

Telecommunications Industry Ombudsman submission to the CAANZ consultation on *Australian Law review: Clarification, simplification and modernisation of the consumer guarantee framework*

Introduction from the Ombudsman, Judi Jones

As the Telecommunications Industry Ombudsman, I welcome reforms to give greater clarity and certainty to the application of consumer guarantees.

When handling complaints, my office considers applicable laws (including the economy-wide consumer safeguards offered by the *Australian Consumer Law*, and other specific telecommunications safeguards), good practice, and what is fair and reasonable in the circumstances.¹

This submission responds to Chapter 2 *Australian Consumer Law Review: Clarifying the consumer guarantees remedies* in Consultation Regulation Impact Statement.

It covers:

1. The Telecommunications Industry Ombudsman's support for reforms to clarify the remedies for failure to meet consumer guarantees
2. Complaints about equipment to the Telecommunications Industry Ombudsman

Part 1: The Telecommunications Industry Ombudsman's support for reforms to clarify the remedies for failure to meet consumer guarantees

The Telecommunications Industry Ombudsman supports reforms to clarify remedies for failure to meet the consumer guarantees.

In particular, we support the proposed reforms to amend the *Australian Consumer Law (ACL)* for when goods:

- fail within a short period of time (*Option 2*, for problem 1);
- have multiple non-major failures (*Option 2*, for problem 2).

We support these reforms because we continue to see inconsistent responses by telecommunications service providers to complaints involving consumer guarantees.²

We receive complaints from consumers who have purchased a smart phone or mobile handset bundled with a 24 month phone contract for connection services, and there is an issue with the handset.

We may also receive complaints from consumers who purchase other types of equipment (e.g. wifi dongles, modems, routers, tablets and landline handsets) from their retail service provider to access a connection service.

Part 2 of this Submission provides information on the number of consumers who complained about equipment issues to our office in the six month period between 1 July – 31 December 2017.³

¹ When handling consumer complaints, the Telecommunications Industry Ombudsman considers relevant laws, best practice and what is fair and reasonable in the circumstances: *Telecommunications Industry Ombudsman Terms of Reference* (25 October 2017), clause 1.5 (See: <http://www.tio.com.au/about-us/terms-of-reference-and-company-constitution>)

² Telecommunications Industry Ombudsman, Submission to the *Australian Consumer Law Review Interim Report (October 2016)*, 23 December 2016, 3 – 5 (See: http://www.tio.com.au/data/assets/pdf_file/0013/234040/March-2017-TIO-Submission,-Review-of-ACL-Interim-Report.pdf)

³ **Note:** The Telecommunications Industry Ombudsman does not handle complaints involving equipment issues where the telecommunications service provider resolves the complaint to the consumer's satisfaction: As above for note 1, clause 2.5

In the cases we see we observe that complainants tend to feel they have:

- no option other than to accept a refurbished or repaired phone (or other equipment), even though they expected to receive a new replacement when a defect presents within the first few months of their service contract;
- been unfairly locked into a contract that requires them to make payment.

If the status quo under Option 1 remains (even with guidance developed by ACL regulators for consumers), we anticipate we will continue to see inconsistent industry responses to complaints and consumers feeling they have been treated unfairly.

1.1 Failure within a short period of time

The Telecommunications Industry Ombudsman supports proposed Option 2 to specify in the *ACL* a short period of time (30 days) within which a consumer has a right to reject and choose a refund or replacement without having to prove a major failure.⁴

If this reform proceeds, it could give consumers a *dead on arrival safeguard* that could enhance a consumer's ability to assert their right to a replacement directly with their provider and, also be easily applied by our service when handling complaints about equipment issues.⁵

In the cases we handle involving faulty mobile handsets (or other telecommunications equipment), we see:

- the consumer reports a latent defect which renders the handset (or other equipment) unusable (but does not involve a product safety issue) within 30 days of the start of the consumer contract;
- the telecommunications retail service provider offers a refurbished or repaired mobile phone to replace the defective handset, for example if the mobile phone screen goes black and no calls can be made;
- while the consumer may be offered a new handset if they immediately report it was 'dead on arrival' or even within a month of arrival, industry's interpretation of *major failure* is inconsistent such that a consumer will rarely be able to choose which remedy they want (repair, refurbished phone or new replacement).

1.2 Multiple failures (Problem 2)

The Telecommunications Industry Ombudsman supports proposed Option 2 to clarify in the *ACL* that multiple non-major failures can amount to a major failure.⁶

We consider this reform could complement proposed Option 2 for failure within a short period of time, especially if the consumer initially agrees to repair as their preferred remedy.

This reform could prevent consumers from getting stuck in a *cycle of repair*.

In the cases we handle involving faulty mobile handsets (or other telecommunications equipment), we see complaints involving a *cycle of repair* where a refurbished phone continues to be returned for repair, but the fault remains and the customer is not provided with an interim or new handset. During this time, the customer may be required to pay connection service fees and charges under their contract, even though they do not have a functioning mobile phone (or other equipment) to access the service.

We agree with the reasoning of CAANZ for not prescribing a threshold for the number of failed repairs under proposed Option 3.⁷

⁴ CAANZ, Consultation Regulation Impact Statement Chapter 2, *Australian Consumer Law Review: Clarifying the consumer guarantees remedies*, 12 – 21

⁵ As above for note 1

⁶ As above for note 4, 32 – 34

⁷ As above for note 4, 34 – 36

Part 2: Complaints about equipment to the Telecommunications Industry Ombudsman

For the period 1 July – 31 December 2017, the Telecommunications Industry Ombudsman received a total of 84,914 complaints from residential and small business consumers, as well as not-for-profit organisations.⁸

Of the total number of complaints received, 2,957 complaints (almost 3.5%)⁹ involved issues or problems with equipment (or goods) necessary to access a telecommunications service.¹⁰

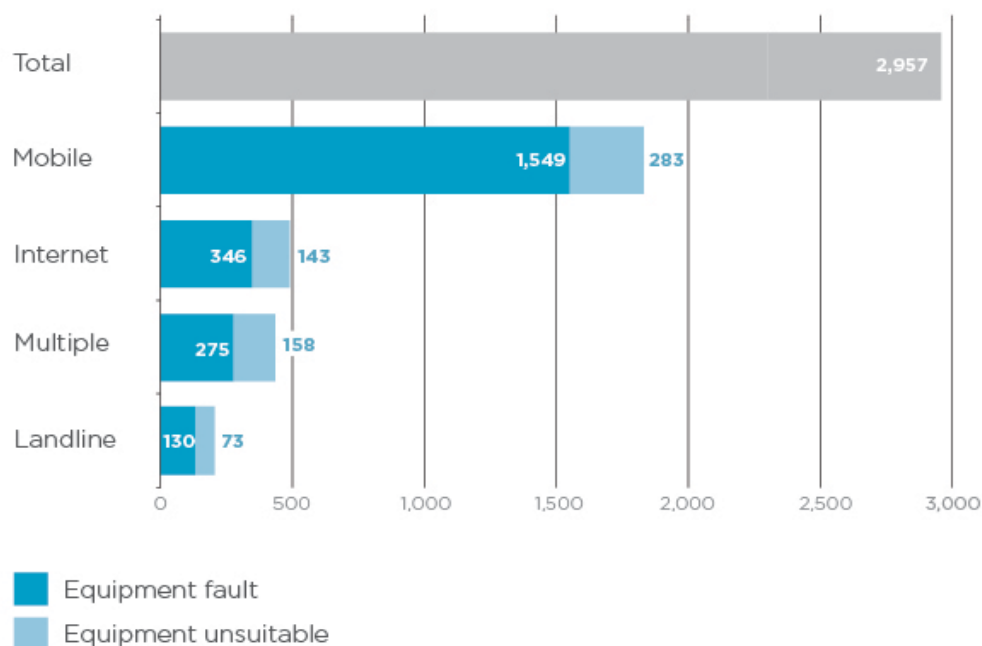
Complaints about equipment are typically made by residential consumers (i.e. 2,632 or almost 90% of all equipment complaints).¹¹

Graph 1 below shows the breakdown of equipment complaints by the type of telecommunications service (including more than one or 'multiple' services) delivered, and whether the consumer complained the equipment had a 'fault' (e.g. was not of acceptable quality) or was 'unsuitable' (e.g. was unfit for purpose).

Over 50% of equipment complaints to the Telecommunications Industry Ombudsman were about mobile phone handsets or smart phone devices, with the remainder about other types of equipment, such as wifi dongles, modems, routers, tablets and landline handsets.

The number of complaints about mobile handsets could in part reflect the growing popularity of the mobile phone and a growing number of Australians (33%) choosing to replace their landline service with a mobile only phone service.¹²

Graph 1: Complaints about equipment to the Telecommunications Industry Ombudsman (July – December 2017)



Note: On 1 July 2017, we changed the way we capture and report complaints to more accurately reflect the description of complaints given by residential and small business consumers. This means the complaints numbers in Graph 1 cannot be compared with the numbers in our 23 December 2016 submission to the *Australian Consumer Law Review Interim Report*.

⁸ Telecommunications Industry Ombudsman, *July – December 2017 Six Month Update*, 9-10 (See: http://www.tio.com.au/data/assets/pdf_file/0003/254937/Telecommunications-Industry-Ombudsman-Six-Month-Update-Jul-to-Dec-2017.pdf)

⁹ As above for note 5, 10

¹⁰ **Note:** The Telecommunications Industry Ombudsman only handles complaints about equipment, when the equipment is necessary to access the telecommunications service. Complaints about other types of telecommunications equipment are referred to the complaints handling service offered by the relevant State or Territory ACL regulator (e.g. Consumer Affairs Victoria): As above for note 1, clauses 2.7(a)-(b) and 2.10(e)

¹¹ As above for note 5, 12

¹² ACCC, *Communications Sector Market Study Final Report* (April 2018), 20 (See: https://www.accc.gov.au/system/files/Communications%20Sector%20Market%20Study%20Final%20Report%20April%202018_0.pdf)