

Telecommunications Industry Ombudsman

Submission to Consumer Safeguards Review

Part A

Redress and Complaint Handling



Telecommunications
Industry Ombudsman

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Acronyms and abbreviations

2017 Independent Review	Telecommunications Industry Ombudsman Independent Review Report
ACCAN	Australian Communications Consumer Action Network
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
AFCA	Australian Financial Complaints Authority
CISAS	United Kingdom's Communications and Internet Services Adjudication Scheme
CCTS	Canada's Commission for Complaints for Telecom-Television Services
Complaint Handling Standard	Telecommunications (Consumer Complaints Handling) Industry Standard 2018
Consultation Paper	Consumer Safeguards Review Part A Consultation Paper
EDR	External dispute resolution
EWON	Energy and Water Ombudsman NSW
EWOV	Energy and Water Ombudsman Victoria
FOS	Financial Ombudsman Service
Government Benchmarks for Dispute Resolution	Benchmarks for Industry-based Customer Dispute Resolution
IDR	Internal dispute resolution
International Companion Paper	International and Sectorial Comparisons of Redress and Complaints Handling Models for Consumers and Small Business
OBSI	Ombudsman for Banking Services and Investments
OECD	Organisation for Economic Co-Operation and Development
OS	United Kingdom's Ombudsman Services
Ramsay Review	Review of the Financial System External Dispute Resolution and Complaints Framework
Record Keeping Rules	Telecommunications (Consumer Complaints) Record-Keeping Rules 2018
TCP Code	Telecommunications Consumer Protections Code
TDR	New Zealand's Telecom Dispute Resolution scheme
TIO	Telecommunications Industry Ombudsman

Executive Summary

The Telecommunications Industry Ombudsman (TIO) welcomes the review of consumer safeguards and the opportunity to contribute to improved public policy settings and consumer outcomes in complaint handling. This Submission addresses the Consumer Safeguards Review Part A Consultation Paper (**Consultation Paper**) and the further proposals advanced in consultations undertaken by the Government's Lead Reviewer, Mr Andrew Dyer, including in his meeting with the TIO Board on 24 July 2018.

The problem

The Consumer Safeguards Review is being conducted against the backdrop of a significant increase in the number of complaints about telecommunication services received by the TIO since 2016. This increase, which followed a number of years of falling complaint numbers, is described by the Consultation Paper as 'the problem' to be addressed through Part A of the Consumer Safeguards Review.

As explained in **Part 1** of this Submission, the problem is not the complaint numbers per se, but rather the underlying dissatisfaction that these numbers indicate.

Viewed historically, complaint numbers have increased at times of major change and disruption within the telecommunications sector, and declined when significant changes have been bedded down. This means it is important to advance reforms that do not assume complaint numbers will remain at current levels indefinitely. Reforms should be designed to improve complaint processes or outcomes for consumers on an ongoing basis, rather than having the sole purpose of reducing complaints to the TIO.

Guiding principles

Accordingly, it is important to ensure that reforms for policy settings and industry structures are devised and tested against overarching and enduring principles. For complaint handling and external dispute resolution (**EDR**), these guiding principles are set out in the Government's Benchmarks for Industry-based Customer Dispute Resolution (**Government Benchmarks for Dispute Resolution**):

- accountability
- independence
- fairness
- accessibility
- efficiency
- effectiveness¹

Consumer markets in Australia such as utilities and financial services, as well as telecommunications, each have highly evolved EDR systems available to consumers. Assisting consumers to access these EDR systems are a range of consumer support organisations such as consumer advocates, financial counsellors, legal aid commissions and community legal centres.

Consumer support organisations deal with various consumer complaint and redress mechanisms across the service sectors. The TIO submits that the insight of consumer representatives into which systems and processes work best for consumers should be highly influential for the Government in assessing reforms to consumer safeguards in telecommunications.

1. Australian Government (2015) *Benchmarks for Industry-based Customer Dispute Resolution*.

Improved internal dispute resolution

The Consultation Paper and Mr Dyer in his consultations identify complaint handling processes within telecommunication providers as a key area for improvement.

The reform proposals point out that the experience of the TIO is a large majority of complaints received are subsequently resolved when referred back to the provider. It is then contended that most of these complaints should be able to be resolved through improved internal dispute resolution (IDR) processes and not need EDR.

The TIO supports the measures canvassed in the Consultation Paper and further developed by Mr Dyer to improve IDR. These measures build upon the recent introduction by the Australian Communications and Media Authority (ACMA) of the Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (**Complaint Handling Standard**) and Telecommunications (Consumer Complaints) Record-Keeping Rules 2018 (**Record Keeping Rules**).

Part 2 of this Submission outlines how the TIO supports good IDR, including training and feedback to providers about their processes and the conduct of systemic investigations.

To foster improved IDR, it is important that the respective roles and focus of providers, the regulators, and the TIO be understood and agreed. The TIO submits that primary responsibility for IDR naturally rests with individual providers, and oversight of IDR rests with the ACMA as the regulator. The TIO's role is to assist IDR performance through training, best practice advice and systemic reviews. However, consistent with its role as the provider of EDR, the TIO should not become a regulator of IDR, nor should the regulator handle complaints.

Recommendation 1

That the Government continue to enable the ACMA to support strong internal dispute resolution through the development of standards, monitoring and enforcement

The interface between IDR and EDR

The Consultation Paper suggests a significant change in the interface between IDR and consumer access to EDR. This change is predicated on the EDR scheme dealing only with complex matters unable to be resolved at IDR or cases where a provider has failed to comply with its IDR process within a reasonable time. It is then contended that the need for the EDR scheme to contain a referral process is removed.

Part 3 of this Submission explains the value and importance of the referral process. It is submitted that it is inconsistent with the guiding principles of accessibility and efficiency to place barriers to consumers accessing the EDR scheme. Equally, it is explained that EDR schemes invariably include a referral step, including the New Zealand and Canadian telecommunications EDR schemes cited in the Consultation Paper.

Referral was also endorsed in the recent reforms to EDR in the financial services sector and accepted by the Government in the creation of the Australian Financial Complaints Authority (AFCA).

Recommendation 2

That the referral process is retained as an essential element of an efficient and effective EDR scheme

Retention of the industry based Ombudsman model

The Consultation Paper canvasses the replacement of the TIO with a new EDR body that is independent from industry and meets other design features.

In **Part 4** of this Submission it is argued that the industry based Ombudsman model, the TIO, should be retained given it meets the design features set out in the Consultation Paper:

- it meets the guiding principles as articulated in the Government Benchmarks for Dispute Resolution
- it is funded by industry in proportion with complaints received
- it is independent – its governance structure and decisions are not controlled by industry, consumers or government (it is not correct to say that the TIO is industry owned, as suggested by the Consultation Paper)
- it requires consumers to have attempted to resolve the complaint with the provider
- it provides complaints data to the ACMA and the Australian Competition and Consumer Commission (**ACCC**).

Furthermore, the TIO:

- is free for consumers
- is a single end-to-end service for escalated complaint resolution in the sector, which is a recognised benefit for EDR schemes.

The industry based Ombudsman model has been consistently endorsed by government and independent reviews as providing superior access to justice and cost effective and efficient dispute resolution. These reviews have also endorsed the model's governance, which balances industry and consumer interests.

Recommendation 3

That the Government retains the industry based Ombudsman model in the telecommunications sector

Data collection and reporting

The TIO provides data to the ACMA as intended in Proposal 3 of the Consultation Paper, and we support broader reporting powers by the ACMA.

We appreciate that data on TIO complaints is an important diagnostic tool for the telecommunications industry. We are working on a range of measures to improve our data collection and reporting, including implementing recommendations from the 2017 Independent Review of the TIO.

We believe that it is important for the TIO to continue reporting both to the regulator and publicly, as outlined in **Part 5** of this Submission.

Recommendation 4

That independent reporting by the EDR scheme is retained, alongside reporting by the ACMA

Other improvements

We consider that complaint handling in the telecommunications industry could be further improved through the following additional recommendations, as outlined in **Part 6** of this Submission.

Recommendation 5

That the TIO's powers are expanded to allow it to award compensation for non-financial loss

Recommendation 6

That the Government introduce a registration requirement for telecommunications service providers

1. Consumer dissatisfaction in a disrupted industry

The Government's Consultation Paper appears to be concerned with high TIO complaint numbers about service outages, delays in connections and repairs, incorrect billing and a lack of provider responsiveness. The problem, however, is not with TIO complaint numbers per se, but with the underlying consumer dissatisfaction that these numbers indicate.

The TIO's complaint levels have historically risen and fallen in response to disruption in the telecommunications industry. Our data shows there is a correlation between significant marketplace events and a higher volume of complaints to the TIO. Major events correlating with higher TIO complaint numbers include the collapse of OneTel, Telstra's implementation of a new billing system and Vodafone's rapid expansion of its mobile network (illustrated in Figure 1).

Similarly, increased numbers of complaints in all categories (mobile, landline and internet) received by the TIO are correlated with the rollout of the NBN as a significant marketplace event.

Figure 1: The correlation between significant marketplace events and TIO complaint numbers

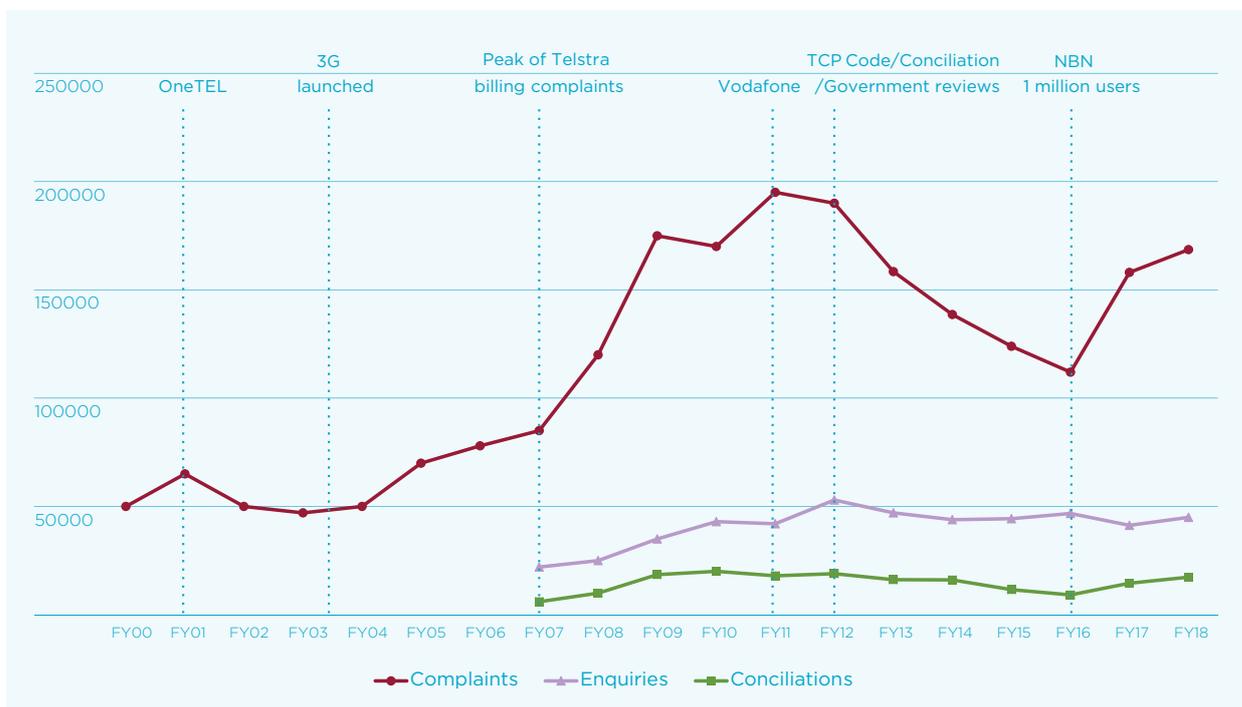


Figure 1 shows that after a 43 per cent reduction in the number of complaints to the TIO between 2011 and 2016, there is a sharp increase in annual complaint numbers from July 2016. While currently only around a quarter of TIO complaints are about services delivered over the NBN,² the sharp increase in total complaints coincides with the accelerated rollout of the NBN. Given the scale of the rollout, affecting millions of households and businesses, this trend is not surprising.

2. Telecommunications Industry Ombudsman (2017) *Six Month Update - July - December 2017*.

However, as shown in **Figure 2**, the TIO’s monthly data indicates that complaints to the TIO have recently settled somewhat.

Figure 2: TIO complaints by month July 2016 – June 2018



The Complaints in Context comparison of complaints against services in operation, published by Communications Alliance in June 2018 (**Figure 3**), also shows variability in complaints, and the start of a downward trend.

Figure 3: Complaints in Context showing TIO complaints lodged against each participating provider per 10,000 services in operation as at June 2018³



3. Communications Alliance (2018) *Telecommunications Complaints in Context*.

1.1 Recent measures to improve the consumer experience and customer satisfaction

In recognition of the current disruption within the telecommunications industry and the high number of consumer complaints, the Government, regulators, industry, the TIO and nbn co have all recently introduced measures to improve consumer outcomes, increase consumer satisfaction with telecommunications services, improve provider responsiveness to complaints and reduce complaints overall.

While it is still too early to assess the full impact of these measures, the TIO's monthly data shows complaints have slowed in the second half of the 2018 financial year (**Figure 2**).

We note that a large portion of the modernisation of safeguards has been left to Parts B and C of the Consumer Safeguards Review. Part B will address the reliability of telecommunications services, including reasonable timeframes for connections, fault repairs and appointments. Part C will address the ability to make informed choices and the fair treatment of customers by their provider in areas such as customer service, contracts, billing, credit/debt management and switching providers. These will have a greater impact on achieving the fundamental aim of safeguards, which is to ensure Australian consumers have access to reliable telecommunications services that meet consumer expectations. We look forward to contributing to subsequent parts of the Consumer Safeguards Review to improve these fundamentals.

Regulatory responses

At the broader market and supply chain level, the ACCC has been active in its oversight of the communications market through its Communications Sector Market Study and its in-progress inquiry into NBN wholesale service standards.

The ACCC has also been active in enforcing compliance with the Australian Consumer Law, especially on broadband speed claims. The ACCC's recent actions include its guidance on speed claims, broadband speed monitoring program, accepting court enforceable undertakings from a number of major retail providers for false or misleading broadband speed claims and issuing penalty infringement notices.

With the support and backing of the Department of Communications and the Arts, the ACMA has strengthened the obligation on providers to deal effectively with consumer complaints by transferring complaint handling from the Telecommunications Consumer Protections Code (**TCP Code**) to the enforceable Complaint Handling Standard, effective from 1 July 2018. The new Complaint Handling Standard and Record Keeping Rules give the ACMA greater ability to oversee and enforce how providers handle complaints at the IDR stage, and should reduce the number of complaints escalated to the TIO.

These measures are complemented by the ACMA's new suite of instruments to improve the customer experience when migrating to a service delivered over the NBN⁴. These will take full effect in September 2018 and focus on:

- improved customer disclosure through Key Facts Sheets about NBN plans
- ensuring the customer is not left without any service during the 18 month migration period

4. This suite of standards includes the following: Telecommunications (NBN Consumer Information) Industry Standard (2018); Telecommunications Service Provider (NBN Service Migration) Determination (2018); Telecommunications (NBN Continuity of Service) Industry Standard (2018).

- making sure the customer's line is tested on migration to the NBN to ensure it is properly connected and is capable of achieving their maximum attainable speed.

The ACMA has announced it will be closely monitoring compliance with these new requirements and will conduct regular industry 'tune ups' to ensure the new safeguards are working as intended.

Part 2 of this Submission suggests further gains can be made by enabling the ACMA to continue to support strong IDR.

Industry responses

An updated TCP Code is also currently under consultation. The safeguards in the TCP Code complement existing safeguards in consumer, privacy and telecommunications service laws. These safeguards focus on the customer relationship, covering disclosure and sales, billing and hardship.

A number of steps have been taken by nbn co to increase consumer satisfaction with services provided over the NBN, including:

- adjustment to CVC pricing in 2018 to encourage improved provisioning by providers
- a pause in the HFC rollout in recognition of the need to address the increased complexity of this technology
- more detailed reporting to track service and quality improvements of services delivered over the NBN.⁵

There have also been industry CEO roundtables convened by the Minister for Communications between providers and nbn co that focus on the consumer experience with migration to the NBN. Importantly, industry is taking steps to adapt its service and product offerings to meet the needs of consumers.⁶

Telecommunications Industry Ombudsman

On 1 July 2018, the TIO introduced a new funding structure that has an annual membership fee based on the complaint numbers of each telecommunications service provider in the previous calendar year.

This structure is expected to put downward pressure on complaints escalated to the TIO as it provides a clear incentive for providers to resolve complaints internally.

The TIO also encourages good IDR with a range of initiatives, including offering provider training, feedback to members about their IDR, investigation of systemic issues and small member forums. **Part 2.2** of this Submission provides more information on these initiatives.

5. nbn co Media Centre (13 March 2018) *nbn co to publish customer experience progress report* (accessed on 27 July 2018) <<https://www.nbnco.com.au/corporate-information/media-centre/media-statements/customer-experience-progress-report.html>>.

6. One recent example is Telstra's move to introduce mobile phone products that do not include excess data charges: Paul Smith, Australian Financial Review, *New Telstra Mobile Deals Highlight Fierce Competition Amid Earnings Concerns* (24 July 2018 – accessed on 25 July 2018) <<https://www.afr.com/business/telecommunications/new-telstra-mobile-deals-highlight-fierce-competition-amid-earnings-concerns-20180724-h1328e>>.

2. We support improvements in IDR

We agree with establishing strong regulation and oversight of provider processes, as suggested in Proposal 1 of the Consultation Paper. IDR is a fundamental pillar of consumer safeguards, as is the TIO's role in resolving escalated disputes. Well-functioning IDR processes allow providers to directly resolve consumer complaints quickly and effectively. While we observe some good practice by telecommunications service providers, we support measures to strengthen the regulatory framework for complaint handling, including measures to incentivise early resolution of complaints before they reach the TIO.

The TIO has welcomed the ACMA's recently introduced Complaint Handling Standard and Record Keeping Rules. Together with the ACMA's suite of instruments to support migration to the NBN, these are a welcome development in introducing minimum enforceable standards for IDR.

The TIO expects these measures, once they have had an opportunity to operate as intended, will play a strong role in improving complaint handling by service providers.

Current requirements for IDR under the ACMA Complaint Handling Standard

- Provider must have complaint handling process in place (s7)
- IDR process should be readily available and accessible (s8)
- Contact details (number, email, website) must be available (s8)
- Internal escalation process must be clear, accessible and transparent (s10)
- IDR process must include the right to escalate to the TIO and give the TIO's details (s10)
- Provider must set out required timeframes and advise of any proposed delays outside those timeframes (15 working days to resolve and 10 working days to implement, or two working days to resolve and implement for certain urgent complaints) (ss 9,12-14)
- IDR process must require staff to help consumers with different needs and backgrounds (s8)
- All staff dealing directly with consumers must be properly trained (s8,11)
- Provider must collect and keep records of complaint data (ss20-21)

2.1 Who is responsible for improving IDR?

The TIO does not have direct responsibility for overseeing IDR. The TIO's role in relation to IDR is intended to complement the role of the ACMA as the industry regulator, which has enforcement powers and the ability to hold providers to account for failure to comply with the Complaint Handling Standard and the EDR scheme. **Table 1** sets out the existing roles of various bodies in relation to IDR.

Table 1: Roles and responsibilities in relation to IDR in the telecommunications industry

ACMA	Communications Alliance	Communications Compliance	Providers	TIO
Set standards	Set industry codes	Monitor compliance with TCP Code	Operate IDR in a way that meets requirements under TCP Code and ACMA's Complaint Handling Standard	Provide resolution when IDR does not resolve a complaint
Collect information about IDR under Record Keeping Rules	Publish comparative report of TIO complaints 'Complaints in Context'	Engage with Communications Alliance and industry participants to provide feedback about good and poor IDR practice	Report to the ACMA on IDR under Record Keeping Rules	Provide systemic analysis and feedback to providers where IDR fails
Enforce compliance			Develop IDR practices that meet the Australian/ NZ Complaint Handling Guidelines ⁷	Offer training and support to improve IDR
				Publish and provide escalated complaint figures to the ACMA and providers as part of feedback loop

While the ACMA will likely have more oversight over IDR processes which were previously under the purview of the TCP Code, Mr Andrew Dyer, Lead Reviewer on the Consumer Safeguards Review, suggested that Communications Alliance were developing templates that meet the requirements set out in the Complaint Handling Standard. This seems an appropriate role for the industry organisation.

7. Council of Standards Australia and Council of Standards New Zealand (2014) *Australian/New Zealand Standard AS/NZS 10002:2014 Guidelines for Complaint Management in Organizations*.

The broader roles and responsibilities in the Australian telecommunications ecosystem are shown in **Figure 4**.

Figure 4: Roles and responsibilities in the telecommunications industry

GOVERNMENT	REGULATORS	CONSUMER REPRESENTATIVES	INDUSTRY ASSOCIATIONS	DISPUTE RESOLUTION
<p>Federal Minister for Communications</p> <p>Federal Minister for Regional Communications</p> <p>Department of Communications and the Arts</p> <ul style="list-style-type: none"> collectively responsible for setting overarching telecommunications policy and coordinating implementation administers the mobile blackspot funding program <p>State/Territory Governments</p> <ul style="list-style-type: none"> some contribute to mobile black spot funding 	<p>ACMA</p> <ul style="list-style-type: none"> administers the telecommunications licensing and conduct regime enforces compliance with the TIO scheme membership and Ombudsman decisions approves industry codes <p>ACCC</p> <ul style="list-style-type: none"> regulates the network and market competition administers the Australian Consumer Law, including ensuring fair market practices 	<p>Australian Communications Consumer Action Network (ACCAN)</p> <ul style="list-style-type: none"> peak body for consumer education, advocacy and research (telecommunications specific) <p>Financial Counselling Australia</p> <ul style="list-style-type: none"> consumer case work and advice contributes to policy debates; hardship and debt focus <p>Other Consumer Law Centres</p> <ul style="list-style-type: none"> consumer case work and legal advice <p>CHOICE and Consumers Federation of Australia</p>	<p>Communications Alliance</p> <ul style="list-style-type: none"> develops industry codes, standards and guidelines advocates for industry <p>Communications Compliance</p> <ul style="list-style-type: none"> monitors compliance of industry codes <p>Other associations for internet and mobile</p>	<p>TIO</p> <ul style="list-style-type: none"> facilitates the resolution of residential and small business consumer complaints identifies and resolves broader systemic issues makes determinations on land access objections

2.2 What the TIO does to encourage good IDR

The TIO encourages good IDR by offering providers training, providing feedback to members about IDR through regular meetings and recommendations to management, and raising concerns about provider practices through systemic investigations. The TIO also supports good IDR by holding small member forums, escalating non-compliance to the ACMA and collecting and reporting data about complaints that are not resolved through IDR.

In addition, as noted in **Part 1** of this Submission, on 1 July 2018 the TIO introduced a membership fee that is based on the provider's referred complaint levels in the previous calendar year. This provides a clear incentive for providers to resolve complaints with their IDR process before they are escalated to the TIO. Providers are also charged additional fees for complaints that remain unresolved after being referred back to the provider.

Although the TIO would be open to taking a more direct role in improving IDR, we note that too much involvement in the establishment or oversight of IDR processes could compromise the TIO's independence in the handling of complaints that have not been resolved through those IDR processes. Accordingly, it is appropriate for other bodies to be involved in the development, oversight and enforcement work.

Training in dispute resolution

The TIO has partnered with the Box Hill Institute to design and deliver the Graduate Certificate in Dispute Resolution (Industry). The Certificate is undertaken by TIO staff to ensure a high level of dispute resolution expertise at the TIO. To improve IDR, we offer providers access to selected modules from the Certificate to improve the dispute resolution skills of their staff. Providers are increasingly taking up this option.

Feedback to providers about IDR

The TIO's Dispute Resolution Specialists have regular meetings with the larger providers to raise any service and quality issues, complaint trends and the TIO's approach to commonly escalated complaints. The Ombudsman also uses regular meetings with providers to bring issues to the attention of senior leadership.

Where we identify there may be an issue with a provider's staff not applying appropriate and constructive IDR processes, we contact the provider and raise this with management. Generally these issues arise from gaps in staff training or lack of understanding of the rights and obligations under Australian Consumer Law or industry codes. In such cases, a single contact usually corrects the issue.

“In essence, irrespective of the findings of [the TIO Dispute Resolution Officer]... the considerations she has expressed, and the detail with which she has done so, gives us absolute assurance in her skills and proficiency in her role. There is much we can and will learn from her assessment of this matter, and it will assist me considerably in my own role here to improve this company... I am genuinely impressed.”

Grey Telco*

Stronger protocols for escalation to the ACMA

In July 2018, the TIO introduced our revised complaint handling process, a Responsive Complaint Service. As part of the change, we have introduced stronger referral protocols to the ACMA for failure by providers to comply with an agreed resolution reached through the TIO's process.

Small member forums

Each year, the TIO holds forums across Australia to engage with small members. These include information on effective complaint resolution and also provide the opportunity for small members to raise issues directly with the Ombudsman.

Data collection and reporting

Our data collection and reporting to regulators, members and the public provides valuable insight into where IDR has failed to achieve complaint resolution. We provide complaint data reports on a daily, weekly and monthly basis to providers with TIO complaints. From August 2018, we are making a report on complaint volumes available to all members on the member portal. This will allow providers to compare their TIO complaint volumes with the rest of the industry.

Our members tell us they use TIO data to verify and check their own complaint records in order to provide insights into areas for improvement and training for their IDR staff.

* Name of individuals, organisations and companies have been changed

Systemic work

As a high volume complaint resolution service, the TIO is well placed to identify and publish systemic insights to improve industry wide practices. We also work with providers to address their individual systemic issues to improve consumer outcomes. Where issues prove to be more complex, the issue is escalated to the Ombudsman and senior management of the provider to exchange views about the underlying cause and resolution of the issue.

In the 2018 financial year, around 80 possible systemic issues were identified, and the TIO investigated and notified providers of around 50 systemic issues. As at 30 June 2018, approximately 30 of the systemic issues raised resulted in the provider making changes to its system, process or practice. **Case Study A** illustrates our work with providers in addressing systemic issues.

Case Study A – Systemic Investigation

At the end of 2017, the TIO's systemic investigation team was alerted to a possible issue with the information Teal Telco* was providing customers complaining about mobile coverage. Analysis of Teal Telco's complaints revealed a significant number of consumers were told their mobile coverage issues would be resolved by upgrade works that were either underway or about to start, however customers never observed any improvement. The TIO was concerned that Teal Telco agents were providing inaccurate or misleading information about works to improve coverage.

We raised our concerns with Teal Telco and requested information about the issue. Teal Telco was responsive and keen to work with us on the issue. After discussions and correspondence with the TIO, Teal Telco addressed the concerns by:

- auditing their coverage checker tool used by front line agents based on learnings from our investigation
- undertaking quality assurance and improvements to the procedures used by front line agents
- extending their 30 day network satisfaction guarantee to new customers who reported coverage issues during the 30 day period and were told there will be upgrade works in their area
- allowing their complaints case managers to offer customers additional credits based on a holistic view of the customers' experiences up to that point.

Teal Telco also told us it was committed to reducing the number of mobile complaints it received more generally. We provided feedback about complaints we had received from customers being charged early termination fees on fixed term contracts when moving to premises where Teal Telco's services no longer provided adequate mobile coverage. Responding to this feedback, Teal Telco removed early termination fees to allow release from contract in these circumstances, and allowed its debt collection team to offer more flexible payment arrangements for outstanding charges.

* Name of individuals, organisations and companies have been changed

2.3 Enabling the ACMA to support strong IDR

As noted above, the ACMA's Complaint Handling Standard, Record Keeping Rules and its suite of instruments to support migration to the NBN will have a strong role in reducing complaints and improving complaint handling by telecommunications providers.

The TIO continues to work closely with the ACMA to support good IDR in the telecommunications industry. We will apply the Complaint Handling Standard and other instruments as relevant to complaints and have refined our processes in consultation with the ACMA on how we send matters to the ACMA for enforcement action. For example, we have a stricter process in place for referring cases in which providers do not implement TIO facilitated agreements, assessments or decisions.

The early stages of the ACMA measures will be a critical time for compliance monitoring and could involve surveying consumers to determine whether the Complaint Handling Standard and other instruments are performing as intended.

We note that the ACMA will face some challenges in the collection of data under its Record Keeping Rules, including:

- consistency of complaint classification by different providers
- establishing rigour in identifying, recording and reporting complaints
- overcoming the conflict of providers' commercial drivers.

The TIO believes it is important for the Government to support robust enforcement action by the ACMA to ensure an effective consumer safeguards framework.

Recommendation 1

That the Government continue to enable the ACMA to support strong internal dispute resolution through the development of standards, monitoring and enforcement

3. The referral process should be retained as an essential element of an efficient and effective EDR scheme

The Consultation Paper suggests a significant change in the interface between IDR and consumer access to EDR, by removing the ability of the TIO to refer complaints to the provider for resolution. In his presentation to the TIO Board, Mr Andrew Dyer, Lead Reviewer on the Consumer Safeguards Review, clarified that Proposal 2 of the Government's Consultation Paper may require the TIO to progress all complaints to case management instead of being referred to the provider for a final attempt at resolution.

The proposal to remove the referral process relies on the premise that the 90 per cent of the TIO's complaints currently resolved through the referral process can instead be effectively resolved by providers through their internal escalation processes. Furthermore, the proposal appears to be based on a misconception that the TIO merely acts as a post box for complaints it refers to providers. This does not align with our data and experience. In particular:

- consumers contact us because the provider has not resolved their issue, despite many providers already having an internal escalation process
- consumers already wait a long time for providers to resolve their complaints, with a significant number of consumers having issues that are still unresolved after four months⁸
- consumers tell us it is our involvement as an independent arbiter that helps to resolve the complaint when we refer it to a provider
- the TIO applies considerable expertise and understanding of consumer law and industry codes in facilitating the high rate of complaint resolution through its referral function
- the referral function is a well-regarded feature of Ombudsman schemes in Australia and internationally.

Another misconception suggested in Mr Dyer's presentation to the Board is that the referral process means consumers are 'bounced' around the provider's internal processes. This is not borne out by our recent consumer survey, which shows that consumers are overwhelmingly satisfied with the resolution they achieve through the referral. Our recent consumer survey showed that consumers achieved a resolution in 81 per cent of referred complaints that are not further escalated to the TIO.

While the TIO welcomes the Government's focus on improving IDR as outlined in Proposal 1 of its Consultation Paper, there is no evidence to show that removing the TIO's referral function will lead to better consumer outcomes. Any measures to improve IDR will take time to have a lasting reliable impact. It is therefore important that safeguards such as the TIO's referral function remain in place to support consumers. Removing the referral process will have significant negative consequences for consumer outcomes.

8. Telecommunications Industry Ombudsman (2018) *Understanding Phone and Internet Issues in Australia* (accessed on 27 July 2018) <https://www.tio.com.au/__data/assets/pdf_file/0005/256910/Kantar_TNS_4June.pdf>.

3.1 Referral is a well-regarded feature of Ombudsman schemes

The referral process is a common feature of Ombudsman schemes, and is recognised as an efficient way of resolving complaints. In fact, it is common for 70-90 per cent of complaints to be resolved in this way by both large and small EDR schemes. A high resolution rate for referred complaints is seen as an indication of the effectiveness of the EDR scheme and the skill of its front line staff.

Furthermore, there is no evidence to suggest that EDR complaint levels are determined by whether the scheme refers complaints to providers for initial resolution. The Consultation Paper provides New Zealand's Telecommunications Dispute Resolution scheme (TDR) and Canada's Commission for Complaints for Telecom-Television Services (CCTS) as examples of EDR schemes with low levels of complaints. According to the TDR 2017 Annual Report, however, 94 per cent of TDR complaints '[w]ere resolved before requiring resolution assistance from a TDR facilitator or practitioner.'⁹

This [94 per cent figure] means that in most of those complaints, the telecommunications provider resolved the issue with the consumer directly. This is the best possible outcome. Many consumers reported that just making the enquiry to TDR, which TDR then escalates with the provider, resulted in them in getting their issue resolved quickly.¹⁰

Similarly, approximately 70 per cent of CCTS complaints are resolved through referral, and the CCTS believes that this is an efficient and effective form of resolution.¹¹

The referral process is also a key feature of other highly regarded Australian Ombudsman schemes. For example, in the Financial Ombudsman Service (FOS) 2016-17 Annual Review, the registration and referral process was recognised as a key driver for the resolution of FOS complaints:

More than four in ten (43%) of the disputes received at Registration and Referral were closed after they were referred back to the [financial service provider's] internal dispute resolution (IDR) process. This compares with 36% last year. These disputes are resolved by the [financial service provider] and the consumer working together. This highlights the value of [financial service providers] considering disputes before we become involved.¹²

Benefits of referral process

- Provides oversight and incentivises effective IDR
- Ensures consumers do not fall through the cracks
- Helps identify systemic issues
- Reduces barriers for consumers seeking to raise a complaint
- Prevents consumer fatigue
- Repairs the communication breakdown between consumers and providers
- Provides an unbiased perspective on complaints
- Supports vulnerable consumers
- Provides an independent insight into IDR outcomes

9. Telecommunications Dispute Resolution, *Annual Report 1 July 2016 - 30 June 2017*, 7.

10. Telecommunications Dispute Resolution, *Annual Report 1 July 2016 - 30 June 2017*, 3.

11. Based on conversations with the CCTS. The CCTS 2017 Annual Report states that 97.8 per cent of these complaints are '[c]omplaints concluded at Pre-Investigation stage within 40 days of acceptance.' Commission for Complaints for Telecom-Television Services, *Annual Report 2016-17*, 47.

12. Financial Ombudsman Service, *Annual Review 2016-17*, 60.

The Energy and Water Ombudsman Victoria (**EWOV**) also uses a referral process that closely resembles the process used at the TIO. According to EWOV's 2017 Annual Report, 80 per cent of finalised complaints are resolved by referral back to the provider (17 per cent by unassisted referrals, 63 per cent by assisted referrals).¹³

Through its referral process, the TIO repairs the communication breakdown between the consumer and provider, provides an unbiased perspective on complaints and supports vulnerable consumers. The Telecommunications Industry Ombudsman Independent Review Report¹⁴ (**2017 Independent Review of the TIO**) endorsed the referral process, noting that:

*the fact that the complaint has been made to the TIO does frequently change the dynamic with the telecommunications provider, as attested by some consumers who were part of our random sample of interviewees. For this reason, we think that it is appropriate for the TIO's process to build in a further opportunity for the telecommunications provider to try and resolve the complaint without the active involvement of the TIO. This is both efficient from a time and cost perspective and best preserves the relationship between the telecommunications provider and the consumer.*¹⁵

The Government's 2017 Review of the Financial System External Dispute Resolution and Complaints Framework¹⁶ (**Ramsay Review**) supported the referral of complaints to IDR as a final opportunity for the provider and the consumer to resolve the dispute. The Ramsay Review said:

There are a number of benefits to EDR bodies referring disputes back to IDR and tracking the progress of those disputes:

- *It increases oversight over financial firms' IDR, providing incentives for the financial firm to address complaints more promptly than may otherwise be the case.*
- *Registration of the complaint and then tracking by the single EDR body ensures that consumer disputes do not fall through the cracks should they remain unresolved.*
- *It increases the potential for systemic issues relating to how firms handle disputes in IDR, and which may require investigation, to be identified and addressed.*
- *It reduces barriers to IDR because it does not require the consumer to take the further step of initiating the IDR process. This can be particularly important where there has been a breakdown of trust between the consumer and the financial firm.*¹⁷

The Ramsay Review further identified that a well-managed referral process 'by a single EDR body' is an important mechanism for preventing complaint fatigue:

*Disputes should not be abandoned due to complaint fatigue or the complexity of the system. The single EDR body can minimise these concerns by providing appropriate time limits for action by firms but then stepping in to resolve the dispute where not resolved by the firm.*¹⁸

13. Energy and Water Ombudsman Victoria, *EWOV 2017 Annual Report*, 22.

14. Cameron, Ralph, Khoury. (2017) *Telecommunications Industry Ombudsman Independent Review Report* (accessed on 27 July 2018) <<https://www.tio.com.au/about-us/independent-review>>.

15. 2017 Independent Review of the TIO, 41-2.

16. Australian Government and the Treasury (2017) *Final Report: Review of the Financial System External Dispute Resolution and Complaints Framework*.

17. Ramsay Review, 192-3.

18. Ramsay Review, 193

The Ramsay Review acknowledged that the Superannuation Complaints Tribunal did not have an existing referral process and recommended this process be put in place for superannuation complaints. Recognising its importance, the Government introduced the requirement to have a referral process in place as part of the approval process for the AFCA scheme.¹⁹

Our data supports that the risk of consumer fatigue is significant. As illustrated in **Figure 5**, research published this year shows that consumers can wait more than four months for a complaint to be resolved.²⁰

Figure 5: How long it takes for consumers to resolve issues with their phone or internet service



19. Australian Financial Complaints Authority (2018) *Rules of Complaint Resolution Scheme* (Draft), (accessed on 25 July 2018) <<https://www.afca.org.au/custom/files/docs/1527568173029/australian-financial-complaints-authority-draft-rules.pdf>> r A.5.3.

20. Telecommunications Industry Ombudsman (2018) *Understanding Phone and Internet Issues in Australia*.

3.2 The referral process in action

The case studies in this section illustrate how the TIO's referral process ensures consumers are supported to engage with their provider's IDR process in a way that facilitates the resolution of their complaint.

Repairing communication breakdown between consumers and providers

The TIO plays an important role in repairing the communication breakdown between the consumer and their provider. Many consumers (particularly those who are vulnerable) experience difficulties in resolving their telecommunications complaints. The TIO's staff are trained in knowledge of the law, industry codes, practices and products. In responding to a complaint, staff:

- listen carefully to the consumer and clarify the facts
- inform consumers about their rights and obligations, having regard to relevant consumer law and industry codes
- set consumer expectations by providing an impartial assessment of resolution options
- if the complaint is within the TIO's remit, reframe the complaint to the provider in such a way as to facilitate a resolution (for example by using technical knowledge, codes or product language)
- code the complaint issues for reporting purposes.

For example, **Case Study B** illustrates the way in which TIO staff applied technical knowledge and understanding of consumer law and industry codes to facilitate resolution of the complaint.

Case Study B - Laurence*

Laurence* runs a construction business which has mobile services with Pink Telco*. Laurence received a bill with \$3,200 in excess data charges. He did not believe he had exceeded his data limit, and had not received any SMS warnings about his data usage. Laurence thought that under the agreement with Pink Telco his mobile would be barred if data charges reached \$200, and raised this issue with Pink Telco. Incorrect mobile data charges also appeared on Laurence's next bill. Pink Telco kept telling Laurence that the charges were valid and he would have to pay the bill to avoid his services being restricted.

Laurence spoke to TIO Enquiry Officer, Alex*, about his complaint. Alex explained that many providers allow customers to purchase data packages when they are near the data limit and that industry codes require Pink Telco to send data usage notifications to help avoid bill shock.

Alex summarised Laurence's interactions with Pink Telco and sent a written record of Laurence's complaint to Pink Telco's internal complaints department, giving Pink Telco ten days to resolve the complaint. On the tenth day, Pink Telco agreed that the data charges were billed incorrectly and waived the excess charges.

“I have been ... unable to get anyone there to even acknowledge there was an issue... The young man [from the TIO] that took my details was a consummate [p]rofessional & well versed in his product knowledge & extremely helpful.”

Cameron* - Queensland

* Name of individuals, organisations and companies have been changed

Providing an unbiased perspective and setting expectations

An important aspect of the TIO's role is providing an unbiased perspective on the consumer's complaint. This includes ensuring that the consumer has given the provider a reasonable opportunity to resolve the complaint.

Case Study C shows how the TIO helps consumers to understand what they can reasonably expect from their provider. Handling the complaint in this way recognises that providers may still be investigating the matter, but gives the consumer an avenue to escalate the complaint.

Appendix 2 includes a diagram of the TIO's dispute resolution process, including referral of complaints to service providers.

Case Study C - Anita*

Anita arranged for Blue Telco* to transfer her internet service to a new address. When Anita moved in two weeks later, there was a problem setting up the connection. After a month of back and forth conversations, Blue Telco told Anita that they could not provide internet and offered to cancel her services without cost. However, one month later, Anita received a bill for a cancellation fee of \$320 along with a direct debit of \$24 from her bank account for the month. Anita called Blue Telco who told her there were no system notes about waiving cancellation fees. They said they needed to investigate and would call Anita back.

Anita called the TIO and spoke to Jay*, an Enquiry Officer, about her frustration in dealing with Blue Telco and the additional time they wanted to investigate her complaint. Jay explained that it is important that Blue Telco had an opportunity to consider the direct debit and bill issues.

Jay expressed understanding that the issues were part of an ongoing problem, but confirmed that Blue Telco is doing what the TIO would expect by looking into it. Jay explained that if Anita waited for Blue Telco's call and was not satisfied with the resolution, she could call the TIO back and we would progress the complaint as a Referral with a 10 day resolution timeframe.

* Name of individuals, organisations and companies have been changed Supporting vulnerable consumers

Supporting vulnerable consumers

The TIO's referral process is particularly critical for vulnerable consumers. Many consumers do not have the resources or capability to explain their circumstances to providers in a way that achieves the resolution they need.

Case Studies D and E provide examples of consumers who were assisted by the TIO to achieve a resolution they felt powerless to achieve on their own.

“I would like to say to you all at the TIO that you do a great job for all the ‘little people’ who are unable, for whatever reason, to stand up against [Beige Telco*].”

Blake* - Tasmania

Case Study D - Kevin*

Kevin went to his local store to renew his mobile contract. Green Telco* suggested that Kevin get a new phone, the Orion Plus. Kevin felt uncertain and explained he has difficulty understanding new technology. Green Telco insisted he needed a new phone and assured him that the Orion Plus would be easy to use. Kevin eventually agreed.

For two months Kevin tried to use the Orion Plus, but could not operate it. Kevin felt he had been misled and pressured by Green Telco to get the new phone. After many calls Green Telco agreed to replace the Orion Plus with a Pramin 5.

The new phone did not arrive. Kevin called Green Telco several times to find out what was going on. Green Telco said there were no system notes about replacing his phone with the Pramin 5. Kevin tried to explain the situation, but Green Telco said that if Kevin wanted to stop his Orion Plus plan and get a new phone, he would need to pay the termination fee.

Kevin spoke to TIO Enquiry Officer, Jesse*. Kevin was upset and had trouble explaining the problem. Kevin said he felt like he had been bullied. Jesse worked with Kevin to summarise the complaint and then sent it to Green Telco's senior resolution department. Three weeks later, Kevin and Green Telco resolved the complaint. Kevin sent back the Orion Plus and Green Telco sent Kevin a Pramin 5 phone on a new plan.

* Name of individuals, organisations and companies have been changed

Case Study E - Lynn*

Lynn is 78 years old, lives alone and has very little knowledge of technology. Lynn noticed that her name was not spelled correctly on her home phone bill. Lynn went into her local Violet Telco store to have this fixed. Violet Telco* convinced Lynn to sign up for a new NBN package while she was there. Lynn took the paperwork home and became worried that she did not understand what she had agreed to.

The next day, Lynn spoke to her friend, Barbara.* Barbara looked at the paperwork and explained to Lynn what the NBN package was and the cost. Lynn became upset as she did not want this package and went back into the Violet Telco store the next day. Violet Telco said that no cooling off period applied and Lynn needed to just go ahead with the contract.

Barbara submitted an online form to the TIO on Lynn's behalf. Taylor*, a TIO Enquiry Officer, received the complaint and wrote a referral letter to Violet Telco's complaints team the same day. One month later, Barbara emailed the TIO and said that Violet Telco had cancelled Lynn's NBN package without cost and put her on a more suitable plan.

“I just wanted to take a minute and thank the TIO for the very important role that you play. There is no doubt in my mind that Lynn* was overpowered by a strong minded sales team that took advantage of her... She was visibly stressed and didn't know who she could turn to for help. Your support of people who are vulnerable is outstanding and very much appreciated. I am not sure how Lynn* and I could have resolved her problem without the TIO.”

Barbara* - Victoria

* Name of individuals, organisations and companies have been changed

In some cases, complaints have a long history. **Case Study F** outlines how the TIO helped a vulnerable consumer to resolve a problem in just one week that had been outstanding for three years. Because provider referral is such an efficient process, it is a critical avenue for consumers with debt collection issues, as described in **Case Study F**.

Case Study F - Adeline*

Adeline renewed her mobile contract with Navy Telco*. Adeline had no trouble paying her bills at first, but seven months into the contract she was hospitalised for severe mental health issues. Adeline knew that bills were piling up but did not have the capacity to communicate with Navy Telco to deal with it.

A few months later, Adeline was contacted by three debt collection agencies about an outstanding debt with Navy Telco for \$1,200. Adeline had a representative talk to Navy Telco to explain her circumstances. About a month later, Adeline was told that the debt had been waived.

Two years later, a new debt collection agency started emailing Adeline about the \$1,200 Navy Telco debt. Adeline called Navy Telco several times about this over a two week period. Navy Telco maintained that the debt was valid. Adeline was confused and worried about her credit record.

A few days later, Adeline called the TIO and spoke with Charlie*, an Enquiry Officer. Charlie created a chronology of events and summarised Adeline's complaint. Charlie explained to Adeline that Navy Telco should not take any further action that could affect her credit record while the complaint is with the TIO. Charlie sent Adeline's complaint to Navy Telco's internal complaints team. A week later, Navy Telco waived the \$1,200 debt.

“I’m so grateful to Charlie* I am literally in tears. I’ve had this hanging over my head for years following a really difficult time [in] my life and I haven’t had the mental strength to fight the battle with Navy Telco* that proved to be futile for me anyway. I can’t believe something I’ve been stressing over literally every day for the past 3 years was resolved so quickly.”

Adeline* - Victoria

* Name of individuals, organisations and companies have been changed

The TIO referral process is also a critical avenue for those with medical and safety issues. The TIO handles the complaints of people with medical conditions and safety concerns with additional urgency and care. We refer these complaints to a provider with an expectation that the complaint will be given high priority. We follow up with the consumer in two days to check that the provider has contacted the person to resolve the issue.

‘Priority assistance’ is a service standard intended to ensure faster connection, greater reliability and faster fault rectification of a standard telephone service for people with a life threatening medical condition. A fault with a priority assistance service should be repaired within 24 hours in urban or rural areas, or within 48 hours in remote areas.²¹ If the fault cannot be repaired in the timeframe, the provider must ensure the customer has an alternative or interim service.²² For priority assistance complaints, the ACMA’s Complaint Handling Standard requires providers to confirm a proposed resolution in two working days.²³

Case Study G illustrates the role that the TIO plays in the fast resolution of these complaints about priority assistance services.

“In despair I rang [the] Ombudsman and spoke to Jordan* who was very helpful... mum is safe. Thank you so much. What happens to old people who have no one to help them.”

Spencer* - Victoria

Case Study G - Valerie *

Valerie is 95 years old, lives alone and has a home phone service with Yellow Telco. Valerie is registered for priority assistance, and her phone stopped working. Valerie’s son, Spencer,* helped Valerie to report the fault to Yellow Telco. Yellow Telco sent a technician to Valerie’s home the next day.

Yellow Telco called Spencer and said they did not know when they could fix the home phone. They offered Valerie a mobile phone. Spencer explained that this would not work because Valerie lives in an area with no mobile coverage. Yellow Telco said they would send a different interim phone within 24 hours, but 24 hours passed and no phone was delivered.

Spencer was concerned about his mother’s safety and for four days Valerie had been unable to use her home phone. Spencer called the TIO and spoke to Jordan. Jordan assessed Valerie’s situation and deemed the complaint urgent. Jordan also explained to Spencer that Valerie may be eligible for Customer Service Guarantee compensation due to the delay in fixing her services. Jordan sent the complaint to Yellow Telco resolution team, asking that they address Valerie’s need for an appropriate interim phone in two days.

The TIO’s triage officer called Spencer two days later to ensure that Valerie was no longer at risk. Spencer said that the day after he contacted the TIO, Yellow Telco called and said they would send Valerie a satellite phone, which Valerie received 24 hours later.

*Name of individuals, organisations and companies have been changed

21. Australian Communications Industry Forum (2007) *Industry Code ACIF C609:2007 Priority Assistance for Life Threatening Medical Conditions*, s 4.4. The same timeframes apply under this Code for connection (s 4.2.2).

22. Australian Communications Industry Forum (2007) *Industry Code ACIF C609:2007 Priority Assistance for Life Threatening Medical Conditions*, s 4.6.2.

23. Complaint Handling Standard, s 13(1)(h).

3.3 The practical impact of removing the TIO's referral function

Mr Dyer told the TIO Board that Proposal 2 of the Government's Consultation Paper may require the TIO to progress all complaints to case management instead of being referred to the provider for a final attempt at resolution. This is likely to have the unintended consequence of reducing the effectiveness and efficiency of the TIO and increasing the cost of the scheme.

Greater TIO resources would be required

Currently, approximately 90 per cent of complaints raised with the TIO do not return for further escalation. Even if IDR were improved, our experience suggests there would still be a significant number of complaints raised with the TIO that would otherwise have been resolved through the referral process. Because the resources required at later stages of the TIO's process are much higher than at the referral stage, this would require the TIO to employ significantly more staff.

Removing referral means removing important independent data collection

An additional benefit of the referral process is that it provides a consistent source of data to inform improvements in IDR. If, as a consequence of any changes, complaints we would usually refer were lost in provider escalations, or in some other way separated from the rest of our service, the consistency of data reporting on these escalated complaints may be compromised.

The ACMA's new Record Keeping Rules will allow the ACMA to collect IDR data from providers. However, it will be faced with inherent challenges in obtaining consistent data, beginning with the approaches taken to the classification of a complaint by different providers.

By registering complaints received and requiring providers to have a further attempt at resolution within a defined timeframe, the TIO's referral process:

- provides feedback to providers on areas for improvement
- gives an early indication of emerging problems in the industry
- identifies potential systemic issues in dispute resolution processes.

The information from referrals allows the TIO to analyse trends and identify systemic issues in the industry. This complaint data is independent and not commercially driven. In addition, data is collected in a standardised way. The TIO uses this data to contribute to government and regulator consultations and the development of policy settings and industry standards. All consumers benefit from the TIO's industry insight. Reporting is discussed further in **Part 5** of this Submission.

3.4 Understanding referral outcomes is important

The Ramsay Review recommended that the EDR body for financial services should register and track the progress of complaints referred back to IDR.²⁴ This was also recommended by the 2017 Independent Review of the TIO. While recommending the TIO ‘undertake a limited exercise of periodic telephone surveying of a randomly selected group of consumers whose complaint does not return to the TIO,’ the reviewers cautioned that reporting back on all complaints would not be effective or efficient:

We think that there would be little public benefit in the TIO requiring all telecommunications providers to report back on the results of referred complaints. We have seen this attempted in other settings without much success. Without checking and calibrating telecommunications providers’ information with the affected consumer, we think that this information would add little.

Nor do we think it would be efficient for the TIO to follow up all consumers whose complaints are referred back to their telecommunications provider. To do so would be a huge, resource intensive exercise, given that this is some 10 times the number actually dealt with through conciliation at the moment.²⁵

In June 2018, the TIO responded to the recommendations of the 2017 Independent Review of the TIO by undertaking its first periodic survey of consumers whose complaint is referred to the provider for initial resolution and does not return to the TIO. The reviewers recommended that:

The TIO should undertake a limited exercise of periodic telephone surveying of a randomly selected group of consumers whose complaint does not return to the TIO as a conciliated (Level 2) complaint – to check that they were satisfied that their complaint was reasonably and fairly dealt with by the provider and, if not, why they did not pursue their complaint through the TIO. This data should be collated and analysed with a view to identifying any weaknesses in the process that should be addressed and trends over time.²⁶

We have introduced external surveying of these consumers. In our first survey, consumers told us that in 91 per cent of referrals providers made contact with the consumer, and that 81 per cent of consumers had their issue resolved through this process. The survey showed clearly that consumers had spent significant resources before contacting the TIO, and that the TIO’s involvement in referring their complaint to the provider was instrumental in achieving a resolution of their complaint.

24. Ramsay Review, 17. This quote is repeated at 193.

25. Independent Review of the TIO, 42.

26. Independent Review of the TIO, 44

Survey of referral complaints

The TIO recently surveyed consumers whose complaint was referred to the provider and was not further escalated to the TIO. The survey results show that consumers are overwhelmingly satisfied with the resolution they achieve through referral:

- 81 per cent of referred complaints were resolved
- 68 per cent of people had spent a month or more trying to resolve their complaint with the provider before contacting the TIO
- before contacting the TIO, on average they had contacted the provider eight times
- 70 per cent felt frustrated, 57 per cent felt angry, 56 per cent felt annoyed, 51 per cent felt stressed and 47 per cent felt powerless dealing with their provider

Recommendation 2

That the referral process is retained as an essential element of an efficient and effective EDR scheme

4. The industry based Ombudsman model should be retained

The TIO is a respected and effective EDR body that is independent of industry, government and consumers, and is funded by providers. We believe the TIO has the desirable EDR features outlined in the Government's Consultation Paper:

- it meets the guiding principles as articulated in the Government Benchmarks for Dispute Resolution
- it is funded by industry in proportion with complaints received
- it is independent – its governance structure and decisions are not controlled by industry, consumers or government (it is not correct to say that the TIO is industry owned, as suggested by the Consultation Paper)
- it requires consumers to have attempted to resolve the complaint with the provider
- it provides complaints data to the ACMA and the ACCC.

Furthermore, the TIO:

- is free for consumers
- is a single end-to-end service for escalated complaint resolution in the sector, which is a recognised benefit for EDR schemes.

The Consultation Paper and companion documents make a number of comparisons with EDR models in other jurisdictions including New Zealand, Canada, Germany, Singapore, South Korea, the United States of America (US) and the United Kingdom (UK).²⁷ The Consultation Paper comments favourably on the TDR scheme in New Zealand and the CCTS in Canada, citing their low complaint numbers. However, complaint levels can be affected by factors outside the scheme, such as population and cultural differences, industry disruption, lack of visibility of the EDR scheme, and barriers to raising complaints.

We caution against diminishing or replacing the current EDR scheme and have provided some observations in **Appendix A** that could be helpful to the Government in considering what can be learned from examining these other jurisdictions.

4.1 The continuing relevance of industry based EDR schemes

The industry based EDR model adopted by the Government and the telecommunications industry when the TIO was established in 1993 followed the EDR model established in the banking industry in Australia and the UK. Its development was borne out of the failure of the court system to serve as an adequate independent arbiter for consumer complaints. The design of the EDR model was based on the principle that consumers should have access to justice for low value disputes with service providers that is efficient and fair. Without this service, consumers would often be left without redress, as the courts are an inadequate

27. Department of Communication and the Arts (2018) *Telecommunications Consumer Safeguards: International and Sectorial Comparisons of Redress and Complaints Handling Models for Consumers and Small Business*.

avenue for such disputes. As noted by the Organisation for Economic Co-Operation and Development (OECD) in their consumer policy toolkit on communication services:

*Consumers may be reluctant to take legal action when they have serious disputes with their service provider, either because of the time and expense involved and/or because they find the judicial process intimidating.*²⁸

Industry based EDR schemes also play a strong role in contributing to improvement of the industry and supporting public trust in the system. Queen Margaret University's review of New Zealand's industry based energy EDR scheme commented:

*The work of a dispute resolution scheme is complex, as its primary objective, the delivery of justice, is intangible. Its work consists of much more than simply the handling of complaints. It includes a role to contribute to the improvement of the overall system in which it exists and the management of the expectations of complainants. A final role for alternative dispute resolution schemes is that they should contribute to the improvement of public trust in the overall system in which they operate.*²⁹

The EDR model adopted by the TIO and other industry based schemes (in Australia and internationally) has operated successfully for almost 30 years. In that time, government and independent reviews have consistently endorsed the model as being in the best interests of consumers. Recent government reviews continue to support the industry based Ombudsman scheme as the most effective EDR model. The Ramsay Review of EDR in the financial sector commented:

*The establishment of industry based schemes has been actively supported by government, recognising that EDR makes good business sense by improving industry practices while providing consumer redress and negating the need for government intervention.*³⁰

In its report on Access to Justice Arrangements, the Productivity Commission said industry based Ombudsman schemes are consistently seen as better performers than government Ombudsman schemes.³¹ The leading performance of industry based Ombudsman schemes is a result of design features such as mandatory service provider membership, independent boards, industry funding, systemic investigation and data collection.³²

As emphasised in the Ramsay Review, the governance model of industry based Ombudsman schemes ensures that funding and other decisions are made in the best interest of the scheme as a whole:

*The strong governance model of industry [O]mbudsman schemes, with an independent chair and equal numbers of directors of consumer and industry backgrounds, ensures that boards are able to make decisions about funding and other matters in the best interests of the scheme.*³³

28. Organisation for Economic Co-Operation and Development Committee on Consumer Policy (2013) *OECD Consumer Policy Toolkit Workshop on Communication Services: Summary of Proceedings* (accessed on 27 July 2018) <https://www.oecd-ilibrary.org/science-and-technology/oecd-consumer-policy-toolkit-workshop-on-communication-services_5k480t1g546j-en> 48.

29. Gavin McBurnie and Dr Chris Gill (2017) *Independent Review of Utilities Disputes Limited - 2017*, 47.

30. Ramsay Review, 34.

31. Australian Government (2014) *Access to Justice Arrangements: Productivity Commission Report* (vol 1, no 72) 337.

32. Australian Government (2014) *Access to Justice Arrangements: Productivity Commission Report* (vol 1, no 72) 338.

33. Ramsay Review, 180; Simon Cohen, *Australian Institute of Administrative Law Forum* (2010) *Fair and Reasonable - An Industry Ombudsman's Guiding Principle* (no 63) 21.

4.2 Meeting the Government Benchmarks for Dispute Resolution

The Government Benchmarks for Dispute Resolution are not referred to in the Government's Consultation Paper. These benchmarks continue to inform best practice for industry based EDR schemes on a state and national level, and are consistent with the OECD's Recommendation on Consumer Dispute Resolution and Redress.³⁴

The TIO believes that it is important to apply established criteria in assessing the current and future EDR framework for the Australian telecommunications industry. The TIO was assessed against the Benchmarks by the 2017 Independent Review of the TIO. The reviewers found that:

the TIO has measures in place to meet those Benchmarks and Key Practices, albeit that there are some areas where we think that more is required of the TIO to fully achieve its role.³⁵

The TIO is currently implementing the recommendations for improvement identified during the review. **Table 2** summarises the TIO's performance against the Benchmarks.

Table 2: Meeting the Government Benchmarks for Dispute Resolution

Benchmark	How the TIO is meeting the Benchmark
Accessibility	The TIO is a free service that accepts complaints through online forms, email, fax, letters and by phone. The ACMA's new Complaint Handling Standard requires providers to give consumers information about the scheme. The TIO provides interpreter and national relay services, and has processes to support easy involvement of representatives. The complaints process is easy for consumers to use and there are no evidentiary barriers to accessing the TIO at any level.
Independence	The TIO's governance structure supports the independence of the Ombudsman in handling complaints and making determinations. In 2014, the TIO enhanced the independence of its governance by moving to a unitary model in which the TIO's Board is comprised of equal numbers of industry, independent (one of whom is required to be the Chair), and consumer directors.
Fairness	The TIO's decision-making and procedures are fair. Complaint outcomes are decided according to what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law. To ensure procedural fairness is afforded, our Complaint Handling Procedures are published and if a consumer or provider believes they have not been followed, they can ask for the decision to be reviewed.

34. Organisation for Economic Co-Operation and Development (2007) *OECD Recommendation on Consumer Dispute Resolution and Redress*.

35. Independent Review of the TIO, 91.

Accountability	The TIO publicly reports final determinations and information about the complaints received. The TIO provides data on complaints to the ACCC, ACMA and providers, reports industry code breaches to the ACMA, and reports on systemic problems to the public and stakeholders. The TIO publishes annual reports and six month updates on trends in complaints.
Efficiency	The TIO operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance. The TIO will only accept a complaint which a provider has had a reasonable opportunity to consider and has not resolved. The TIO's new Responsive Complaint Service process ensures that if a complaint is not resolved by referral back to the provider, there is a range of tools at the disposal of dispute resolution staff to ensure the quickest resolution pathway for each individual complaint.
Effectiveness	The TIO can consider complaints about service quality, contracts, representations, equipment, property damage, and deals with land access notices. Part 4.3 of this Submission discusses our effectiveness in providing access to justice for consumers. The TIO also undergoes periodic independent reviews – the most recent one in 2017, and is working to implement the recommendations made.

4.3 Our effectiveness in providing access to justice for telecommunications consumers

As a free and effective complaint resolution service, the TIO provides access to justice for consumers whose claims are often too small to warrant a court or tribunal process. It is an essential service for those who simply do not have the skills, power, or resources (including access to information) to resolve a dispute with a telecommunications provider on their own. Many consumers would otherwise be left without a remedy.

The 2017 Independent Review of the TIO observed:

*The TIO is one of Australia's best known and arguably most influential Ombudsman schemes. Over many years it has built a high level of awareness and credibility and contributed to better consumer outcomes in a critical sector that continues to grow in importance for all Australians.*³⁶

Access to justice is enhanced by the TIO being accessible to Australian consumers, and by being efficient and effective without compromising our integrity and independence. In the 2017 financial year:

- around 200,000 residential consumers and small businesses contacted the TIO
- we re-directed 40,000 enquiries that were out of scope of the scheme to a more appropriate forum
- we consistently processed new complaints within one business day

36. 2017 Independent Review of the TIO, 5.

- we provided complaint resolution for consumers from diverse communities, including making information on how to access the service available in 32 languages
- we commenced 14,556 new conciliations and finalised 16,482 conciliations and investigations
- conciliation and investigation timeframes met the target of 80 per cent of cases closed within 60 days and 95 per cent of cases closed within 120 days.

By the time consumers contact the TIO, they have often lost trust in their provider, and EDR helps to rebuild that trust. It is not the consumer's responsibility to ensure providers have undertaken adequate IDR steps. When consumers raise their complaint with the TIO, we support their ability to access the appropriate level within the provider's process.

“Thank you for organising the multi-party conciliation call with [the consumer]. I’m very pleased this process has been organised, this type of complaint would have taken at least 6+ month[s] to be finalised. I’m glad we got through this today. The process worked smoothly and I am very pleased the way you conducted yourself in this conversation. I found the process to be structured with a conclusion in the end.”

Purple Telco*

“I actually found it very helpful, the consumer was completely different toward me with [the TIO Dispute Resolution Officer] on the other side of the phone. I feel like it helped a lot to come to a resolution because no one was speaking over each other... All in all, [it] was a good experience.”

Brown Telco*

What we are doing to improve consumer outcomes

The TIO is continuously improving its complaint resolution processes and has recently introduced a Responsive Complaint Service - a more simple and agile complaints management process that lets us take a more responsive and effective approach to complaints.

Our new process for disputes lets us use the best method to resolve each case. We expect that disputes will be resolved more quickly, which is in the best interests of both consumers and providers.

A diagram of the TIO's complaint process is provided at **Appendix B**.

Two recent consumer surveys commissioned by the TIO show that consumers use the TIO after spending considerable time and resources attempting to resolve their complaint through providers' IDR processes. In 2018, the TIO published a survey of 2,719 residential consumers and small businesses, which showed that:

- one in four phone or internet issues experienced by residential consumers were not resolved after four months of using providers' internal processes
- consumers want to deal with a trustworthy and competent organisation to resolve their complaint.³⁷

The second survey was of 427 consumers and small businesses who complained to the TIO and were referred to an escalation point at the provider. The results showed that the TIO is a catalyst for the provider to take action, and that before contacting the TIO:

- 68 per cent of those surveyed had spent a month or more trying to resolve their complaint with the provider
- the consumers had on average contacted their provider eight times
- 70 per cent felt frustrated, 57 per cent felt angry, 56 per cent felt annoyed, 51 per cent felt stressed and 47 per cent felt powerless.

The survey also showed that the stress levels of consumers significantly decreased after contacting the TIO, suggesting the broader community benefits of the TIO's intervention should not be underestimated.

The TIO is continuously improving its service to respond to the needs of consumers, and cautions against introducing barriers to consumers seeking the assistance of the TIO.

Providing effective access to justice - snapshot from 2017

- Contacted by around 200,000 residential consumers and small businesses
- Handled 158,016 new complaints
- Facilitated the resolution of more than 140,000 referrals
- Finalised 16,482 conciliations and investigations
- Consistently achieved same day processing for new complaints
- Consistently met closure targets for unresolved complaints that progressed after referral

37. Telecommunications Industry Ombudsman (2018) *Understanding Phone and Internet Issues in Australia*.

4.4 The TIO is independent of industry, government and consumers

The Consultation Paper raises the issue of independence. However, Mr Andrew Dyer, Lead Reviewer on the Consumer Safeguards Review, has since indicated in his conversation with the TIO Board that he is satisfied that the TIO is independent.

The TIO's governance structure is carefully designed to ensure that industry has no influence on the decisions of the Ombudsman and does not control the Board. The TIO is funded by members who pay a membership fee and are charged for the handling of complaints raised by consumers.

Although wholly funded by industry fees and charges, it is not correct to say the TIO is 'owned by industry' as asserted in the Consultation Paper. The reasons for this include:

- the TIO is a not for profit company limited by guarantee and members of the scheme are not shareholders
- members do not receive payments or profits (for example, by way of dividends)
- members have no claim over any assets and no entitlement should the organisation be wound up
- membership is compulsory and is required by legislation
- failure to comply with the requirements of the scheme can result in regulatory enforcement action by the ACMA.

As highlighted in **Table 2 (Part 4.2)** of this Submission), in 2014 the TIO enhanced the independence of its governance by moving to a unitary model in which the TIO's Board is comprised of equal numbers of industry, independent and consumer directors. This structure enables strong and independent governance for setting strategy and monitoring the performance of the TIO. It also promotes a collaborative approach to the exchange of information and perspectives between the Ombudsman, industry and consumer organisations.

The Chair of the Board is required to be one of the independent directors. Having industry directors on the Board as a minority is in line with the Government Benchmarks for Dispute Resolution, and with other industry Ombudsman schemes in Australia and internationally. More information on our governance can be found on our website.³⁸

In implementing the recommendations of the 2017 Independent Review of the TIO to enhance our stakeholder engagement, the TIO will introduce a consumer advisory panel to ensure we are aware of emerging consumer issues and our service remains accessible.

Table 3 shows that the composition of the TIO Board compares favourably with the governance arrangements of other industry based schemes. The UK's Ombudsman Service (one of two EDR schemes for telecommunications services in the UK) is the only scheme with a greater representation of independent board members. However, the Ombudsman Service covers a broad range of industries, not only telecommunications, making representational governance more challenging. Further comparative observations about other schemes can be found in **Appendix A**.

38. Telecommunications Industry Ombudsman, *About Us* (accessed on 7 August 2018)

Table 3: Comparison of governance in EDR schemes

	Independent Chair	Industry	Consumer Advocate / Academic	Independent (Gov)	Independent (NFP)	Independent (Commercial)	Mediator	Total
Telecommunications Industry Ombudsman (TIO)	1	3	3		1	1		9
Australian Financial Complaints Authority (AFCA)	1	3*	3*					7*
Energy and Water Ombudsman (EWOV)	1	4	4					9
Canada's Commission for Complaints for Telecom-Television Services (CCTS)	1	3	2			1		7
New Zealand's Telecommunications Dispute Resolution (TDR)		4	4					8
UK's Ombudsman Service Communications (OS)	1			3	1	3		8
UK's Communications and Internet Services Adjudication Scheme (CISAS)							9	9

*Indicates the minimum number of directors. It is a requirement for the ACFA that there be no more than 11 directors, and that there must be an equal number of consumer and industry directors, and one independent Chair at all times.

4.5 The benefit of the TIO being a single end-to-end service for escalated complaints

Having a single end-to-end service for escalated complaints is a significant benefit for consumers and the telecommunications industry.

Our research shows that consumers have confidence in the TIO and that we are recognised as the organisation to go to for telecommunications issues.³⁹

Like other Ombudsman schemes, the TIO requires service providers to attempt to resolve complaints at first instance before a complaint is accepted. However, once it becomes clear a resolution cannot be achieved using the provider's IDR process, the TIO provides a safety net by being the single external body consumers can approach to seek a resolution.

39. Telecommunications Industry Ombudsman (2018) *Understanding Phone and Internet Issues in Australia* and a survey conducted in 2018 of consumers and small businesses who complained to the TIO and were referred to an escalation point at the provider.

The Ramsay Review recognised a one-stop-shop for escalated complaints as a benefit and driver for the Government's recent consolidation and redesign of Australia's EDR model for financial services. The Ramsay Review advocated strongly for the amalgamation of multiple bodies, and strongly endorsed the importance of a single scheme in order to achieve reduced confusion for consumers and achieve good consumer outcomes. The Review found that the multi-body framework that existed in the sector:

imposes unnecessary costs on consumers because it results in: inconsistent outcomes and processes for similar disputes; difficulties where a dispute involves financial firms that are members of different EDR schemes; and consumer confusion as to where they should seek redress.⁴⁰

Being the single service for escalated complaints in the industry also allows the TIO to collect consistent and reliable information about the consumer experience from an EDR perspective, which enables it to contribute to policy and regulatory consultations aimed to benefit all consumers of telecommunications services. The TIO uses its complaint information to make a significant contribution to policy development and systemic insights. This is discussed further in **Part 2.2**.

In the 2018 financial year, the TIO made six formal submissions to government and industry consultations. It also identified around 80 possible systemic issues and investigated and notified providers of around 50 systemic issues that we considered may cause detriment to their customers.

The TIO's contribution to improvement in IDR and consumer outcomes is outlined in more detail in **Part 2.2** of this Submission.

By being a one-stop-shop for escalated complaints, the TIO:

- ensures that consumers do not fall through gaps in jurisdiction
- prevents consumers getting lost pursuing different complaint escalation avenues
- is able to draw connections and correlations to inform systemic issue analysis
- passes on the benefits of cost efficiency and administration gains.

Recommendation 3

That the Government retains the industry based Ombudsman model in the telecommunications sector

40. Ramsay Review, 109.

5. Independent reporting by the EDR scheme should be retained, alongside reporting by the ACMA

The TIO is an independent body and is therefore well placed to produce unbiased and consistent industry insights about consumers' experiences. Because of this, there is a high demand for our data. We have a collaborative working relationship with the ACMA, to whom we provide complaint data each month, and we also provide regular monthly reports to members, industry, consumer organisations and the ACCC.

Our data is separate from industry and government and is not motivated by political or industry pressure. When the TIO reports, it is independent, fair and unbiased. As noted by the 2017 Independent Review of the TIO:

[T]he TIO's data will always be important, as an independent source, as a crosscheck to other data and for highlighting the hard-to-resolve complaints.⁴¹

The Government Benchmarks for Dispute Resolution require the TIO to report publicly on complaints as part of the Accountability benchmark.

We appreciate that data on TIO complaints is an important diagnostic tool for the telecommunications industry. We recognise the strong interest in our data and are committed to working with stakeholders to examine the way we report. We are aware of views that our reporting should:

- provide more root cause analysis
- be more granular
- provide more comparative data about providers.

We are working on a range of measures to improve our data collection and reporting, including implementing recommendations from the 2017 Independent Review of the TIO. Any improvements made will need to strike a balance between different interests and the impact on the delivery of effective EDR. We are organising a stakeholder workshop in the coming months to explore how we can better provide reporting that is of value to our stakeholders.

5.1 Distinguishing between IDR and EDR reporting

The bulk of data collected and reported by the TIO is extracted from what consumers tell us when they lodge a complaint which they are unable to resolve through IDR. Complaints arise from issues with telecommunications services or products and can be seen as a funnel. The largest number of complaints are at the top of the funnel and providers resolve most of these through IDR. The TIO only receives complaints at the narrowest end of the funnel, if EDR is required further down the track. As the EDR body, we do not know the size or quantum of the top of the funnel of consumer complaints in the telecommunications industry.

We expect the number of complaints handled through IDR would be many times the number of complaints that are lodged with the TIO. We anticipate that the ACMA's Record Keeping Rules will be able shed some light on this.

41. 2017 Independent Review of the TIO, 77

EDR reporting is important both in the context of influencing IDR development and reporting on industry wide issues. In its submission to the Ramsay Review, FOS emphasised the importance of reporting data and analysis of complaint referrals in improving IDR in the finance sector:

*EDR schemes also have a role to play in influencing the standard of IDR handling in individual firms, in specific industry sectors... through data capture and analysis about the registration and referral of disputes.*⁴²

Given the high volume of our complaints, the TIO is best placed to convey what our EDR data is saying in terms of the underlying issues or consumer experience. We are keen to avoid our data being taken out of context, which could result in incorrect correlations and conclusions being drawn. The best way to ensure our data is accurately interrogated, reported and explained is for the TIO to retain full ownership of our reporting.

5.2 Root cause analysis

Establishing the root cause of consumer complaints about telecommunications services is not the role of an EDR scheme. The focus of an EDR scheme is primarily on efficiently and effectively resolving escalated consumer complaints. Collecting root cause data about every complaint could add an administrative burden that risks compromising this primary purpose.

Service providers have the best access to information about what goes wrong with their delivery of telecommunications services, and regulators have the necessary powers to source this information. The ACMA is well positioned and resourced through its inquisitorial and information-gathering powers to do deep dive root cause analysis and granular assessment.

A recent example of this was the ACMA's use of its powers to undertake root cause analysis to identify what happens when consumers migrate to the NBN. This analysis informed the introduction and development of the ACMA's Complaint Handling Standard and Record Keeping Rules.

5.3 Greater granularity

Reporting publicly on complaints is particularly important in the context of a large infrastructure rollout such as the NBN. The 2017 Independent Review of the TIO recommended that we provide more granular reporting by refining our keyword classifications to identify 'new/ existing service and the delivery technology: fixed line/ cable/ fibre/ wireless/ satellite'.⁴³

We are limited in the granularity of our reporting because most of the information we collect about complaints comes from consumers. Most consumers do not know what technology type their service is provided on – they simply know that they do not have a connection, or the connection is not working properly.

The 2017 Independent Review of the TIO agreed that the TIO's data collection function must not detract from the consumer experience:

Our view is that the TIO's role is to collect the information that the TIO needs to resolve complaints (absent any specific funding for a broader data collection role).

42. Financial Ombudsman Service (2016) *Review of the Financial System External Dispute Resolution Framework: FOS Submission* (accessed on 27 July 2018) <<https://www.fos.org.au/custom/files/docs/fos-submission-to-edr-review.pdf>> 15.

43. 2017 Independent Review of the TIO, 78-9.

Given the large numbers of complaints to the TIO, longer telephone calls would increase costs of providing the TIO service. Even if funded to do so, collecting broader information would require TIO enquiries officers to ask additional questions of consumers, something many consumers would view as intrusive and burdensome. There are also job design issues for staff who already have a high key-stroke count in their regular data capture.⁴⁴

There are ways the TIO can improve the collection of data without having this impact. For example, we are working with nbn co to link the address of a consumer's premises with the nbn co database to ensure the accuracy of data about services delivered over the NBN.

5.4 Comparative provider data

We acknowledge the interest in our comparative data about providers. We accept that comparative provider data is useful for the regulator and we are looking into ways we can make this type of comparative analysis more comprehensive and contextualised. Together with IDR reporting under the Record Keeping Rules, this could allow the ACMA to investigate any disparity between the reported IDR and EDR complaint levels.

If there is a robust IDR reporting framework, the number of complaints reported to the ACMA could be contextualised based on the number of services in operation for each provider and this would provide valuable information to consumers comparing different offerings in the market. This benefit to consumers may warrant the ACMA devising an equivalent IDR Complaints in Context report to that currently published by Communications Alliance about complaints to the TIO.

We support any initiatives by the ACMA or Communications Alliance to expand comparative reporting to provide a more comprehensive view of the industry. However, we note that EDR data and IDR data may not necessarily be comparable because each has a different focus. For example:

- EDR data does not include product level information, while IDR data of providers is likely facilitate the comparison of product performance and the impact of marketing or sales strategies
- EDR data includes information about compliance with the Australian Consumer Law and industry codes, which may not be the focus of IDR data.

5.5 Systemic issues investigation

TIO complaint spikes and trends can be an indicator of emerging and systemic issues. Identifying, investigating and reporting on systemic issues is an important TIO role and one that is expected of EDR schemes. We engage regularly with the ACMA informally and formally to draw their attention to de-identified 'early warning' signs of emerging trends or issues that may come to our attention through complaints. We do this as part of our information sharing arrangements under our Memorandum of Understanding with the ACMA.

As part of our more formal information sharing arrangements under this Memorandum of Understanding, the ACMA may serve on us a statutory notice to provide information. This means the TIO can assist the ACMA with its compliance monitoring and enforcement role, while satisfying its obligation to maintain the privacy and confidentiality of consumers and providers.

44. 2017 Independent Review of the TIO, 77.

5.6 Contributing to policy and industry improvement

As a national EDR scheme, the TIO is also a rich source of data about the profile of consumers experiencing issues with their telecommunications service. This information is valuable to government, regulators, industry and consumer representative organisations.

Our policy submissions are supported by consumer complaint data that is able to be broken down by:

- state, major city or regional and remote Australia
- whether the consumer is a residential consumer or small businesses
- whether the consumer has special needs in terms of language, disability or other vulnerability
- whether consumers need additional support (for example, from financial counselling services).

This data is supported by case studies that bring to life the experience of the consumer. This is valuable for the TIO to report publicly. A recent example of this can be seen in our submission to the Government's triennial Regional Telecommunications Review.

Tailored data analysis, supported by case studies, is also the basis of TIO presentations designed to inform and educate participants at industry forums, consumer conferences and legal and alternative dispute resolution conferences, such as the Australian and New Zealand Ombudsman Association conference.

5.7 The TIO must report publicly on its work

The TIO provides data to the ACMA and supports continuing this practice to assist the ACMA to complete root cause analysis and assess industry performance. However, the TIO should continue to have the flexibility to report publicly about industry behaviour and issues as necessary from its unique perspective as a dispute resolution service provider.

Because the TIO is an independent non-government body, it is valuable for the TIO to contribute to publicly available information about the industry from this neutral perspective. This reporting should continue alongside the ACMA, industry associations and consumer groups, who all publicly report from their own distinct and important perspectives.

The Government Benchmarks for Dispute Resolution require the TIO to report publicly on complaints as part of the Accountability benchmark. This is important both in the context of influencing IDR development and reporting on industry wide issues.

Public reporting should not be restricted to the numbers of complaints handled. It should paint a picture of how the EDR scheme meets all the benchmarks, including Accessibility and Effectiveness. These two benchmarks require an EDR scheme to be accessible to all consumers and to be able to deal with the vast majority of customer complaints in the industry.

The TIO's annual report demonstrates it meets the Accessibility benchmark by reporting complaints segmented by consumer profile and location. It demonstrates it meets the Effectiveness benchmark by reporting complaints segmented by telecommunications service type (mobile, landline, internet), the new network, NBN, and existing networks, and complaint issues that reflect the range of issues that arise in the industry.

The 2017 Independent Review of the TIO recommended that the TIO ‘provide more detailed public reporting’ and, while cautioning about the inherent limitations, emphasised the importance of the TIO’s reporting function:

[D]espite its best endeavours, the TIO’s data can only ever be indicative of consumer experience with telecommunications products and services and that the TIO will need to caution about drawing overly definitive conclusions from its reporting. Nevertheless we think that the TIO’s independent status makes its data an important point of comparison with industry data.⁴⁵

Recommendation 4

That independent reporting by the EDR scheme is retained, alongside reporting by the ACMA

45. 2017 Independent Review of the TIO, 82.

6. Other recommendations to improve consumer safeguards

We consider that complaint handling in the telecommunications industry could be further improved through additional measures.

This section discusses the TIO's recommendations to expand the TIO's powers to award compensation for non-financial loss, and introduce a registration requirement for telecommunications service providers.

6.1 The TIO's powers should be expanded to allow it to award compensation for non-financial loss

The Government's Consultation Paper proposes that the EDR body could, where appropriate 'include financial compensation to consumers or the ability to issue fines or other forms of remedy depending on the case.' We note that the ability to issue fines is properly the function of a regulator, however, we agree with the possibility of expanding our powers to award financial compensation to consumers.

Currently, the TIO can only consider a compensation claim by a consumer for embarrassment or humiliation caused by a privacy breach under the *Privacy Act 1988* (Cth). This includes breaches of the Australian Privacy Principles, and rules relating to credit reporting.⁴⁶

The 2017 Independent Review of the TIO suggested that 'the TIO should be expressly permitted by its Terms of Reference to be able, in exceptional circumstances, to award modest compensation for non-financial loss or indirect loss.'⁴⁷

We note that other schemes both in Australia and internationally have the power to award compensation for a variety of non-financial losses. The TIO believes being mandated to award compensation for non-financial loss could enhance consumer safeguards.

There is no readily identifiable consistent approach taken by EDR schemes to awarding compensation for non-financial loss. **Table 4** shows the approaches taken by other Australian EDR schemes, and EDR schemes in Canada and the UK.

46. Telecommunications Industry Ombudsman, Consumer Guide to Compensation for Embarrassment or Humiliation (accessed on 21 July 2018) <<https://www.tio.com.au/publications/factsheets-and-brochures/Consumer-guide-to-compensation-for-embarrassment-or-humiliation.pdf>>.

47. 2017 Independent Review of the TIO, 27.

Table 4: Comparison of non-financial loss compensation powers in EDR schemes

EDR Scheme	Non-financial Loss Compensation Powers
FOS (Aus)*	May award compensation for non-financial loss for humiliation or injured feelings (in a privacy dispute only), and in any case where there has been an unusual degree or extent of: <ul style="list-style-type: none"> • physical inconvenience • time taken to resolve a situation • interference with the Applicant's expectation of enjoyment or peace of mind.⁴⁸
EWON (Aus)	Considers compensation for goodwill payment, where there has been: <ul style="list-style-type: none"> • significant inconvenience incurred • significant frustration or upset as a result of repeated attempts to resolve the complaint • incorrect advice which caused the consumer to take unnecessary action or pay unnecessary costs.⁴⁹
CCTS (Canada)	May award an amount to compensate for: <ul style="list-style-type: none"> • any loss, damage or inconvenience directly incurred from complaint circumstances • the failure of the provider to inform the consumer of the CCTS • the failure of the provider to comply with CCTS requirements about unpaid charges in dispute.⁵⁰
OS (UK)	May provide an award or remedy for an amount not greater than reasonably appropriate to provide redress relating to: <ul style="list-style-type: none"> • loss and inconvenience suffered due to acts or omissions.⁵¹
FOS (UK)	Whether or not a court would award it, may award a fair compensatory amount for: <ul style="list-style-type: none"> • pain and suffering • damage to reputation • distress or inconvenience.⁵²
OBSI (Canada)	May provide an award or remedy for an amount not greater than reasonably appropriate to provide redress relating to: <ul style="list-style-type: none"> • loss, damage or harm suffered due to acts or omissions.⁵³

* Following the Ramsay Review, the AFCA's Draft Rules propose to retain the approach taken by FOS for non-superannuation disputes.⁵⁴

48. Financial Ombudsman Service, *The FOS Approach to Non-financial Loss Claims* (accessed on 27 July 2018) <<https://www.fos.org.au/custom/files/docs/the-fos-approach-to-nonfinancial-loss-claims.pdf>> 2; Financial Ombudsman Service, *Terms of Reference* (1 January 2010 – as amended 1 January 2018) s 18.3.

49. Energy and Water Ombudsman NSW, *Charter* (1 July 2012) s 11.2.

50. *Commission for Complaints for Telecom-Television Services*, *Procedural Code* (amended and restated effective 1 September 2017) s 14.2.

51. Ombudsman Services, *Terms of Reference* (post October 2015) s 10.6(b)(ii).

52. Financial Conduct Authority (July 2018) *Handbook: Dispute Resolution Complaints* (accessed on 27 July 2018) <<https://www.handbook.fca.org.uk/handbook/DISP.pdf>> r 3.7.2.

53. Ombudsman for Banking Services and Investments (2015) *Terms of Reference*, s 26.

54. Australian Financial Complaints Authority (2018) *Rules of Complaint Resolution Scheme* (Draft), (accessed on 25 July 2018) <<https://www.afca.org.au/custom/files/docs/1527568173029/australian-financial-complaints-authority-draft-rules.pdf>> r D.3.

Although EWOV's Charter is silent on specific types of compensation able to be awarded, in practice, EWOV will consider customer service issues and make awards that reflect deficiencies in customer service.⁵⁵ For example, in one binding decision, '[t]he Ombudsman... directed that the company pay the customer \$350 in compensation for inadequate customer service following information delays, errors and insufficient detail.'⁵⁶

In the UK, the Communications & Internet Service Adjudication Scheme (**CISAS**) Rules do not contain any provisions for or against awarding non-financial loss, it merely stipulates that a resolution awarded may be for a member to make a 'payment'.⁵⁷ However, there have been several CISAS case studies published that indicate the award of compensation for inconvenience and stress.⁵⁸

New Zealand's TDR specifically excludes the power to award compensation for non-financial loss, stipulating that non-financial loss refers to loss of profits, indirect loss, pain and suffering, loss of business reputation, inconvenience, mental distress, costs in making a complaint or going through the TDR process.⁵⁹ However, whilst the TDR itself does not consider compensation claims for non-financial loss, it does state that providers retain discretion to make a gesture of goodwill where any of these types of losses have been suffered.

Monetary limits on the amount that can be awarded for non-financial losses are either unclear or vary. In Australia, the cap for non-financial loss amounts is \$3,000 per claim at FOS,⁶⁰ and at the AFCA it will be \$5,000 if the Draft Rules are approved.⁶¹ At the CCTS in Canada, the cap for non-financial loss claims is \$5,000.⁶² At the UK's Ombudsman Service, the cap is 10,000 pounds for any award.⁶³

All of these schemes appear to avoid a strict legalistic approach to calculating non-financial loss compensation. This approach is in line with the Key Practices for the Government Benchmarks for Dispute Resolution which discourage 'a legalistic, adversarial approach.'⁶⁴ Although caps for non-financial loss apply, the mechanics of the calculation is left to the discretion of the office.

Another common feature of compensation powers is the express exclusion of punitive damages.⁶⁵ This aligns with the TIO's view that enforcement and punitive action, such as imposing fines, is the role of the regulator.

Recommendation 5

That the TIO's powers are expanded to allow it to award compensation for non-financial loss

55. Energy and Water Ombudsman Victoria (2008) *Developing new terms of reference for the Financial Ombudsman Service* (accessed on 19 July 2018) <https://www.fos.org.au/custom/files/docs/tor_submission_energy_water_ombudsman_victoria.pdf> 6.

56. Energy and Water Ombudsman Victoria (1998) *Quality of Supply D/98/1* (accessed on 25 July 2018) <<https://www.ewov.com.au/quality-of-supply-d981>>.

57. Communications & Internet Service Adjudication Scheme (2017) *CISAS Rules*, r 5.3.

58. Communications & Internet Service Adjudication Scheme (2014) *Annual Report 2014*, 19. See also, Communications & Internet Service Adjudication Scheme (2014 - issue 18) *Case Studies* (accessed on 7 August 2018) <<https://www.cedr.com/cisas/docslib/17-cisas-20-case-studies-032014.pdf>>; Communications & Internet Service Adjudication Scheme (2013 - issue 18) *Case Studies* (accessed on 7 August 2018) <<https://www.cedr.com/cisas/docslib/17-cisas-20-case-studies-032014.pdf>>; Communications & Internet Service Adjudication Scheme (2011 - issue 6) *Case Studies Compensation Summary* (accessed on 7 August 2018) <<https://www.cedr.com/cisas/docslib/21-cisas-17-case-studies-092011.pdf>>.

59. New Zealand Telecommunications Form (2016) *Customer Complaints Code*, s 34.8.

6.2 There should be a registration requirement for telecommunications service providers

We agree with the Consultation Paper's comment that part of the problem is 'an environment where there is little or no restraint on market entry and exit.' A registration requirement for telecommunication service providers may address this issue.

The original policy intent of having no barriers to entry and no registration requirement for providers was to open up competition when Telstra was privatised. It is important to revisit this policy setting for post-2020. Other sectors which are also regulated and have EDR avenues (for example, energy, credit provision and financial services) require providers to register or become authorised.

A registration requirement could benefit consumers and industry by requiring a minimum standard of training. In identifying and raising systemic issue investigations, we have worked with some new providers that come into the industry untrained and unaware of their obligations under the TCP Code.

It could also enable better compliance monitoring for business practices. Information required to be provided in the registration process could be balanced to allow competition, not impose a disproportionate burden on new providers, but also protect consumers from unscrupulous traders. It could also assist in stabilising the small provider end of the sector where we see a high turnover of providers which in certain circumstances results in consumers being left without a service.

For these reasons the TIO supports a registration requirement for telecommunications service providers and we have already raised this with the Minister for Communications and the Department of Communications and the Arts.

A register of providers administered by the ACMA would:

- support compliance with the EDR scheme
- provide a mechanism to ensure providers are aware of their obligations under the TCP Code and ACMA's Complaint Handling Standard
- allow the ACMA to address the issue of high turnover rate in the small provider end of the market and phoenixing by requiring directors to demonstrate a history of good trading practices in order to register as a provider of telecommunications services.

Recommendation 6

That the Government introduce a registration requirement for telecommunications service providers Appendix A: Comparison with other EDR schemes for the telecommunications service providers

60. Financial Ombudsman Service, *The FOS Approach to Non-financial Loss Claims* (accessed on 27 July 2018) <<https://www.fos.org.au/custom/files/docs/the-fos-approach-to-nonfinancial-loss-claims.pdf>> 3, s 2.2;

61. Australian Financial Complaints Authority (2018) *Rules of Complaint Resolution Scheme* (Draft) (accessed on 25 July 2018) <<https://www.afca.org.au/custom/files/docs/1527568173029/australian-financial-complaints-authority-draft-rules.pdf>> D.4.1.

62. Commission for Complaints for Telecom-Television Services, *Procedural Code* (amended and restated effective 1 September 2017) s 14.1.

63. Ombudsman Services, *Terms of Reference Annex: Communications Sector* (2015) s 1.1.

64. Australian Government (2015) *Key Practices for Industry-based Customer Dispute Resolution*, 10 [1.25].

65. New Zealand Telecommunications Form (2016) *Customer Complaints Code*, s 34.10; Financial Ombudsman Service, *Terms of Reference* (1 January 2010 – as amended 1 January 2018) s 9.6; Commission for Complaints for Telecom-Television Services, *Procedural Code* (amended and restated effective 1 September 2017) s 14.2(b); Australian Financial Complaints Authority (2018) *Rules of Complaint Resolution Scheme (Draft)* (accessed on 25 July 2018) <<https://www.afca.org.au/custom/files/docs/1527568173029/australian-financial-complaints-authority-draft-rules.pdf>> r D.3.4.

Appendix A: Comparison with other EDR schemes for the telecommunications sector

This Appendix considers the countries covered by the Consultation Paper's companion paper, *International and Sectorial Comparisons of Redress and Complaints Handling Models for Consumers and Small Business (International Companion Paper)*.⁶⁶ The International Companion Paper compares EDR models in New Zealand, Canada, Germany, Singapore, South Korea, the US and the UK. The following observations could be helpful to the Government in considering what can be learned from examining these other jurisdictions.

Complaint levels

The Consultation Paper comments favourably on the TDR scheme in New Zealand and the CCTS in Canada, citing their low complaint numbers. However, complaint levels can be affected by factors outside the scheme, such as population and cultural differences, industry disruption, lack of visibility and barriers to raising complaints.

We caution against introducing barriers to consumers complaining to the EDR scheme, for example, by reducing its visibility, imposing restrictions on the types of complaints that can be raised with the EDR scheme, or by increasing the time limit for providers to resolve complaints.

Timeframes for providers

We understand, for example, that the TDR scheme allows providers six weeks before accepting the complaint, and the CCTS scheme allows providers 30 days to resolve referred complaints before progressing these to further case management. Similarly, Ombudsman Services (OS) in the UK does not accept complaints until the provider has had eight weeks to resolve it. The TIO allows providers 15 days if consumers have not contacted their provider, and 10 days if they have attempted resolution with their provider. This is in line with the ACMA's Complaint Handling Standard which requires providers to resolve complaints within 15 days.

Simple and accessible process

Blurring the line between an EDR service and the regulator creates confusion for consumers and compromises independence from government. For example, in South Korea, either the regulator or the government EDR body can provide resolution assistance to consumers. Similarly, the UK has two EDR schemes for telecommunications complaints, OS and Communications & Internet Service Adjudication Scheme (CISAS). As Australia has learned through its recent experience in the finance sector, competition between EDR schemes does not support good consumer outcomes.⁶⁷ In 2017, UK consumer group Citizens Advice concluded that multiple schemes for telecommunication disputes causes unnecessary confusion.⁶⁸

66. Department of Communication and the Arts (2018) *Telecommunications Consumer Safeguards: International and Sectorial Comparisons of Redress and Complaints Handling Models for Consumers and Small Business*.

67. Ramsay Review, 119-21.

68. Chris Gill, Naomi Creutzfeldt and Jane Williams et al (2017) *Confusion, Gaps, and Overlaps: A Consumer Perspective on Alternative Dispute Resolution between Consumers and Business*, 24-6.

The International Companion Paper indicates that Singapore's model currently creates a need to progress complaints past its Info-Communications Media Development Authority of Singapore to a small claims tribunal. The TIO views the tribunal avenue as a less accessible and less effective form of EDR.

In the UK, although it is mandatory for service providers to participate in an EDR scheme, a consumer can only access the EDR scheme that its service provider participates in. CISAS has similar limitations to those listed for OS. CISAS has an additional barrier to consumers as it will only process complaints that are written.

Some schemes, such as OS in the UK, require a deadlock letter from the provider before they can handle complaints. Such an approach burdens the consumer and puts the industry in control of whether consumers are able to escalate their complaint to seek a resolution.

As noted in **Part 3.1** of this Submission, the majority of EDR schemes include referral as an effective form of dispute resolution, including the TDR and the CCTS.

Appendix B: TIO dispute resolution process

