed the problem.

I am going around and around in circles, talking with supervisors and managers in store and also in

the carriage provider's call centre and this has been going on since June 2013. My carriage provider has told me to contact the content provider who never answers their phone. I have left many, many messages and have only received 1 phone call back. They just told me to email the phone number affected and what charges are being disputed. I did just that, but the email bounced back! I am so frustrated with the level of service I am offered and the lack of action taken to resolve this issue. I have taken the initiative of calling my service provider over and over again only to be given conflicting advice and information."

The consumer did not return to the TIO after referral to a senior level within his carriage provider in November 2013.

Case example 9 (presented in the consumer's own words)

"My 13 year old disabled son's prepaid phone credit was disappearing rapidly, and he vehemently denied spending it, although he did say he had been getting some "junk" messages which he had deleted. I did not see these. I contacted my carriage provider three times over the issue, and received the assurance that while they could and had added a premium SMS bar to the phone (which I had requested and believed was in place when I first activated the phone) to prevent further credit being stolen this way, that I needed to contact the content provider directly to ask for a refund of the charges made for the MPS.

I called the content supplier and spoke with the representative (who was unable to give me a reference number), and explained the situation. After some 14 minutes, she offered a \$30 refund cheque "in good faith", asserting her company had been "providing a service" in the premium SMS messages, even though 3 or 4 had been received in the space of less than a minute with no time to respond."

The consumer did not return to the TIO after referral to a senior level within her carriage provider in July 2013.

Case example 10

Consumer K contacted the TIO because he wished to have MPS barring applied to his service and his provider told him that it did not offer barring.

When the TIO progressed Consumer K's complaint to conciliation, the service provider responded that it could not stop access to MPS from its end. After the TIO provided information to the service provider's staff about the existence of the MPS Code and the MPS Barring Determination, MPS barring was applied in accordance with Consumer K's original request.