

19 December 2018

Mr Rod Sims
Chair
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne VIC 3000

Sent by email to: broadbandperformance@acc.gov.au

Dear Rod,

2018 ACCC consultation on Broadband Speed Claims – Industry Guidance

Thank you for the opportunity to comment on the ACCC's proposed update to its August 2017 *Broadband Speed Claims Industry Guidance (Guidance)*.

I welcome the ACCC's review of the effectiveness of the *Guidance* and the proposed update. The update focuses on extending the guidance to cover broadband speed claims made by retailers about services delivered over nbn co's fixed wireless technology. The update also proposes other minor refinements for improved clarity of guidance.

My office will take the finalised *Guidance* into account when handling complaints about broadband speed claims.

This letter explains:

- My office applies the ACCC *Guidance* when handling complaints about broadband speeds
- The importance of reliable broadband speeds to consumers

The Annexure provides more information about the number of complaints my office receives about broadband speed claims.

1. The TIO applies the ACCC *Guidance* when handling complaints about broadband speeds

Residential and small business consumers complain to my office about slow or intermittent broadband speeds when migrating to a service delivered over the National Broadband Network (**NBN**).

When considering these complaints, my staff consider a range of issues including:

- (a) the extent to which the consumer can use or derive any benefit from the service;
- (b) the circumstances that the retail provider says are outside its control;
- (c) the accuracy of the information about broadband data speeds given to the consumer at point of sale;
- (d) any representations the provider made about the quality of service the consumer would receive.

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We set out these considerations in our Position Statement: *Faulty services or equipment*.

We also consider relevant laws, including:

- (a) Australian Consumer Law protections, and the ACCC's requirements in its *Guidance*;
- (b) recently introduced rules by the ACMA to improve the experience of customers migrating to the NBN, such as information disclosure by way of a one-page NBN key facts sheet and line capability speed testing for customers connected to certain NBN technologies (e.g. FTTB, FTTC and FTTN).¹

In determining a fair and reasonable settlement of complaints, my staff also take into account the range of remedies provided by the Australian Consumer Law and the ACMA rules (e.g. early release from the customer contract at no charge, the option to transfer to a lower speed plan, refunds).

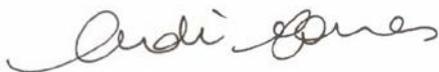
2. The importance of broadband speeds to consumers

Our insights from the complaints we handle about slow data speeds are that consumers expect their broadband service will perform at reliable and promised speeds so they can go about their daily lives or operate small businesses. This can include being able to download movies, watch entertainment, do online banking and other personal and small business activities.

In resolving complaints, we have found consumers generally want their service to perform at the level expected from the representations made by the retail service provider. They may not want cancellation of their contract without cost, or transfer to a lower speed plan. This is especially the case when the issue is with the underlying network, and changing providers will not make a difference to their connection.

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

Yours sincerely,



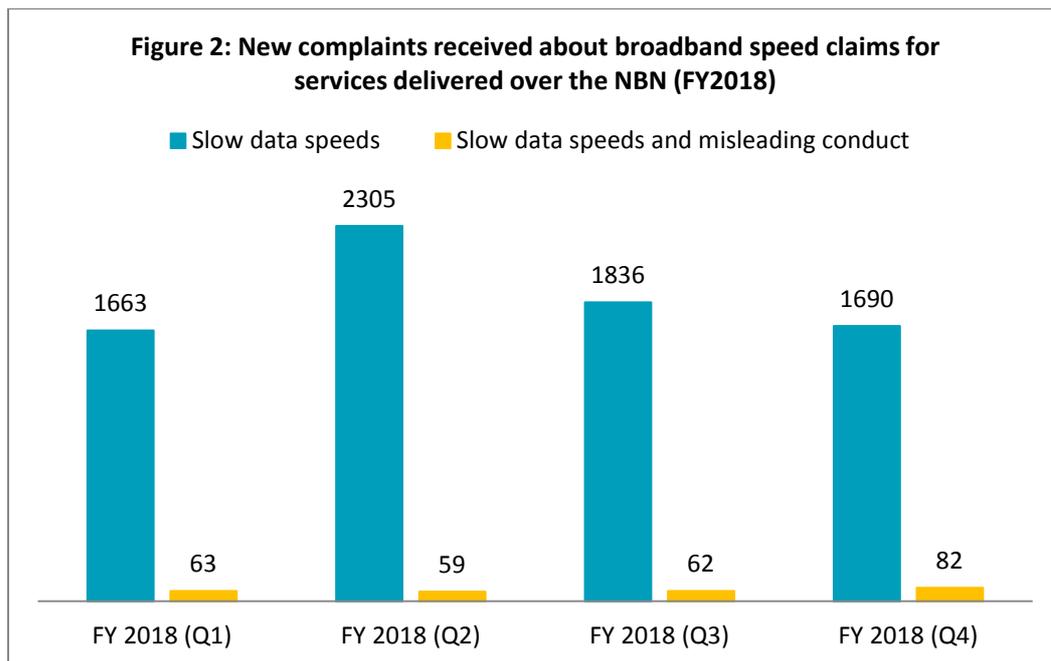
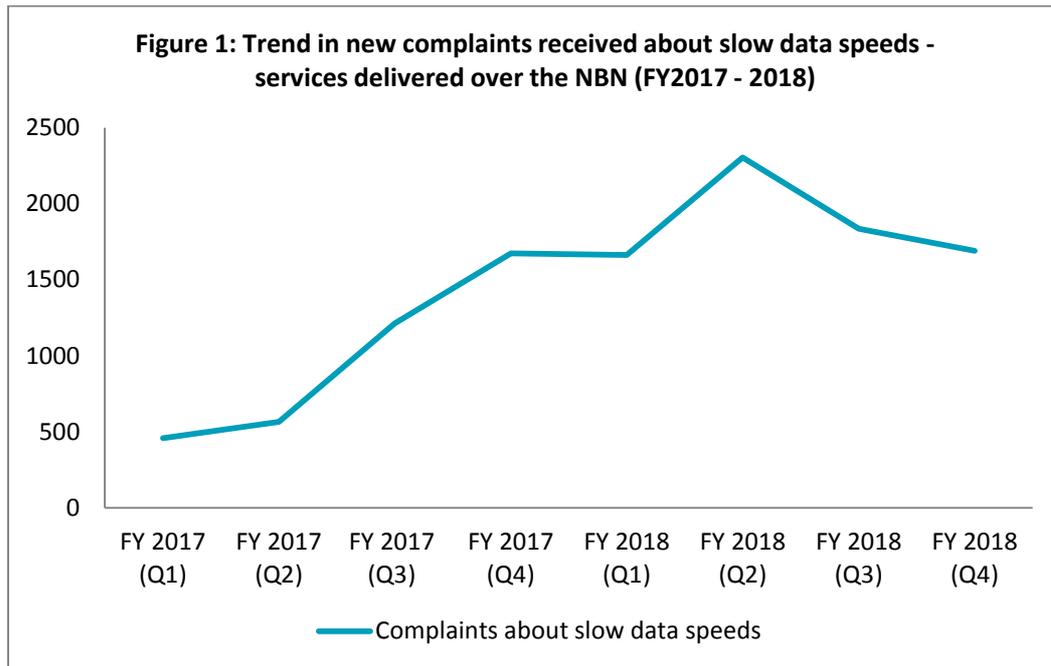
Judi Jones
Ombudsman
Telecommunications Industry Ombudsman

¹ *Telecommunications (NBN Consumer Information) Industry Standard; Telecommunications Service Provider (NBN Service Migration) Determination 2018*

Annexure: Complaints to the TIO about slow data speeds

Figure 1 shows that from 1 October 2018, there was a decrease in the number of new complaints to the TIO about slow data speeds for services delivered over the NBN.

As **Figure 2** illustrates, in financial year 2018, only for a very small proportion of these complaints (approximately 2.5 – 4.8%), did consumers report concerns about potentially misleading broadband speed claims.



Note: From 1 July 2017, the TIO introduced a new approach to recording complaints. This means the complaints numbers in our 2016 submission to the *ACCC Discussion Paper: Broadband Speed Claims* are not directly comparable with the complaints numbers in this Figure 2.