

16 May 2013

Manager
New Communications Issues and Safeguards
Australian Communications and Media Authority
PO Box 13112,
Law Courts
Melbourne Vic 8010
email: premium-voice@acma.gov.au



**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

Dear Sir/Madam

Review of the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1)

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with this opportunity to contribute to the review of the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1) (the Determination).

We enclose our submission in response to ACMA's Consultation Paper. In this submission, we provide the following:

- (a) An overview of TIO complaints statistics
- (b) Specific issues about premium voice services that continue to generate new complaints to the TIO – including relevant case studies
- (c) Our view as to the ongoing value of the Determination and our recommendations for updating the Determination to ensure its continued effectiveness and relevance in protecting consumers.

If you require any further information, please contact David Brockman, the TIO's Executive Director – Industry, Community and Government, on 03 8600 8700.

Yours sincerely

Simon Cohen
Ombudsman

"... providing independent, just, informal and speedy resolution of complaints"

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

Website: www.tio.com.au
Email: tio@tio.com.au

Postal address:
PO Box 276
COLLINS ST WEST VIC 8007

Street address:
Level 3
595 Collins Street
MELBOURNE VIC 3000

Tel freecall*: **1800 062 058**
Fax freecall*: 1800 630 614
Telephone: (03) 8600 8700
Fax: (03) 8600 8797
TTY: 1800 675 692
*calls from mobile phones may incur charges



Telecommunications Industry Ombudsman

Telecommunications Industry Ombudsman – Submission on the Review of the Telecommunications Service Provider (Premium Services Determination) 2004 (No.1)

May 2013



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About the TIO

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide an independent alternative dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the service provider is given an opportunity to resolve the complaint with its customer.

We are independent of telecommunications companies, consumer groups and government. Our services are provided at no cost to consumers.

For most complaints we receive, we establish the issues in the dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at their relevant telephone or internet service provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. Around 90% of complaints we receive each year are resolved at this stage of the process.

Where the consumer and service provider do not reach an agreement at this early stage, the TIO becomes more directly involved by seeking to conciliate an agreed resolution between the parties. Around 7% of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are escalated for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding determinations on a service provider up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

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

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

Introduction

The TIO welcomes the opportunity to comment on the review of the Telecommunications Service Provider (Premium Services) Determination 2004 (No.1) (the Determination).

The premium voice services on offer in Australia serve up a smorgasbord of content to consumers ranging from recipes and competitions to astrological guidance and adult chat. While we are unable to handle complaints regarding the content or classification of these services and will refer these matters to the Australian Communications and Media Authority (the ACMA) or the Australian Competition and Consumer Commission (the ACCC), we do handle complaints regarding disputes over the billing of these services. To this end, we understand that the primary objective of the Determination is to ensure providers give consumers sufficient and relevant information – so that they can make informed choices about the premium voice services they purchase.

Before the Determination came into effect, we regularly received complaints from consumers regarding premium voice services. These complaints often related to unexpectedly high bills incurred through 190 services based overseas. Consumers would complain that their telephone bills included calls to unknown destinations such as Diego Garcia and that they had little or no information on what the charges were for or who had been called.

Since the Determination came into effect in 2004, the volume of these types of complaints has dramatically reduced. The manner in which consumers can obtain these services has also significantly changed. While previously consumers would use a landline phone as the standard device to access premium voice services, this type of content can now be accessed more cheaply and conveniently online or via mobile applications. However, the TIO continues to receive complaints regarding premium voice services.

In this submission, we have focused our comments on the following:

- (a) An overview of TIO complaints statistics
- (b) Specific issues about premium voice services that continue to generate new complaints to the TIO – including relevant case studies
- (c) Our view as to the ongoing value of the Determination and our recommendations for updating the Determination to ensure its continued effectiveness and relevance in protecting consumers.

We trust that the information in this submission will assist in the ACMA's review of the Determination.

Complaints to the TIO

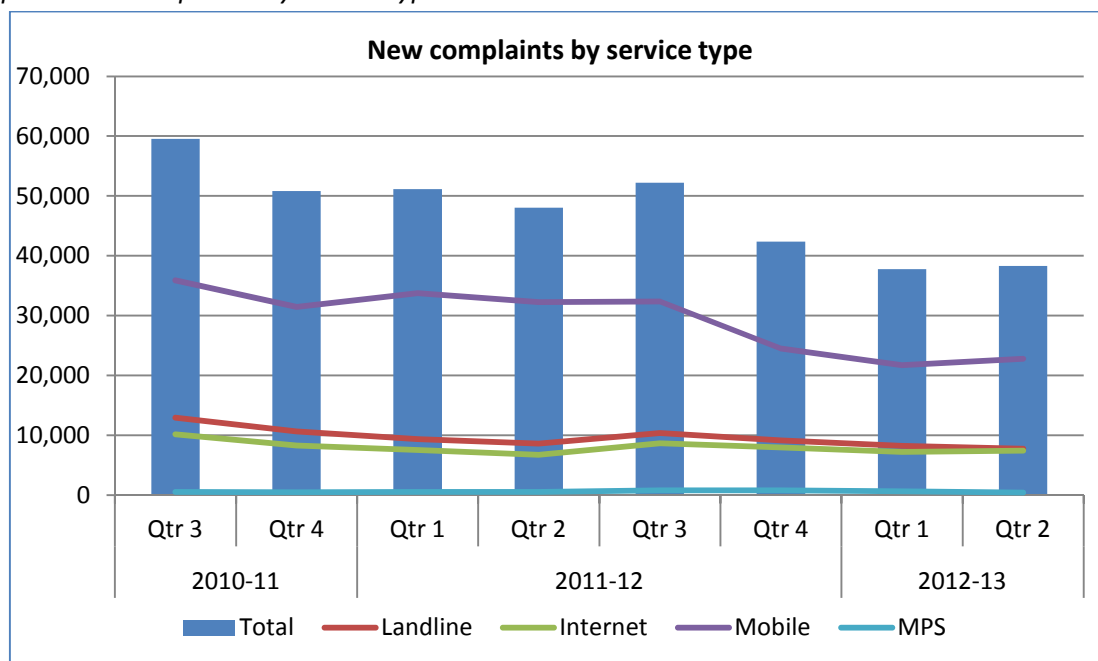
Overall trends for new complaints

When a consumer – residential or small business – contacts us about an expression of grievance or dissatisfaction about a matter within the TIO’s jurisdiction that the service provider has had an opportunity to consider, we record this as a ‘new complaint’.

The TIO recorded and handled around 193,702 new complaints from small business and residential consumers in 2011-12. This compares with 167,772 new complaints recorded during 2009-10 and 197,682 in 2010-11. Over the first two quarters of 2012-13, we recorded more than 76,000 new complaints.

The graph below shows the breakdown of new complaints recorded by the TIO by service type – internet, landline, mobile and mobile premium services (MPS) – over the last eight quarters up to quarter 2 of 2012-13.¹

Graph 1: New complaints by service type



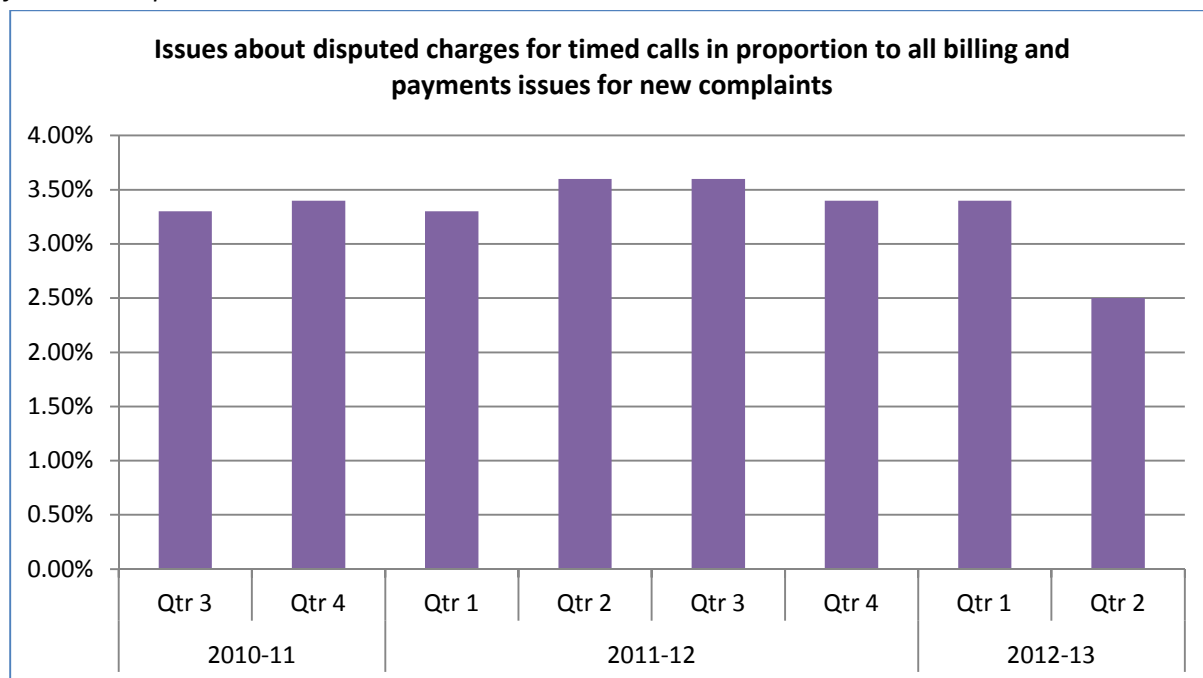
Issues in new complaints about premium voice services

The TIO does not specifically capture complaint issues about premium voice services. These issues are generally captured under a broad billing and payments category of disputed charges for ‘timed calls’ – which covers national, mobile, international and diverted calls in addition to calls to 190 services. This category applies to landline and mobile services.

¹ Details of TIO complaints data for the full financial year 2011-12 are available in the TIO’s 2012 Annual Report at http://www.tio.com.au/data/assets/pdf_file/0011/107975/TIO-2012-Annual-Report.pdf. Details of TIO complaints data for quarter 2 of 2012-13 were released in the February edition of TIO Talks at http://www.tio.com.au/data/assets/pdf_file/0011/127865/TIO-Talks_No1_2013_FINAL.pdf.

Graph 2 shows the proportion of issues about disputed charges for ‘timed calls’ compared to all billing and payments issues recorded against new complaints – over the last eight quarters up to quarter 2 of 2012-13.

Graph 2: Issues about disputed charges for timed calls in proportion to all billing and payments issues for new complaints



We also capture issues about internet dialers, which was once a very common problem for consumers. In recent years this type of complaint has dwindled considerably, with the TIO recording only 60 internet dialer issues for new complaints recorded for the period from January 2011 to December 2012.

Common themes in new complaints about premium voice services

Analysis

As mentioned above, new complaints regarding premium voice services are not captured under their own specific category and cannot be separately reported on.

To assist with the review of the Determination, we manually reviewed a sample of 137 new complaints identified as involving premium voice services from the period 1 July 2011 to 30 April 2013 (across 6 quarters). Our analysis of these 137 new complaints about premium voice services identified a number of common themes. These themes are outlined below. We hope that our analysis of these new complaints proves useful to the ACMA’s review of the Determination.

Case studies that illustrate some of the themes outlined below are set out in **Attachment A**.

Deny all knowledge

In these types of complaints, the consumer would receive an invoice – often from a provider who does not normally bill them – and would not recognise the number they have been charged for calling.

Upon contacting their service provider or the provider who had billed them, these consumers would be advised that the charges are for a premium voice service and be told what type of service it was, be it an adult chat line, competition line, psychic reading or horoscopes.

The consumer would deny making the call(s) They would complain to the TIO when their provider insists that the calls had been made from their service and that they must pay.

Barring

In these complaints the consumer had previously requested a bar on premium services, often because they had been billed for premium services in the past and been required to pay. These complaints often occurred because the provider had failed to action the barring request or because someone other than the account holder had succeeded in having the bar removed. These complaints can be particularly distressing for consumers as there may be repeated instances of barring not being placed or erroneously removed from services.

In one example, the TIO was contacted by a consumer who advised that she had requested a premium services bar on her service as her grandson, whom the consumer advised was autistic and had a fascination with phones, had previously incurred a large bill. The consumer advised that without her knowledge or authority, the 190 barring was removed. When she contacted the provider, it acknowledged the error, and advised her that the barring would be reactivated and the charges waived. However, the consumer remained concerned that this had happened and that it could happen again.

Billing

In these cases a consumer has changed residence and their provider has not disconnected their old service. This failure to disconnect could be because of the supplier's failure to action a consumer's request to disconnect, or because a consumer forgot to tell their provider that they were moving.

In either instance the failure to disconnect results in the consumer being charged for someone else's calls to a premium voice service. These complaints can be complex and difficult to resolve as they often relate to old invoices and premises the consumer has not used for months or years.

Failure to provide billing information

A number of new complaints we examined involved consumers acknowledging access to premium voice services but disputing the amounts that they were charged for that usage, on the basis that they did not receive any information about what the charges would be. In some instances consumers also claimed that the advice they were given about how much the premium service would cost was incorrect.

Credit management issues

Credit management issues in premium service complaints can be varied and often include one of or a combination of the following:

- the adequacy of supplier controls – along with receiving a higher than expected bill, consumers also complained that their provider made no attempt to advise them of unusual usage on the account over a short period of time
- payment arrangements – consumers would complain of difficulty in negotiating a payment arrangement with the provider in relation to paying off a premium service debt, and
- credit defaults – consumers may be threatened with or have credit defaults listed against their names due to premium service debts that they had failed or refused to pay.

TIO's response to the Review

Retain and update the Determination

The TIO's view is that the Determination continues to provide valuable consumer protection and should be retained. However, we believe that the Determination requires updating to ensure that it remains relevant and continues to protect all consumers that use or access premium voice services.

Although there are other mechanisms to protect consumers, such as the Critical Information Summaries (CIS) required by clause 4.1.2 of the Telecommunications Consumer Protections (TCP) Code 2012 from March 2013, and Telstra's Code of Practice for Infocall 190 Services, these mechanisms do not sufficiently address the spectrum of issues that arise about premium voice services.

For example, although the CIS document required by the TCP Code 2012 must contain pricing information and information about inclusions, exclusions, restrictions etc., there is no requirement for the document to specifically state what premium voice services are or whether they are automatically available as part of the offer being made to the customer. The CIS also does not say anything about the availability of premium voice service barring and how this can be requested, and will always be limited in its usefulness because every premium voice service is billed differently.

Another limitation of the TCP Code 2012 is that it does not require premium call usage to be included in expenditure notifications. While the TCP Code 2012 requires consumers to be told that premium service usage does not form part of unbilled usage information so they do not assume it is, ideally consumers should be getting all usage – premium service and otherwise – reflected in those usage notifications.

Similarly, while Telstra's Code of Practice for Infocall 190 Services contains some strong provisions such as giving information to consumers before billing commences, customer opt-in requirements, maximum call timeframes and expenditure updates, this mechanism does not address premium voice service barring at all, and does not provide for the actual account holder of the service (who in TIO complaints is often denying all knowledge of the calls) to be told about the amount of premium call usage happening on their service.

In addition, as the Code of Practice for Infocall 190 Services is a Telstra code with compliance managed by an external private body, there is no transparency in the code compliance process.

Recommendations for updating the Determination

In updating the Determination, the TIO recommends that the ACMA consider the following issues for inclusion in the Determination:

- Whether services should be sold with premium services automatically barred, and require account holders to request the activation of those services, at which time detailed information about the service can be provided. This would allow a consumer to make an informed decision about using the premium voice service.
- Introducing record keeping obligations that could assist in determining whether a premium service was actually requested or not, and could confirm the pricing information that was/was not given to the caller.
- Introducing a process by which account holders can be directly notified in a timely manner about unusually high premium service usage on their account (outside of the call itself), so that they can act to stop financial over-commitment or unlimited credit.
- Requiring premium service content providers to ask customers to set a spend limit at the beginning of the call and then terminate the call when that spend limit is reached.
- Imposing a process for premium service barring that requires providers to activate barring within a specific timeframe and to provide notification that barring has successfully been applied.
- Imposing rules about who, how and when premium service barring can be removed, to ensure that unauthorised changes are not made to consumer accounts by third parties.

Attachment A – Case Studies

Case Study 1

The consumer called on behalf of his mother who had incurred more than \$2,600 on her bill for 190 charges. The consumer advised that his mother had been overseas between August 2011 and January 2012 and a housesitter had been living at her residence. During this period, the housesitter had made calls to the 190 numbers and used an automated system to make payment arrangements with the provider. However, as no payments were made, the service was eventually disconnected.

The provider advised the TIO that 190 charges had been incurred on the service prior to August 2011 and that credits had been applied for these charges on two occasions and the consumer's mother was informed that no further credits would be supplied.

The TIO asked the provider why the service was able to continue accruing charges when no payments were made over a lengthy period. Despite the provider's argument that payment arrangements were made on four occasions, the TIO took the view that as no actual payment was forthcoming, it was unreasonable for the provider to continue allowing access to these expensive services.

The provider subsequently agreed to reduce the outstanding amount to \$1,000, allow a reasonable payment arrangement and restrict the service so that additional charges would not be incurred while the debt was being paid. The consumer accepted the resolution and the complaint was closed.

Case Study 2

At the point of sale, the consumer specifically requested that the provider place a bar on his service preventing access to 190 or other premium numbers. The consumer advised that he received invoices as normal, but then received one from another provider with \$2,400 outstanding. When he spoke with his provider, it offered to place a credit on his account for \$650, but as the charges were billed by a separate provider this offer was rejected.

The TIO asked the provider to clarify how it had arrived at the amount offered. The provider responded by stating that when the charges had reached \$650, it had called the consumer's premises and been advised by someone purporting to be the consumer that the charges were in order. It subsequently transpired that the person the provider had spoken to was the consumer's son.

As a result and on the basis that it had removed the bar at the request of an unauthorised party, the provider agreed to reimburse the consumer the full amount of the charges so that he could then pay the account from the other provider. The consumer was satisfied with this resolution and placed a pin number on the account to prevent unauthorised access in the future.