

Telecommunications Industry Ombudsman submission to the *Communications Alliance consultation on the draft Telecommunications Consumer Protections Code (DR C628:2018)*

Introduction from the Ombudsman, Judi Jones

I welcome the opportunity for the Telecommunications Industry Ombudsman to once again contribute to the development of the *Telecommunications Consumer Protections Code*.

The *Code* provides an important suite of retail provider obligations that elaborate on existing safeguards in the *Australian Consumer Law*, privacy and telecommunications laws, as well as recently made ACMA rules to improve the experience of customers migrating to the NBN.

As the independent dispute resolution service for telecommunications complaints, my office takes into account the *Code* provisions when facilitating the resolution of complaints and investigating systemic issues. Drawing on this experience, my office is in a unique position to comment on how certain *Code* obligations are operating in practice, and whether they are safeguarding residential and small business consumers as intended.

It is desirable for any new or revised requirement in the 2018 registered *Code* to be set at an appropriate standard to take telecommunications services beyond 2020.

Wherever possible, this submission draws on the Telecommunications Industry Ombudsman's experience in facilitating the resolution of complaints and through its investigation into systemic issues.

More information about *How to understand the Telecommunications Industry Ombudsman's complaints data* is provided at **Appendix A**.

I also attach at **Appendix B** *Our submission to the CommsAlliance review of the Customer Requested Barring Guideline*.

I look forward to continuing to work closely with CommsAlliance, other industry associations, members of our scheme, consumer representatives and the ACMA to ensure the newly registered *Code* is working as intended.

This submission covers:

1. The importance of the *Code* to complaints handling
2. Our request for amendments to draft *Code* provisions that refer to the Telecommunications Industry Ombudsman
3. Our support for draft *Code* provisions that introduce new or strengthened requirements and suggestions for improvement
4. Draft *Code* provisions where the standard could be raised to better safeguard consumers

Telecommunications Industry Ombudsman submission to the Communications Alliance consultation on the draft Telecommunications Consumer Protections Code (DR C628:2018)

Contents

Part 1: The importance of the Code to complaints handling	4
1.1 How the Code is referenced by the Telecommunications Industry Ombudsman	4
1.2 Complaints scenarios and statistics	4
Part 2: <i>Our request for amendments to draft Code provisions that refer to the Telecommunications Industry Ombudsman</i>	7
2.1 The Telecommunications Industry Ombudsman’s authority for handling complaints involving the Code does not require section 114 of the <i>Telecommunications Act 1997</i>	7
2.2 How to best determine who participates in ‘Complaints in Context’ reporting	8
Participation in ‘Complaints in Context’ determined by the ACMA.....	8
Part 3: <i>Our support for draft Code provisions that introduce new or strengthened requirements and suggestions for improvement</i>	10
3.1 The new requirement for providers to refund incorrectly applied direct debits	10
Scenario A: <i>Direct debiting error – multiple deductions due to an IT systems glitch</i>	10
Scenario B: <i>Direct debiting error – ongoing deductions beyond disconnection of the service</i>	10
Direct debit issues recorded in July to December 2017	11
3.2 The new requirement for providers to deal directly with enquiries and complaints about third party charges.....	12
The new requirement could be supported by changes to the <i>MPS Code</i>	12
Scenario C: <i>Unexpected third party charges for mobile premium services</i>	12
Third party complaint numbers in July to December 2017	13
3.3 Strengthened financial hardship requirements.....	14
Improving access to Code hardship arrangements	14
Bringing ‘promise to pay’ arrangements within the coverage of the Code	14
Scenario D: <i>‘Promise to pay’ arrangements are outside the coverage of the Code</i>	15
Financial hardship and credit management complaint numbers in July to December 2017	15
Part 4: <i>Draft Code provisions where the standard could be raised to better safeguard consumers</i>	16
4.1 Expanding the concept of ‘responsible provision of telecommunications products and services’	16
To whom do providers owe a responsibility and why?	16
What constitutes an adequate credit assessment?	17
The benefits of good credit assessment practices	17
Scenario E: <i>Mr Youthful*</i>	18
Scenario F: <i>A cycle of taking out new post-paid plans</i>	18
Scenario G: <i>Family members taking advantage of older relatives</i>	18

Scenario H: <i>Asylum seekers and high pressure commission sales cultures</i>	19
Credit assessment complaints numbers in July to December 2017	19
4.2 Safeguarding small business consumers to a standard that is consistent with the <i>Australian Consumer Law</i>	20
Appendix A: <i>How to understand the Telecommunications Industry Ombudsman’s complaints data</i> ...	21
A.1 The Telecommunications Industry Ombudsman’s dispute resolution service	21
A.2 Changes to recording complaint issues from 1 July 2017	22
A.3 Complaints we handle	23
A.4 About us	23
Appendix B: <i>Our submission to the CommsAlliance review of the Customer Requested Barring Guideline</i>	24

Part 1: The importance of the Code to complaints handling

Since first registration in 2007, the *Telecommunications Consumer Protections Code* provides an important suite of safeguards for residential and small business consumers of telecommunications services.

The *Code's* safeguards complement existing safeguards in consumer, privacy and telecommunications service laws and focus on key aspects of the customer relationship including information disclosure, sales, spend management tools, billing and financial hardship.

When handling residential and small business complaints, the Telecommunications Industry Ombudsman has regard to the law, good practice and what is fair in the circumstances.¹

1.1 How the *Code* is referenced by the Telecommunications Industry Ombudsman

Our staff regularly cite the *Code's* requirements to facilitate the resolution of complaints whether at referral, conciliation, or as part of an investigation of an individual complaint or a systemic issue.

For example, when referring a complaint to a provider's escalated complaints handling team, our staff take steps to draw the provider's attention to their obligations by:²

- listening carefully to the consumer's problem and clarifying the facts;
- reframing the consumer's complaint to facilitate resolution, for example by using technical knowledge, references to legal or *Code* requirements and product language; and
- characterising the issues having regard to relevant laws, ACMA rules and industry codes.

In cases that remain unresolved after referral to the provider and in the investigation of systemic issues, we provide greater detail about relevant legal and *Code* requirements to focus a provider's attention on the issues in dispute and on its obligations.

In this way, the Telecommunications Industry Ombudsman regularly references *Code* provisions and is uniquely positioned to comment on whether proposed new *Code* requirements will improve providers' understanding of their legal and industry practice obligations and so promote better industry practice and better internal dispute resolution (*IDR*). We are also in a position to comment on whether particular *Code* requirements are working as intended.

1.2 Complaints scenarios and statistics

In this submission we have referred to de-identified complaints scenarios to illustrate the application of the *Code*. The scenarios tell a story about how a provider may interpret their *Code* obligations in certain situations and the consequences where there is ambiguity in *Code* provisions.

For completeness, we have included relevant complaints statistics to provide a more comprehensive picture of the complaint issues being discussed.

We caution against using our complaints data to gauge the size or incidence of a particular consumer issue or problem that may involve a *Code* provision.

This is because the Telecommunications Industry Ombudsman can achieve outcomes for customers across a provider's entire customer base using our powers to identify and respond to systemic issues, even if the issue comes to our attention without a complaint (e.g. through information shared by a consumer advocacy agency or raised in the media) or through several or an increased number of complaints to our scheme.³

Further, our research indicates not all customers complain to the Telecommunications Industry Ombudsman about their problem.⁴ This means, for some of the issues discussed, even if our

¹ *Telecommunications Industry Ombudsman Terms of Reference* (version published on 25 October 2017), clause 1.5. See: https://www.tio.com.au/_data/assets/pdf_file/0019/251443/TELECOMMUNICATIONS-INDUSTRY-OMBUDSMAN-TERMS-OF-FINAL-OCTOBER-2017.pdf

² *Telecommunications Industry Ombudsman Submission to the Consumer Safeguards review (Part A, Redress and Complaints Handling)*, 23

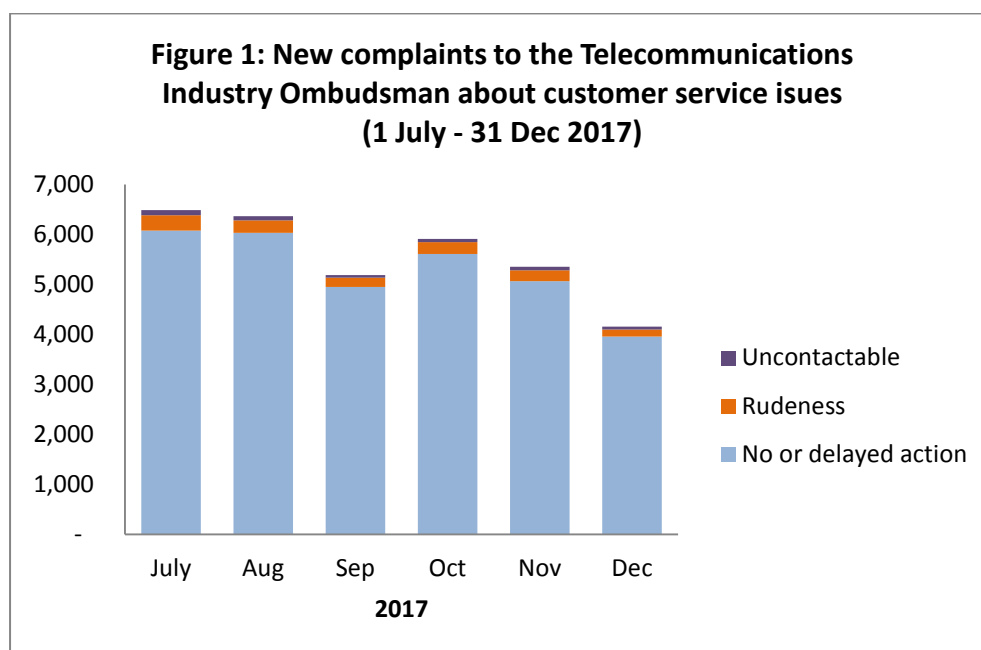
³ As above for note 1, clause 5

⁴ Telecommunications Industry Ombudsman, *Understanding Phone and Internet Issues in Australia*, 6. See: https://www.tio.com.au/_data/assets/pdf_file/0005/256910/Kantar_TNS_4June.pdf

complaints numbers are small this may not necessarily mean the size of the problem is small. For example, the potential impacts of a particular issue on an individual consumer may be very serious for them, and many other consumers, if the Telecommunications Industry Ombudsman does not become involved in achieving a resolution.

While our complaints numbers in the first half of financial year 2018 indicate a significant proportion of case issues involved customer dissatisfaction with how providers respond to complaints at IDR (**Figure 1**) and service connections (**Figure 2**), we do not comment on these issues in this submission.

This is because there are other new consumer safeguards that are aimed at addressing these issues and reducing complaints. From 1 July 2018, Code provisions about complaints handling were transferred to the ACMA's *Complaints Handling Standard and Record-Keeping Rules*⁵ and from 1 September 2018, new ACMA rules will commence to safeguard against customers being left without any service on migrating to the NBN.⁶

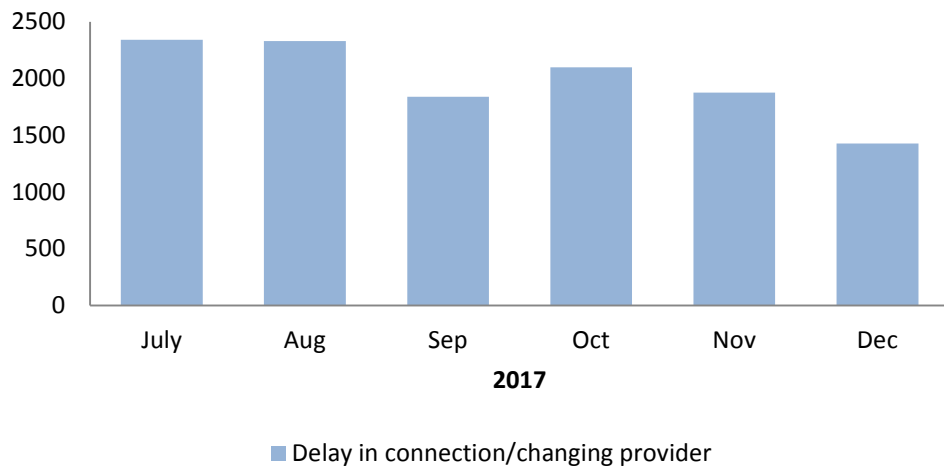


Note: From 1 July 2017, the Telecommunications Industry Ombudsman introduced a new approach to capturing and recording complaints: see **Appendix A**.

⁵ *Telecommunications (Consumer Complaints Handling) industry Standard 2018; Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*. See: <https://www.acma.gov.au/Industry/Telco/Infrastructure/The-NBN-and-industry/new-complaints-handling-rules-1>

⁶ *Telecommunications (NBN Consumer Information) Industry Standard 2018*. See: <https://www.acma.gov.au/theACMA/consumer-information-standard-your-obligations>; *Telecommunications Service Provider(NBN Service Migration) Determination 2018*. See: <https://www.acma.gov.au/theACMA/service-migration-determination-your-obligations>; *Telecommunications (NBN Continuity of Service) Industry Standard 2018*. See: <https://www.acma.gov.au/theACMA/service-continuity-standard-your-obligations>

**Figure 2: New complaints to the Telecommunications Industry Ombudsman about connection issues
(1 July - 31 Dec 2017)**



Part 2: Our request for amendments to draft Code provisions that refer to the Telecommunications Industry Ombudsman

This Part covers:

- The Telecommunications Industry Ombudsman's authority for handling complaints involving the Code does not require section 114 of the *Telecommunications Act 1997*
- How to best determine who participates in 'Complaints in Context' reporting

2.1 The Telecommunications Industry Ombudsman's authority for handling complaints involving the Code does not require section 114 of the Telecommunications Act 1997

The 2018 review of the Code presents a timely opportunity to remove legacy references that no longer apply.

Reference to section 114 of the *Telecommunications Act* in clause 1.8 could be replaced with current sources of power for the Telecommunications Industry Ombudsman to receive, investigate, resolve, determine, give directions and report on complaints involving Code issues.⁷

There is no need for industry-developed codes to continue to confer on, and for the Telecommunications Industry Ombudsman to consent to,⁸ conferral of complaints handling functions and powers with respect to a code every time a code is made or revised.

This is because:

- the Telecommunications Industry Ombudsman is already sufficiently empowered to handle complaints involving the Code, and any revised version of the Code, under relevant telecommunications consumer protection laws,⁹ and the Telecommunications Industry Ombudsman's *Constitution*¹⁰ and *Terms of Reference*;¹¹ and
- like other modern Ombudsman complaints schemes, when any code is initially developed or revised, the Telecommunications Industry Ombudsman will treat the code in the same way as any new or revised law, by having regard to whether it applies to a provider's actions on commencement.

While there may have been particular reasons for the inclusion of section 114 when the Code was first developed in 2007,¹² modern Ombudsman scheme practices and the establishment of Communications Compliance in 2012¹³ to invigorate industry's approach to code compliance monitoring¹⁴ means the overarching co-regulatory framework has changed considerably.

It may well have been that the need for section 114 was never revisited as part of the 2012 and 2015 Code reviews due to the many other significant Code revisions being debated at the time.

It is our understanding that Parliament's policy intention for section 114 was to allow for a conferral of code compliance monitoring functions and powers on the Telecommunications Industry Ombudsman through a mechanism that did not necessarily assume scheme acceptance.¹⁵

⁷ Draft *Telecommunications Consumer Protections Code* (DR C628:2018), clause 1.8

⁸ CommsAlliance, Public Comment Explanatory Statement (July 2018) to the *Telecommunications Consumer Protections Code* (DR C628:2018), 4

⁹ *Telecommunications (Consumer Protection and Service Standards) Act 1999*, sections 128 and 132

¹⁰ *Constitution of Telecommunications Industry Ombudsman Limited* (incorporating 8 May 2018 amendments). See: https://www.tio.com.au/_data/assets/pdf_file/0017/167111/TIO-Cons-incorporating-amendments-8-May-2018.pdf

¹¹ As above for note 1

¹² *Telecommunications Consumer Protections Code* (C628:2007), clause 10.2. See: <https://www.acma.gov.au/-/media/National-and-community-interests/Content-from-Consumer-Interests/Regulation/pdf/Communications-Alliance-Industry-Code-Telecommunications-Consumer-Protections-Code-C6282007.PDF?la=en>

¹³ See: <http://commcom.com.au/about-us/>

¹⁴ ACMA, *Reconnecting the Customer Final Public Inquiry Report* (September 2011), Section 10.1, 130 – 131.

See: <https://www.acma.gov.au/-/media/National-and-community-interests/Content-from-Consumer-Interests/Report/pdf/Reconnecting-the-Customerfinal-public-inquiry-report.PDF?la=en>

¹⁵ Explanatory Memorandum to the *Telecommunications Bill 1996 (Volume 1)*, 69

It is not the role of the Telecommunications Industry Ombudsman to monitor compliance with the *Code* and therefore the reference to section 114 of the *Telecommunications Act 1997* in this revised code is not necessary. Code compliance monitoring and enforcement is the role of Communications Compliance and the ACMA.

We do provide a report to Communications Compliance and the ACMA that links our keyword issues in complaints to various chapters in the *Code*. However, this does not perform a code administrative function because the keywords reflect the consumer description of the complaint and there is no validation of whether there is an association with the *Code* clause or whether there has been a *Code* breach.

2.2 How to best determine who participates in ‘Complaints in Context’ reporting

It appears that the *Code* is being used as a mechanism to require more retail service providers to participate in CommsAlliance’s ‘Complaints in Context’ reporting. We support the initiative to engage more providers in ‘Complaints in Context’ reporting but do not think that referring to listings in the Annual Report of the Telecommunications Industry Ombudsman is the best or most appropriate approach.

The main reason for this view is that it would be desirable for the *Code* to be ‘future-proofed’ and therefore it should not refer to something that is not controlled by CommsAlliance and which may vary in the future. The Telecommunications Industry Ombudsman Annual Report is the Ombudsman’s report. It has reported on the retail service provider brands with the greatest number of complaints over the past few years (the top 10 in 2015, top 5 in 2016 and top 10 in 2017). If in the future there is a consolidation of different brands into a single Telecommunications Industry Ombudsman membership, then reporting on the top five or top 10 members which generate the most complaints may not achieve the outcome desired by the proposed *Code* provision.

Further, with the telecommunications service industry undergoing continuous change due to merger and acquisition, or changed provider service delivery strategy, the providers who may appear in the Telecommunications Industry Ombudsman’s reporting of complaints may not necessarily reflect a ‘top ten’ or if there is a ‘top ten’ the providers within that group may change year-on-year.

Participation in ‘Complaints in Context’ determined by the ACMA

The ten providers who must participate in Complaints in Context reporting in clause 4.9.3 of the draft *Code* could be prescribed by the ACMA instead of by reference to the *top ten service providers with the largest number of phone and internet complaints as reported in the Telecommunications Industry Ombudsman’s Annual Report for the previous year*.¹⁶

We think the ACMA is best placed to determine which providers participate in ‘Complaints in Context’ because:

- under the new complaint handling standards and reporting rules the ACMA will have an insight into the providers whose IDR processes appear less effective and therefore which should participate in ‘Complaints in Context’. It may change the definition of ‘Complaints in Context’ and decide the report should reflect the complaints handled by IDR compared to services in operation instead of, or in addition to, the complaints handled by the external dispute resolution (**EDR**) scheme, the Telecommunications Industry Ombudsman;
- the ACMA will continue to receive reports from the Telecommunications Industry Ombudsman and will be able to compare providers’ IDR and the number of complaints referred to EDR;
- the ACMA can determine which brands are visible to Australian consumers and which should participate in ‘Complaints in Context’ to provide maximum transparency and comparability, irrespective of their membership status with the Telecommunications Industry Ombudsman;

¹⁶ As above for note 7, clause 4.9.3

- the ACMA can determine and vary participation in 'Complaints in Context' to ensure comparison and trends analysis over time and make appropriate adjustments to accommodate changes in the industry and brand visibility.

Part 3: Our support for draft Code provisions that introduce new or strengthened requirements and suggestions for improvement

This Part covers:

- The new requirement for providers to refund incorrectly applied direct debits
- The new requirement for providers to deal directly with enquiries and complaints about third party charges
- Strengthened financial hardship requirements

3.1 The new requirement for providers to refund incorrectly applied direct debits

The Telecommunications Industry Ombudsman supports the proposed new *Code* requirement for retail service providers to *fully refund* customers in a *timely manner* (or provide an otherwise mutually agreed alternative resolution) when direct debits have been processed in error.¹⁷

We see two situations when providers process direct debit payments in error (**Scenarios A** and **B**). The new *Code* requirement could be usefully applied to both situations. It is in addition to existing safeguards where consumers can complain to their bank or payment service provider to reverse an unauthorised direct debit transaction.¹⁸

Scenario A is an example of how a glitch in a provider's IT billing system caused multiple direct debits to be processed in error resulting in multiple debits from each customer's account.

Scenario B is an example of consumers losing their money when providers continue to take direct debit payments after disconnecting the customer's telecommunications service.

Scenario A: Direct debiting error – multiple deductions due to an IT systems glitch

In late 2017, a number of consumers complained to the Telecommunications Industry Ombudsman about their provider *ACETelco** which had deducted multiple unauthorised direct debit payments.

In most cases, consumers told us they had been charged four times their usual monthly direct debit payment for that month's bill.

A high number of complaints were received from financially vulnerable consumers who were left without sufficient funds or an 'overdrawn' account. The issue was raised with *ACETelco* as a possible systemic issue.

ACETelco said the cause of the problem was a glitch in their IT billing system, affecting almost 59,000 customers and it had been rectified.

The Telecommunications Industry Ombudsman closed its systemic issue case on being satisfied procedures were in place to ensure all affected customers had been refunded.

*Name of organisations and companies have been changed

Scenario B: Direct debiting error – ongoing deductions beyond disconnection of the service

In 2017, a small retail provider *MyTel** issued a disconnection notice to all of its customers and stopped providing landline, mobile and internet services, as it was going out of business.

The issue came to our attention when two consumers complained to the Telecommunications Industry Ombudsman when they discovered *MyTel* was continuing to take direct debit payments without authorisation.

The Telecommunications Industry Ombudsman treated the matter as a systemic investigation.

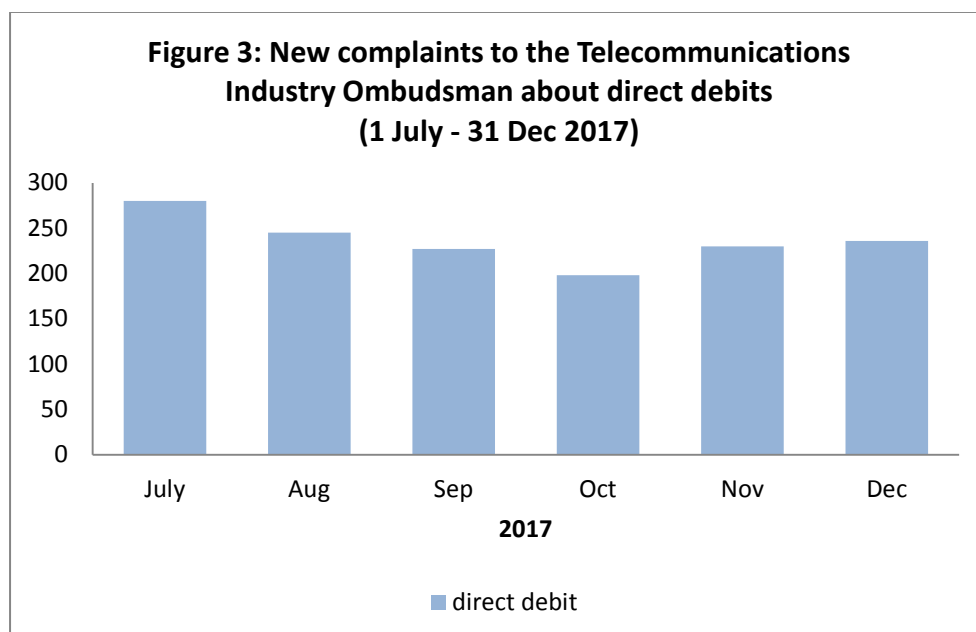
*Name of organisations and companies have been changed

¹⁷ As above for note 7, clause 5.7.1 g)

¹⁸ See: <https://www.moneysmart.gov.au/managing-your-money/banking/unauthorised-and-mistaken-transactions>

Direct debit issues recorded in July to December 2017

As illustrated by **Figure 3**, in the first half of financial year 2018, the Telecommunications Industry Ombudsman received a total of over 1,400 new complaints involving direct debit payment issues. This represents a monthly average of 236 new complaints about direct debit issues to the Telecommunications Industry Ombudsman, reflecting a very small (under 2%) proportion of our scheme's overall caseload. However, despite the relatively small number of complaints about unauthorised direct debits, this is a serious issue that reduces a consumers' available cash or credit and therefore requires immediate response and remediation. We support the strengthened *Code* provisions.



3.2 The new requirement for providers to deal directly with enquiries and complaints about third party charges

The Telecommunications Industry Ombudsman supports the proposed new *Code* requirement for retail providers to *address* all customer enquiries and complaints about charges for third party services on a bill.¹⁹ It could be supported by changes to the *Mobile Premium Services Code (MPS Code)*.

The new requirement could be supported by changes to the MPS Code

Through our systemic investigation²⁰ and policy²¹ work over the years, the Telecommunications Industry Ombudsman has repeatedly called for retail providers to deal directly with this type of enquiry and complaint rather than redirecting consumers to overseas third party aggregators, content or mobile premium service providers at first instance.

For the new *Code* requirement to have impact, the inconsistent provisions in the *MPS Code* could be removed.²² Those inconsistent provisions provide:

- retail providers and aggregators may redirect complainants to third party content providers, unless the retail provider voluntarily elects to handle the complaint itself;²³
- third party content providers, after unsuccessfully attempting to resolve the complaint, must advise the complainant of their right to access the Telecommunications Industry Ombudsman.²⁴

In our view, retail providers (instead of aggregators and third party providers) are best placed to respond to enquiries and complaints about disputed third party charges on a customer's bill.²⁵

This is because the retail provider:²⁶

- has the direct customer relationship with the telecommunications consumer;
- is likely to have a commercial arrangement with the third party provider in respect of payment for the content purchased on the consumer's mobile device;
- can refund or remove the disputed third party charge from the customer's bill; and
- can waive recovery of an unpaid or disputed amount on the customer's bill that may be recovered as a debt.

While the new requirement is a welcome development, the Telecommunications Industry Ombudsman encourages providers to consider what practical steps they can take to fully *address* complaints so resolution outcomes at IDR are improved.

Scenario C gives an insight into the experience of consumers when they discover they have an unexpected mobile premium service charge and why consumers escalate their complaint to the Telecommunications Industry Ombudsman. These complaints were referred to the provider's escalated complaints handling team and did not return to our scheme to progress through our dispute resolution service.

Scenario C: Unexpected third party charges for mobile premium services

During 2017 to 2018, over 350 customers with a major retail service provider complained to the Telecommunications Industry Ombudsman about unexpected third party charges on their bill.

The disputed charges were incurred with *PremiumX**, a third party mobile premium service provider.

Consumers reported a range of ways in which they realised they had a problem:

¹⁹ As above for note 7, clause 5.8

²⁰ See *ACCC v Telstra Corporations Limited* [2018] FCA 571, [69] and Appendix A [39] for the Federal Court's findings, which mentioned the Telecommunications Industry Ombudsman's systemic issues case work.

²¹ Telecommunications Industry Ombudsman submission to the *CommsAlliance consultation on draft Code DR C637:2011 Mobile Premium Services (incorporating variation No. 1/2017)* (August 2017), 3-4. See: https://www.tio.com.au/_data/assets/pdf_file/0008/246770/TIO-Submission-MPS-Code-CommsAlliance-20170804-FINAL.pdf

²² *Mobile Premium Service Code (C637:2011, incorporating Variation No.1/2014)*, clause 6.1. See: http://www.commsalliance.com.au/_data/assets/pdf_file/0007/45844/C637_2011-Variation-No.1-2014.pdf

²³ As above, note 22, clauses 6.1.9 – 6.1.11.

²⁴ As above, note 22, clause 6.1.17

²⁵ As above note 21, 3-4

²⁶ As above note 21, 3-4

- I started getting messages from *PremiumX*, but I don't remember signing up with them;
- I started getting messages from *PremiumX* after accidentally clicking on an internet pop up when surfing the net on my smart phone;
- *PremiumX* charged me for 1300 calls I never made.

When consumers complained to our scheme, they reported dissatisfaction with their provider's response which varied between, *my provider told me...*

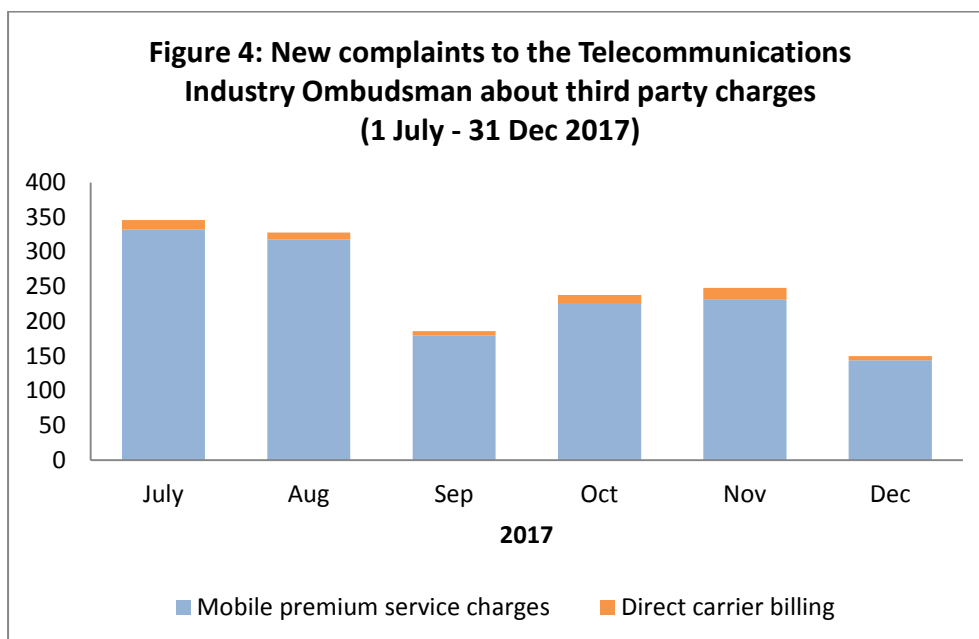
- nothing can be done and I still have to pay the charges;
- they blocked *PremiumX* services and I will be refunded, but it hasn't worked. I'm still being charged;
- they blocked *PremiumX* services, but I still have to contact *PremiumX* to get the charges removed.

*Name of organisations and companies have been changed

In its August 2017 submission to the *MPS Code*, the Telecommunications Industry Ombudsman called for other improved protections to safeguard consumers, such as double opt-in protections for all third party mobile content services and extension of existing safeguards to cover content delivered over smart phones so the *Code* protections are technology neutral.²⁷ These protections could also go towards addressing the issues raised by complainants in **Scenario C**.

Third party complaint numbers in July to December 2017

Figure 4 shows that in the first half of financial year 2018, the Telecommunications Industry Ombudsman received a total of almost 1,500 complaints about mobile premium services and other unexpected third party charges. These complaints reflect a small (1-2%) proportion of overall complaints. The number of complaints is likely to be an under-representation of the total number of consumer complaints about disputed third party charges given the practices of providers to redirect consumers to a third party aggregator, content provider, or mobile premium service provider in the first instance.



²⁷ As above for note 21

3.3 Strengthened financial hardship requirements

The Telecommunications Industry Ombudsman welcomes greater prominence being given to financial hardship by the creation of a new stand alone Chapter 7 and encourages retail providers to take steps to ensure their staff know and understand how to apply the provisions for the benefit of their vulnerable customers.

The Telecommunications Industry Ombudsman supports strengthened protections for financial hardship, including updated requirements that:

- hardship policies must disclose a set range of payment options that must be available to the customer;²⁸
- the providers' requests for information and documents to assess the consumer's eligibility for hardship must not be unduly onerous on the customer;²⁹
- providers must assess hardship and communicate a hardship variation within a shorter timeframe than required by the current *Code*;³⁰ and
- providers must give flexible repayment options that meet a customer's individual circumstances (and where domestic or family violence may be involved, provide options to manage the account).³¹

We will take the strengthened financial hardship requirements into account on the commencement of the revised *Code*.

Improving access to *Code* hardship arrangements

The hardship obligations could have greater impact if complemented by strengthened staff training obligations to raise awareness of consumers' eligibility for hardship programs.

Our staff regularly come across cases where a consumer presents as being eligible to access a provider's financial hardship arrangements, but the consumer was unaware, and the provider's staff did not make the consumer aware, that there was a hardship policy and procedures available to them.

It is not clear whether the draft *Code* requires a provider to train its staff to *identify* customers who may be experiencing family or domestic violence, or other life situations that are recognised circumstances for hardship so the consumer can be made aware they can request a hardship arrangement.³² There is an opportunity with more precise drafting to put this beyond doubt in clause 7.3 of the draft *Code*.

Bringing 'promise to pay' arrangements within the coverage of the *Code*

The draft *Code* could provide greater clarity and certainty as to what constitutes a 'promise to pay' arrangement and what is permitted under these arrangements.

'Promise to pay' arrangements are outside the scope of the draft *Code*: clause 7.2.1 a) (iv).

It would be an unintended consequence if providers were to put all customers on a 'promise to pay' arrangement in order to avoid *Code* recognised hardship arrangements.

If the draft *Code* continues to distinguish 'promise to pay' arrangements from hardship arrangements that are outside the scope of the *Code*,³³ this may disadvantage consumers who are prevented from accessing *Code* safeguards.

Scenario D illustrates consumers being disadvantaged when the provider has a policy of putting all customers on 'promise to pay' arrangements. In this example, the provider told the Telecommunications Industry Ombudsman it did not have any customers in its financial hardship program. From the cases we saw, there were customers who clearly should have been in a hardship program. The provider argued that as the *Code* did not apply, it could legitimately charge customers late payment fees to incentivise against continued late payments or payment delinquency.

²⁸ As above for note 7, clause 7.2.1

²⁹ As above for note 7, clause 7.4.1

³⁰ As above for note 7, clauses 7.5.4 (*sic*) which looks like it is meant to be 7.4.4 and 7.4.5 (*sic*) which looks like it is meant to be 7.7.5

³¹ As above for note 7, clause 7.6.1

³² As above for note 7, clause 7.3: *A Supplier must ensure that staff who are directly involved in applying the Financial Hardship Policy are appropriately trained.*

³³ As above for note 7, clause 7.2.1 a) (iv)

Scenario D: 'Promise to pay' arrangements are outside the coverage of the Code

In 2018, two consumers complained to the Telecommunications Industry Ombudsman about their retail provider, *Te/Star** and its approach to hardship. Both consumers wanted help negotiating a hardship arrangement with *Te/Star*.

In one case that progressed to conciliation, the consumer sought assistance with negotiating a hardship arrangement for an outstanding amount of almost \$1,500.

During conciliation, *Te/Star* initially offered a 15 month repayment plan that added a \$20 per month late payment fee, adding \$300 in late fees to the repayment plan.

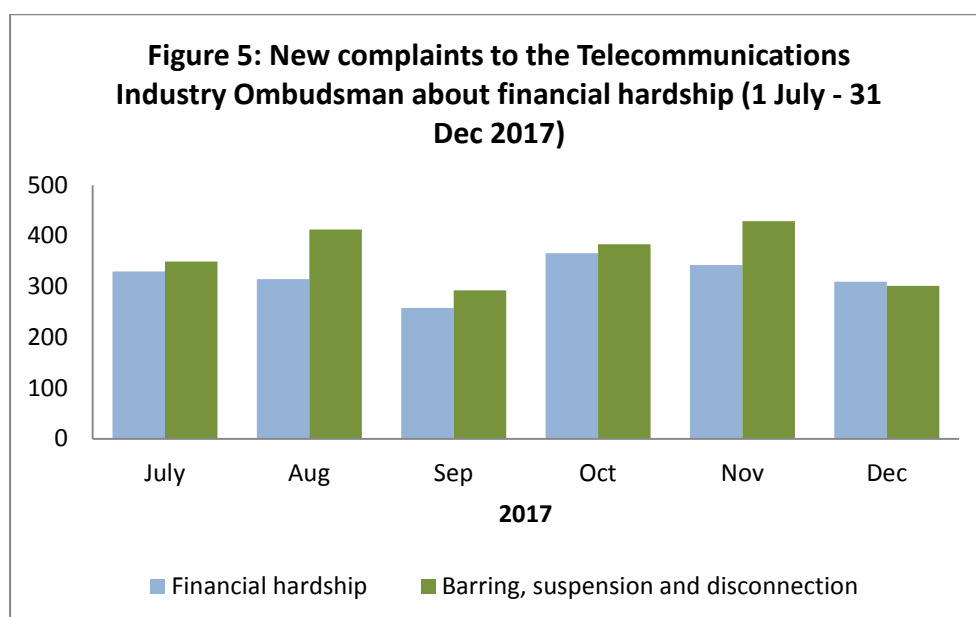
When the Telecommunications Industry Ombudsman questioned this practice, *Te/Star* reported that as the *Code* does not cover 'promise to pay' arrangements, *Te/Star* can legitimately charge monthly late payment fees. The late fee payment is to incentivise against continued late payments or payment delinquency by the consumer. If the consumer wanted to apply for a hardship arrangement, they would be covered by the *Code* and no late fee would apply.

In querying *Te/Star*'s practice, the Telecommunications Industry Ombudsman pointed out that if *Te/Star* and the customer were agreeing to a payment plan, then the consumer was likely to meet the definition of being in *financial hardship* under the *Code*. The Telecommunications Industry Ombudsman also cited section 6.3 3 of the Guideline for *Assisting and responding to customers in financial hardship*, which recommends that providers waive any fees for late payments in a bill.³⁴

*Name of organisations and companies have been changed

Financial hardship and credit management complaint numbers in July to December 2017

Figure 5 shows that in the first six months of financial year 2018, over 1,900 consumers complained to the Telecommunications Industry Ombudsman about financial hardship issues. This represents on average 2.26 per cent of all new complaints per month, reflecting a small proportion of our overall complaints. Included in **Figure 5** are the number of complaints about barring, suspension and disconnection as these issues may often be associated with, or as a result of financial hardship.



³⁴ *Assisting and responding to customers in financial hardship: Principles and practices – guide for telecommunications providers* (2nd Edition, April 2017), section 6.3, para 3. See https://www.tio.com.au/data/assets/pdf_file/0009/169776/TIO_FinancialHardship-Guidelines-2nd-edition-28-April-2017.pdf

Part 4: Draft Code provisions where the standard could be raised to better safeguard consumers

This Part covers:

- Expanding the concept of ‘responsible provision of telecommunications products and services’ to ensure the consumer can afford to pay and to reduce the provider’s commercial risk of non-payment
- Safeguarding small business consumers by setting a standard that is consistent with the *Australian Consumer Law*

4.1 Expanding the concept of ‘responsible provision of telecommunications products and services’

Providers have different interpretations of what they must do to provide telecommunications products and services responsibly. The draft *Code* provisions on the *responsible provision of telecommunications products* at clause 6.2 do not go far enough to adequately safeguard consumers. The differences could be resolved by rewriting clause 6.2 of the draft *Code* to put beyond doubt what is required by the *Code*.

Retail providers offer ‘credit’ to customers when they provide post-paid plans,³⁵ for example, when the cost of a device (smart phone or tablet) is bundled with a mobile or internet service over a 24 month plan. Under the draft *Code*, the provision of credit comes with an associated provider responsibility or general obligation to provide the telecommunications products and services *responsibly* by undertaking a credit assessment.

From our experience in facilitating the resolution of complaints and our investigations into systemic issues, providers do not share a universally accepted interpretation of what the *Code* requires when it comes to undertaking a credit assessment to responsibly provide telecommunications products and services.

The wording in the *Code* leaves open a number of questions that are fundamental to the effective operation of the consumer safeguard. These include:

- To whom do providers owe a responsibility and why?
- What constitutes an adequate credit assessment?

In our view the *Code* should make clear to providers what their responsibility is, to whom it is owed and provide guidelines on how to meet the standard set in the *Code*.

We suggest there are benefits to providers in improving their credit assessment practices that include:

- increased trust in the industry as a result of recognising consumer vulnerability;
- a reduction of sales practices that exploit consumer vulnerability; and
- reduced financial loss that arises from non-payment of debts.

To whom do providers owe a responsibility and why?

Clause 6.2, along with the other clauses in the *Code*, is intended to provide ‘telecommunications consumer protections’. The responsibility of a provider is to act fairly towards each of its actual or prospective customers each and every time a new telecommunications product or service is provided, so the provider treats the customer ‘fairly’ (as required by clause 3.3.2 of the draft *Code*) and ‘does no harm’ or causes no detriment to the customer when providing the initial or subsequent telecommunications product or service.

Providers tell us they are seeking to manage the commercial risk to themselves that may be posed by eroded profit margins if they take on too many customers who cannot repay their post-paid plan.

With this in mind, providers view the responsible provision requirements in the *Code* as them having to assess whether providing credit to a customer will contribute to their overall loss when their profit and loss ledgers are balanced. This is at odds with a *Code* requirement that is meant to safeguard individual consumers (**Scenarios F and G**).

Our complaints handling and systemic issues work reveals that provider interpretation and operation of clause 6.2 is inconsistent with the intention of the clause and with the responsibility to their

³⁵ *Privacy Act 1988*, Part IIIA; *Privacy (Credit Reporting) Code 2014 (Version 2)*, effective from 1 July 2018

customer. The inconsistency arises because providers interpret the responsibility as owed to themselves to manage their commercial risk and maintain overall profit-margins, rather than operating as a safeguard to protect the consumer from irresponsible credit provision, or credit that they cannot afford or repay.

It is our contention that properly exercised credit assessments protect both parties to the contract. Making an assessment that the consumer can reasonably discharge their payment obligations in accordance with contract terms protects the consumer and also protects the provider by mitigating the commercial risk of non-payment of the debt. The case scenarios demonstrate that no or a poor credit assessment results in high consumer debt, which most often also results in financial losses for the provider.

We suggest that clause 6.2 be worded to make it explicit that the credit assessment is conducted in order to act fairly towards the customer and to protect the provider's commercial interests.

What constitutes an adequate credit assessment?

Clause 6.2.1 a) of the draft *Code* could be redrafted to clearly define what steps must be taken to undertake a credit assessment so that the risk to a customer is managed.

Based on the types of complaints we see and our findings from systemic investigations, it is our view that the draft *Code* requirements at clause 6.2.1 a) which set out the minimum steps a provider must take to act responsibly, would not be adequate to safeguard consumers.

If it is acknowledged and agreed that providers owe a responsibility to act fairly towards customers when they provide telecommunications products and services, this significantly transforms what a credit assessment is intended to achieve.

It then follows that if the responsibility is about making sure customers are safeguarded each time they are offered credit (or a post-paid service), the provider should take reasonable steps to assess:

would the consumer be able to repay the whole plan without having to go into financial hardship (including a 'promise to pay') arrangement or default?

To satisfy this, providers could be required to make *reasonable inquiries* to assess whether the customer can afford to repay, by undertaking some of the checks already outlined in the CommsAlliance *Sales Practices and Credit and Debt Management Industry Guidance Note* (IGN013:2017).

It would not be enough to assess the customer's past payment history for one post-paid plan when the customer is being considered for additional or more costly plans (as required by clause 6.2.1 a) of the draft *Code*). This would especially be inadequate if the customer's needs for their first plan with the provider could have been better served by a pre-paid plan rather than a post-paid plan (**Scenario F and G**).

The benefits of good credit assessment practices

Good credit assessment practices can ensure providers recognise consumer vulnerability and act as a restraint on sales practices that exploit consumer vulnerability. **Scenario H** illustrates the role sales culture and commission-based selling structures can have in incentivising 'irresponsible' provision of telecommunications products and services. In **Scenarios E to H**, the provider could have avoided financial losses if it had adequate credit assessment practices in place.

Consumer vulnerability can present in a range of ways including through youth unemployment and homelessness, disability or impairment, being an older Australian reliant on younger family members, or for other reasons. A number of laws give special protections to vulnerable consumers that may be applied to telecommunications services. For example, the *Australian Consumer Law* provides an economy-wide consumer protection against unconscionable conduct, to prevent against the exploitation of a consumer's vulnerability.³⁶

In the credit and banking sector, special safeguards apply to consumers on lower socio-economic incomes. Under responsible lending laws, consumer credit providers are prohibited from binding a

³⁶ *Australian Consumer Law*, ss20-22A in *Competition and Consumer Act 2010*, Schedule 2

significant proportion of a consumer's social security benefit towards the payment of a consumer credit loan.³⁷

Scenario E: Mr Youthful*

In 2017, an unemployed and homeless Mr Youthful complained to the Telecommunications Industry Ombudsman about accumulated debts of over \$3,000 for post-paid mobile phone services.

When he took out his plan with *BigTel**, Mr Youthful's only source of income was the Government supported youth allowance. The terms of repayment was a monthly charge of \$68 for 8GB of data, plus automatic top ups of \$10 for every extra 1GB of data.

Mr Youthful incurred many additional charges for data. Despite experiencing difficulty in making his first \$1,300 repayment, several months later *BigTel* provided Mr Youthful with a second post-paid mobile plan, of \$50 per month for 25GB. This put Mr Youthful into further debt, with the debt for the second plan being on-sold to a debt collector.

By this time, the debt recovery action was causing Mr Youthful considerable stress, and he was being assisted by a financial counsellor and support worker.

Following conciliation of the complaint and a finding that no credit assessment had been made, *BigTel* agreed to waive the entire outstanding debt in resolution of the complaint.

*Name of consumers, organisations and companies have been changed

Scenario F: A cycle of taking out new post-paid plans

In 2016, within a period of several months, the consumer had signed up for multiple post-paid mobile plans with *GoodTel**. At the time the consumer's only source of income was the disability pension.

The consumer tried to solve the subsequent financial stress by constantly applying for new plans with *GoodTel* to sell off the phones so the money could be used to pay the bills for the other plans. At one stage, the consumer owed \$10,000 in debt.

When the consumer's representative lodged a complaint on the consumer's behalf, the consumer had totally lost track of how many plans he had taken out with *GoodTel*.

During conciliation, *GoodTel* reported the customer had seven post-paid and two pre-paid mobile accounts, with as many as fourteen phone plans and associated devices.

It was acknowledged that *GoodTel*'s credit assessment practices permitted the ongoing provision of additional post-paid services because assessing credit was an automatic process. The consumer could be provided with subsequent plans based on the consumer passing their initial credit assessment check. The customer was not viewed as a 'risk to *GoodTel*'s commercial viability as a business' while he continued to be a customer of *GoodTel*.

The Telecommunications Industry Ombudsman closed the complaint when *GoodTel* agreed to disconnect all of the disputed services and keep two remaining mobile services active, with almost all outstanding debts waived except for some valid charges on one account.

*Name of organisations and companies have been changed

Scenario G: Family members taking advantage of older relatives

In 2015, Mr Retired*, an older Australian whose only income was the Government supported pension, had an internet and landline service with *WowCall**. Mr Retired added one of his daughters as an authorised representative to his *WowCall* account because he was hard of hearing.

Four years later, on being contacted out of the blue by *WowCall*, Mr Retired discovered his daughter had taken out nine post-paid mobile phone plans within a fortnight. These plans were for the latest smart phone, exposing Mr Retired to a \$15,000 liability if he cancelled the plans. His daughter was not contactable.

³⁷ *National Consumer Credit Protection Act*, s133CC; *National Consumer Credit Protection Regulations*, reg 28S; ASIC Regulatory Guide 209 *Credit Licensing: responsible lending conduct* (November 2014), RG 209.62 – 209.63.

During our handling of the complaint, *WowCall* told us Mr Retired passed each of the nine credit assessments every time because Mr Retired was classified as an existing customer who posed no credit risk. He was only contacted because when his daughter tried to take out another plan, triggering *WowCall*'s 'ten device limit'.

The Telecommunications Industry Ombudsman closed the complaint when *WowCall* agreed to cancel all the services and waive all associated charges.

*Name of consumers, organisations and companies have been changed

Scenario H: Asylum seekers and high pressure commission sales cultures

In late 2016, following a community advocacy agency bringing the issue to our attention, the Telecommunications Industry Ombudsman completed a systemic investigation into the sales and credit assessment practices of a major service provider, *Green Phones**.

Our systemic investigation found the sales staff of *Green Phones* had sold expensive post-paid plans to newly arrived asylum seekers who did not hold working visas. Each of these customers was then pursued for outstanding debts of up to \$6,000.

Sales staff were working in a culture of high pressure sales through *Green Phone*'s commission-based remuneration structure. Staff focused on selling and never performed any credit checks as part of signing up new customers.

Instead, credit assessments were performed by *Green Phone*'s credit risk team who were removed from interacting with the customer. The credit risk team based their assessments on pass or fail rules.

Green Phones engaged constructively with our systemic issues investigation and as part of fully resolving the issue, implemented a number of actions, including:

- applying what was learnt from the systemic investigation, *Green Phones* refreshed its auditing standards for sales dealerships. Where audited contracts were found to be non-compliant (including links to vulnerability or disadvantage), *Green Phones* could claw back any sales commission paid to staff;
- training and reference materials were updated and all sales staff had to complete training on credit and contract compliance requirements, also covering *Green Phones*' credit policy and the consequences for not following the policy;
- ongoing refresher sales training through induction and refresher training, including a focus on ethical selling. Core components of the training covered managing recognition of and sales to customers who may have the characteristics of vulnerability and disadvantage.

The Telecommunications Industry Ombudsman closed its investigation once satisfied *Green Phones* had implemented all actions and this had successfully addressed the 'root cause' of complaints.

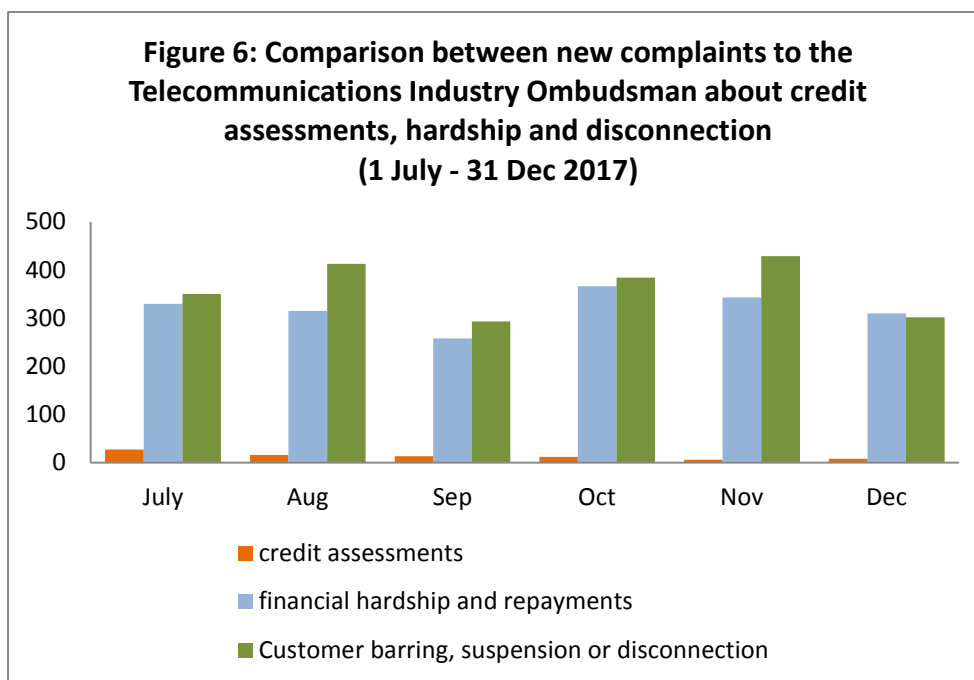
*Name of organisations and companies have been changed

Credit assessment complaints numbers in July to December 2017

Figure 6 shows that in the first half of financial year 2018, the Telecommunications Industry Ombudsman received a very small number of new complaints (over 80) about credit assessments. In comparison, we received over 1,900 new complaints involving financial hardship and repayment issues, and over 2,170 new complaints involving barring, suspension and disconnection issues.

The low number of cases in the credit assessment category can be partly explained by the fact that consumers themselves rarely complain about the credit assessment, rather this is the language of representatives such as legal centres and financial counsellors. Consumers usually complain about not being able to repay the debt, hardship or disconnection issues and only when we examine the case in more detail do we understand that the underlying cause is an inadequate credit assessment.

When considered in the context of the consumer experience as discussed above in **Scenarios E to H**, even a small number of credit assessment complaints has the potential to harm consumers.



4.2 Safeguarding small business consumers to a standard that is consistent with the *Australian Consumer Law*

For consistency, the safeguards in the *Code* could be updated to cover the types of small business consumers who are also protected by the *Australian Consumer Law*.

When the Telecommunications Industry Ombudsman considers residential and small business consumer complaints involving advertising, sales and contracts, we may have regard to whether the protections in the *Australian Consumer Law* apply. The *Australian Consumer Law* provides for protections such as cooling off periods for unsolicited sales, unfair contract terms, consumer guarantees and prohibitions against false or misleading representations and unconscionable conduct.

When the *Australian Consumer Law* applies to small business consumers, it applies a definition based on threshold spend not exceeding \$40,000.³⁸ This is a doubling of the threshold spend provided for in the draft *Code*.³⁹

The definition of ‘consumer’ in the *Australian Consumer Law* is currently under review by CAANZ. In March 2018, Federal Treasury on behalf of CAANZ commenced a consultation into whether the definition of consumer remains fit for purpose. Treasury sought feedback on whether the definition based on threshold spend should be raised to a threshold not exceeding \$100,000 (with the option of indexation).⁴⁰

The current jurisdiction of the Telecommunications Industry Ombudsman permits *small business consumers* to access our service. In determining whether a complainant can access our scheme, we apply a definition of small business based on employee numbers and annual turnover,⁴¹ with the types of resolution outcomes we can provide capped at between \$50,000 to \$100,000.⁴²

³⁸ *Australian Consumer Law*, s3 in *Competition and Consumer Act 2010*, Schedule 2

³⁹ As above for note 7, clause 2 (definition of ‘consumer’)

⁴⁰ Federal Treasury, Consultation on *Clarification, simplification and modernisation of the consumer guarantee framework*, Consultation Regulatory Impact Statement, Chapter 1: Increasing the threshold definition of ‘consumer’ from \$40,000 to \$100,000. See: <https://consult.treasury.gov.au/market-and-competition-policy-division/c2018-t271629/>

⁴¹ As above for note 1, clause 2.2; Our policy on *businesses who can complain to us*. See: <https://www.tio.com.au/small-business>

⁴² As above for note 1, clauses 3.11 and 3.16

Appendix A: How to understand the Telecommunications Industry Ombudsman's complaints data

This Appendix A covers:

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

A.1 The Telecommunications Industry Ombudsman's dispute resolution service

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

Providers of telecommunications services are required to join and comply with the Telecommunications Industry Ombudsman scheme.⁴³ This means implementing a decision of the Ombudsman or following the Ombudsman's direction.

For a complaint to be within jurisdiction,⁴⁴ the complaint must be about a provider that is a current scheme member.⁴⁵

The membership base of over 1,500 members has been relatively stable over the past three years and comprises telecommunications retail service providers, wholesalers and network operators.

Residential and small business consumers Australia-wide can escalate their complaint to the Telecommunications Industry Ombudsman if they remain dissatisfied with their provider's response, or the way in which their provider is handling their complaint.

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

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

When considering the complaint, the Telecommunications Industry Ombudsman will have regard to the law, good practice and what is fair in the circumstances.⁴⁶

The Telecommunications Industry Ombudsman can identify as a systemic issue certain matters affecting a number or class of consumers and take action to reduce the consumer detriment. The approach to systemic issues is to bring the matter to a provider's attention in order to remediate the problem or to investigate and publish our findings to draw attention to industry-wide issues.⁴⁷

⁴³ As above for note 9

⁴⁴ As above note 1

⁴⁵ As above note 1, clause 2.3; and the *Telecommunications Industry Ombudsman Members Listing*: <https://www.tio.com.au/members/members-listing>

⁴⁶ As above for note 1, clause 1.5

⁴⁷ As above for note 1, clause 5; and the Telecommunications Industry Ombudsman's Complaints Handling Procedures on systemic issues. See: <https://www.tio.com.au/about-us/policies-and-procedures/systemic-problem-investigation>

For example, the Telecommunications Industry Ombudsman recently published recommendations about steps providers can take to prevent consumers losing their telephone number when migrating to a service delivered over the NBN.⁴⁸

A.2 Changes to recording complaint issues from 1 July 2017

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

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



For example complaints about:

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

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

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

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

We have a separate category for recording land access disputes.

⁴⁸ Telecommunications Industry Ombudsman, *Systemic Insight: Loss of telephone numbers during migration to the NBN (18 July 2018)*. See: <https://www.tio.com.au/publications/news/systemic-insight-loss-of-telephone-numbers-during-migration-to-the-nbn>

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

A.3 Complaints we handle

The Telecommunications Industry Ombudsman handles residential and small business consumer complaints about our members.⁴⁹

A.4 About us

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

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

Members of the Telecommunications Industry Ombudsman include businesses or individuals who are carriers or provide carriage services.

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

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

A carrier must hold a licence issued by the ACMA and as a condition of that licence comply with the land access regime in the *Telecommunications Act 1997 (Schedule 3)*.⁵⁰

The land access regime provides for the Telecommunications Industry Ombudsman to determine a landowner or occupier's dispute about a carrier seeking to enter land if the carrier has not been able to resolve the dispute. Entry onto land may be for the purposes of deploying certain types of prescribed telecommunications network infrastructure. More information about how the Telecommunications Industry Ombudsman determines land access disputes is set out in our *Guideline*.⁵¹

⁴⁹ See above note 1, clause 2.3; and the *Telecommunications Industry Ombudsman Members Listing*: <https://www.tio.com.au/members/members-listing>

⁵⁰ See also: *Telecommunications (Low-impact Facilities) Determination 2018*; *Telecommunications Code of Practice 2018*

⁵¹ *Telecommunications Industry Ombudsman, Guidelines on the Installation and Maintenance of Low-Impact Facilities* (22 June 2018). See: https://www.tio.com.au/_data/assets/pdf_file/0019/170623/Land-Access-Guidelines-2018-Revision.pdf

Appendix B: *Our submission to the CommsAlliance review of the Customer Requested Barring Guideline*



8 June 2018

Mr Craig Purdon
Communications Alliance Ltd
Level 12
75 Miller Street
North Sydney NSW 2060

Sent by email to: c.purdon@commsalliance.com.au
cc: stanton@commsalliance.com.au

Dear Craig,

CommsAlliance review of *Customer Requested Barring Guideline (G612:2012)*

Thank you for inviting my comment to the review of the *Customer Requested Barring Guideline (G612:2012)* (**Guideline**).

The review invites general comment on whether there are any issues, gaps, areas for improvement with the *Guideline*, and whether it should be amended, reconfirmed or withdrawn.

My comments cover:

- Consideration of whether the consumer safeguards in the *Guideline* should be incorporated in the *Telecommunications Consumer Protections Code*
- The relatively low number of complaints to my office about excess charges for call and premium messaging services

1. Consideration of whether the consumer safeguards in the *Guideline* should be incorporated in the *Telecommunications Consumer Protections Code*

I believe there could be benefits to industry, consumers and my office if the obligations in the *Guideline* were incorporated in the *Telecommunications Consumer Protections Code* (**Code**). The benefits are likely to be improved industry understanding and therefore compliance which may in turn reduce the number of complaints to my office.

The *Guideline* sets obligations on retail service providers to:

- (a) on the request of a new connecting customer, advise as to which call and premium messaging services can be barred; and
- (b) if the customer requests a bar, the retail service provider must not charge a fee for it or for the service.

The *Guideline* also sets obligations on carriers to ensure the requested types of calls and premium messaging services have been barred.

The safeguards in the *Guideline* appear to complement the consumer safeguards in the *Code*, including information disclosure to consumers and the requirement for retail service providers to offer at least one spend management tool, which may be barring of call and premium messaging services.ⁱ

2. Complaints to my office about excess charges for call and premium messaging services

Complaints to my office about excess charges for call and premium messaging services are relatively low.

In the six month period to 31 December 2017, my office received over 700 complaints about excess charges for call and premium messaging (whether SMS or MMS) services. This is in the context of receiving 38,594 complaints about charges and feesⁱⁱ in that same period.ⁱⁱⁱ


In the complaints about call and premium messaging services, residential consumers tend to dispute ever signing up for the particular service. The complaints do not generally include issues of consumers having requested barring and a provider not putting a bar in place.

Where complaints are received about excess charges for call and premium messaging, retail service providers will often bar the disputed call or premium messaging service as part of the resolution of the complaint.

The nature of the complaints to my office suggest improved consumer awareness of the right to bar could reduce complaints about excess charges for call and premium messaging services.

If you have any questions regarding this letter, please feel free to contact me, or my Senior Policy Advisor, Ai-Lin Lee on (03) 8680 8403 or Ai-Lin.Lee@tio.com.au.

Yours sincerely,



Judi Jones
Telecommunications Industry Ombudsman

ⁱ *Telecommunications Consumer Protections Code (C628:2015 Incorporating Variation No. 1/2017)*, clause 6.5.5(c)

ⁱⁱ *Telecommunications Industry Ombudsman Terms of Reference (25 October 2017)*, clause 2.7(a)

ⁱⁱⁱ *Telecommunications Industry Ombudsman, Six Month Update (July – December 2017)*, 10