

Telecommunications Industry Ombudsman submission to the ACMA consultation on *new rules to protect customers migrating to the National Broadband Network – Improving management and handling of consumer complaints*

Introduction from the Ombudsman, Judi Jones

As the Telecommunications Industry Ombudsman, I welcome the ACMA's focus on ensuring consistency of complaint handling by telecommunications providers. Internal dispute resolution is a fundamental pillar of consumer safeguards, along with the role of my office in resolving escalated disputes.

Well-functioning internal dispute resolution processes allow providers to directly resolve consumer complaints quickly and effectively. While I have observed good practice by retail service providers, I support measures to strengthen the regulatory framework for complaints handling in the telecommunications service industry, including measures to incentivise early resolution of complaints before they reach my office.

This submission covers:

1. The Telecommunications Industry Ombudsman's welcome for new rules for complaints handling
2. Ensuring the Standard is consistent with best practice complaints handling
3. The role of the Telecommunications Industry Ombudsman

Part 1: *The Telecommunications Industry Ombudsman's welcome for new rules for complaints handling*

The Telecommunications Industry Ombudsman welcomes new rules for safeguarding consumers migrating to the National Broadband Network.

The new rules proposed by the ACMA include:

- *Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (Standard)*;
- *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018 (RKR)*s).

1.1 The Standard

We understand the current drafting of the *Standard* draws heavily on the requirements in Chapter 8, *Telecommunications Consumer Protections Code 2015 (TCP Code)*.

Chapter 8, *TCP Code* was developed having regard to the now superseded Australian Standard AS ISO 10002-2006 *Customer satisfaction – Guidelines for complaints handling in organizations*.¹

The development of the *Standard* by the ACMA presents a unique opportunity to modernise complaints handling in the Australian telecommunications service industry.

This could be achieved by bringing baseline protections into alignment with the current Australia/ New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations (2014 Guidelines)*.

The *2014 Guidelines*:

- puts the onus on a provider to identify whether a consumer is making a complaint (as distinct from an enquiry);²
- requires a provider to train its Senior Manager and staff so they can competently carry out their complaints handling responsibilities;³
- requires a provider to adequately resource its complaints management process and focus on early resolutions;⁴

¹ *Telecommunications Consumer Protections Code C628:2015 (Incorporating Variation No. 1/2017)*, page 65

² Australia/ New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations*, 4.2

³ As above for note 2, 7.6 and supported by 6.4.3(f), 6.4.5 and 6.5

⁴ As above for note 2, 7.4, 8.3 and 8.7.3

- requires a provider to make a consumer aware of their right to complain to a provider's complaints handling process and if their complaint remains unresolved, notify the consumer they can complain to the Telecommunications Industry Ombudsman service.⁵

We believe the *2014 Guidelines* reflect minimum community expectations as to how complaints can be best managed.

This is demonstrated by the *2014 Guidelines* being adopted economy-wide and Australian consumers who complain to other providers of essential or critical services (e.g. energy services) already being able to access internal complaints handling processes that must be consistent with the *2014 Guidelines*.⁶

We welcome the Standard introducing a reasonable assistance requirement for carriers, wholesalers and other participants in the supply chain to assist a provider to investigate and respond to a consumer's complaint.⁷ This broadly aligns with the requirements in the *2014 Guidelines*⁸ and, at a provider's complaints handling level, supports recent amendments made to the Telecommunications Industry Ombudsman's Terms of Reference.

Recent amendments to the Telecommunications Industry Ombudsman's Terms of Reference confirm that other relevant parties in the supply chain are obliged to cooperate and assist the Telecommunications Industry Ombudsman to effectively resolve complaints.⁹

Parts 2 and 3 of this Submission offer more specific comments about how the *Standard* could be aligned with the *2014 Guidelines* and how the Telecommunications Industry Ombudsman may encourage compliance with the *Standard*.

1.2 The record-keeping rules

We believe the RKR presents a unique opportunity to give businesses, regulators and consumers a more comprehensive and holistic picture of complaints handling performance across the entire telecommunications service industry.

We believe that over time, ACMA benchmarking through the RKR could become a key competitive performance indicator of complaints handling.

This might be possible if:

- the obligations to count and report complaints in the RKR apply broadly across providers in the market (and not just to those with existing market share);¹⁰
- providers regard the indicator as a point of significant brand differentiation.

Some providers engage in brand differentiation when the quarterly *Telecommunications Complaints in Context* is published. The reporting enables comparison of five providers for new complaints received by the Telecommunications Industry Ombudsman per 10,000 services in operation.¹¹

The Australian energy industry adopts an across the sector reporting approach that may be a useful reference point for developing record-keeping rules for complaints handling.¹²

⁵ As above for note 2, 5.1, 8.1 and Appendix B

⁶ Energy retailers, distributors and embedded network operators must have an internal complaints handling process that is consistent with AS/NZS 10002:2014: see *National Energy Retail Law (South Australia) Act 2011*, s81 in the Schedule; and *AER (Retail) Exempt Selling Guideline (Version 5) (March 2018)*, condition of exemption 16 (see: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018>).

⁷ *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, Part 6 (sections 23 – 26)

⁸ As above for note 2, 5.3.3

⁹ Telecommunications Industry Ombudsman, Terms of Reference (25 October 2017), clauses 3.21 – 3.24 (See: <http://www.tio.com.au/about-us/terms-of-reference-and-company-constitution>)

¹⁰ *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*, sections 5 (definition of *active service* and *service in operation*) and 7

¹¹ CommsAlliance, *Telecommunications Complaints in Context (October – December 2017)* (See: http://www.commsalliance.com.au/data/assets/pdf_file/0020/59600/2017-Oct-Dec-Complaints-in-Context-report.pdf)

¹² *AER (Retail Law) performance Reporting Procedures and Guidelines* (January 2019) (See: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-retail-law-performance-reporting-procedures-and-guidelines-january-2019>)

As a minor aside, we encourage the use of *Ombudsman referral* or *Ombudsman referred complaint* as an alternative term to *Level 1 complaint* in the RKR. ¹³ This will allow for future-proofing of the RKR, as our terminology is likely to change over time.

Part 2: Ensuring the Standard is consistent with best practice complaints handling

This part covers:

- Adequacy of coverage of a provider's complaints handling process;
- Dealing with complainants who act unreasonably;
- Effective referrals to the Telecommunications Industry Ombudsman.

2.1 Adequacy of coverage of a provider's complaints handling process

The *2014 Guidelines* recommend that a provider's complaints handling process be established having regard to: applicable laws and regulations; the number and types of complaints a provider receives; and reflect the definition of complaint. ¹⁴

To ensure adequate coverage to satisfy this recommendation, the *Standard*¹⁵ could require a provider's complaints handling process cover complaints:

- made by residential and small business consumers who are safeguarded by the Australian Consumer Law¹⁶;
- made by former customers;¹⁷
- about bundled telecommunications goods (or equipment) and services;
- about disputed liability for a debt (whether involving alleged identity fraud or where the issue is the subject of legal action);
- about a fault or problem with the consumer's service connection and the consumer expects it will be fixed, even though they have not said 'I wish to complain' or 'I have a complaint';
- that are referred by the Telecommunications Industry Ombudsman to the provider for an opportunity to first consider the complaint. ¹⁸

In addition, to ensure adequate coverage of complaints specifically involving a disputed liability for a debt, the *Standard*¹⁹ could require consistency with the joint ACCC – ASIC *Debt collection guidelines for collectors and creditors* (July 2017) (***Debt Collection Guidelines***).²⁰

The *Debt Collection Guidelines* encourage a provider to halt collection activity, legal action or legal proceedings when a consumer disputes liability for a debt. This allows for the provider to consider the complaint using the provider's complaints handling process or the Telecommunications Industry Ombudsman service.²¹

The Telecommunications Industry Ombudsman's processes are consistent with the *Debt Collection Guidelines*. Providers are expected to halt collection activity, legal action and legal proceedings while the scheme is handling the complaint (whether or not an investigation has commenced).²²

2.2 Dealing with complainants who act unreasonably

The *2014 Guidelines* recommend that all complaints be addressed equitably; and a provider's complaints handling process address how it will deal with complainants who act unreasonably.²³

¹³ As above for note 10, sections 5 (definition of *Level 1 complaint*) and 9

¹⁴ As above for note 2, 4.2 and 6.1

¹⁵ As above for note 7, Part 1 (section 5, definitions of *complaint*, *consumer* and *telecommunications product*); Part 2 (sections 7 – 10)

¹⁶ *Australian Consumer Law*, section 3 in *Competition and Consumer Act 2010*, Schedule 2

¹⁷ As above for note 1, Chapter 8

¹⁸ As above for note 9, clauses 2.1 – 2.11

¹⁹ As above for note 7, Part 3 (section 15(3)(c))

²⁰ ACCC – ASIC *Debt collection guidelines for collectors and creditors* (July 2017) (See: <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>)

²¹ As above for note 20, sections 13 and 22

²² As above for note 9, clauses 4.1 and 4.6

²³ As above for note 2, 5.2.3 and Appendix E

For consistency with the *2014 Guidelines*, instead of allowing the provider to stop dealing with frivolous and vexatious complaints the provider cannot resolve, the *Standard*²⁴ could set out how providers are required to address complaints involving unreasonable complainant conduct.

We observe that:

- under the *2014 Guidelines*, complainant conduct that is ‘unreasonable’ refers to behaviours which raise substantial health, safety, resource or equity issues for the provider or its staff, and potentially captures a broader range of conduct than that which is frivolous or vexatious.²⁵
- Whether a complaint or complainant conduct is frivolous or vexatious is a defined legal term. It allows courts to dismiss legal proceedings and other dispute resolution bodies to stop handling a complaint and has a high threshold.
- The Telecommunications Industry Ombudsman’s processes are broadly consistent with the *2014 Guidelines* and allow for dealing with unreasonable complainant conduct (of which frivolous or vexatious conduct may be a sub-category).²⁶

2.3 Effective referrals to the Telecommunications Industry Ombudsman

The *2014 Guidelines* recommend that an effective complaints handling process should provide options for escalation or review; and these options should be clearly communicated to the consumer.²⁷

- (a) *Provision of the Telecommunications Industry Ombudsman’s contact details*
For consistency with the *2014 Guidelines*, the *Standard*²⁸ could require providers give consumers the contact details of the Telecommunications Industry Ombudsman when they are notified of their option to complain to the scheme.

Giving consumers sufficient information so they can easily make a complaint to the Telecommunications Industry Ombudsman can assist in the expeditious resolution of complaints.

This is consistent with the baseline protections for complaints handling in other essential or critical service industries, such as banking and financial services.²⁹

- (b) *Retention of complaints records for access to the Telecommunications Industry Ombudsman*
To ensure consumers can access the Telecommunications Industry Ombudsman, the *Standard*³⁰ could require providers retain and not destroy records of complaints for a sufficient period of time after a complaint is closed using the provider’s complaints handling process.

This would facilitate the fair and reasonable consideration of the complaint by the Telecommunications Industry Ombudsman.

Preserving documents and other records relevant to resolving complaints made to the Telecommunications Industry Ombudsman is consistent with legal requirements that prohibit the destruction of documents that may be needed as evidence in legal proceedings.³¹

The 2 year record retention period as reflected in the *Standard*, may be insufficient to deal with all cases where a consumer complains to the Telecommunications Industry Ombudsman.

Currently, the Telecommunications Industry Ombudsman may handle complaints for up to six years from when a consumer discovers their problem.³² This allows for the Telecommunications Industry Ombudsman to be an alternative dispute resolution mechanism to court by providing general consistency with statute of limitations periods. This jurisdiction may be particularly relevant to consumers disputing their liability for a telecommunications service debt.

²⁴ As above for note 7, Part 3 (section 16)

²⁵ As above for note 2, Appendix E, E1

²⁶ As above for note 9, clause 3.20

²⁷ As above for note 2, 7.2, 8.1 and Appendix H

²⁸ As above for note 7, Part 3 (sections 14(2)(c), 15(1)(e), 15(2)(d) and 16(2))

²⁹ ASIC, Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (February 2018), RG 165.90(c), 165.96(c), RG 165.106(c), RG 165.108(c), RG 165.130(b). (See: <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-165-licensing-internal-and-external-dispute-resolution/>)

³⁰ As above for note 7, Part 5 (section 21)

³¹ *Crimes Act 1958 (Vic)*, sections 253 – 255

³² As above for note 9, clause 2.6

Part 3: The role of the Telecommunications Industry Ombudsman

The *Standard* requires that relevant parties in the supply chain assist the Telecommunications Industry Ombudsman to investigate a complaint about compliance with the *Standard*.³³

The Telecommunications Industry Ombudsman's role is to resolve complaints that the provider has not been able to resolve using the provider's complaints handling process.

We may seek to encourage compliance with the *Standard* when potential non-compliance is identified in the course of assisting the parties to resolve a complaint. In these circumstances, we may draw the provider's attention to its potential non-compliance with the *Standard* so the provider can consider and respond to the issue.

If the potential non-compliance with the *Standard* contributes to the complaint (e.g. a provider's excessive delays in responding to the complaint contributes to the small business consumer's loss), we will take this into account when assisting the parties to agree to a fair and reasonable resolution.

In situations beyond these limited circumstances, we anticipate the ACMA will continue to perform its important regulatory role of investigating, and encouraging compliance with the *Standard*, whether through ongoing engagement with industry, or the use of its compliance and enforcement powers (including the issue of monetary fines).³⁴

³³ As above for note 7, section 26

³⁴ *Telecommunications Act 1997*, sections 128 and Part 31