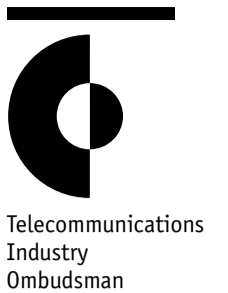


Providing free, independent,  
just, informal and speedy  
resolution of complaints

# TIO talks



Print Post Approved PP381667/00356

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## Natural disasters and extreme weather delay landline repairs, connections

Service providers claim exemptions from performance standards for circumstances beyond their control

Twenty-three service providers have notified the TIO about exemptions to complying with legislative timeframes to connect or repair landline services in the first nine months of 2012-13.

Required repair and connection times for landlines are set out in the *Customer Service Guarantee (CSG) Standard*. Depending on the remoteness and size of a place where a repair or a connection is needed these times can be from two to 20 working days.

If a provider does not repair a fault or connect a new service within those times, it may have to pay a consumer a small amount of compensation starting at \$14.52 for residential customers and \$24.20 for business customers per working day. However, when natural disasters or extreme weather cause problems for many consumers in an area, providers can claim an exemption from the CSG Standard. These are known as Mass Service Disruptions (MSDs). In some cases, the extent of the disaster can be such that the provider might claim an exemption because it has to move staff or equipment from a non-affected area to restore services somewhere else.

Providers must tell their affected customers about an MSD either individually or by publishing a notice in a newspaper. They must also forward those notices to the TIO and the Australian Communications and Media Authority.

According to the CSG standard, resellers must also do this, even if their wholesaler has already published a notice. We have been actively reminding providers of these obligations over the last year.

There have been 585 MSDs declared by 23 providers in Australia so far in the 2012-13 financial year — almost 100 more than for all of 2011-12. Some of those exemptions were extended up to four months and were applied to large or densely populated areas, including capital cities.

For example, an exemption that covered metropolitan Melbourne and Western Victorian districts was declared from 8 to 29 March, and extended to 31 May. The disruption to services was attributed to the redeployment of technicians to service flood-affected areas in New South Wales and Queensland.

Another MSD that covered Metropolitan Sydney, Greater Sydney, Hunter, Central Tablelands and Illawarra districts in New South Wales was declared due to heavy rains and flooding from 29 January to 1 March. It was extended to 3 May.

Tasmania has also been covered by exemptions, one due to the effects of bushfires in early January. A more recent exemption was declared for the whole state due to damaging winds.

If a consumer calls us about a fault or connection problem directly caused by an MSD-related issue, there may be limits to how we can help. We will give consumers information about

the MSD, and tell them to contact us again if their service isn't repaired or connected after the exemption expires.

If the MSD doesn't comply with the standard or the consumer has other issues they are calling us about, we can generally deal with the complaint. For example, we will look into complaints about missed appointments, or about providers asking for payment for services that consumers couldn't use at all.

There were 1,114 new complaints made in January-March 2013 about faulty landlines that were fully unusable — almost double the number we received the previous quarter.

Telstra, as the universal service provider, has an obligation to provide alternative services to its Priority Assistance Customers even when an MSD is declared. Priority Assistance Customers are people with diagnosed life-threatening conditions that need access to a working landline service.

"I am aware of the frustration that consumers experience when they have a delay in getting a service repaired or connected," Ombudsman Simon Cohen said. "However, when there are circumstances beyond any company's control, such as a natural disaster, it may be unreasonable or unrealistic to hold a provider to a performance standard such as the CSG."



Areas covered by service exemptions at time of publication.  
Most of these expire in early June.

A provider must tell all possibly affected consumers about a disruption that exempts it from the CSG Standard. It can do this directly in writing or by publishing a notice in a daily newspaper available where the consumers live, including:

- reasons for the exemption
- areas that may be affected
- number of services that may be affected
- range of telephone numbers that may be affected
- the consumer's right to dispute the exemption, first to the provider then to the TIO, if dissatisfied.

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## Ombudsman's message



The Australian summer often brings real challenges to telecommunications companies in connecting and repairing services — especially landlines — across Australia. Floods, storms and bushfires can do substantial damage to telecommunications infrastructure

In this edition of *TIO Talks*, we give information about Mass Service Disruptions (MSDs) declared by telecommunications companies across Australia to respond to these natural disasters. Customers have been told connections or repairs to landline services will not be made in the timeframes required by the *Customer Service Guarantee Standard*. MSDs have also been declared in areas from where providers have advised they need to redeploy technicians.

We are aware of the impact of these MSDs, especially when consumers contact us to complain about the delays. Fault and connection complaints to the TIO for landline and internet services are substantially up on previous quarters.

Sometimes, there is very little we can do to assist these consumers. We can provide information about the MSDs, as each notice has to be sent to the TIO. We will also ask the consumer to contact us again if their service is not fixed after the MSD ends. And we will look into complaints about broken promises (for example, missed appointments), or where a consumer complains a provider has not acted fairly (for example, by asking them to pay for an unusable service).

Another impact of these natural disasters has been an increase in demand for our service, especially since February 2013.

While we have worked hard to manage this demand, some consumers are waiting too long for us to deal with their telephone call or online complaint. I fully understand the frustration and inconvenience this can cause, and I am sorry for it. We have a range of initiatives in place to reduce this impact, including more staff, streamlined processes and better communications with consumers and service providers.

In this edition of *TIO Talks* we also announce an increase in the time allowed for consumers to make complaints. From July 1 2013, consumers will be able to come to us within two years of becoming aware of a problem, and within six years in some circumstances. While it is preferable for a consumer to complain in a timely way, there are many reasons why a complaint may not be made early. Our review of out-of-time complaints made to the TIO showed that the consumers who commonly made late complaints to us were those with default listings or those in financial hardship. These new rules will significantly increase the accessibility of our services.

**Simon Cohen**  
Ombudsman



## TIO time limits expanded

The TIO will be able to deal with complaints that a consumer became aware of up to two years before coming to us, up from the current one year time limit, from 1 July 2013

We will also have discretion to investigate complaints up to six years old, an increase from the current two years permitted under our constitution.

The extension of powers was approved by the TIO Board in January 2013, after a recommendation from the TIO Council and Ombudsman. The Board also consulted with the Federal Ministers for Communications and Consumer Affairs, who supported the changes.

The changes follow a review of the number and nature of enquiries we could not deal with because they were out of time. Our research found that several hundred complaints were out of jurisdiction each year because consumers had known about the complaints for longer than two years. Most issues in those complaints were about credit management.

"This change will increase the accessibility of the TIO to Australian telecommunications consumers," Ombudsman Simon Cohen said. "This includes, in particular, consumers who are in financial hardship and those who are the subject of default listings

and other credit management actions by telcos."

Complaints between two and six years old will only be investigated where it is fair and reasonable to do so. Some of the things we will consider before looking into these complaints are:

- the reasons for any delay in making a complaint
- the ongoing impact of the dispute, and
- any disadvantage to the telco as a result of the delay.

"The six-year jurisdiction aligns us with other national Ombudsman, small claims tribunals and lower court jurisdictions, and the two-year jurisdiction aligns us with the contract terms of most telco contracts," Mr Cohen said.

The expanded powers follow a review of the TIO's monetary limits last year that increased our complaint determination power to \$50,000 (up from \$35,000), and increased our recommendation power to \$100,000 (up from \$85,000).

It also follows the adoption of a more flexible approach to defining a small business in 2012.



# Complaint statistics January–March 2013

## Mobile complaints stable, landline and internet fault and connection complaints rise

The TIO received 40,021 new complaints between January and March 2013, an increase of 4.5 per cent when compared to the previous quarter, and a 23.3 per cent decrease when compared with the same period in 2012.

New complaints about mobile services increased by only 0.7 per cent to 22,918 in the quarter. This is 29.2 per cent less than at the same time in 2012, when 32,357 complaints were received.

Most issue types for mobile complaints have increased from the previous quarter, with the main categories being customer service, faults, and billing and payments. All categories, particularly complaint handling, have decreased compared to the same quarter in 2012.

Mobile coverage continues to be the most common issue in mobile complaints, with 6,502 new issues between January and March 2013. It was the most common concern in seven out of the top 10 complaint postcodes in Australia in that period. Issues about mobile coverage were 12 per cent fewer than in January–March 2012.

New complaints about landline and internet services have increased substantially this quarter, but both types of complaints are less than at the same time last year. Landline complaints increased 8.8 per cent to 8,671 and internet complaints increased 12.4 per cent to 8,041.

The main reason for these increases is complaints about fault and connection issues compared to the previous quarter.

This includes:

- internet services that are slow or drop out (up 18.8 per cent to 2,026 issues, and equal to the same period in 2012)

- landline or internet services that are fully unusable (up 58.9 per cent to 2,507 issues, and up 12.4 per cent on the same period in 2012)
- delays in connecting new landline and internet services (up 25.4 per cent to 2,339 issues, and up 40.1 per cent on the same period in 2012).

A reason for these increased fault complaints is the events that have led to Mass Service Disruptions declared in Australia from January 2013.

“It is good to see fewer complaints than 12 months ago, and in particular fewer complaint handling issues being raised by consumers,” Ombudsman Simon Cohen said. “However, the summer wet season has impacted on landline and internet services.”

This has been reflected in both increased fault complaints and an increased demand for TIO services since late February 2013. In the last week of February 2013, the TIO received more than 7,000 calls and emails, and registered almost 4,000 new complaints. This is close to 1,000 calls and emails more than our weekly average for the previous six months. The increase in demand has reduced the timeliness of some of our services.

“Some consumers have waited for a number of minutes before we have been able to answer their calls, and those who have emailed us have sometimes waited several weeks for us to assess their complaints,” Mr Cohen said. “There have also been significant delays with some matters requiring conciliation or investigation, which is regrettable. We are taking a range of steps to reduce the impact of these delays, including hiring more staff, improving our communications to consumers who are waiting, and implementing streamlined processes.”

### CASE STUDY

## Christoph's complaint

Christoph called us about a problem with his landline, which had been cutting off intermittently for two months.

He reported the fault once to his service provider and they repaired it. The problem happened again a few weeks later and he was told they would fix it in two days. After two days, he still had the same problems so he called his provider again.

The provider told him there was a Mass Service Disruption in the area where he lived and it would not be able to repair the service for two weeks. In the meantime, it offered to redirect all calls to his mobile. The redirection did not work.

Christoph told us his landline had not been fixed even after the disruption ended. He wanted the fault fixed and to know if he was entitled to any compensation under the *Customer Service Guarantee Standard (CSG)*.

During our conciliation of Christoph's complaint, the provider repaired the fault and offered to credit the bills they sent him during the time the service was not working. The provider told us that because they had declared a mass disruption, Christoph was not entitled to compensation.

We asked the provider if it had told consumers in Christoph's area about the disruption. The provider told us it hadn't published a notice in a newspaper or told consumers directly. This meant they did not follow the rules in the standard, and Christoph was entitled to some compensation, which we helped the provider work out.

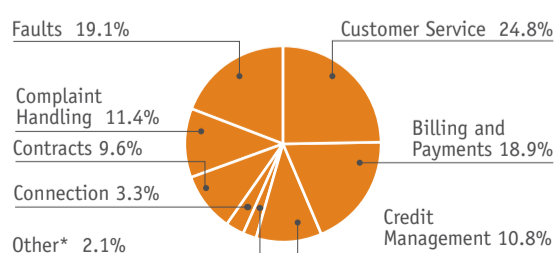
As a resolution, the provider fixed the fault on Christoph's landline, credited his bills for the time he could not use his service and gave him almost \$570 in CSG compensation.

Christoph was happy with this result and we closed the complaint.

## January–March 2013 at a glance

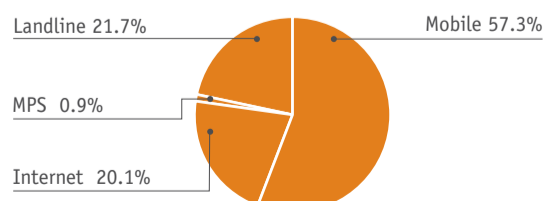
Quarters	New complaints Level 1, 2 and 4 Most new complaints are Level 1 cases where the TIO gives the service provider a final chance at resolving the case without further intervention by the TIO.	Investigations			Enquiries
		Level 2 Cases that are not resolved by referral, and where the TIO conciliates the outcome.	Level 3 Cases requiring further investigation including where the TIO provides advice about a fair outcome.	Level 4 Cases requiring a thorough and detailed investigation and may result in a decision or direction by the TIO.	
Apr-Jun 12	42,353	4,236	66	4	12,427
Jul-Sep 12	37,777	3,892	154	4	12,717
Oct-Dec 12	38,287	3,318	86	2	12,227
<b>Jan-Mar 13</b>	<b>40,021</b>	<b>3,909</b>	<b>102</b>	<b>3</b>	<b>10,831</b>
% change	4.5	17.8	18.6	50	-11.4

### New complaints – top issues January–March 2013



\* Includes: transfer, privacy, directories, land access, disability, phonecard and payphones.

### New complaints by service type January–March 2013



## Complaints by state January–March 2013

Mobile phone coverage was the most commonly reported issue from consumers in the postcodes with the most complaints per 1,000 people during January–March

Consumers who complain to the TIO generally have concerns about customer service and complaint handling. However, these issues are secondary to the main problem that they could not resolve with their telco.

Mobile coverage was the most commonly reported issue. Other issues included:

- the total of their bills
- inadequate information about contract terms.

The postcodes with the most complaints per population around Australia were mainly in Victoria and New South Wales.

The states with the most complaints per population were Victoria (2 complaints per 1,000), South Australia (1.9 complaints per 1,000) and New South Wales (1.9 complaints per 1,000).

From Australia as a whole, we received 1.8 complaints per 1,000 people.

### Top 10 postcodes Australia-wide

Postcode/place	New complaints	Complaints /1,000	Top issue
3000 Melbourne	107	5.2	Total amount of bill
2150 Parramatta	126	5.1	Mobile coverage
2160 Merrylands	128	3.9	Mobile coverage
2606 Chifley	30	3.7	Mobile coverage
2200 Bankstown	146	3.6	Mobile coverage
4215 Southport	140	3.1	Mobile coverage
3064 Craigieburn	166	3.1	Mobile coverage
3029 Hoppers Crossing	212	3.1	Mobile coverage
5113 Elizabeth Downs	57	3.1	Drop-outs
5095 Mawson Lakes	54	3	Contract terms

### Western Australia

Total new complaints: 2,879 | Complaints per 1,000: 1.3

Postcode/place	New complaints	Complaints /1,000	Top issue
6064 Alexander Heights	57	1.9	Mobile coverage
6061 Mirrabooka	59	1.8	Total amount of bill
6030 Clarkson	63	1.7	Mobile coverage
6112 Armadale	66	1.6	Mobile coverage
6027 Joondalup	67	1.6	Mobile coverage

### Northern Territory

Total new complaints: 197 | Complaints per 1,000: 1

Postcode/place	New complaints	Complaints /1,000	Top issue
810 Coconut Grove	28	0.9	Mobile coverage

### Queensland

Total new complaints: 6,670 | Complaints per 1,000: 1.6

Postcode/place	New complaints	Complaints /1,000	Top issue
4215 Southport	140	3.1	Mobile coverage
4220 Burleigh Heads	83	2.9	Mobile coverage
4217 Bundall	98	2.8	Mobile coverage
4211 Nerang	134	2.4	Mobile coverage
4053 Stafford	95	2.3	Total amount of bill

### New South Wales

Total new complaints: 13,011 | Complaints per 1,000: 1.9

Postcode/place	New complaints	Complaints /1,000	Top issue
2150 Parramatta	126	5.1	Mobile coverage
2160 Merrylands	128	3.9	Mobile coverage
2200 Bankstown	146	3.6	Mobile coverage
2148 Blacktown	175	3	Mobile coverage
2170 Casula	264	2.8	Mobile coverage

### Australian Capital Territory

Total new complaints: 569 | Complaints per 1,000: 1.6

Postcode/place	New complaints	Complaints /1,000	Top issue
2606 Chifley	30	3.7	Internet usage charges
2914 Amaroo	39	2.8	Mobile coverage
2913 Ngunnawal	54	2.1	Mobile coverage
2615 Melba	79	1.8	Mobile coverage
2612 Braddon	25	1.7	Mobile coverage

### South Australia

Total new complaints 3,051 | Complaint per 1,000: 1.9

Postcode/place	New complaints	Complaints /1,000	Top issue
5113 Elizabeth Downs	57	3.1	Drop-outs
5095 Mawson Lakes	54	3	Contract terms
5114 Blakeview	81	2.8	Mobile coverage
5112 Elizabeth	50	2.7	Mobile coverage
5108 Salisbury	95	2.5	Mobile coverage

### Tasmania

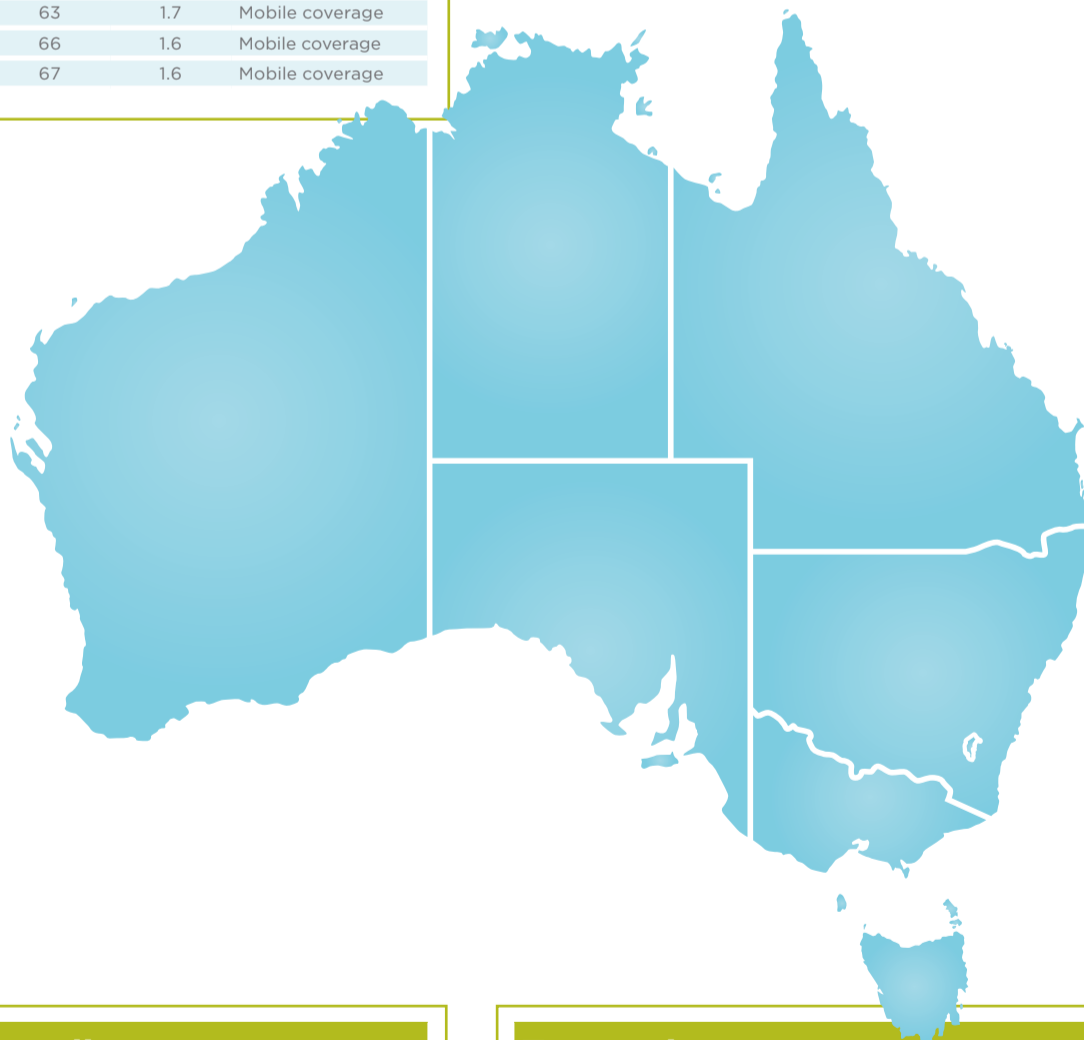
Total new complaints: 544 | Complaints per 1,000: 1.1

Postcode/place	New complaints	Complaints /1,000	Top issue
7010 Glenorchy	27	1.7	Financial overcommitment
7250 Launceston	49	1	Contract terms
7310 Devonport	26	1	Total amount of bill

### Victoria

Total new complaints: 10,405 | Complaints per 1,000: 2

Postcode/place	New complaints	Complaints /1,000	Top issue
3000 Melbourne	107	5.2	Total amount of bill
3064 Craigieburn	166	3.1	Mobile coverage
3029 Hoppers Crossing	212	3.1	Mobile coverage
3977 Cranbourne	178	2.6	Mobile coverage
3175 Dandenong	124	2.6	Total amount of bill





## TIO helps financial counsellors decipher the telco code

An insight into the TCP Code a benefit to consumers in financial hardship

Financial counsellors are learning about the telecommunications industry code and the rights and obligations of consumers thanks to training run by the TIO. We joined the Financial Ombudsman Service (FOS) and the Energy and Water Ombudsman Victoria (EWOV) for a codes training day for financial counsellors in April. The session hosted by Victoria's Financial and Consumer Rights Council (FCRC) was aimed at giving financial counsellors an overview of the banking, insurance, energy, water and telecommunications industry codes.

We also hosted an "Unlocking the Codes" session for financial counsellors at this year's External Dispute Resolution Conference in Sydney in May.

These events give us the chance to talk to financial counsellors about the TIO, how we use industry codes and what the Telecommunications Consumer Protections (TCP) Code says about financial hardship.

The updated TCP Code, which came into effect in September 2012, has new requirements for providers when dealing with consumers in financial hardship. According to the new code, a provider must:

- contact a customer who has broken a payment plan before trying to collect a debt or default list them
- respond to a consumer's request for financial hardship assistance within seven working days, and
- tell a consumer about their financial hardship policy when it is apparent to them that the consumer may need assistance, not only when the consumer requests it.

Rules carried over from the previous code still apply and require providers to:

- have a financial hardship policy that is easy for consumers to access



**Showing the "code cube" for financial counsellors were Shobini Mahendra and Jessica Sayer from TIO, Chris Stuart-Walker from Energy and Water Ombudsman Victoria, Ralph Haller-Trost from Code Compliance Monitoring Committee and Bernadette Pasco from FCRC.**

- offer flexible payment options and review payment plans if the consumer's circumstances change, and
- not collect debts while a payment plan is in place or being discussed.

We received 1,302 new complaints involving issues of financial hardship and payment plans between January and March 2013. The most common issue reported by consumers was that their provider refused to negotiate a payment plan.

### CASE STUDY

#### Patricia's complaint

**Patricia called us about a problem with a payment plan**

She told us she had asked her provider for a payment plan because, even though she accepted that the charges were correct, she couldn't afford to pay a \$1,100 bill by the due date. Her provider said that if she paid \$500 up front she could pay the rest off in \$100 monthly instalments. Patricia agreed to the plan and made the payments as promised, but her service was disconnected without warning.

Patricia told us that when she called her provider, she was told she would have to pay all outstanding charges to get her service reactivated. She argued that the payment plan was in place, but was told that the person who agreed to that payment arrangement should not have offered it in the first place. She said she was told that the person no longer worked for the provider.

Patricia told us that the provider had added late payment fees to each bill she received while on the payment plan and she disagreed with those fees.

When we conciliated Patricia's complaint, the provider offered to reconnect the service, reinstate her previous payment plan and waive the amount charged while her service was disconnected. However, it was not willing to waive the late payment fees because it said that the terms and conditions in Patricia's contract allowed them to charge those fees. Patricia said she had not been told that this was part of the contract.

Because Patricia and the provider could not reach an agreement, we investigated the complaint. The provider told us that the late payment fees were legitimate but it could not prove that it had warned Patricia that late fees would apply while she was on a payment plan. Because of this, we concluded the late fees were not fair and reasonable.

The provider offered to give Patricia a \$400 credit to cover all late payment fees in dispute. Patricia accepted the offer and we closed the complaint.

## TIO monitors misleading telemarketing practices

Consumers complain about unauthorised transfers

The TIO's Industry Improvement team has monitored 20 providers about misleading telemarketing practices in the past year. More than 950 consumers made complaints about being misled into transferring their services to those providers in that period.

Three providers have been referred to regulators for not improving their sales practices as a result of a TIO systemic investigation into these issues in the last year, while others have changed their sales tactics.

Consumers affected by this issue tell us that their services are transferred after they receive a call from a telemarketer who claims to be from the consumer's existing provider. Other consumers are told that by saying "yes", they agree to a discount or to have information sent to them.

These consumers do not realise that their service has been transferred until they receive a bill from the new provider. Some other issues that consumers report are:

- the new provider tries to transfer the service back after the consumer has returned to their original provider without the consumer's permission
- they are not given information about cooling off periods, as required by Australian Consumer Law, and
- the provider transfers the service without consent from the account holder.

The Industry Improvement team has been working with these providers to help them improve their sales practices. This includes recommending that providers amend their scripts so consumers are clear about which company they are calling from and to tighten up their transfer approval processes. Other telcos have terminated contracts with telemarketing companies involved in misleading practices.

If after an investigation we are not satisfied that the provider has tried to improve their practices, we may refer them to the Australian Communications and Media Authority or the Australian Competition and Consumer Commission.

Consumers who do not wish to receive cold calls can add their number to the Do Not Call Register at [www.donotcall.gov.au](http://www.donotcall.gov.au)

### CASE STUDY

#### Josephine's complaint

**Josephine called us about having her landline transferred without her permission**

She told us she was called two months earlier by a telemarketer who said he was from her provider, offering to move her service to a better plan. Josephine told him that the account was in her husband's name and they were not interested in moving to a new plan without seeing information about the offer in writing first.

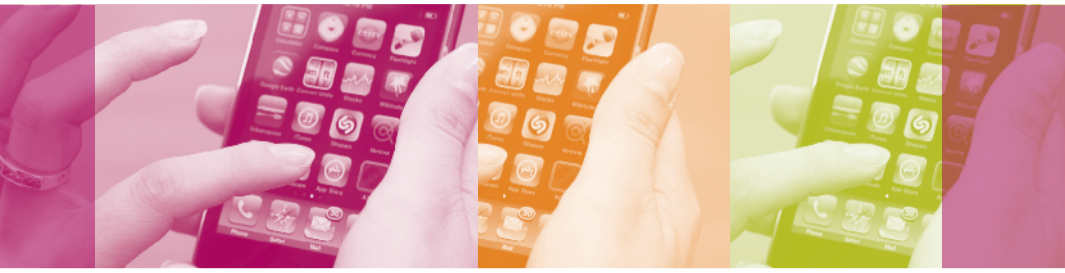
Instead of information about a new offer, Josephine got a letter in the mail from a provider she hadn't heard of, with information about a 10-day cooling off period for a new service. She called the number on the letter and discovered that her service had been transferred to this second provider and the account was now in her name.

Josephine told us that she managed to transfer the service back to her original provider, but the second provider transferred it back again. She told us that this happened twice and she was unable to get the second provider to cancel the service and stop claiming it back from her original provider. She also wanted the second provider to waive a bill they sent her as she had not given them permission to take her service in the first place.

We referred Josephine's complaint to the second provider. They transferred the service back to her original provider and waived the bill. But Josephine called us a month later when the second provider claimed the service again and sent her a new bill.

We conciliated the complaint, asking the provider to prove that they had proper authorisation to take Josephine's service, but the provider did not send any evidence to prove that they had her permission. Instead, it returned the service to Josephine's original provider and waived the second bill. They also confirmed that they had permanently cancelled her account with them and they would not contact her again.

Josephine accepted this resolution and we closed the complaint. We had noticed that other consumers had also experienced similar problems, and we raised these with the provider as a systemic issue. As a result, the provider has reviewed its telemarketing practices.



## Ombudsman issues interim direction

Provider direct debited more than \$600 in charges disputed by consumer

The TIO has issued an interim direction to a service provider for direct debiting more than \$600 and trying to collect a debt from a consumer who made a complaint to the TIO.

Ombudsman Simon Cohen issued the interim direction in April 2013 after the provider did not respond to three requests from the TIO to not collect the debt disputed by the consumer.

The consumer came to the TIO in January 2013 disputing a bill of more than \$500 after exceeding his internet allowance by three gigabytes. He disputed the excess charges because he said he had not been told by the provider that he had gone over his data allowance, and neither was it recorded by the online usage meter issued by the provider.

The consumer said that the provider could not explain how the excess usage was priced and he was unable to check if the charges were valid. Despite this, the provider charged the amount to his credit card. The consumer then asked his bank to reverse the charge and cancel the provider's direct debit authority.

As a result, the provider added an extra \$100 fee and continued to demand payment through its collections department even after the TIO twice requested it to stop in January. The provider then went on to debit more than \$600 from the consumer's credit card.

Providers cannot attempt to collect debts that a consumer disputes under the *Telecommunications Consumer Protections Code*. The TIO has the power to issue a legally binding interim direction to a provider that does not follow this rule.

The TIO's interim direction included telling the provider to refund the charges it had direct debited in April and stop demanding payment of the disputed charges.

The provider has reversed the charges since we issued the interim direction and has not demanded payment.

The TIO may refer providers that do not comply with interim directions to the Australian Communication and Media Authority.

## Excite Mobile deceived consumers: Federal Court

Conduct included setting up a fake resolutions department

A Federal Court judge has found Excite Mobile Pty Ltd used deceptive sales tactics and coercive debt collection methods toward consumers between 2009 and 2010.

The Australian Competition and Consumer Commission took Excite Mobile to court for behaviour that breached the *Trade Practices Act 1974*. The conduct that was found to be unlawful included setting up a fake complaints line resembling the TIO, making misleading legal threats to intimidate consumers into paying debts, and misleading consumers about the availability of mobile coverage in their area.

The court heard that Excite offered mobile phone services to consumers living in communities that had no mobile coverage. Most of the consumers who were cold called by Excite were on Centrelink payments.

The Court was especially critical of Excite Mobile's "day cap" mobile plan, which broke up consumers' monthly call allowances into a \$2.20 daily allowance. This meant they would start to run up excess usage charges after making only two phone calls and one text message.

In sales recordings heard by the court, telemarketers misrepresented the offer and ignored consumers' attempts to reject it. Justice Mansfield said Excite Mobile's marketing approach was "cynically indifferent to the interests of its potential customers."

Excite Mobile also charged consumers for returning handsets during cooling off periods and a handset insurance excess that was equivalent to the cost of the phone.

The court found that Excite set up a fake complaints line, "Telecom Industry Complaints," which misled consumers into thinking they were dealing with an independent dispute resolution body, when they were actually dealing with a related company of Excite Mobile.

Excite Mobile misled consumers by creating a fictitious debt collector, Jerry Hastings, who threatened consumers with legal action and repossession of all their belongings, "including children's toys." Staff from Excite Mobile pretending to work for Jerry Hastings then persuaded consumers to agree to payment plans, which were often deducted from Centrelink benefits.

The court judgement made findings about the involvement of Excite's Directors and another staff member in the contraventions of the *Trade Practices Act*.

Penalties for Excite Mobile, the directors and the other staff member have not yet been set, and are due to be decided at the end of May 2013.

## Consumer Protection bill presented in Parliament

A bill presented in Federal Parliament in March proposes to set standards and periodic reviews for the TIO

The *Telecommunications Legislation Amendment (Consumer Protection) Bill 2013* was presented in Parliament and was referred to two Senate committees.

Among the proposals of the bill are amendments to Part 6 of the *Telecommunications (Consumer Protections and Service Standards) Act 1999*, which deals with the TIO. The amended bill inserts new subsections that give the Minister discretion to determine standards to which the TIO must comply. The intent of these amendments is to set principles that underpin the TIO's operations, ensuring that it is consistent with other dispute resolution schemes and relevant to the telecommunications industry.

The proposed principles reflect the benchmarks for industry-based dispute resolution schemes. These principles are already part of the TIO Constitution: accessibility, accountability, independence, fairness, efficiency and effectiveness.

The bill also proposes the introduction of regular and independent reviews of the TIO every five years, and to make public those reviews and the responses by the TIO. This reflects the current requirement for regular reviews included in the TIO Articles of Association.

The proposed changes come about from recommendations in the 2012 review of the TIO by the Department for Broadband, Communications and the Digital Economy.

One of the Federal Parliamentary committees reviewing the bill is expected to hand down a report in June.

## REGULATOR CONSIDERS INTERNATIONAL ROAMING STANDARD

The Australian Communications and Media Authority's consultation continues

The TIO has submitted its views to the second round of consultation on the International Roaming Standard, undertaken by the Australian Communications and Media Authority (ACMA) in April.

The ACMA's second draft of the standard includes amendments that require:

- wholesale providers to share pricing information with retail providers
- mobile virtual network operators to give complete pricing information to consumers from 23 May 2016, with transitional obligations before that date, and
- providers to give clear information about tools that allow consumers to check usage.

New complaints to the TIO about roaming have decreased since April 2012. We received 472 complaints about mobile roaming in January-March 2013 compared to 1,087 at the same time last year.

Of the complaints received between January and March 2013, 35.4 per cent were for values between \$1,000 and \$5,000.



# What's happening

## LOL (Lots Of Learning) for tech savvy teens

TIO contributes to the development of student resource on mobile phone use

Ombudsman Simon Cohen joined the launch of a “virtual mobile phone” for school students developed by the Australian Securities and Investments Commission (ASIC). The virtual phone is part of a series of interactive activities that teaches students from years five to eight how to be smart mobile phone consumers.

The resource, launched on 7 May at Sydney's Holy Cross College, is part of its MoneySmart Teaching program and was developed with help from the TIO, the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and the Australian Mobile Telecommunications Association.

“It's never too early to learn about financial literacy and it is vitally important that young people learn to manage their mobile phone expenditure,” Mr Cohen said. “Smart phones allow people to run up significant bills quickly, so I commend ASIC for developing this resource.”

A screenshot of one of the modules in ASIC's virtual mobile phone



The resource was developed over a year with significant input from the TIO. We provided advice drawn from the complaints we receive and the *Telecommunications Consumer Protections Code*, updated in 2012.

ASIC is encouraging teachers and parents to check the activities and introduce them into their schools and homes. Activities are free to download and can be accessed at [teaching.moneysmart.gov.au](http://teaching.moneysmart.gov.au). They can be used on tablets and computers.

ASIC's multimedia activities on mobile phones are part of the MoneySmart Teaching program currently being taught in Foundation to Year 10 in schools across Australia.

The MoneySmart Teaching program is part of a Federal Government initiative to improve financial literacy in schools.

The virtual mobile phone consists of eight units for children to work through. They are:

- choosing a plan
- calls, messaging and browsing
- social media
- premium services
- mobile phone advertising
- security
- entertainment
- mobile credit.



Holy Cross Ryde students Michael Sciara and Joseph Nassif with Ombudsman Simon Cohen at the launch of the virtual mobile phone

## TIO works to raise awareness among new migrants

New migrants have been the focus of TIO outreach activities

Staff from Spectrum Migrant Resource Centre in Preston, Victoria, spoke to TIO staff in February about the challenges faced by their clients.

The talk was aimed at giving TIO staff a greater understanding of the issues faced by newly arrived migrants who may use our services. Spectrum works with migrants in the first five years of their residency in Australia.

New arrivals are often not familiar with Australia's commercial system and may not understand the financial consequences of entering into contracts for telecommunications services.

TIO officers also visited multicultural support workers to give them information about what recourse their clients have if they cannot resolve a problem with a telecommunications provider.

We spoke to Hume Multicultural Workers Network meeting in the northern Melbourne suburb of Broadmeadows in February. The meeting was attended by staff from the Department of Immigration, adult English teaching agencies, migrant resource centres, Victoria Police and local councils.

In March, we spoke to the Perth Multicultural Advisory Forum. We have attended most of these forums, convened in all Australian capital cities by the Department of Human Services.

While in Perth, we met with staff from the Department of Commerce and Western Australian Council of Social Services (WACOSS).

We returned to Perth in early May to the WACOSS Emergency Relief forum, which consists of nearly 300 agencies that provide services to people in financial crisis. We also spoke with ASIC Indigenous outreach workers, the state's financial counselling call centre and the West Australian Ombudsman's office.

The TIO partnered with the Energy & Water Ombudsman NSW, the NSW and Commonwealth Ombudsman's office to advise seniors attending the Royal Easter Show in Sydney in late March.

## SURVEY TO ASSESS AWARENESS AMONG INDIGENOUS CONSUMERS

TIO surveys workers in remote communities in five states

The TIO is surveying 29 remote communities in May to understand awareness of our service among Indigenous Australians. The survey will be conducted by the Shannon Company on behalf of the TIO. It will be aimed at organisations that work with Indigenous people in Remote Service Delivery communities in five states.

“We want to understand the needs of organisations that rely on us,” Ombudsman Simon Cohen said. “This survey is a first step to building our knowledge about Indigenous awareness of the TIO, and how we can best reach these communities with services and information.”

Through the work of our Outreach and also our Indigenous Liaison teams, we have learned that telecommunications debts can mean significant hardship for many Indigenous consumers.

“This initiative will provide the TIO with valuable information about the specific telecommunications issues faced by remote communities,” Danny Sherman of the TIO's Indigenous Liaison team said. “It will assist us in developing key messages to increase awareness about consumer rights including the TIO.”

“Ultimately, the desired impact of the initiative is to increase the accessibility of the TIO to Indigenous consumers,” Danny said.

Remote Service Delivery is a partnership between local, state and federal governments that works in 29 communities in Western Australia, Northern Territory, Queensland, New South Wales and South Australia.

According to figures from the Australian Bureau of Statistics, more than 60 per cent of Indigenous people living in remote areas use prepaid mobile phones.

## Events calendar

The TIO plans to attend the following key events as part of our outreach program to consumers. The outreach program spreads messages about our work and how we can help resolve complaints between consumers or small businesses and their telecommunications provider. Upcoming TIO Board and Council Meetings are also listed.

Event	Date*	Location	Description
TIO Council meeting	18 June	Melbourne, Vic	Regular meeting of TIO governing body
Bring Your Bills Day	20 June	Frankston, Vic	Community event
Department of Human Services Multicultural Advisory Forum	20 June	Melbourne, Vic	Cross-agency forum for migrants
TIO Board meeting	25 June	Melbourne, Vic	Regular meeting of TIO governing body
TIO Board meeting	24 July	Melbourne, Vic	Regular meeting of TIO governing body
National Association of Community Legal Centres conference	24 July	Cairns, Qld	National community legal centres conference
Bring Your Bills Day	25 July	Cairns, Qld	Community event
Business Educators Association of Queensland conference	26 July	Brisbane, Qld	Conference for Queensland secondary school teachers
TIO Council meeting	20 August	Melbourne, Vic	Regular meeting of TIO governing body
South Australian Financial Counsellors Association conference	26 August	Adelaide, SA	State financial counsellors conference
Society of Consumer Affairs Professional (SOCAP) conference	28 August	Sydney, NSW	Consumer conference
Financial and Consumer Rights Council conference	11 September	Ballarat, Vic	State financial counsellors conference
Financial Counselling Association of NSW conference	15 September	Wollongong, NSW	State financial counsellors conference
TIO Board meeting	18 September	Melbourne, Vic	Regular meeting of TIO governing body
Financial Counsellors Association of WA conference	17 October	Perth, WA	State financial counsellors conference
Bring Your Bills Day	17 October	Geelong, Vic	Community event
TIO Council meeting	22 October	Melbourne, Vic	Regular meeting of TIO governing body
Money Workers Association of the Northern Territory conference	6 November	Darwin, NT	State financial counsellors conference
Federation of Ethnic Communities Councils of Australia conference	6 November	Gold Coast, Qld	Multicultural conference
Annual general meeting	20 November	Melbourne, Vic	Annual meeting of TIO members
TIO Board meeting	20 November	Melbourne, Vic	Regular meeting of TIO governing body

\* dates are subject to change

## Report of TIO Council January-April 2013

The TIO Council met in February, March and April 2013. During the first months of this year, Council has considered a range of matters. These include:

- finalisation of required approvals and review of implementation plans for proposed change to the TIO's time limits jurisdiction
- review of the monetary limits for the TIO jurisdiction
- review of recently conducted employee engagement surveys and preparations for member surveys to be conducted by the TIO
- initiation of a program to redraft the current TIO Constitution into clearer language to improve its readability for consumers, members and stakeholders
- providing input to and reviewing the recommendations of the joint TIO Board/Council Transition Committee regarding the proposed unitary governance arrangements for the TIO
- review of the proposed TIO budget and programs for 2013-14
- review of the TIO Strategy implementation progress, and
- receiving regular reports and conducting site visits with regard to the roll out of the National Broadband Network so as to better understand matters related to both the implementation and steady state operation of the network.

The Council received regular reports from:

- the Ombudsman on a range of policy, procedure, operational and financial matters
- the Council Constitution Sub-Committee on matters including the Constitution redraft, land access jurisdiction, monetary limits jurisdiction, and
- the joint TIO Board/Council Transition Committee regarding progress on the consultation activities and governance design

During the period, Council was pleased to confirm that its recommendation to reappoint the current Ombudsman for a three-year term was approved by the Board. Council was also pleased to confirm the reappointment of Ms Teresa Corbin and Dr Paul Harrison.

**Andrew Dyer**

Chairman of Council

## Board appointments

Steve Dalby, Chief Regulatory Officer at iiNet, was elected for another term as the ISP representative at the TIO's annual general meeting on 21 November 2012.

Ravi Bhatia, former CEO of Primus, did not seek a further term on the Board as non-ISP representative. Iain Falshaw, Managing Director of ACN Pacific, was elected as the Board's non-ISP representative. He attended his first Board meeting on 30 January 2013.

Mr Falshaw has been Managing Director of ACN Pacific since January 2008, and a Director since the company's inception in 2004. He has more than 22 years of experience in the telecommunications industry in a number of international markets including New Zealand, UK, USA, Malaysia and Singapore. He is also a director of the Direct Selling Association of Australia.



**New TIO Board member Iain Falshaw**

## How to contact the Telecommunications Industry Ombudsman

Telephone and internet companies must have an opportunity to address a complaint before the TIO will become involved.

FREECALL	1800 062 058 (calls from mobiles will be charged at the applicable rates – if you are calling from a mobile phone, you can ask us to call you back). <b>Opening hours: 9am to 5.30pm AEST Monday to Friday</b>
FREEFAX	1800 630 614
INTERPRETER SERVICE	131 450
WEB	www.tio.com.au
POSTAL	PO Box 276 Collins Street West VIC 8007
EMAIL	tio@tio.com.au

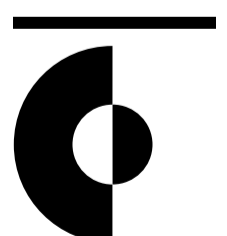


If you are deaf or have a hearing or speech impairment, please contact us through the National Relay Service:

- TTY users phone 1800 555 677 then ask for 1800 062 058
- Speak and Listen users phone 1800 555 727 then ask for 1800 062 058
- Internet relay users connect to the NRS (www.relayservice.com.au) and then ask for 1800 062 058

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