

Telecommunications Industry Ombudsman

TIO submission to the Department's Consumer Safeguards Review

Part B – reliability of services

January 2019

Contents

Acronyms and abbreviations	2
Introduction	5
Summary of recommendations	5
1. Reliability in a transformed telecommunications sector and shifting policy landscape	7
1.1. A transformed telecommunications sector	7
1.2. Increasing CSG complexity	8
1.3. Redesign in a shifting policy landscape	8
Interaction with the new USG	8
Interaction with the SIP regime	9
Policy considerations from the 2018 Regional Telecommunications Review	10
1.4. Reliability rules that are technology neutral, other than mobile	10
1.5. Reliability rules that cover all providers and services	10
Waiving reliability protections	11
Excluding sophisticated services impacting small businesses	11
2. Adequate rules to meet the needs and expectations of consumers	13
2.1. Consumers see connectivity as essential and expect reliable service	13
2.2. A uniform guaranteed timeframe for connections and repair	14
2.3. Consumers expect a permanent fix for recurring fault and service problems	14
2.4. Consumers expect providers will be responsive when they report a fault or service problem	16
2.5. Interim services and alternative solutions that suit customer needs	17
2.6. A service continuity safety net for vulnerable consumers	18
Our experience with current priority assistance protections	18
3. Well-designed incentives for providers to deliver reliable services	21
3.1. Financial incentives for providers to connect and rectify in a timely manner	21
Proportional and appropriate incentives	21
Missed appointments	21
Responding to the wrong technician being sent	22
3.2. Fair outcomes to resolve complaints	23
Not billing for services not delivered	23
Exiting a contract without penalty	23
Expectations of fair compensation	23
3.3. A simple system	23

3.4. Performance reporting incentive	25
4. Major disruptions are inevitable	26
4.1. Mass service disruption events increase complaints to the TIO	26
Priority assistance customers are particularly affected by major incidents	26
4.2. Network rectification plans that are strategic and considered	27
Appendix A: TIO complaints involving CSG payments	29
Appendix B: TIO complaints involving Priority Assistance customers	31
Appendix C: How to understand the TIO's complaints data	32
The TIO's dispute resolution service	32
Changes to recording complaint issues from 1 July 2017	33
Complaints we handle	34
About us	34

Acronyms and abbreviations

ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
Consultation Paper	Department's Consumer Safeguards Review Part B Consultation Paper, November 2018
CSG	Telecommunications (Customer Service Guarantee) Standard 2011
MSD	Mass Service Disruption
NBN	National Broadband Network
SIP	Statutory Infrastructure Provider
TIO	Telecommunications Industry Ombudsman
USG	Universal Service Guarantee
USO	Universal Service Obligation

Introduction

The Telecommunications Industry Ombudsman (**TIO**) welcomes the review of consumer safeguards to guarantee minimum standards of reliability for telecommunications services. This submission responds to the proposals for reform in the Department's Consumer Safeguards Review Part B Consultation Paper, November 2018 (**Consultation Paper**).

As the independent dispute resolution service for telecommunications complaints, the TIO is uniquely positioned to provide insights into the experiences of consumers who complain about not having a connection or a quality connection. This submission is informed by the complaints we handle and the findings of our systemic investigations.

In financial year 2018, the TIO received 167,831 new complaints from residential, small business and not for profit consumers. For these complaints:

- 12.8% involved an issue about delays in establishing a service;
- 12.5% involved no service; and
- 10.1% involved intermittent service or drop outs.

In the same year, the TIO closed 18,088 cases where a matter progressed using conciliation or investigation. At least 9.5% of these closed cases involved a financial payment calculated in accordance with *Telecommunications (Customer Service Guarantee) Standard 2011 (CSG)* as part of the agreed resolution. The CSG payment may have been accompanied by one or a combination of other financial outcomes. These outcomes may include compensation for direct financial loss, goodwill payments, reimbursements for costs incurred by the customer, or the waiver of service fees and charges.

Data about TIO complaints involving a CSG payment and TIO complaints involving Priority Assistance customers is provided at **Appendix A** and **Appendix B**. **Appendix C** provides information about how to understand the TIO's complaints data.

Summary of recommendations

Recommendation 1: That all providers of voice and data services (other than mobile) and all the services they offer, be subject to the new reliability rules.

Recommendation 2: That the new reliability rules cover connection and fault repairs, including permanently fixing intermittent faults and service problems.

Recommendation 3: That the rules ensure consumers have clarity about how and when to report faults, and there is a 'no wrong door' approach to reporting a fault.

Recommendation 4: That any requirement in the new rules to offer an interim service or solution be one that is the most practical and effective for the consumer.

Recommendation 5: That the rules provide an adequate safety net for vulnerable consumers.

Recommendation 6: That the rules provide consistent and adequate incentives for providers to keep appointments and provide connectivity.

Recommendation 7: That the performance framework is clear and transparent so consumers can make informed choices about which provider offers the most reliable service.

Recommendation 8: That the rules make adequate provision for major disruptions.

Recommendation 9: That a network rectification plan under the rules include a clear communication plan for how the provider will notify TIO and affected customers.

1. Reliability in a transformed telecommunications sector and shifting policy landscape

The telecommunications landscape today is vastly different to the one that gave rise to the existing reliability rules embodied in *Telecommunications (Customer Service Guarantee) Standard 2011 (CSG)* in 1998. These rules will no longer adequately safeguard consumers against connection and repair delays, and provide limited incentives for service improvement in the industry.

While the Government has made numerous changes to the CSG over the past 20 years to address emerging challenges, the TIO supports a fresh approach to ensuring reliability that takes into account:

- increased multiplicity of players and complexity of the supply chain;
- the reduction in reliance on traditional fixed line voice services;
- the evolution of products and service contracts; and
- compatibility with emerging regulatory measures including the USG and SIP reforms and developing policy priorities arising from the 2018 Regional Telecommunications Review.

Part B Safeguards Review presents a timely opportunity to re-evaluate how to best reset the regulatory settings for guaranteed reliability of services once the roll-out of the National Broadband Network (**NBN**) is complete.

The review takes place in the context of many changes since the CSG was introduced in 1998. These changes include a transformed telecommunications sector, increasing CSG complexity, a shifting policy framework, and changing consumer expectations and needs.

The TIO supports direct Government regulation as the best way to guarantee standards of reliability for telecommunications service consumers across all services excepting mobile. The baseline standard of reliable services consumers will receive should not be left to industry to self-regulate (or to consumers to independently negotiate with their provider).

1.1. A transformed telecommunications sector

The CSG was first developed as a consumer protection measure in the lead up to the Government's privatisation of Telstra, and commenced on 1 January 1998¹.

Since then, the telecommunications sector has undergone significant transformation, with competition opening up the market. Many more providers² now participate in the supply chain, whether operating a vertically integrated business model, or performing the role of a network operator, aggregator, wholesaler, or retail service provider. Today, retail providers no longer have full control over whether repair, connection and appointment timeframes are met as work is likely to be required by technicians up the supply chain. This is particularly the case if the retail provider acquires services through intermediaries in the supply chain.

¹ Given J, Legislative Note Customer Service: Guaranteed? (1998) *UNSW Law Journal* 623, 625

² Around 1,600 providers are now members of the TIO

The roll-out of the NBN is a significant transformative event in the telecommunications sector, with it being expected that on completion of the roll-out, over 11.6 million premises will be connected to NBN technology. Of these, approximately 10.5 million premises will be connected within the NBN fixed line footprint³, 600,000 premises will be connected by fixed wireless, and 400,000 premises will be connected by satellite.

1.2. Increasing CSG complexity

Since its introduction, the CSG has been varied a number of times. For example, in 2011 performance reporting and record-keeping rules were added⁴.

Other key variations have focused on⁵:

- introducing broader grounds of exemption from having to meet connection and repair timeframes and pay CSG compensation (e.g. when valid customer waivers are obtained, and when a 'mass service disruption' exemption can be claimed);
- strengthening the consumer protections (e.g. to ensure remote Australians have their service problem fixed more quickly by halving the maximum period an interim service can be provided to 6 months, and increasing the mandated scale of CSG payments by 21% on the then Minister's direction).

On balance, these variations have added complexity in establishing whether the CSG applies, and to some extent have reduced the overall effectiveness of the CSG as an industry-wide consumer protection.

1.3. Redesign in a shifting policy landscape

The telecommunications policy landscape is undergoing substantive changes in a range of areas. It is important that the reliability standard introduced is compatible with other regulatory measures to be adopted in the industry.

Aspects of the regulatory framework currently under review include the design of a Universal Service Guarantee (**USG**) for voice and data and the introduction of Statutory Infrastructure Provider (**SIP**) reforms. Further policy considerations arising from the 2018 Regional Telecommunications Review should be taken into account.

Interaction with the new USG

The CSG protections are inextricably intertwined with Telstra being the guaranteed or universal service provider of standard fixed line voice services. Having Telstra perform this role aims to protect regional, rural and remote Australians who even in a competitive market, might not otherwise receive a standard voice service because it costs more to roll out infrastructure to these customers.

³ Using FTTP, FTTB, FTTC, FTTN or HFC technologies

⁴ *Telecommunications (Consumer Protection and Service Standards Act) 1999, Part 5; Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011*

⁵ The 2004, 2006 and 2011 variations to the *Telecommunications (Consumer Protection and Service Standards Act) 1999, Part 5* and *Telecommunications (Customer Service Guarantee) Standard*

As the universal service provider, Telstra is the only provider in the market who cannot contract out of the CSG protections. Telstra is also the only provider who is required to offer priority assistance services as a condition of its carrier licence.

It is not yet clear what the Government will introduce as the new USG to replace Telstra's existing universal service provider obligations (**USO**).

The Government has announced⁶ it aims to ultimately regulate for regional, rural and remote Australians to have guaranteed access to affordable voice and data communications in a post-NBN landscape. The detail of this regulation is not yet available. The Government has also indicated that any new USG will be conditional on the new consumer safeguards (currently under development through Part B and also Parts A and C of the Consumer Safeguards Review) being in place.

As an interim holding measure, and so the Government can undertake further work to explore the best design for a USG, the Government has announced it will:

- for voice services, retain the existing Telstra USO arrangements for copper networks and payphones; and
- for broadband services, introduce new USG requirements for nbn co to provide fixed wireless and satellite services for data.

Interaction with the SIP regime

The broadband component of the USG may be implemented as part of the SIP reforms that have been introduced to Parliament⁷. If enacted, the SIP reforms will create a universal network infrastructure provider obligation that requires providers to:

- connect (or explain why the customer will not be connected) within specified timeframes; and
- supply services that meet a certain level of reliability for voice and data services.

Regulated infrastructure providers under the SIP reforms will not just be nbn co, but other carriers who may install telecommunications network infrastructure in new apartment and multi-story buildings under current bespoke carrier licence conditions.

The SIP reliability requirement that will apply to nbn co after completion of the roll-out will only commence once the Australian Competition and Consumer Commission (**ACCC**) ceases to regulate nbn co under current infrastructure competition laws⁸.

The standard of reliability attached to the SIP will ultimately replace the reliability standards the ACCC sets for NBN wholesale service delivery, currently being reviewed through the ACCC's NBN Wholesale Service Standard Inquiry.

⁶ Department of Communications and the Arts, *Development of the Universal Service Guarantee Summary Report* (November 2018), 9

⁷ *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2018*, Schedule 3 to introduce a new Part 19 to the *Telecommunications Act 1997*

⁸ proposed new section 360Q(2) in the *Telecommunications Act 1997*

Policy considerations from the 2018 Regional Telecommunications Review

In December 2018, the Review Committee's Final Report to the 2018 Regional Telecommunications Review was tabled in Parliament⁹. The Committee recommends the Government audit, for regional, rural and remote Australians, the repair times for landline services and measure the impact of mass service disruption events on these repair times. If the Government agrees to conduct an audit, the findings may inform the development of the new mandatory rules.

1.4. Reliability rules that are technology neutral, other than mobile

The TIO supports a fresh approach to reliability that is technology neutral and ensures protections for all residential consumers, small businesses and not for profit organisations.

Only covering some technologies, such as fixed landline voice services, may result in consumers being unfairly disadvantaged. This is because consumers may not have a choice in the network technology available.

We acknowledge the Government is working through how to meet the legitimate voice needs of regional, rural and remote customers, who are served by satellite services, and that this may require reflection in the SIP regime.

It is also desirable the new rules comprehensively cover technology of specific interest to small businesses. Small businesses may have diverse and wide-ranging needs, such as farmers who rely on agtech, and health professionals who rely on telehealth services. Being technologically neutral would also assist in the simplicity of the regime.

We acknowledge the challenges that may present if the new rules were to also cover mobile services. It may not be possible to guarantee reliability of mobile services in the same rule, particularly if a consumer experiences drop outs or a poor quality connection when travelling domestically to a blackspot or beyond mobile network coverage, or when travelling abroad and roaming on another country's network. Particular consideration will also need to be given to the reliability standard appropriate for satellite connections.

1.5. Reliability rules that cover all providers and services

The TIO supports new reliability rules that will apply to all providers in the transformed telecommunications market. This will ensure all businesses in the supply chain meet a baseline standard of reliability that interfaces with a network operator's obligations under the proposed SIP regime.

Significant limitations of the current CSG include the ability of providers (other than Telstra) to require consumers to agree to a waiver as a condition of providing the service, and the exclusion of sophisticated business-oriented services.

⁹ Final Report *2018 Regional Telecommunications Review – Getting it right out there*. See: <https://www.communications.gov.au/publications/2018-regional-telecommunications-review-getting-it-right-out-there>

Waiving reliability protections

The current regulatory settings mandate Telstra as the single guaranteed universal service provider having to comply with the CSG. All other providers can voluntarily exempt themselves from the CSG timeframes for connection and repair, and from having to make CSG payments.

Providers other than Telstra can voluntarily exempt themselves by obtaining a valid waiver from the customer at the point of sale. The consumer may provide the waiver in writing or verbally. For the waiver to be valid, the provider must obtain the waiver in the manner specified by the CSG.

Some providers require a CSG waiver from the customer as a pre-condition providing the service during the standard sign-up process. If the customer declines to provide the waiver, the provider will not progress the customer further.

The waiver requirements are complex and we receive complaints that raise concerns about providers' practices in obtaining these waivers. The TIO's systemics team has observed sign-up processes that did not comply with CSG requirements for a range of reasons, including:

- customers were not told about the consequences of waiver and that they had a cooling-off period within which they could withdraw their waiver;
- customers were not told they would receive written information about waiver;
- the provider's recordings of conversations did not include the date the customer waived their CSG rights;
- where customers did receive a written statement about waiver, it may not have been within the required timeframe;
- the written statement did not have a prominent title containing the word 'waiver';
- there was no explanation of the customer's CSG rights and protections; or
- there was no statement summarising the consequences of waiver for the customer.

Our systemic team works with providers to:

- update their templates for written waiver and scripts for their call centre staff;
- provide training feedback to its relevant staff about CSG waivers; and
- publish policies so staff can refer to these when obtaining a CSG waiver.

In general, consumers are not well informed about the waiver and its implications. The result is that the provider complies with the requirements for obtaining a valid waiver, consumers may not understand the extent of the protection they are giving up.

An alternate approach would be to set a minimum baseline standard of reliability with no exemptions, allowing providers to have competitive points of differentiation where they exceed the minimum standard.

Excluding sophisticated services impacting small businesses

The exemptions from the definition of 'CSG service' for 'sophisticated business-oriented services' can result in otherwise protected small business customers losing their protection. The TIO believes it is

preferable for any new regulation to not reference 'sophisticated services'. The concept of 'sophistication' can change as rapidly as technology advances, making it difficult to define in rules with precision.

In 2014 and 2015 the TIO dealt with complaints in which a major service provider claimed it was exempt from having to pay CSG payments because the service was a 'sophisticated business-oriented service'. After discussion with the Australian Communications and Media Authority (**ACMA**), it was concluded the CSG did not apply. This was despite:

- the provider marketing the service to small business customers as a standard bundled offering to respond to their general needs;
- the small businesses who took up the service needing standard voice services so they could run their restaurant, lingerie and pest control businesses;
- the 'sophisticated' service having standard phone service features such as call forwarding and message bank; and
- the voice service not appearing to have any distinct features that indicated 'sophistication' or 'complexity' (for example there was no feature that could provide additional security and privacy in communications).

Recommendation 1

That all providers of voice and data services (other than mobile) and all the services they offer, be subject to the new reliability rules.

2. Adequate rules to meet the needs and expectations of consumers

Voice and data communication is an essential service for modern Australian society, underpinning the operations of businesses, public services, emergency assistance, banking and other essential services. Interruptions to communications services through slow repair times, delayed installation and missed appointments can significantly hamper social and economic participation of individuals, endanger critical health and safety services and lead to significant business losses.

2.1. Consumers see connectivity as essential and expect reliable service

Residential, not for profit, and small business consumers tell us they expect to receive a reliable service. They say that connectivity, through the provision of reliable voice and data services is essential to their daily lives and for operating their small business. For consumers, reliable connectivity can include being able to make phone calls in emergency situations, communicate with friends and family, watch entertainment, participate in education programs, do online banking, and complete other personal and small business activities.

Consumers also tell us they view telecommunications in much the same way as they see utilities, and make comparisons between their respective reliability. They say it can be particularly frustrating when an electricity fault is fixed within a couple of days, but the repair of the telephone line damaged in the same event is delayed due to extensions applied for mass service disruptions. Mass service disruptions are discussed in more detail in **Section 4** of this Submission.

“I’m 72 years of age, and rely on my landline for communication... Surely six weeks is too long to wait for an essential service to be restored.”
Samuel*

“We run a small business and are unable to make or receive calls. Our retail provider, Green Phones* told us there is a mass service disruption, and the infrastructure owner who owns the lines is working to fix things. Three technicians from the infrastructure owner have been to our site, but they have been unable to resolve the issue. The infrastructure provider needs to fix the lines. We are now in a fourth week without an essential small business tool.”
GrowThingsCo*

*Name of individuals, organisations and companies have been changed

2.2. A uniform guaranteed timeframe for connections and repair

The TIO supports providers having to guarantee a time period within which customers can know and expect they will have their service connected and faults repaired.

A uniform timeframe could achieve greater simplicity than the Consultation Paper's proposed tiered approach. The proposed tiered approach would use ABS definitions of whether an area is a 'significant urban area' or 'other area' depending on whether that area's population exceeds 10,000 persons, and whether the site of the customer's affected service is 'close to required infrastructure'.

In our experience, a tiered approach to guaranteed timeframes can create complexity in applying the framework. For example, we have found the current CSG connect timeframe based on a 'close to required infrastructure' definition difficult to apply. This is because the meaning of 'close to' is open to interpretation.

The uniform timeframe could be developed by reference to an outer tolerance limit. If timeframes are based on an outer tolerance limit, industry is best placed to inform the exact timeframes that will be guaranteed under the new reliability rules. However, it may be desirable to stress-test whether the timeframes are achievable for both smaller emerging providers and established providers with greater market share, to remove any possible anti-competitive effects.

2.3. Consumers expect a permanent fix for recurring fault and service problems

When consumers complain to our service, they expect intermittent service, drop outs and recurring problems will be permanently fixed the first time they report it to their provider.

The 2018 Regional Review Committee highlighted the issue of temporary repairs in its recent report. For consumers who did not have their fault repaired within the CSG timeframes in 2018, a common theme was the customer continuing to report the same problem later, or for weeks to come, because a permanent repair was not completed when the initial fault was reported.

As illustrated by **Case Study A**, intermittent service and drop outs can be challenging for providers to troubleshoot and resolve quickly and permanently. This may be because the intermittent nature of the problem makes it hard to localise and analyse what the problem is. In this particular case, the interim service or solution also did not work, contributing to the customer's poor experience with their service. We often find intermittent faults are actually an ongoing fault, and direct providers to pay CSG for the whole period.

Case Study A – Permanently fixing Shiny Locks intermittent fault**

Shiny Locks is a small hairdressing business and has a landline connection with WowCall. Shiny Locks began receiving emails and social media messages saying customers could not call through. Shiny Locks was unable to receive calls for an entire day at a time and at other times only a few calls would come through for the day.

After Shiny Locks reported the intermittent drop out issue to WowCall, WowCall set up a diversion to a mobile phone. The diversion stopped working after one day. WowCall then provided Shiny Locks with a temporary phone. This also stopped working after a day. Shiny Locks had several conversations with WowCall to try to resolve the problem. Even after two technicians came to the salon, the problem continued for another six weeks.

Shiny Locks raised a complaint with the TIO. WowCall reinstated the diversion to the mobile phone but then, believing the problem was resolved, turned off the diversion without telling Shiny Locks. Shiny Locks experienced the intermittent drop out problem several times for a month, and became increasingly frustrated as the diversion service kept being turned off without a permanent solution.

After Shiny Locks escalated the complaint with the TIO, the intermittent drop out issue was permanently resolved and a payment agreed that reflected the entire period of the disruption.

*Name of individuals, organisations and companies have been changed

Recommendation 2

That the new reliability rules cover connection and fault repairs, including permanently fixing intermittent faults and service problems.

2.4. Consumers expect providers will be responsive when they report a fault or service problem

When consumers contact their provider to report a fault or service difficulty, they expect their provider will permanently fix the problem the first time.

The TIO finds that consumers who experience a fault or service difficulty may encounter unique barriers to having their problem recognised as a ‘reported fault’ by their provider. This can contribute to the provider not fixing the problem properly the first time.

As **Case Study B** illustrates, the provider may not have integrated business processes and systems in place for a ‘no wrong door’ approach to receiving customer reports of faults and service difficulties.

In this case, the customer’s repeated reports of the fault were not recognised by the provider, because the customer had not reported the fault through the provider’s dedicated fault line. It should not be up to consumers to have to find the right pathway into a provider’s business to have their fault or service difficulty recognised so it can be permanently fixed.

Case Study B: Debbie* keeps reporting her fault to Marble Telco*

Debbie experienced ongoing problems with her home phone. She started calling her provider, Marble Telco, but was unable get her landline fixed despite repeated tries. A month later, Debbie submitted an online form to Marble Telco, and was able to get her landline fixed a month later.

Debbie contacted the TIO to dispute the fees on her account for the period she had experienced problems with her phone. We assessed Debbie as eligible for a CSG payment. Marble Telco’s CSG team disagreed with our calculation, arguing that the only record they had of the problem was Debbie’s online form and that this did not amount to a fault report. Marble Telco told us a fault report required the customer to call its main faults line. In Marble Telco’s view, as there was no ‘fault report’, the CSG payment should be zero. Marble Telco’s customer service manager offered a goodwill payment, however Debbie rejected this offer.

The TIO took the view that the online form was evidence of a fault report, as it referred to previous failed attempts to rectify the problem. However, it was difficult to establish the exact date on which Debbie initially reported the fault as neither Debbie nor Marble Telco had a record of Debbie’s calls. We reviewed customer care notes and Debbie’s outgoing calls, but were unable to establish the first time Debbie reported the problem with her phone.

When deciding what was fair and reasonable in the circumstances, the TIO based its CSG calculation on the date Debbie submitted the online form.

*Name of individuals, organisations and companies have been changed

Recommendation 3

That the rules ensure consumers have clarity about how and when to report faults, and there is a ‘no wrong door’ approach to reporting a fault.

2.5. Interim services and alternative solutions that suit customer needs

The TIO supports the new reliability rules having a focus on keeping customers connected with a solution that is the most appropriate for their needs. In our experience, what is offered as an interim service under the CSG may not necessarily be the most suitable and effective solution for the customer.

For example, we see instances of providers offering a temporary mobile handset and service to customers who are located in an area without mobile network coverage. For these customers, an appropriate interim solution may involve more complex installations such as a temporary satellite telephone service. In other cases, providers may offer other interim solutions such as access to a temporary wifi dongle and wireless connection, and free additional mobile data.

We find that customers who are offered an interim service or solution they believe to be unworkable or unsuitable are more likely to reject the offer and complain to our service.

Small businesses can also have specific needs that should be taken into account in providing an interim or alternative service solution. **Case Study C** shows challenges for small business customers who have multiple landline services diverted to a mobile, especially if the mobile cannot receive the same volume of calls as the lines that were diverted.

Case Study C: Diverting four lines to Number Crunch* mobile as an interim solution

Number Crunch* is a small accounting business. Number Crunch applied for NBN phone and internet services with ScoopTel*. When Number Crunch applied, they made it clear it was critical to their business that their existing four lines be maintained on migration to the NBN. ScoopTel acknowledged this and set a connection date.

The agreed date arrived without a technician turning up. Over the next three months, ScoopTel arranged several other appointments, all of which were not attended. ScoopTel told Number Crunch it would take another three months before the NBN service could be connected, and in the meantime their existing services would stay active.

On the migration date, the existing phone services of Number Crunch were disconnected without a new NBN service connection in place. After two weeks of back and forth conversations, ScoopTel arranged for Number Crunch's four phone lines to be diverted to a mobile phone. Number Crunch told ScoopTel this was not a suitable interim solution because the many calls were diverting to only one mobile service so the usual call volume could not be received. Even though this was causing Number Crunch business loss, ScoopTel would not offer any other interim solution.

Number Crunch continued to rely on the interim diversion to one mobile phone for a further month until the NBN service was connected, with compensation being an important part of the resolution.

*Name of individuals, organisations and companies have been changed

Recommendation 4

That any requirement in the new rules to offer an interim service or solution be one that is the most practical and effective for the consumer.

2.6. A service continuity safety net for vulnerable consumers

The TIO supports the new reliability rules including a safety net for vulnerable consumers experiencing a serious or life threatening medical condition or illness. It can be a matter of life or death for medically vulnerable customers if they are not given high priority or treated with 'urgency' in having a working telecommunications service¹⁰.

Medically vulnerable consumers could be best protected if the safety net is a shared responsibility across all providers in the supply chain, including:

- network infrastructure operators as a part of the SIP regime; and
- retail providers who have the direct contractual relationship with the consumer and have the opportunity to identify whether the consumer is medically vulnerable.

The safety net could provide for:

- all providers to have robust systems and processes to clearly know and identify their medically vulnerable consumers – this would involve having to ask questions of whether a customer might be medically vulnerable as part of the sales process;
- shorter guaranteed timeframes for connection and repair than for standard connection and repair timeframes;
- a focus on alternative services or backup solutions so medically vulnerable customers remain connected. These solutions may need to be different for those customers in regional, rural or remote locations who have no mobile network coverage.

Our experience with current priority assistance protections

It is our experience that the current regulatory settings for priority assistance are no longer fit for purpose or working as intended in a changing telecommunications market.

In 2018, the TIO received over 300 new complaints from priority assistance customers. As shown in **Appendix B**, this is gradually increasing.

In 2018, priority assistance complaints involved a range of reliability service issues: see **Appendix B**.

¹⁰ In October 2018, the ACMA found Telstra had not met its priority assistance obligations following an investigation into two incidents in 2017 where customers with serious, chronic health conditions were unable to use their Telstra landline service. The ACMA found neither customer was registered for priority assistance, but both made plain their serious health conditions and their need for a working telephone service. In both cases, the customers passed away: ACMA Media Release 32/2018 *Telstra breaches priority assistance obligations* (8 October 2018). See: <https://www.acma.gov.au/theACMA/telstra-breaches-priority-assistance-obligations>

Current regulatory settings mandate Telstra as the only provider who must offer priority assistance services as a condition of their carrier licence. This is because Telstra, as the universal service provider, may be the only provider delivering services to regional, rural and remote Australia. The priority assistance timeframes require that customers receive priority treatment for the connection and fault repair of their landline phone service within shorter timeframes than the standard timeframes under the CSG (within 24 hours in urban and rural areas and within 48 hours in remote areas). However, Telstra is relieved from having to meet priority assistance timeframes when it relies on network infrastructure or other services it does not own (e.g. those owned by nbn co).

Case Study D illustrates the experience of medically vulnerable consumers in a migration to the NBN context. In our view, these cases demonstrate the need for a future safety net having to be a shared responsibility with network infrastructure operators.

Case Study D: Priority assistance customer Kylo* disconnected by Brite Talk* during the migration process

Kylo applied to migrate his phone and internet services to the NBN with his existing provider, Brite Talk. Brite Talk scheduled an appointment for a technician to install the connection. When the agreed connection date arrived, Kylo's services were disconnected and no one showed up. Brite Talk made four different appointments after this, but each time the agreed date arrived, no one attended. Kylo kept reminding Brite Talk that he is a priority assistance customer, but still had no services four weeks after his migration application.

Kylo became frustrated and called the TIO. Kylo explained that he has a life threatening medical condition and lives in a rural area with poor mobile coverage. The TIO referred Kylo's complaint as urgent to Brite Talk.

A few days later, the TIO contacted Kylo to check whether he had received an interim service. Kylo said another technician had been scheduled, but they did not turn up and he had not been offered an interim service. The TIO began working with Brite Talk and Kylo to urgently conciliate the complaint.

During the conciliation, Brite Talk gave the consumer a mobile phone as Brite Talk disagreed there were mobile coverage issues. Kylo tried to use the mobile phone but it would not work in his area. When TIO requested that Brite Talk provide a suitable alternative interim service, Brite Talk agreed to send Kylo a satellite phone. When Kylo received the satellite phone, the TIO closed the urgent issue and continued to conciliate the issue of customer compensation.

*Name of individuals, organisations and companies have been changed

Current regulation also allows other retail service providers to voluntarily provide priority assistance services so long as they subscribe to the protections in the Priority Assistance industry Code¹¹. If providers do not offer priority assistance (as defined by the Code), to redirect prospective consumers who enquire about these services to Telstra (or another equivalent priority assistance provider)¹². The requirement to redirect customers is intended to provide an additional protection over and above the Australian Consumer Law, by seeking to ensure that medically vulnerable customers are connected

¹¹ CommsAlliance, *Priority Assistance for Life Threatening Medical Conditions Code (ACIF C609:2007)*

¹² *Telecommunications Act 1997*, Part 6 of Schedule 2

with service providers who can actually cater to their specific needs before they enter into a customer contract.

To our knowledge, there are no other equivalent providers who offer priority assistance services to new customers in the competitive market. This is likely to be because of the added compliance burden and the potentially 'higher' risk if things go wrong.

Case Study E illustrates that the protection to redirect customers does not always work as intended. This is another reason why it would be desirable for the safety net to be a shared responsibility across the entire telecommunications service supply chain.

Case Study E: Phil* was released from his SnapTel* contract without penalty so he could sign up to a provider with priority assistance services

Phil moved house and ordered a new NBN home phone service with SnapTel. Technicians installed the service, but after they left, Phil found that the home phone was not working.

For the next six weeks, Phil had several interactions with SnapTel about solving the problem with no resolution. Phil had explained to SnapTel that he has advanced lung cancer and cannot use his mobile at home due to bad coverage. Phil emphasised that he needs the home phone because the risks associated with his condition could result in death if he could not get help. Eventually, SnapTel said they would fix the home phone by the end of the next day. Four days later, Phil had not received any contact from SnapTel and the home phone still did not work.

Concerned about his situation, Phil called the TIO. The TIO prioritised Phil's complaint as urgent, and said to Phil that the TIO would contact him to check if SnapTel had addressed Phil's need for an interim solution.

The TIO contacted Phil a few days later. Phil told the TIO that SnapTel had sent a technician out and the home phone was now working. Phil said that he was really grateful the TIO was able to get such a quick response to his complaint after he had been trying to set up the service for so long. The TIO closed the urgent aspect of the complaint and continued to work with Phil and SnapTel to conciliate the issue of compensation and service reliability.

After two months, a resolution was reached. SnapTel agreed to waive \$100 for the time Phil was without services and paid \$80 in CSG compensation. SnapTel also agreed to release Phil from his contract without penalty fees so that Phil could sign up for priority assistance services with another provider, as the repair and connection requirements for those services would better suit Phil's needs.

*Name of individuals, organisations and companies have been changed

Recommendation 5

That the rules provide an adequate safety net for vulnerable consumers.

3. Well-designed incentives for providers to deliver reliable services

The TIO supports new reliability rules that provide a strong incentive for providers to deliver reliable voice and data services. Carefully designed incentives that encourage providers to be responsive to the needs of consumers can lift reliability performance across the sector, without the need for the regulator to take action.

Designing new reliability rules that rely solely on regulator compliance and enforcement action would be less effective, and costly to administer. A regulator enforcing compliance with the rules is best reserved as a 'last resort' supporting measure.

3.1. Financial incentives for providers to connect and rectify in a timely manner

The TIO supports financial incentives for providers to connect and rectify in a timely manner. It is important that any financial incentive be proportionate to the severity of inconvenience to the customer, and easy to apply.

Proportional and appropriate incentives

We find it difficult to reconcile a rebate incentive scheme for a missed technician appointment, when failure to rectify more serious customer problems, such as no connectivity for extended periods, do not attract an equivalent rebate.

A financial incentive to keep technician appointments can reduce extended delays. However, missed appointments are not the only cause of delays.

Missed appointments

We support the proposed financial incentives for missed appointments. However, these should allow consumers to easily identify who is responsible to pay, so there can be arrangements in place across the supply chain, for the rebate to be passed on to the affected customer.

In our experience, technicians sent to a customer's premises to connect the service or repair a fault may not necessarily be an agent of the retail provider. They may be employed or contracted by the network infrastructure operator, such as nbn co. Customers who complain to our scheme may not always know whether the technician represents the network infrastructure provider or the retail provider.

It is also not clear how the \$100 per missed appointment fee was determined. It is not clear whether an economic cost-benefit analysis has been undertaken to inform whether this is a proportionate amount for a financial incentive (as distinct from a penalty or compensation for inconvenience to the consumer). In other Australian essential services sectors, such as electricity, the customer rebate for

a missed technician appointment varies between each State and Territory. For example, the rebate is \$25 in South Australia, \$30 in Victoria and \$57 in Queensland¹³.

We note the current regulatory settings require nbn co to pay its access seekers (a wholesaler or retailer) a \$25 rebate for each missed technician appointment until the roll-out of the NBN is complete¹⁴. If the \$25 rebate were to continue after the roll-out of the NBN is complete, a \$100 missed appointment fee could mean retail providers have a \$75 cost burden, whether or not they are responsible for the technician.

Responding to the wrong technician being sent

In some cases, consumers tell us that a technician attended, however the technician did not have the specialised skills or qualifications to address the specific problem and should never have been sent in the first place.

This is illustrated by **Case Study F**, where technicians with the wrong expertise continued to be sent, delaying the resolution of the problem. For this consumer, this created just as much inconvenience as a technician missing their appointment.

Case Study F: So Yoon* eventually connected after many technicians attended

So Yoon applied for NBN home phone and internet services with GoodTel*. GoodTel scheduled a connection appointment a few days later. The technician who attended the appointment told So Yoon they could not connect her because her internal wiring needed an upgrade. Based on this advice, So Yoon arranged for a private technician to upgrade her internal wiring that day, so GoodTel arranged for another technician to attend in two weeks.

The second technician who attended could not complete the connection because of problems with GoodTel's cabling. So Yoon reported this to GoodTel who organised for a more appropriately qualified technician to attend in another two weeks. This third technician said that they also could not fix the problem because a more specialised technician was required. So Yoon called GoodTel who apologised and scheduled a new appointment a week later.

In frustration, So Yoon contacted the TIO for help. As GoodTel still had not connected So Yoon after referral of the complaint, the TIO began conciliation. Over the next four months the complaint was conciliated, GoodTel arranged three additional technician appointments.

Each time the technician kept the appointment, but gave different advice to So Yoon about why the connection could not be completed. Many appointments later, the TIO was able to confirm So Yoon's services were properly connected and closed the complaint.

*Name of individuals, organisations and companies have been changed

¹³ *Electricity Distribution Code 2018 (SA)* (January 2018, version EDC/12.1), clause 2.3.1; *Electricity Distribution Code 2018 (Vic)* (August 2018, version 9A), clause 6.1.1; *Electricity Distribution Network Code 2018 (Qld)* (version 3), clause 2.3.10.

¹⁴ ACCC Media Release MR 182/18 *NBN Co commits to improve service rebates and reporting* (12 September 2018). See: <https://www.accc.gov.au/media-release/nbn-co-commits-to-improve-service-rebates-and-reporting>; ACCC section 87 undertaking with NBN Co Limited. See: <https://www.accc.gov.au/public-registers/undertakings-registers/nbn-co-limited>

3.2. Fair outcomes to resolve complaints

Safeguarding reliable telecommunications services through a new reliability rule would provide additional protection over and above the general consumer protections available under the Australian Consumer Law. This means that consumers may be afforded additional protections and remedies specific to telecommunications services.

Not billing for services not delivered

The TIO agrees with the proposal that consumers should not be billed for services if they are not connected on time or for any periods during which they do not have a working service. However, this may not necessarily respond to situations where the consumer reports a recurring fault such as intermittent services and drop outs.

From our experience in handling billing disputes and disputes where a CSG payment is agreed, we find that providers do not have integrated IT systems and processes in place to support the removal of charges for 'no or delayed service' from the customer's post-paid bill. Instead, providers will apply a waiver or reimbursement to the customer's account if the customer disputes their bill, but the waiver or reimbursement may not always be correctly applied to the account, contributing to the issues in dispute.

Exiting a contract without penalty

When consumers tell us what they want in resolution of their complaint, it usually involves getting them connected or fixing the problem with their service.

While some consumers are happy to be offered the option to exit their service contract without penalty, this is usually not a satisfactory solution for customers, especially if no competitor in the market can offer a more reliable service over the particular network infrastructure.

Expectations of fair compensation

If a provider is unable to fix the service for long periods, we find consumers expect to receive fair monetary compensation to respond to:

- the inconvenience of being without a connection or a reliable service (including for intermittent service and drop outs);
- reimbursing them for their direct financial loss caused by the service disconnection or problem

This is particularly the case for small businesses and not for profits, who can suffer significant detriment due to being unable to receive new bookings or customer orders over the phone or online and not being able to communicate with clients.

3.3. A simple system

Our experience with CSG payment calculations is they can be complex, time-consuming and open to differing interpretations between the provider and the TIO. In some cases, we find providers may make a 'low-ball' offer to see if the customer will accept it as the agreed resolution.

Having a simple and clear set of rules that articulate the payment methodology for calculating fair compensation amounts can be very useful for the TIO to refer to when handling complaints about

reliability of services. It could also empower customers to resolve their complaint directly with their provider, without the need to escalate it to the TIO.

If the CSG payment calculation method were to be completely removed and not replaced, we expect consumers will continue to claim a fair financial payment in resolution of their complaint. Providers may find themselves having to respond without an industry-wide accepted formula for calculation. This could protract complaints handling, with potentially more time having to be spent negotiating with the provider what is a fair sum for resolution.

As **Case Study G** illustrates, consumers expect to be compensated, but calculating the CSG payment can be complex and time-consuming.

Case Study G: Calculating the CSG payment for small business, SpareParts

SpareParts* runs a car parts distribution business. They intended to move to new business premises, and ordered a landline service from PrideNet*. As SpareParts knew internet-based voice services did not work in the area, they ordered four copper lines. SpareParts selected PrideNet as their landline provider because it offered to have the service ready when they moved in, while other providers had given them a longer timeframe for connection.

The connection took longer than anticipated, and after two months, PrideNet connected a single line which resulted in a poor voice service. When Spare Parts reported the fault, PrideNet installed an internet-based voice (VOIP) service, but Spare Parts experienced constant faults with this service too.

SpareParts contacted us to complain that they were not happy with the VOIP service. SpareParts said that the VOIP service had been in place for longer than six months, and PrideNet was not connecting the remaining three copper lines they had originally requested, which was resulting in a poor voice service.

PrideNet connected the remaining three copper lines ten months after the landline service was first ordered.

The TIO assessed that SpareParts was eligible for a CSG payment for the delay. Our assessment was calculated on the basis that PrideNet failed to connect the four lines purchased by SpareParts within the guaranteed maximum rectification period and that the VOIP service was only an interim solution.

Although SpareParts was prepared to accept the CSG assessment, PrideNet did not agree with our calculation. PrideNet argued that it did everything it could to rectify faults with the VOIP service, and that it should be exempt from CSG obligations relating to connection due to extreme weather conditions that delayed new line appointments. PrideNet applied a goodwill credit to SpareParts' account for the delay.

SpareParts did not accept the offer as sufficient and requested that we escalate the complaint. The TIO found PrideNet was not eligible for a mass service disruption exemption as it did not submit a notice of exemption to the ACMA as a reseller of the service. Under the CSG rules, an interim service can only be put in place for six months from the date the fault is reported unless the consumer otherwise consents. As SpareParts did not consent to the VOIP service being in place for longer than six months after the fault report, the CSG applied once the six month period expired until the remaining three copper lines were connected.

*Name of individuals, organisations and companies have been changed

Recommendation 6

That the rules provide consistent and adequate incentives for providers to keep appointments and provide connectivity.

3.4. Performance reporting incentive

The TIO supports a performance reporting framework for reliability of services so consumers can make informed choices about which provider offers the most reliable service.

If designed well, the performance reporting could improve transparency about service delivery and become a critical point of brand differentiation between providers.

We encourage the design of the reporting be consumer-tested, presented in a visual and easy to understand way, and for the Government to launch the reporting with a campaign so consumers are aware of the information and know how they can use it.

For the information to be most useful to consumers, it could be combined with comparative reporting for complaints handling performance. This is a reporting approach adopted by the UK's telecommunications regulator, Ofcom¹⁵. Ofcom expects the compensation scheme which begins operating this year to assist in the collection of performance reporting data.

We recognise the ACMA may need to collect data to support this performance reporting framework.

We would be happy to be involved in further discussion about the detail of the performance reporting metrics.

Recommendation 7

That the performance framework is clear and transparent so consumers can make informed choices about which provider offers the most reliable service.

¹⁵Ofcom, *Choosing the best broadband, mobile and landline provider – Comparing Service Quality 2017* (3 May 2018). See: https://www.ofcom.org.uk/__data/assets/pdf_file/0023/113639/full-report.pdf

4. Major disruptions are inevitable

Major incidents (for example, extreme weather events and natural disasters) can damage network infrastructure, causing mass service disruptions to many customers simultaneously.

When this happens, it is our experience that customers expect their service provider to notify them, and to have a plan of action to respond in a coordinated and effective manner so services can be quickly restored.

4.1. Mass service disruption events increase complaints to the TIO

The TIO sees a close correlation between a declared mass service disruption event and an increase in the number of customer contacts to our service.

Currently, providers can self-declare a mass service disruption event under the CSG by completing the mass service disruption notification requirements. This allows providers to claim exemptions for a broad range of circumstances outside their control, such as:

- extreme weather events and natural disasters;
- road closures and traffic caused by the 2018 Commonwealth Games or certain annual racing events.

There are no restrictions on how long a mass service disruption exemption can be active and providers have a practice of extending the period by issuing consecutive new mass service disruption notices. To our knowledge, this can lead to an overall mass service disruption period of up to nine months, although most mass service disruption events appear to resolve within 2 – 3 months.

We find that under the current CSG, customers who contact the TIO are often unaware they are directly impacted by a major incident or mass service disruption event. When a customer calls about an unrestored service, the TIO will identify whether the customer's phone number is listed as affected by the mass service disruption. If relevant, we may also explain how this impacts them in terms of technicians being diverted from their area to respond to the major incident impacting another area.

As illustrated by **Case Study H**, customers report having several interactions with their provider's customer service staff and fault rectification division, who lead them to believe usual fault rectification and restoration process applies. This suggests there may be a disconnect between a provider's customer service systems and procedures and the provider's division who manages CSG compliance with mass service disruption notification requirements.

In other cases, the customer may not have been able to move beyond their provider's automated call recording, which does not let them know the provider is busy responding to a major incident and who might be affected.

Priority assistance customers are particularly affected by major incidents

If the TIO identifies a priority assistance customer who is affected by an MSD, we will accept the matter as a complaint even if the provider has an MSD exemption in place.

The TIO performs an important role in helping priority assistance customers who may be vulnerable to resolve their complaint, whilst respecting that providers can only work to resolve some complaint aspects (such as interim connectivity) while they work to address the impact of the major incident.

Case Study H: Dylona* loses her Fly Phones* connection in a storm

Dylona's home phone stopped working during a storm. Dylona called Fly Phones and went through troubleshooting, including sending a technician, but this did not fix the problem. At no point did Fly Phones mention the storm or any limitations.

After weeks of Dylona talking to Fly Phones with no resolution, Dylona became frustrated and contacted the TIO. The TIO identified Dylona's phone number was declared as being impacted by the storm.

The TIO explained that because Fly Phones needed to send technicians to fix the storm damage, they were exempt from meeting regular guaranteed repair timeframes for her phone. We told Dylona she could lodge a complaint with the TIO after the end of the declared major incident in a month if her problem remained unresolved.

*Name of individuals, organisations and companies have been changed

Recommendation 8

That the rules make adequate provision for major disruptions.

4.2. Network rectification plans that are strategic and considered

The TIO supports providers who are responsible for restoring the network having to submit a network rectification plan to the ACMA where a major incident (beyond the provider's control) makes it impossible or unsafe for technicians to respond to the incident within guaranteed maximum rectification timeframes.

The plan should include a clear end date to ensure full rectification which is committed to at the very start. It should also address how connections and repairs for medically vulnerable customers will be prioritised.

Having to make the network rectification plan publicly available and update the plan every five days until the problem is completely resolved can improve transparency. It is our view that this requirement could become a more powerful incentive for the provider to remediate the incident more expeditiously, if updates were required to clearly report on progress tracked against the plan (e.g. 25% - 50% - 75% completely remediated on time).

We would not want to see a system similar to that under the current CSG where providers can respond indefinitely, without a clear overall completion date, by issuing new MSD notices.

It would be desirable for the rectification plan to include a clear communication plan as to how the provider will communicate with the TIO and its affected customers. Communication could be through one or a combination of channels that may be most effective for the types of customers the provider wishes to reach (e.g. SMS push notifications, email or letter, social media, print media, tv, radio, and even through a dedicated hotline, call centre triage or voice recorded message with its call centre).

Recommendation 9

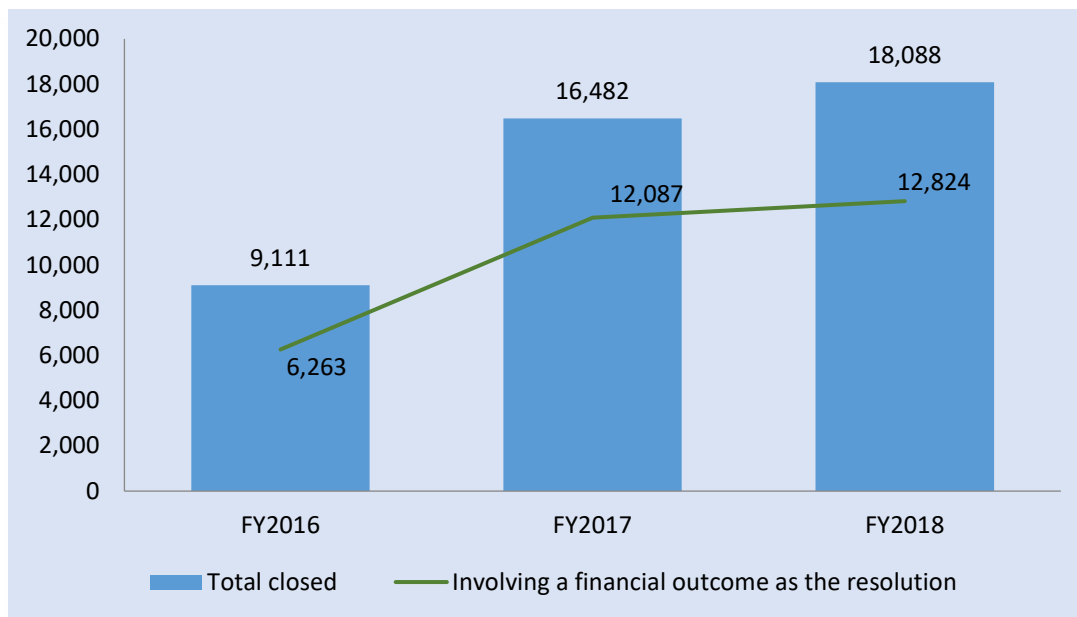
That a network rectification plan under the rules include a clear communication plan for how the provider will notify TIO and affected customers.

Appendix A: TIO complaints involving CSG payments

Figure 1 shows the number of complaints the TIO closed over the last three financial years that involved a financial outcome as part of the resolution of the complaint.

A relatively small number of closed complaints that progressed to conciliation or investigation (approximately 7 – 13 % each financial year) involved a CSG payment.

Figure 1: Proportion of complaints closed involving a financial outcome as the resolution (FY2016 – FY2018)



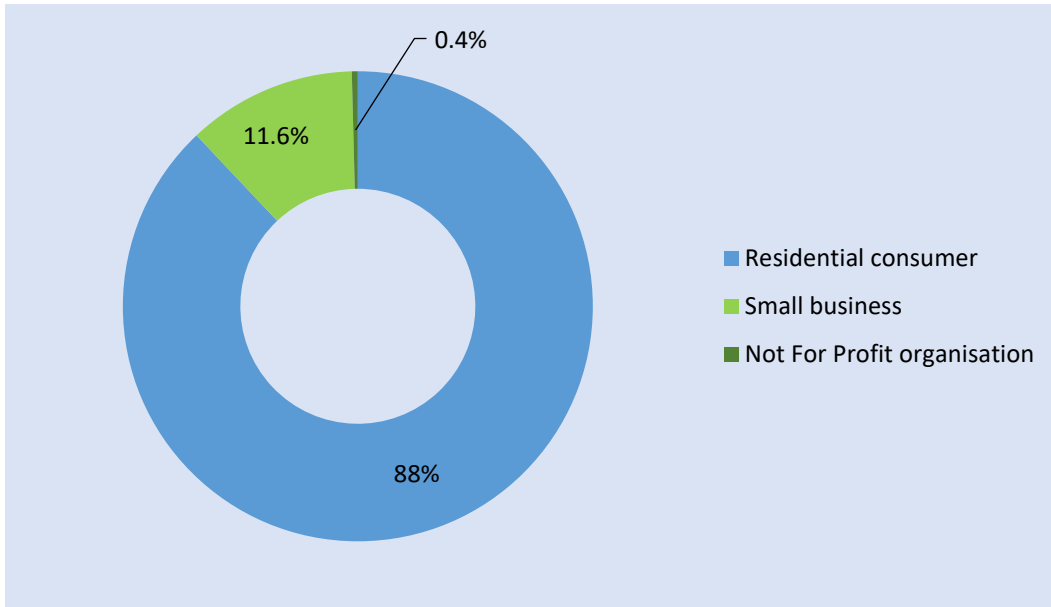
In financial year 2018, the TIO closed 18,088 cases, where a matter progressed using our conciliation or investigation services. The TIO has been able to identify at least 9.5% (or over 1,700) of these closed cases involved a financial payment calculated in accordance with the CSG as part of the agreed resolution.

The CSG payment may have been accompanied by one or a combination of other financial outcomes, such as compensation for direct financial loss, payments by the provider as a goodwill gesture, reimbursements for costs incurred by the customer, or the waiver of service fees and charges.

For the 9.5% of complaints where a CSG payment was part of the case outcome, they involved:

- all types of customers who can access the TIO scheme (See **Figure 2**)
- around 20 providers who are members of our scheme.

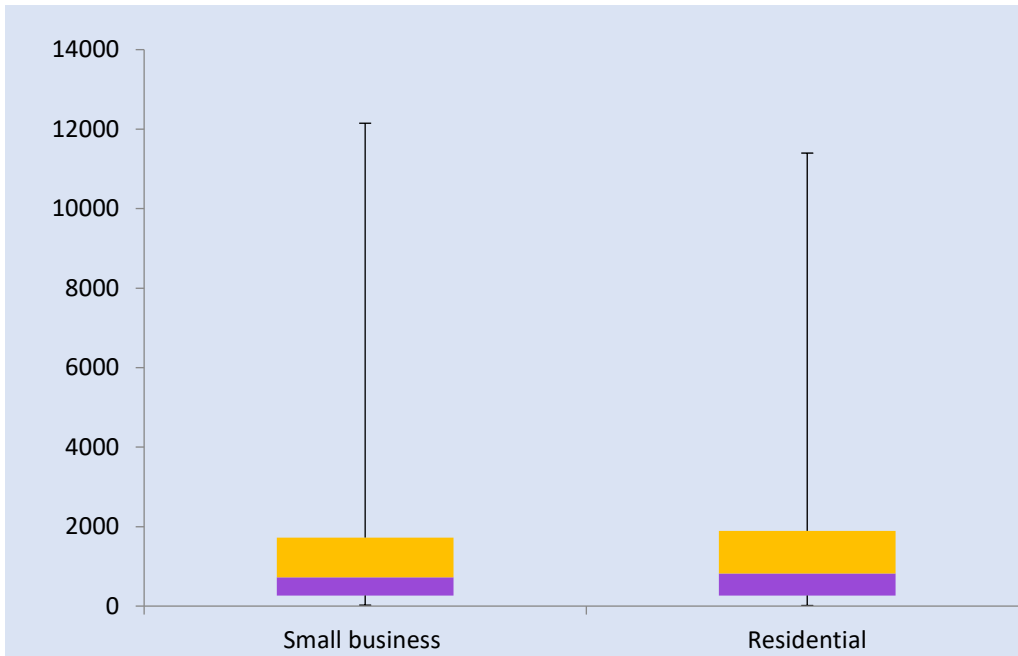
Figure 2: Customers who received a CSG payment as part of the resolution outcome in FY2018



In 2018, there was no case that reached the maximum cap of \$25,000 for a CSG payment. For complaints closed by the TIO in 2018, the maximum amount of CSG payment ranged between approximately \$11,000 - \$12,000.

As shown by **Figure 3**, there is little difference in the CSG payment amounts for a small business or residential customer across the 25th percentile, median and 75th percentiles for cases closed in 2018.

Figure 3: Range of CSG payments by 25th, median and 75th percentiles in FY2018



Note: **Figure 3** does not include a representation for not for profit customers due to the very small number of cases closed.

Appendix B: TIO complaints involving Priority Assistance customers

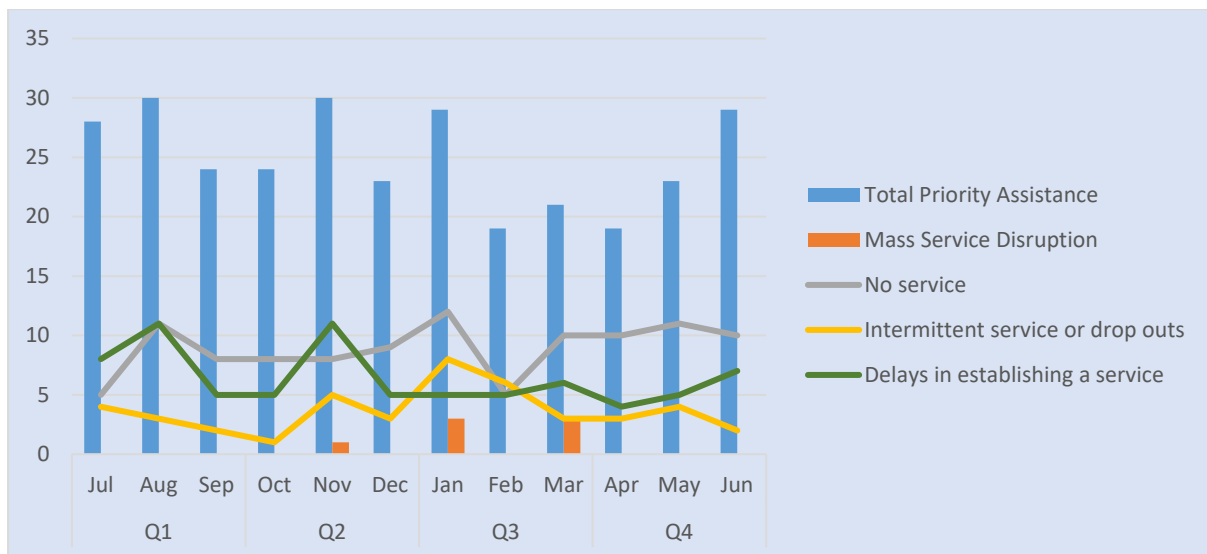
In financial year 2018, the TIO received over 300 new complaints from priority assistance customers. This equates to on average 70 - 80 new priority assistance complaints per quarter, reflecting an increase from around 25 – 30 new priority assistance complaints per quarter during financial years 2012 – 2014.

Figure 4 illustrates the total number of priority assistance complaints and the proportion of these that also involved:

- a major incident or mass service disruption (**MSD**);
- no service;
- delays in establishing a service;
- intermittent services or drop outs.

It should be noted the several months leading up to and during the summer period involved complaints where there priority assistance customers complained during a declared MSD event.

Figure 4: New priority assistance complaints to the TIO in FY2018



Appendix C: How to understand the TIO's complaints data

This Appendix C covers:

- The TIO's dispute resolution service
- Changes to recording complaint issues from 1 July 2017
- Complaints we handle
- About us

The TIO's dispute resolution service

The TIO provides access to justice for consumers of telecommunications services by offering an independent, fair and accessible dispute resolution service.

Providers of telecommunications services are required to join and comply with the TIO scheme.¹⁶ This means implementing a decision of the Ombudsman or following the Ombudsman's direction.

For a complaint to be within jurisdiction,¹⁷ the complaint must be about a provider that is a current scheme member.¹⁸

The membership base of over 1,600 members comprises telecommunications retail service providers, wholesalers and network operators.

Residential consumers, small business and not for profit organisations Australia-wide can escalate their complaint to the TIO if they remain dissatisfied with their provider's response, or the way in which their provider is handling their complaint.

The first step in the dispute resolution process involves referring the complaint to an escalation point at the provider. The referral facilitates resolution in the order of 90 per cent of cases because of the work done by the TIO staff in listening and clarifying the facts with the consumer, informing them of their rights and obligations having regard to relevant consumer laws and industry codes, and setting expectations by providing an impartial assessment of the resolution options.

If the consumer returns to the TIO because the complaint was not resolved by referral, the case progresses to conciliation or investigation. Some cases are resolved by a mutually agreeable settlement facilitated by the case officer and other cases by an assessment of the issues in dispute leading to a recommended fair and reasonable outcome. Appeals against the decision in the assessment are reviewed by a more senior officer or the Ombudsman.

When considering the complaint, the TIO will have regard to the law, good practice and what is fair in the circumstances.¹⁹

The TIO can identify as a systemic issue certain matters affecting a number or class of consumers and take action to reduce the consumer detriment. The approach to systemic issues is to bring the

¹⁶ *Telecommunications (Consumer Protection and Service Standards) Act 1999*, sections 128 and 132

¹⁷ *Telecommunications Industry Ombudsman Terms of Reference* (version published on 25 October 2017), clause 1.5. See: https://www.tio.com.au/_data/assets/pdf_file/0019/251443/TELECOMMUNICATIONS-INDUSTRY-OMBUDSMAN-TERMS-OF-FINAL-OCTOBER-2017.pdf

¹⁸ As for note 17, clause 2.3; and the *Telecommunications Industry Ombudsman Members Listing*: <https://www.tio.com.au/members/members-listing>

¹⁹ As for note 17, clause 1.5

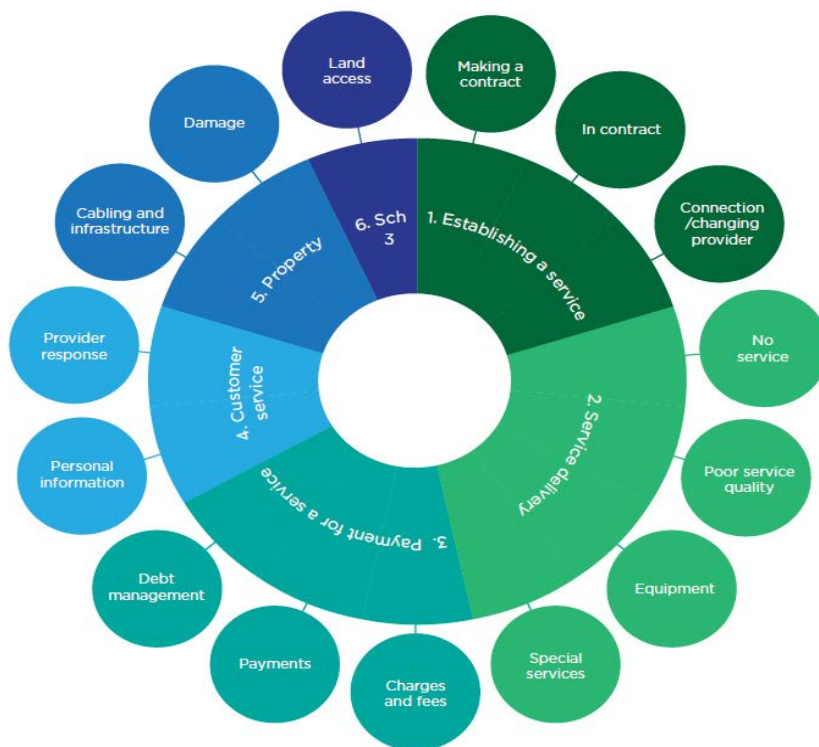
matter to a provider's attention in order to remediate the problem or to investigate and publish our findings to draw attention to industry-wide issues.²⁰

For example, the TIO recently published recommendations about steps providers can take to prevent consumers losing their telephone number when migrating to a service delivered over the NBN.²¹

Changes to recording complaint issues from 1 July 2017

On 1 July 2017, the TIO changed the way it captures and records the issues consumers raise in complaints.

Our recording of the issues raised in complaints is now based on six broad categories that follow the lifecycle of the residential or small business' customer relationship with their provider.



For example complaints about:

- *establishing a service – in contract* - may relate to issues about 'requesting to change the account holder' or the consumer saying they are 'not liable for the contract'.
- *service delivery – equipment* – may relate to issues about the mobile phone handset, modem or other device being 'unsuitable' or 'faulty'
- *payment for a service – charges and fees* – may relate to issues about 'mobile premium service' charges, 'technician fees' or 'roaming charges'
- *customer service – provider response* – may relate to a 'missed appointment', 'rudeness' or 'no or delayed action'.

²⁰ As for note 17, clause 5; and the Telecommunications Industry Ombudsman's Complaints Handling Procedures on systemic issues. See: <https://www.tio.com.au/about-us/policies-and-procedures/systemic-problem-investigation>

²¹ Telecommunications Industry Ombudsman, *Systemic Insight: Loss of telephone numbers during migration to the NBN (18 July 2018)*. See: <https://www.tio.com.au/publications/news/systemic-insight-loss-of-telephone-numbers-during-migration-to-the-nbn>

As part of our change in recording approach, we reduced our complaint issues ‘keywords’ from 128 to 74 to drive greater consistency in their application and interpretation. When we record a complaint, it may involve more than one issue or ‘keyword’.

We also changed our categorisation of the service delivery type for each complaint.

We now record complaints against one of five service categories: phone, mobile, internet, multiple and property.

We have a separate category for recording land access disputes.

The changes mean our complaints data will more accurately reflect the description of complaints given by residential consumers and small businesses; and make it easier to see the issues facing the telecommunications industry, helping providers improve the delivery of phone and internet services.

Complaints we handle

The TIO handles residential consumer, small business and not for profit complaints about our members.²²

About us

The Telecommunications Industry Ombudsman Ltd was established in 1993, and is a company limited by guarantee.

The *Telecommunications (Consumer Protection and Service Standards) Act 1999* requires providers in the telecommunications service supply chain to be a member and comply with the TIO scheme.

Members of the TIO include businesses or individuals who are carriers or provide carriage services.

Carriage service providers supply standard telephone services, public mobile telecommunications services or carriage services that enable consumers to access the internet, including services provided by intermediaries who arrange for the supply of these services.

Carriers are owners or operators of a telecommunications network unit that supplies telecommunications services to the public.

A carrier must hold a licence issued by the ACMA and as a condition of that licence comply with the land access regime in the *Telecommunications Act 1997 (Schedule 3)*.²³

The land access regime provides for the TIO to determine a landowner or occupier’s dispute about a carrier seeking to enter land if the carrier has not been able to resolve the dispute. Entry onto land may be for the purposes of deploying certain types of prescribed telecommunications network infrastructure. More information about how the TIO determines land access disputes is set out in our *Guideline*.²⁴

²² As for note 17, clause 2.3; and the *Telecommunications Industry Ombudsman Members Listing*: <https://www.tio.com.au/members/members-listing>

²³ See also: *Telecommunications (Low-impact Facilities) Determination 2018*; *Telecommunications Code of Practice 2018*

²⁴ *Telecommunications Industry Ombudsman, Guidelines on the Installation and Maintenance of Low-Impact Facilities* (22 June 2018). See: https://www.tio.com.au/_data/assets/pdf_file/0019/170623/Land-Access-Guidelines-2018-Revision.pdf