



1995 Annual Report



Telecommunications Industry Ombudsman

M I S S I O N S T A T E M E N T



The Telecommunications Industry Ombudsman (TIO) has been established as an office of last resort, to provide free, independent, just, informal and speedy resolution of complaints and disputes regarding telecommunications services.

Independent of government, carriers, service providers and other interested bodies, the office of the TIO is accessible to consumers of telecommunications services who remain dissatisfied after lodging a complaint with their service provider. All general and mobile telecommunications carriers are members of the TIO and service providers have been invited to join the Scheme.



Telecommunications Industry Ombudsman

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I N T R O D U C T I O N



The Ombudsman is responsible for complaint handling and the day to day administration of the TIO Scheme.

The Council is responsible for policy matters and assures the independence of the Ombudsman, acting as an intermediary between the Ombudsman and the Board.

The Board is responsible for the formal administration of the company, the TIO Limited and guarantees sufficient funding for the operation of the TIO Scheme.





1.1

Statement from Chairman of the Council

This is the second Telecommunications Industry Ombudsman Scheme Annual Report and covers the period from 1 July 1994 to 30 June last.

Warwick Smith, the first Ombudsman, resigned during this period. He had the task of establishing the office and all acknowledge that due to his dedication, understanding of the industry and appreciation of the difficulties of consumers, together with a very dedicated and sensitive staff, the office has attained a high credibility with consumers and the service providers in the industry.

It is pleasing to record that Warwick's efforts received the Charles Todd Medal for excellence in communications and he was made Communicator of the Year.



The Council then applied itself to the difficult task of selecting a suitable successor. Following Council's recommendation to the Board of TIO Ltd, Mr John Pinnock commenced duty in June last. The Minister for Consumer Affairs, the Hon. Jeannette McHugh welcomed the appointment as did all sections of the industry and consumers. John Pinnock is a graduate in Masters of Law from the University of Sydney and was Deputy Ombudsman in NSW for six years.

John has already confirmed his suitability for the position and both the public and the industry acknowledge his ability, leadership and appreciation of the concerns of consumers in the difficult area of dispute resolution where experience, tact and understanding are essential elements.

When the Scheme was created there was no provision for an Acting or Deputy Ombudsman and I am pleased to report that following Council's request the Board and the Minister readily agreed to the creation of such a position. Mr Wally Rothwell was appointed to that position.

The Scheme continues to increase its workload and on behalf of the Council, I commend the staff and the service providers in the industry for their ability to understand the problems of consumers and their readiness to co-operate in bringing about a speedy resolution within reasonable time limits. During the first quarter of 1995 there was an increase of approximately 125% in case load over the preceding quarter. The biggest increase was regarding mobiles. Mobile complaints mainly relate to coverage, congestion, contracts and equipment. As noted before the majority of complaints relate to billing.

I wish to pay special tribute to my colleagues on the Council. The Council comprises representatives from the consumer movement and the industry. It meets frequently and there is a readiness on all sides to assist in developing processes which will bring about the speedy resolution of inquiries and complaints.

On behalf of the Council, I express my appreciation to the Board of the TIO and its Chairman, Mr Ross Ramsay, for their readiness to accede to Council requests for improvements in structure as well as resourcing.

THE HON. LIONEL BOWEN, AC

Statement from Chairman of the Board

1994/95 was effectively the first full financial year of operation of the Telecommunications Industry Ombudsman. A year of building solidly on the firm base of its start-up.

As more customers became aware of the Scheme, Mr Warwick Smith, the initial Ombudsman and his team handled an increasing number of inquiries, complaints and disputes. Their enthusiastic approach was such that no organisation in the industry was unaware that a new force in the resolution of customer difficulties had arrived.

The company structure, Telecommunications Industry Ombudsman Limited, proved very effective in the management of the Scheme. The non-executive Board of Directors monitored the ongoing achievement of the Scheme objectives, dealt with the financial aspects and met the requirements of the Corporations Law. This allowed the Council with its independent Chairman to focus on the policy and customer service aspects and to provide the Ombudsman with his independence from the Board.

Mr Warwick Smith decided early in 1995 to offer himself for a new period in his former career of politics. Consequently he relinquished the role of Ombudsman just before his initial appointment expired.

Following selection by the Council of Mr John Pincock as the new Ombudsman, the Board was very pleased to appoint him to the office. He brings extensive experience in investigation and mediation from his earlier position of Deputy Ombudsman for the NSW Government.

The Board is very optimistic about the future of the Telecommunications Industry Ombudsman Scheme and expects that it soon will be covering Service Providers who have elected to join. This is a prelude to its wider role for additional players in the industry post 1997. Though independent of government, the Board has periodically provided informal advice on the progress of the Scheme to the Minister for Communications and the Arts and the Minister for Consumer Affairs.

The Board would like to acknowledge the vital role of the Council, the Ombudsman and his team in the continuing and expanding success of the organisation.

Mr L Ramsay
MR ROSS RAMSAY





1.3

Ombudsman's Overview

The Next Stage

The second Annual Report of the TIO marks a new stage in the Scheme's operation. Everyone with an interest in the TIO is indebted to the enthusiasm, commitment and drive displayed by the first Ombudsman, Warwick Smith, in the establishment of the TIO and his efforts in ensuring national awareness of this pathfinding Scheme. For my part, I thank Warwick, the TIO Council and Board and all those connected with the TIO, for the personal welcome and co-operation extended to me since I became Ombudsman.

Developing and maintaining the focus of the TIO during the lead up to 1 July 1997, a period that will see a continuation of rapid change in the telecommunications industry, is the challenge that confronts the Ombudsman.

Independence

The guiding principle for the Scheme is set out in our mission statement — 'free, independent, just, informal and speedy resolution of complaints and disputes regarding telecommunications services'. The most fundamental of these words is independence, the very hallmark of an Ombudsman. Our task is to give practical expression to this ideal by the integrity and professionalism of our decisions, so that the TIO Scheme is recognised as being of the highest standard.

The performance of the office is dependent on the dedication of its staff, in particular the investigation officers who deal with complaints on a daily basis, represent the Scheme to consumers, work under considerable pressure, and who are the heart of the office. As the new Ombudsman, I express my appreciation for the way in which all the TIO staff, a small group of only 16, provide a national service to consumers.

An Office of Last Resort

Like all Ombudsman schemes, the TIO is pre-eminently an office of last resort and this message must be constantly repeated. The members of the Scheme are expected to make good customer service a reality, by endeavouring to resolve complaints at first instance, to obviate the potential for disputes to undermine the customer relationship. Where these attempts fail and the consumer remains dissatisfied, the TIO will act.

Consumer Focus -

Alternative Dispute Resolution

While independence is the touchstone of the TIO, its focus is decidedly on providing residential and small business consumers with an alternative forum for redressing and resolving complaints, where litigation is either impractical or too costly. The flexibility provided by alternative dispute resolution mechanisms such as conciliation, mediation and, in the case of the TIO, determination and arbitration, and the speed of these processes, are positive examples of what has been achieved by the consumer movement and large commercial enterprises working in conjunction.



Trends and Statistics

As might be expected with a new scheme, complaints continue to grow rapidly, as public awareness of the TIO increases. In 1994/95, we received a total of 33,551 approaches to the office, raising 17,205 cases. Because of the youth of the Scheme, care must be taken in attempting to draw conclusions from or to identify trends in complaints and the case mix. Indeed, one of the most difficult jobs for the TIO will be predicting complaint levels over the next one to two years. All that one can be certain of is that complaints will increase.

In order to gain information about the level of public awareness of the TIO Scheme and to gauge complainant satisfaction with the complaint process, separate surveys are to be conducted in early 1996. The results of these will provide the first external measures of the success of the TIO and will be used to review processes and set benchmarks.

However, two trends show gratifying indicators of the success of the Scheme. Firstly, cases are increasingly being resolved at an earlier stage,

with the number of matters dealt with at the Inquiry stage rising from 83.97% in July 1994 to 91.62% in June 1995. In the same period, Complaints dropped from 6.32% to 4.06% of total cases. Secondly, the average time taken to resolve consultations, the second stage in the case process, has dropped from 71 to 38 days, while the average time taken to resolve complaints, the third stage of the case process, has dropped from 103 to 61 days.

These trends reflect both the hard work of the TIO investigation staff and the built-in cost incentive of the TIO Scheme, whereby each progressive stage in the case process is charged out to the carriers at a higher, and cumulative, cost.

Privacy

While conscious of the caveat about drawing conclusions from current statistics, there is room for a degree of cautious optimism in noting a fall in the percentage of privacy related complaints. These figures may reflect the prominence of the issue and the work of the Privacy Advisory Committee chaired by AUSTEL (Australian Telecommunications Authority) and increasing sensitivity on the part of carriers in dealing with this issue.

Mobile Phones

Equally, if any issue has the potential to impact on the TIO over the next year, the phenomenal growth in mobile phone use must be high on the list. Complaints of congestion, lack of coverage and call drop out are likely to rise as Australians continue to take up mobile phones at a per capita rate higher than almost any other country. This growth is already changing the pattern of telephone use and bringing with it a range of new issues.

Voice Monitoring

The early involvement of the TIO in developing guidelines for voice monitoring of calls by the carriers has been reflected in recent draft amendments to the Telecommunications (Interception) Regulations. Under the draft regulations, where a carrier has issued



relevant approved procedures and guidelines and an employee or independent contractor has substantially complied with the guidelines, a court will be

required to have regard to the extent to which the person in question complied with the guidelines. Importantly, the draft regulations provide that 'approved procedures and guidelines' are those that have been approved by the TIO.

Service Providers

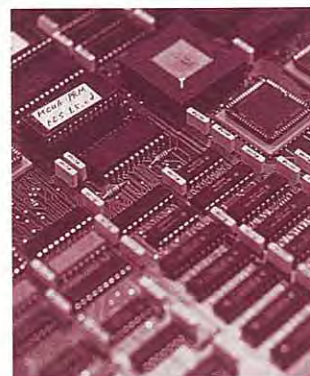
The invitation by the Council and the Board of the TIO to service providers to join the TIO Scheme marks the most important development of the TIO since its inception. The decision recognises the importance of this rapidly growing sector of the telecommunications industry to consumers and positions the TIO to deal with a range of issues and complaints that have recently emerged. I welcome this initiative and will be devoting considerable efforts in 1996 to encourage service providers to take up the invitation.

The COT (Casualties of Telstra) Arbitrations

These arbitrations continue and the requirements of confidentiality and sensitivity impose constraints on comment at this time. At the time of writing, of the original claims, one has been withdrawn, two have been settled by direct negotiation or mediation, a further two by arbitration, (with two more expected shortly).

It is fair and timely to say that the arbitration procedure has not met expectations so far as speedy resolution is concerned. As with the nature of the complaints, the reasons for the delays are complex and often misconstrued. Similarly, some of the media reporting of the issues has proceeded on the assumption that all of the COT claimants have the same attitude to the process and are, like Telstra, monolithic. This is not correct.

Some public comment by the TIO, as Administrator of the Arbitration process, is warranted. Firstly, legal and technical issues have tended to prevail in the approach of the parties, particularly Telstra, at the expense of commercial issues. Secondly, the extensive use of FOI applications, as opposed to seeking documents under the arbitration process, in the





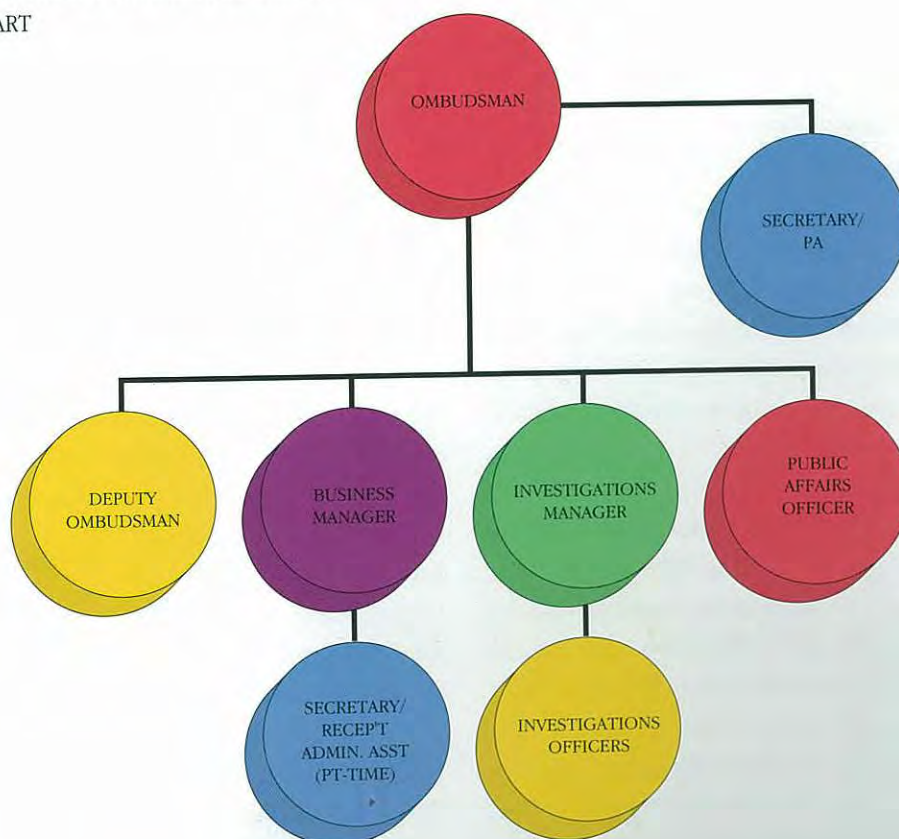
Ombudsman's view has delayed rather than speeded the process. Indeed, even at this late stage, some COT members have still to lodge claim documents with the Arbitrators. Thirdly, the claimants have laboured under a distinct disadvantage in having to engage expensive legal and technical representation without any provision for payment of costs in the event of a determination in their favour. The TIO believes that this last issue must be addressed at the conclusion of the current Arbitrations.

In his first Annual Report as Ombudsman, Warwick Smith remarked that, *'in hindsight, it may have been questionable to ever have had the TIO involved in these matters'*. In terms of the time and effort which the Ombudsman must devote to these cases, at the expense of the TIO Scheme generally, those words were prophetic. However, the former Ombudsman was equally correct when he said that *'justice must be delivered to these claimants'*.



MR JOHN PINNOCK

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN LTD
- ORGANISATION CHART



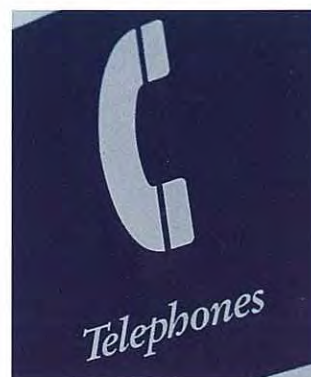
A B O U T T H E S C H E M E



*Established in 1993 as a world first,
the TIO Scheme is independent of
government, carriers, service providers
and other interested parties.*

*The TIO focuses on individual
complaints and dispute resolution.*

*The TIO is free and accessible to
residential and small business
consumers of telecommunications
services.*





2.1

Introduction

The Telecommunications Industry Ombudsman (TIO) Scheme officially opened for business in December 1993 as a means of better protecting the interests of small customers of telecommunications. The TIO is the first telecommunications industry based Ombudsman scheme in the world to be mandated by legislation yet independent of both government and telecommunications carriers and service providers.

Pursuant to their licensing agreements, both general and mobile telecommunications carriers are required to establish, participate in and comply with the TIO Scheme. This obligation arises under Section 64 of the Telecommunications Act and is enforced as a condition of their telecommunications licence, granted by the regulator, AUSTEL.



Carriers currently licensed are Telstra Corporation Limited (general and mobile licences), Optus Communications Pty Limited (general and mobile licences) and Vodafone Pty Ltd (mobile licence only).

On 1 August 1995, in his Statement of Policy Principles, the Minister for Communications and the Arts, The Hon. Michael Lee, MP, indicated that service providers would be required to come within the ambit of the TIO Scheme from 1 July 1997. In anticipation of that date and as a means of giving practical effect to the policy principles, the Board and Council invited service providers to join the Scheme from 1 October 1995.

The TIO has identified a need in the community that was not previously recognised or serviced by either government or industry. The fact that the majority of complaints

made to the TIO relate to basic services and charges suggests that there was a high level of unmet need, unrelated to the partial deregulation of services.

Located in Melbourne, the TIO resolves cases by mediation, conciliation and where necessary, by arbitration or determination. The focus of the TIO is on disputes between consumers, residential and small business, and the licensed telecommunications carriers as well as service providers.

The objective of the Scheme is to provide 'independent, just, informal, speedy resolution of complaints and disputes', free to any individual consumer of telecommunications services. Accessibility to the Scheme is provided through the Freecall phone and fax numbers and Freecall TTY facility.

The TIO is an office of last resort. Consumers are expected to take a complaint to their carrier or service provider in the first instance. Many cases are resolved in this way, giving a practical demonstration of customer satisfaction. Only cases that remain unresolved are dealt with by the TIO.

2.1.1

Structure

Several models and structures were considered in developing the Scheme including the Australian Banking Industry Ombudsman and the British Insurance Ombudsman. No clear precedent existed in the telecommunications industry and the TIO emerged as unique in its industry.

The Federal Ministers for Communications and the Arts and Consumer Affairs were consulted about the constitution of the Scheme.

A wide range of consumer and community groups were also consulted, to ensure that the Scheme addressed consumer issues to the optimum extent and that the Scheme covered particular interest groups in the community.

The TIO Scheme is a company limited by guarantee — the Telecommunications Industry Ombudsman Limited (TIO Ltd).

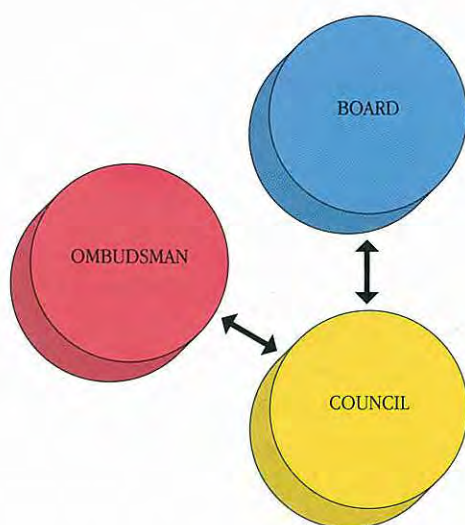
The Memorandum and Articles of Association of the company establish:

- a Council, with equal representation of members of industry and consumer and community interests, chaired by an independent Chairperson. The Minister for Consumer Affairs must be consulted on the appointment of consumer and community interest representatives to the Council;

- a Board of Directors, composed primarily of directors appointed by Scheme members and vested with traditional corporate management responsibilities. There is provision for the appointment of an independent director;
- a Telecommunications Industry Ombudsman (TIO), with authority under the TIO Constitution to receive, investigate and facilitate the resolution of complaints and disputes.

The Council acts as intermediary between the TIO and the Board and ensures the independence of the TIO. The Council has the prime responsibility for policy matters and the oversight of the Scheme's operation.

COUNCIL - OMBUDSMAN - BOARD RELATIONSHIP



The Ombudsman has responsibility for the day to day operation of the Scheme and the resolution of individual cases. The TIO attends Council meetings as an observer.

The Board is responsible for the formal administration of the Company and exercises final authority in relation to the financial affairs of the Company.

The Ombudsman is selected by Council which then recommends the appointment to the Board. The Board then

make the appointment according to Council recommendation. The Board may not dismiss the Ombudsman except on the recommendation of Council.

2.1.2

The TIO Council

The TIO Council has responsibility for:

- overseeing the TIO Scheme;
- addressing complaint handling policy issues;
- maintaining the independence of the Ombudsman, and
- acting as an intermediary between the Ombudsman and the Board.

The members of the Council are:



THE HON.
LIONEL BOWEN AC
CHAIRMAN



MR ANDREW BEDOGNI
MANAGER
REGULATORY AFFAIRS
OPTUS COMMUNICATIONS
PTY LIMITED



MR TED BENJAMIN
NATIONAL MANAGER
CUSTOMER
RESPONSE UNIT
TELSTRA CORPORATION LTD



MR JOHN ROHAN
MANAGING DIRECTOR
VODAFONE PTY LIMITED



MS ELIZABETH MORLEY
AUSTRALIAN
CONSUMERS'
ASSOCIATION



MR EWAN D. BROWN
EXECUTIVE DIRECTOR
THE SMALL ENTERPRISE
TELECOMMUNICATIONS
CENTRE (SETEL)



MS PAM MARSH
DIRECTOR
COMMUNITY INFORMATION
& REFERRAL SERVICE OF A.C.T.





2.1.3

The TIO Board

The TIO Board is responsible for the formal administration of the company and exercises final authority in relation to its financial affairs. Its members fund the Scheme on a volume related costs basis. The Scheme is independent of Government.

The members of the Board are:



MR ROSS RAMSAY

CHAIRMAN

MANAGER
GOVERNMENT LIAISON
OPTUS COMMUNICATIONS
PTY LIMITED



MR ROB SIMPSON

GENERAL COUNSEL
OPTUS COMMUNICATIONS
PTY LIMITED



MR JOHN T. FRIES

FINANCIAL DIRECTOR
VODAFONE PTY LIMITED



MS GILLIAN WELSHE

DIRECTOR OF
CORPORATE AFFAIRS
TELSTRA CORPORATION LTD



MR GRAEME WARD

DIRECTOR OF
CORPORATE PLANNING
TELSTRA CORPORATION LTD

2.1.4

Demand Driven Funding

The TIO has developed a demand driven funding mechanism that ensures that costs are recovered in line with the number of cases against the participant carriers. Funding is based on equitable cost sharing and quantifiable standards.

Requiring participants of the TIO Scheme to meet the costs involved in handling cases provides the incentive and discipline necessary to reduce complaints. The funding mechanism

also provides financial incentives to participants to speedily resolve cases by effectively costing them more each time a matter is elevated to the next stage of the case process.

The TIO is required to pre-bill the carriers every six months based upon projections of both overhead and investigation costs. At the end of the six month period costs are reconciled against the actual overhead costs and the volume of investigations handled in relation to each participant.

The funding requirements are threefold: volume related, recurrent overhead and ongoing capital expenditure.

Volume or demand driven costs relate to the cost of investigations. Each of the four levels of case, inquiry, consultation, complaint and dispute has a different level of cost. The total cost to the participant is determined by the total number of cases relating to the participant and the stage at which cases are resolved.

Income from the investigations areas covers salary costs of the Investigations Officers, costs relating to Freecall telephone, fax and TTY and interpreter services, 50% of accommodation and other relevant overhead costs. Inquiries not related to a specific Scheme participant are included in the overhead charges.

Overhead operating costs relate to the day to day management and operation of the TIO and include costs such as marketing, promotion and general administration. Allocation of these costs is linked to the volume of cases. If 80% of investigations relate to one carrier, that carrier will be charged 80% of overhead costs.

Ongoing capital costs relate to post-establishment capital expenditure. This may involve expansion of infrastructure or growth in the volume of the TIO's activities. Allocation of these charges is also proportionally charged in line with the volume of cases.

The thrust of the Scheme therefore is to require the industry to pay costs associated with dispute resolution rather than requiring the taxpayer to support a publicly funded statutory Ombudsman Scheme. In this way, industry is encouraged to maintain effective customer service operations and an effective case management system.

The Report of the House of Representatives Standing Committee on Transport, Communications and Infrastructure into Telecom (now Telstra) Handling of Customer Complaints (May 1991) showed the cost of dealing with a single case by the Commonwealth Ombudsman for the period 1989/90 was \$700. The total cost to the taxpayer for investigations of cases against Telstra by the Commonwealth Ombudsman for this period was \$616,000.

2.1.5

Alternative Dispute Resolution:

Conciliation, Mediation, Investigation, Determination and Arbitration

The TIO is an alternative dispute resolution (ADR) scheme that seeks to achieve the settlement of disputes outside the traditional court process. Some cases would never be taken to a court because the amount involved may be relatively small; others can involve quite large or complex claims but the complainant may not have the means to pursue traditional forms of resolution.

The advantage of ADR is that it offers a range of flexible responses that can be tailored to fit the nature of individual cases. In the initial stages of the case process, the TIO aims to resolve cases by a conciliation type of process where there is often direct contact between a complainant and the participant.

Where it appears that conciliation is not appropriate and the quantum of the claim is relatively large, the Deputy Ombudsman will usually attempt to mediate the dispute. Alternatively, in selected cases, the Ombudsman will appoint an outside mediator to facilitate resolution of the dispute.

In the event that mediation is not appropriate, or is unlikely to be effective and where conciliation has failed, the TIO may investigate and determine the dispute by requiring a participant to pay compensation or by directing the participant to do or refrain from doing a range of activities. Determinations and directions are binding on participants; a complainant has 21 days in which to accept the Ombudsman's finding or to elect to pursue the claim elsewhere, for example, in court. Alternatively, the Ombudsman may dismiss a case.

There is a jurisdictional limit on the Ombudsman of \$10,000 in respect of each determination and or direction. In addition, the Ombudsman may recommend the payment of compensation, or action on the part of a participant, up to \$50,000. To date, no carrier has rejected a recommendation of the Ombudsman. Where a case involves an amount in excess of \$50,000, the Ombudsman may make a 'finding of fact' only. The precise impact of this provision is obscure, although it appears to have been intended to have some persuasive effect.

Finally, the TIO has developed an arbitration procedure for dealing with large, complex claims, as an alternative to making a finding of fact. The Standard Arbitration Rules allow a complainant to seek arbitration of a dispute. An application to arbitrate is dependent on the participant to the TIO consenting to arbitrate. Where the parties agree, the Ombudsman will appoint an independent arbitrator to determine the dispute and may also appoint a specialist Resource Unit to assist the Arbitrator. The Ombudsman then acts as Administrator of the process.

The arbitration procedure is governed by the Standard Arbitration Rules or, where these are silent, by the Victorian Commercial Arbitration Act, 1984. In the event of conflict between the Act and Rules, the Rules take priority. Decisions by the Arbitrator are binding on the parties, subject to the limited appeal rights under the Act.

As a result of experiences learnt from the arbitration of claims by the Casualties of Telstra (COT), the Standard Arbitration Rules will be revamped.

2.1.6

Complaint Procedures and Staffing

The TIO staff of 16 includes the Ombudsman, the Deputy Ombudsman, Business Manager, Public Affairs Officer, Investigations Manager and an investigations team of eight. The Ombudsman has a full-time Personal Assistant and the office is supported by a full-time Receptionist and a part-time Administrative Assistant.

More than 90% of our contact with the public takes place over the telephone via Freecall numbers. The investigations team received 32,170 calls and 1,381 letters from 1 July 1994 to 30 June 1995. In total they have taken up 17,205 'cases', the generic term used to refer to a matter under investigation.

Each call involves an outline of the caller's problem to ascertain whether the case is inside the jurisdiction of the TIO. It is stressed in this first contact, that the TIO is an office of last resort so that carriers are given every chance to resolve the problem.

3,853 matters, or a total of 11.48% of all approaches to the TIO, are matters outside the jurisdiction of the office and are referred on to another organisation such as the Australian Competition & Consumer Commission (formerly the Trade Practices Commission), AUSTEL, the Office of Fair Trading, the Privacy Commissioner or the Office of the relevant State or Commonwealth Ombudsman.

After an investigation officer decides that a matter is within the TIO's jurisdiction, the office takes the matter up as a case. The officer then 'owns' the case, managing it until it reaches resolution. The TIO is distinctive in combining telephone and case work in the investigative area.





Investigations officers are encouraged to develop areas of expertise and often seek the input and advice of colleagues in managing a case. The Investigations Manager, Deputy Ombudsman and Ombudsman are also regularly consulted. Regular investigation meetings and file workshops ensure a consistent approach and provide an opportunity to take advantage of the breadth of knowledge in the office.

A 'case' may be a matter for conciliation, mediation or investigation but is a matter which requires resolution. Failing resolution at any particular stage, a case will typically pass through successive stages until it is resolved. The first phase is called an inquiry, the second a consultation, the third a complaint and finally, failing resolution in these first three stages, the matter is raised to the level of dispute.

The Ombudsman has established time frames within which participants are expected to deal with cases at each stage. TIO investigations officers deal with inquiries on the spot. Consultations are referred for resolution within 14 days. If unresolved, consultations are raised to the next stage — complaint — and a participant has 28 days further to resolve the matter. If still unresolved, the Ombudsman will then raise the matter to the final stage — dispute.

As a result of the Ombudsman's continued insistence on strict adherence to these time limits, which had begun to 'slip', the average time for resolution of cases at complaint stage has declined from 61 days as at 30 June 1995 to 57 days currently. Further improvement is needed.

Disputes are case managed by the Ombudsman and Deputy Ombudsman in conjunction with the investigation officer who initially took up the matter.

The relatively flat hierarchical structure of the office is a result not only of the size of the TIO but also of the experience of the most efficient complaint handling schemes. The fundamental aspect of this structure is the high degree of delegation and discretion given to investigations officers by the Ombudsman. A concomitant check and balance is the need for formal and informal criteria for deciding whether to raise a matter to the next level of case.

While the focus of the TIO is consumer complaints, the Ombudsman is independent of both parties and must make a decision on the facts of each case, ensuring a fair outcome. An important check and balance and protection for consumer rights is the provision of a right of review, where a decision has been taken not to take a case further. The review is decided by either the Investigations Manager, the Deputy Ombudsman or Ombudsman depending on the level at which the initial decision was made. To ensure finality, only one review is conducted in any case.

2.1.7

Performance

The table shows variations in the case mix of inquiries, consultations, complaints and disputes for the financial year 1994/95 and is an indicator of the early success of the TIO Scheme.

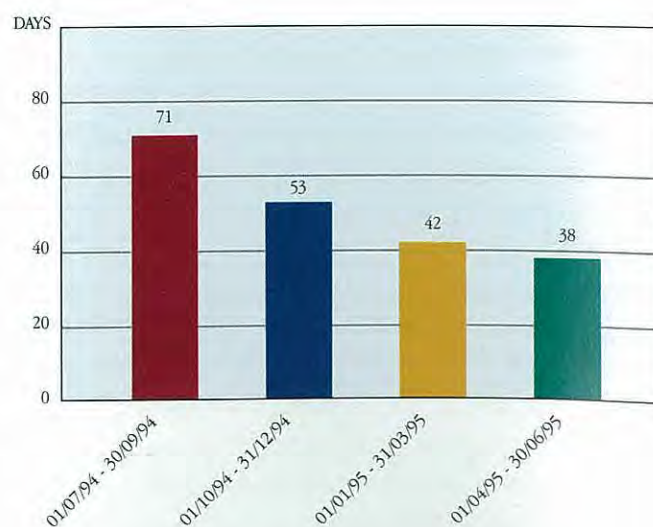
CHANGING CASE MIX - 01/07/94 - 30/06/95

INQUIRIES	CONSULTATIONS	COMPLAINTS	DISPUTES	
83.97%	8.62%	6.32%	1.09%	JULY 1994
86.02%	6.70%	6.89%	0.39%	AUGUST 1994
82.90%	9.32%	6.32%	1.46%	SEPTEMBER 1994
85.63%	10.04%	4.00%	0.33%	OCTOBER 1994
84.62%	10.19%	4.72%	0.47%	NOVEMBER 1994
86.25%	8.96%	4.58%	0.21%	DECEMBER 1994
90.68%	4.58%	4.41%	0.33%	JANUARY 1995
89.43%	5.75%	4.70%	0.12%	FEBRUARY 1995
90.57%	5.40%	3.65%	0.38%	MARCH 1995
92.40%	4.38%	3.08%	0.14%	APRIL 1995
91.32%	4.56%	3.91%	0.22%	MAY 1995
91.62%	4.22%	4.06%	0.10%	JUNE 1995

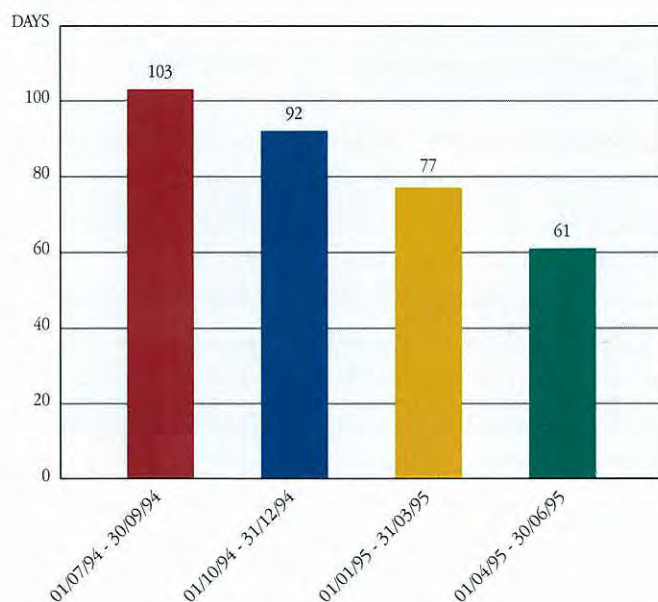
The table shows a distinct continuing trend to resolve cases at the initial stages of the process. The trend is all the more marked when one considers the large increase in the number of cases during the year, compared with the first nine months of the Scheme.

The case mix trend, in conjunction with the average time taken to resolve cases, can be seen as important performance indicators of the success of the Scheme.

TIME ELAPSED ON CONSULTATIONS



TIME ELAPSED ON COMPLAINTS

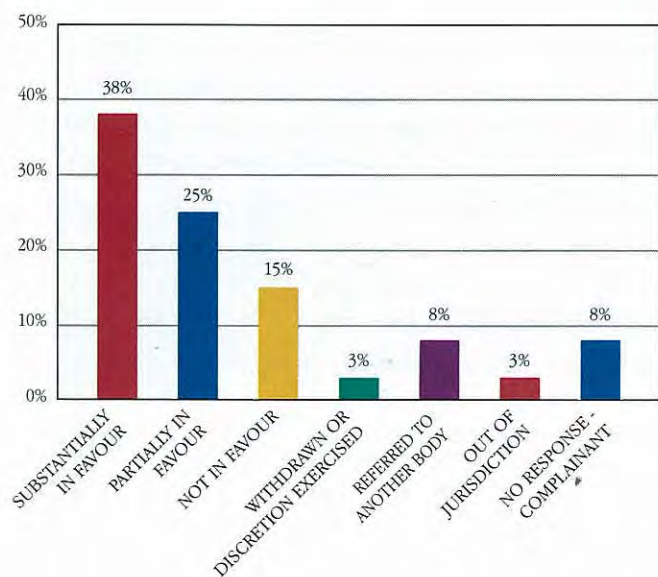


Inquiries are usually dealt with on the same day that they are received. The tables show the average time taken to resolve consultations and complaints in each quarter of 1994/95.

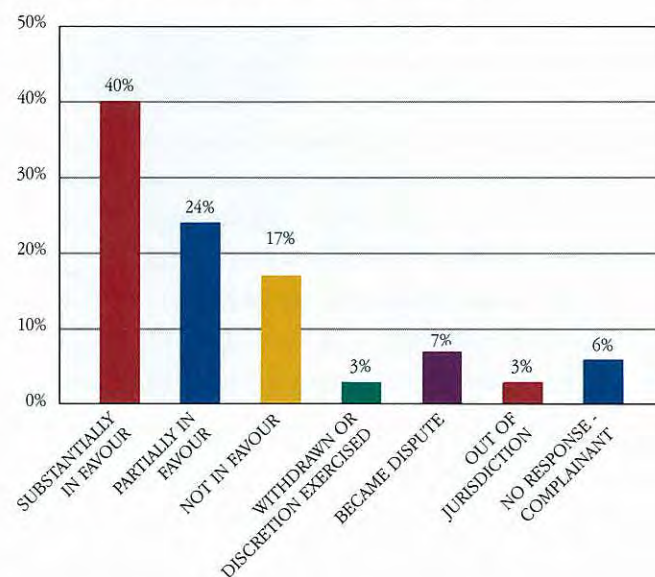
2.1.8 Outcomes

Often, the success of complaint-handling agencies is measured by the number or percentage of cases found in favour of complainants. It is questionable whether such figures are a true measure of success, particularly for an external and independent body such as an Ombudsman's Office.

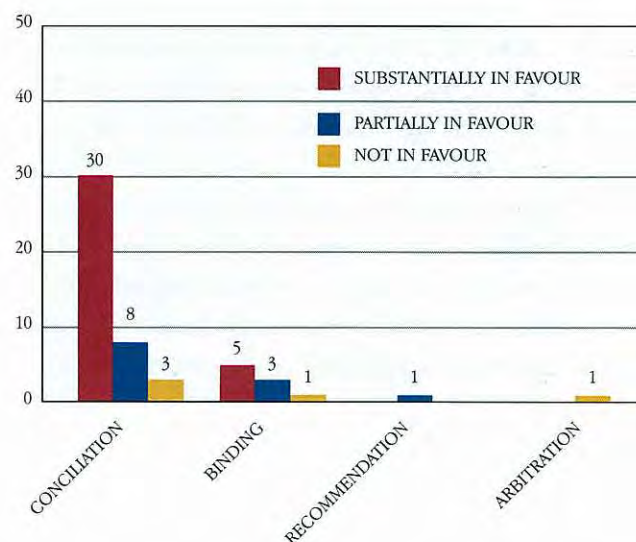
OUTCOME OF CONSULTATIONS - 01/07/94 - 30/06/95



OUTCOME OF COMPLAINTS - 01/07/94 - 30/06/95



OUTCOME OF DISPUTES - 01/07/94 - 30/06/95



On the other hand, in the case of the TIO, from a general consumer perspective these figures do serve as an independent indicator of customer service of participants in the TIO Scheme. The diagrams show the outcomes of consultations, complaints and disputes.





2.2

Jurisdiction: Current Issues

In essence, the TIO's jurisdiction deals with cases concerning the provision of telecommunication services, with certain exceptions, eg. Universal Service Obligations, or the setting of tariffs, which are matters for AUSTEL.

One way in which any Ombudsman Scheme grows is by changes to its Constitution. This phenomenon is apparent both in statutory and industry schemes and there is every reason to suppose that it will occur in the case of the TIO. Two examples suffice to demonstrate this tendency.

Firstly, as detailed elsewhere in this report, the Board and Council of the TIO have recently invited service providers to join the Scheme. Although the Memorandum, Articles and Constitution of the TIO already provide for membership by service providers, the Minister for Communications and the Arts has indicated that as from 1 July 1997, they will be required to come within the ambit of the Scheme. A possible means of giving effect to this would be an amendment of the Class Licence under which service providers operate.

A second example concerns the position of Yellow Pages also referred to in detail elsewhere in this report. Initially, cases concerning Yellow Pages were wholly excluded from the jurisdiction of the TIO. Under the terms of a recent compromise, the TIO now has involvement as a referral point for all such cases, although the new procedure falls short of full and formal jurisdiction.

As the jurisdiction in respect of subject matter is likely to grow, there will be a need to review the monetary limits on the TIO's powers to make determinations, recommendations and findings of fact. This issue was referred to the Council of the TIO by the current Ombudsman soon after taking up the position. It is the joint view of both the Council and the Ombudsman, however, that there is no immediate need to increase these limits.

The Ombudsman anticipates that there will be a continuing trend to expand the TIO's jurisdiction as the Scheme develops. Matters relating to this issue, however, fall squarely within the province of the Council for recommendation to the Board of the TIO.

2.2.1

Matters of Interpretation

Although the initial decision as to whether a case is within the TIO's jurisdiction is delegated to investigations officers, in matters of doubt, the final decision within the office is made by the Ombudsman. However, the TIO Constitution is silent as to whether the Ombudsman has the final say on jurisdictional matters in the event of a challenge.

A former Australian Banking Industry Ombudsman has taken the view that, in an industry scheme, the Ombudsman should have the final say on such a question and that decision should bind participants of the Scheme. There is much to commend this view, as distinct from the position that actual extensions of the Ombudsman's jurisdiction are for the Council and Board, particularly where questions of 'general telecommunications policy' of a participant are concerned. (See Appendix A — Constitution.)

The interpretation of that phrase could have crucial consequences for the Ombudsman's ability to consider whether conduct is reasonable, one of the hallmarks of an Ombudsman's work, as well as to raise systemic matters revealed by cases.

2.2.2

Service Providers

The service provider or reseller sector of the telecommunications industry has experienced phenomenal growth over the last year. Service providers resell network capacity, generating profits by simple aggregation, by value adding services or, in some cases, having their own switched network.

Recognising the importance of this sector to consumers, the Board and Council of the TIO decided to invite service providers to participate in the Scheme. This decision coincided with the Statement of Policy Principles: Post 1997, released by the Minister for Communications and the Arts on 1 August 1995 which indicated that as from 1 July 1997, service providers would be required to come within the ambit of the TIO and to have adequate internal case handling mechanisms.

Although service providers act in accordance with a Class Licence under the Telecommunications Act, they are not required to register with AUSTEL. Consequently, there are difficulties in identifying all of the participants in the sector. Industry estimates repeatedly refer to some 150 participants, however, the TIO, relying on lists provided by AUSTEL, the Service Provider Action Network (SPAN) and the carriers, has been able to identify less than 80.

From a consumer point of view this is unsatisfactory, particularly as customers of service providers have no contractual or other relationship with the carriers. The growth of the service provider industry and its rapid penetration of not only the small business sector, but increasingly the residential area, makes it all the more important that the TIO initiative succeed.

Ultimately, it is hoped that service providers will be required, as the carriers are presently, to support and participate in the TIO Scheme, possibly by way of an amendment to the Class Licence. This raises the issue of whether service providers should be required to be registered.

At the time of writing, ten service providers have joined the Scheme and the Ombudsman intends, over the coming year, to actively encourage participation in the Scheme.

2.2.3 Sometimes it's a Matter of Time

Generally speaking, the jurisdiction of the TIO extends to handling cases against the three carriers, Telstra, Optus and Vodafone about matters relating to the provision of telephone services, billing, privacy and a range of other issues. However, one important restriction on the handling of such cases is the amount of time elapsed since the complainant became aware of the problem. Does the age of the case preclude the TIO from its handling?

Clearly, when a case is first dealt with two or three years after the problem has occurred, there arises a difficulty in obtaining accurate evidence, be it by written, personal and/or oral records and to substantiate that evidence. The investigatory trail may be very cold.

For this reason the TIO Constitution provides that 'A complaint must have arisen from events which became known to the complainant less than one year prior to the complaint', before the TIO can deal with it. However, the Ombudsman has a discretion to investigate a matter where the facts became known up to two years prior to the case being raised by the consumer and that discretion is exercised on occasion.

Questions may arise as to when a case 'became known' and whether an ongoing case should be dealt with for the whole period during which it occurred.

For instance, if a person receives a telephone bill that perhaps seems high and does not complain until their worst fears are confirmed by the next bill received, possibly three months later, when did the case become known? Or, if a person discovers that bills for the last three years have shown the same

defect in that, say, they have been charged for three telephone rentals instead of two, does jurisdiction extend to cover this problem?

The problem of jurisdiction over older cases was discussed by the TIO Council during the year, after the Ombudsman had taken legal advice about a number of aspects of his jurisdiction.

The Council re-affirmed the Ombudsman's discretionary jurisdiction of up to two years and in one case, a carrier has been willing to deal with the merits of a case which became known more than two years after the event. This was an exceptional circumstance and the TIO does not regard it as a precedent.

2.3 Public Affairs

The establishment phase of the TIO Scheme has been distinguished by the dynamism of the inaugural Ombudsman, Mr Warwick Smith, who has done an exceptional job of introducing the TIO Scheme to a large number of Australians.

The extensive outreach program, which formed part of the establishment phase for promotion of the Scheme, concluded with the final forum in Perth in August 1995. A major publicity campaign was also undertaken and the quarterly newsletter *TIO TALKS* established.

Having extended its reach as widely as possible to both industry and community, the TIO must now assess its position, measure awareness of the Scheme and begin to systematically evaluate particular strategies and tools so that it can develop.

Market research is planned, to evaluate the level of public awareness, access and understanding of the Scheme and identify any geographic or demographic gaps. Particular attention will be paid to special needs groups including non-English speaking communities, Aborigines and Torres Strait Islanders, the hearing impaired and the print handicapped, amongst others.





Outreach

Community forums have now been held in Melbourne, Sydney, Brisbane, Adelaide and Perth. These forums provided a valuable opportunity to meet with local representatives from consumer and community organisations, State and local government representatives and the media.

Whilst attendance at these events fluctuated according to location and timing, media campaigns have successfully amplified the message of the Ombudsman, providing an opportunity for local media to become aware of the role of the TIO.

The fourth forum took place in Adelaide on 12 April 1995 and was the last to be held by Mr Warwick Smith. On 8 August 1995, with the new Ombudsman at the helm, a forum was held in Perth. Invitations were directed to ethnic community representatives, Aboriginal community members, the media, local government and small business groups. Media coverage of this event was particularly high with numerous radio interviews and extensive press coverage communicating the message of the TIO to West Australians.



Recently, the Ombudsman conducted a media briefing on service providers for key communication editors and writers in Sydney. Whilst the event focused on the inclusion of service providers in the TIO Scheme, it also provided an opportunity for 'familiarisation', with media representatives questioning the new Ombudsman on a range of issues.

Constituency

There are many stakeholders in the TIO Scheme but the focus is on residential and small business consumers of telecommunications services.

In order to maintain and develop this focus, the Ombudsman will be emphasising the vital role of peak consumer bodies and the carriers in publicising the TIO. This will involve greater contact with consumer groups as well as specific proposals to carriers, such as one currently being developed, to inform consumers of the TIO's role by way of a message on all carrier accounts.

Equally important for the TIO will be developing liaison with bodies such as AUSTEL, ACCC and the Federal and State Consumer Affairs offices. The Ombudsman recently wrote to all State Consumer Affairs offices setting out the role and procedures of the TIO. In this way, channels of communications and referrals can be strengthened to the benefit of consumers.

The Next Phase — Development

A new communications program with twin objectives is being designed to develop a promotional strategy that ensures the widest possible access and understanding of the TIO Scheme and to develop information strategies that maintain and further enhance the profile and credibility of the Ombudsman and the TIO Scheme within industry and amongst key community and consumer groups.

Communication planning for the TIO must be mindful of the range of issues that will affect the office over the next 18 months, in the lead up to mid-1997 and further deregulation of the industry and revision of the Telecommunications Act. Many issues are expected to arise relating to the TIO's jurisdiction, most notably the inclusion of service providers in the Scheme. Monitoring the growth of the Scheme and changing case mix will also be important as will the level of consumer and industry knowledge about case handling in an industry that emphasises self-regulation.

I N V E S T I G A T I O N S



The TIO endeavours to use its regular statistical analysis to identify trends and change in the case mix, as well as systemic issues, bringing them to the attention of both industry and consumers.

As an alternative dispute resolution (ADR) Scheme, the TIO seeks to achieve the settlement of disputes outside the traditional court process through conciliation, mediation, investigation, determination and arbitration.



3.1

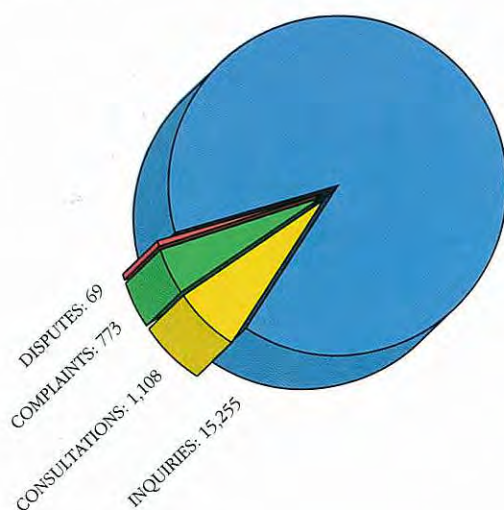
The Year in Review

Overview

In the financial year 1 July 1994 to 30 June 1995, the TIO has experienced a steadily increasing rate of calls with a total of 32,170 calls and 1,381 letters, a total of 33,551 approaches to the office.

From this total number of approaches 17,205 cases have been raised — 15,255 inquiries, 1,108 consultations, 773 complaints and 69 disputes with 3,853 matters outside the jurisdiction of the office. Many, but not all of these matters were referred to a relevant agency such as the Australian Competition and Consumer Commission (formerly the Trade Practices Commission) or the industry regulator, AUSTEL.

TOTAL CASES



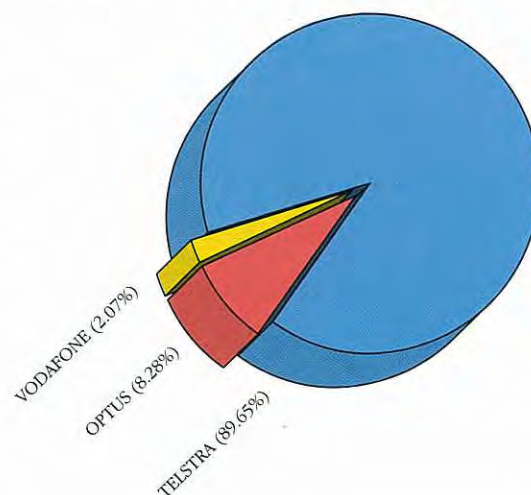
Carrier Breakdown of Cases

As might be expected in an increasingly competitive environment with changes in market share, the breakup of cases amongst the carriers has also shown changes since the TIO's first Annual Report.

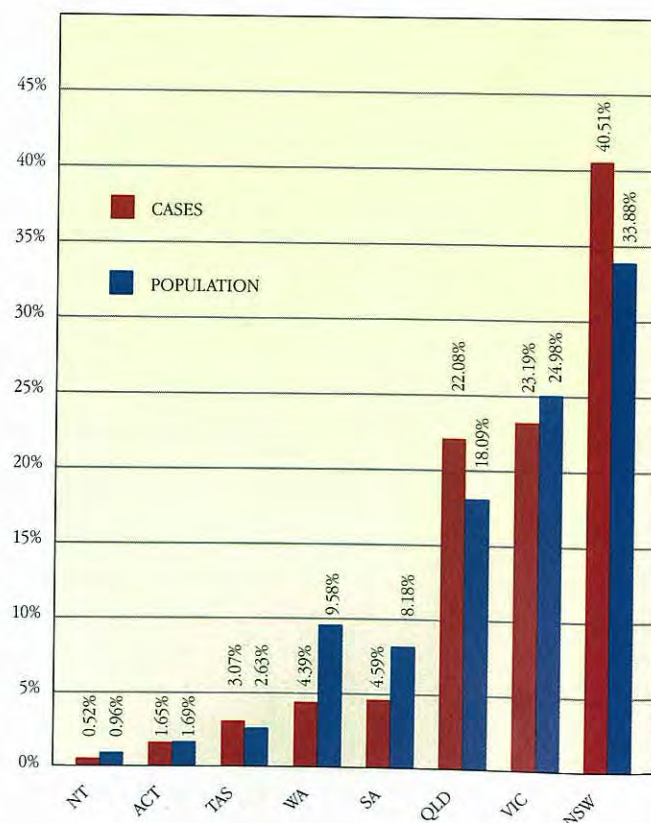
Alternative dispute resolution featured strongly in the majority of the disputes handled by the TIO during this period. Of 69 disputes raised in 1994/95, 41 were resolved through mediation or conciliation, eight by determination and one recommendation, with the balance accounted for by arbitration or private negotiation.

The steady increase in cases indicates the development of 'core' areas of cases, such as billing, and tracks the growth in new products and services such as mobiles.

CASES BY CARRIER - 01/07/94 - 30/06/95



COMPARISON OF CASES & POPULATION BY STATE 01/07/94 - 30/06/95

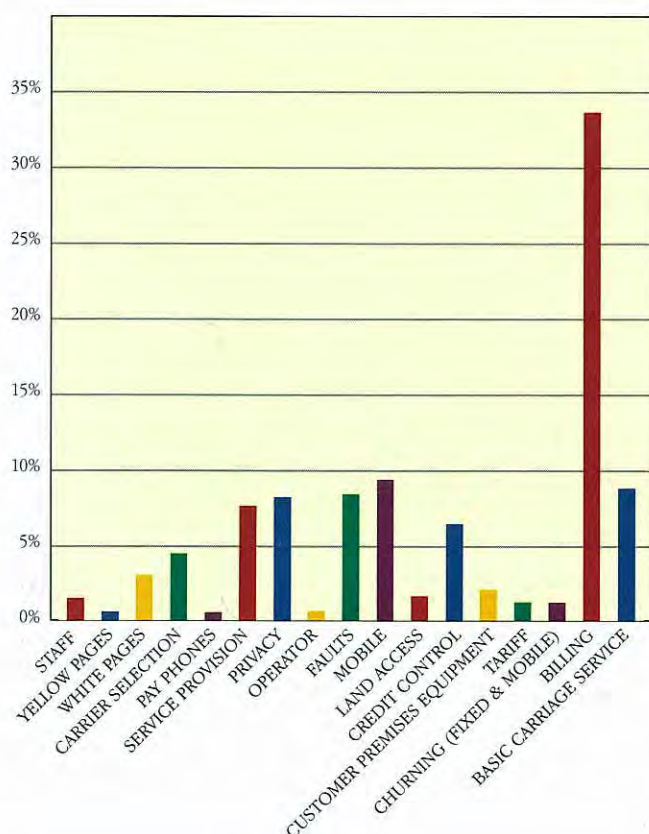


The TIO endeavours to use its regular statistical analysis to identify trends and changes in the case base, as well as systemic issues, bringing them to the attention of both industry and consumers.

Cases show marked regional variations: NSW has approximately 34% of Australia's population and accounts for 40% of the total cases received by the TIO. South Australia and Western Australia with 8.18% and 9.58% respectively of the total Australian population contribute only 4.59% and 4.39% respectively of the total cases received.

Distinguishing precisely why the ratio of population and levels of complaint vary so dramatically is something that will be addressed in forthcoming research.

TOTAL KEYWORD BREAKDOWN 01/07/94 - 30/06/95



3.2

Investigations: Classifications and Reporting

3.2.1

Basic Carriage Service

Inquiries: 1005 Consultations: 121
Complaints: 44 Disputes: 6

This keyword identifies a range of options available beyond the standard telephone service within Telstra's Public Switched Telephone Network. For example upgrades, development and installation of new network components and

exchanges, the introduction of various technical enhancements, products and services, such as itemisation of metered calls, access to Optus, FlexiPlans, Easycall, Call waiting and other such services.

Most of the calls received by the TIO in relation to these matters are inquiries from customers who are seeking independent advice and further explanation of the range of services and products now available. A clear majority of these cases are resolved at a very early stage, following an explanation of technical, policy or legislative information.

3.2.2

Billing

Inquiries: 3,646 Consultations: 398
Complaints: 424 Disputes: 21

The bulk of the cases investigated by the TIO relate to billing. It is simply the core issue for the investigations team and has consistently represented approximately one third of cases for the office. The figures above do not include the substantial number of cases from mobile phone users relating to billing.

Many of the ongoing billing cases handled by the office arise when a customer receives a bill with charges for calls that are disputed and that do not accord with past patterns of telephone use. For this reason, the TIO feels that it is good customer service practice for carriers and service providers to alert customers to sudden increases in their bills.

In almost all technical matters relating to the investigation of billing cases, the TIO remains reliant upon information provided by the carriers. In many billing cases, routine technical checks of metering equipment and lines are carried out by the carrier and, where necessary, faults are rectified.

It is usually only in more complex matters where customers do not accept the outcome of investigations by the carrier that the TIO becomes involved. In these matters the TIO considers a customer's own call records and metering, where available, the account history, including past call patterns, and access and security of the service in assessing a case. In exceptional cases the TIO has the necessary power to conduct independent technical investigation.





Billing cases fall into several distinct areas including:

- metered calls;
- disputed charges for unanswered/unsuccessful calls;
- disconnection for non-payment or request for reconsideration of account payment arrangements; and
- disputes relating to back dated call charges and credit/debit adjustments.

It is clear to the TIO that itemisation of bills encourages greater vigilance for both the consumer and the carrier and has the overall effect of reducing the number of disputes when applied to services. The TIO supports further itemisation of bills and the breakdown of categories on bills such as 'service and equipment'.

A complainant called the TIO to dispute charges for STD, mobile, 0055 and IDD calls that occurred in two blocks over two billing periods. Testing by Telstra failed to find evidence of faults or errors.

However, documentation provided to the TIO showed that there had been no technical inspection of the cable network associated with this service. It was subsequently discovered that the local Telstra office had decided that the full range of testing was unnecessary. More worrying still was the decision by the local office to notify the complainant that, based on a technical investigation, there were no technical problems with the service.

When testing was eventually done, it was found that multiples, or surplus wiring on the street pillar could have caused induction or tripped the telephone metering system. Although Telstra confirmed that these multiples were not connected to any other cable, they were not able to guarantee that the multiple had not been crossed with another service at some time in the past. On this basis, the benefit of the doubt was given to the customer and Telstra agreed to withdraw the disputed charges.

Metering

The majority of billing matters are clearly disputes over the accuracy of metered calls. It is significant that the TIO receives fewer calls about itemised long distance calls than non-itemised local calls.

The consistently high rate of billing cases is not perceived to have any direct relationship to the actual level of fault in metering equipment itself, but in the functioning of associated equipment. Incorrect billing is usually symptomatic of operational

faults and can often be slow to track down. A range of common operational faults produce increased bills, including faulty call disconnection necessitating recalling, faulty customer premises equipment (leased or privately owned), crossed lines or transposition of lines.

Disputed Charges for

Unanswered/Unsuccessful Calls

Definitions of what constitutes a successful call vary among customers but are defined clearly by carriers. The proliferation of telecommunication technologies has seen the developing use of facsimile machines, computer modems, call queuing, privately connected call diversion and PABX call answering and switching.

Many customers do not appreciate that, whilst voice contact is not made through the above services a call has nevertheless been made.

Charges in relation to international calls can also be anomalous. Details of charges for overseas calls are produced by the Australian exchange in response to a connection or answer pulse. In countries with a poor level of telecommunications development, a false or inaccurate answer pulse can be generated. In such cases, the Australian carrier has incurred the charges on behalf of its customers and will bill the customer, because neither the carrier nor the customer is able to detect the inaccurate answer pulse.

Back Billing

An issue of increasing importance is the practice of a carrier rendering an account for calls made outside the normal billing period of the quarterly or monthly account.

A carrier is legally entitled to bill a customer for all calls, whether they are made within or outside the billing cycle. In cases such as international mobile roaming or reverse charge calls from overseas, an Australian carrier has no control over delay on the part of a foreign carrier in issuing bills.

In the case of calls generated in Australia, whether local, STD or ISD, the position is different, in that metering and accounting of calls is not reliant on an external carrier. Nevertheless, for technical reasons, delays in bringing to account charges for past calls do occur and these delays are a real issue in terms of good customer service.

Recognising this, Telstra currently operates under a practice where it will not back bill beyond a period of 12 months. In February 1995, Telstra advised the TIO that it intended to reduce the back billing period to 90 days, within six months.

When the reduction to the 90 day period failed to materialise, the TIO determined a number of disputes concerning back billing in favour of complainants, on the basis that a 90 day period was reasonable.

Telstra's view is that its current practice is a *'... telecommunications policy ... of a participant in the Scheme and hence is outside the jurisdiction of the TIO'*, and has noted that the TIO will deal with each case on its merits.

Optus and Vodafone have indicated that, with the exception of international mobile roaming and other overseas dependent billing information, they believe a 90 day back billing period to be reasonable. Optus has, however, raised a further caveat outlining that this undertaking is contingent on the timely production of billing information by Telstra.

Payment

Whilst the TIO is not a credit counselling service, it does mediate a number of cases regarding payment of bills. We inform complainants of the options available to them and in some cases make representations to carriers on their behalf, proposing extensions to payment plans or renegotiating a range of restrictions or limits to the service. Ultimately, however, carriers determine credit cases individually and on merit and, except in unusual circumstances, the TIO can do little more than assist complainants in assessing their options and supporting those cases it considers valid, to the carrier.

Party Line Calls

An increasing number of cases were received during the year concerning account charges for calls made to international (0011) and local (0055) sex lines, somewhat euphemistically described as 'party-line' calls. The increase in these cases led the TIO to create a sub keyword as a means of monitoring any trends, although these cases are treated as a species of billing cases, albeit involving sensitive issues.

In general, complainants have denied all knowledge of the calls and there have been suggestions of 'phreaking' or remote electronic accessing of complainants' lines, either by unknown individuals or by employees of a carrier, as well as allegations of 'cloning' of mobile phones. The issue received a flurry of attention in the media recently.

Extensive technical briefings sought by the Ombudsman from the carriers indicate that instances of 'phreaking' are rare, usually involve remote accessing of international Bulletin boards and have never been known to result in charges being 'dumped' on residential subscribers' lines. Only one case has

come to the Ombudsman's attention which is suggestive of 'cloning' of a mobile phone, although the practice is apparently well known in other parts of the world.

3.2.3

Churning and Carrier Selection

Fixed: *Inquiries: 87 Consultations: 7*

Complaints: 3 Disputes: 0

Mobile: *Inquiries: 67 Consultations: 7*

Complaints: 2 Disputes: 0

Carrier Selection: *Inquiries: 500 Consultations: 76*

Complaints: 20 Disputes: 0

Total: *Inquiries: 654 Consultations: 90*

Complaints: 25 Disputes: 0

Churning describes the movement of customers from one carrier or service provider to another, usually in response to an overture by a carrier, service provider or their agents. (Whilst churning is not an illegal process, the TIO deals with cases alleging illegal churning practices, known in the industry as 'slamming'.) While consumers are reaping the benefits of market deregulation and increased competition they are also bearing the brunt of this process, which many customers regard as annoying and intrusive. Churning can occur on the fixed or mobile network and the TIO tracks cases relating to these two networks separately. Cases relating to both networks continue to rise.

Generally, complainants say they that have been contacted by people claiming to be representatives for one of the carriers or service providers seeking to solicit their account. The TIO has seen many cases where this is alleged to occur up to ten or more times per day, elevating the matter to the level of harassment.

Ascertaining the callers' access to subscriber information raises possibly more serious concerns. In this respect, churning is also a serious privacy issue.

It is, however, important to remember that, aside from the reasonable objections to illegitimate and illegal practices associated in transferring accounts, churning represents consumers' freedom to select the carrier or service provider who supplies the products and services most suitable for them. Few would disagree that consumers should be free to take advantage of this.





3.2.4

Credit Control

Inquiries: 754 Consultations: 74

Complaints: 33 Disputes: 2

The TIO tries to ensure that credit control procedures applied by the carriers are just and reasonable. The use of security deposits, credit checks and increased use of collection agencies are all current issues for callers to the TIO.

Security Deposits / Access Restrictions

Since the late 1980s, Telstra has accepted new account applications on the basis of credit information given over the phone, dispensing with the requirement for new customers to sign an application form. In the time since this change of procedure, Telstra has claimed an increasing problem with debt recovery. It is now standard practice for those without an established account history with the carrier to be required to pay a security deposit.

Since early in 1995, Telstra has tightened these controls for those customers who fail to pay the security deposit by restricting access to long distance services. In effect, this move redefines our notion of a basic telephone service and the TIO has received many calls from customers who find the new practice and policy prohibitive.

Credit checking for customers applying for a basic telephone service is based entirely on Telstra's own records. Customers who do not have funds for a security deposit, and have access to long distance calls restricted by Telstra, have the option of using Optus. However, Optus has its own methods of checking credit references and any application for a telephone service would be subject to these.

The TIO regularly deals with cases where the complainant seems to be an exception to the rule, for example where customers have a mobile phone account with an established record of payment, or those who have acceptable credit histories with Telstra, but not in the twelve months immediately preceding their recent application.

Credit Checks

The TIO has several cases where customers have, on application for a telephone service or shortly after connection, been told by Telstra that there are outstanding debts in their name. In some cases, these charges date back as far as the late 1980s.

Of concern to the TIO is the inability of Telstra to provide detailed accounts of these debts. Currently, Telstra places the onus on the customer to provide proof that a debt was paid, often a number of years after the event. It is rare to find customers who

retain records for bills beyond several years and in the TIO's opinion, it is unreasonable to expect customers to do so.

The TIO considers that, if Telstra accepts applications for accounts over the telephone, without the requirement for customers' signatures or other proof of identity, it is unreasonable to expect a customer to account for any and every allegedly outstanding account in their name, when such lengthy time frames are involved.

Collection Agencies

Whilst the conduct of agencies, including credit agencies or debt collection agencies representing the carrier is not in the direct jurisdiction of the TIO, the TIO is quite prepared to take cases to carriers where it considers any conduct of those agencies unreasonable.

Of concern to the TIO is the transfer of collection costs of agencies who represent carriers, to the customer. Another serious concern is a practice of allowing third party collection agencies to contact frequently called numbers on phone accounts in order to track down errant customers. This issue is outlined fully in the section on Privacy.

Refusal to Release ESN

A number of customers who have purchased second-hand analogue phones have contacted the TIO regarding inherited debts associated with the handset. The Electronic Serial Number (ESN) is linked to the mobile phone number and account records. In the event that this account is still outstanding when the telephone is sold, the purchaser inherits the problem.

The TIO has recommended that customers who purchase second-hand phones privately, keep records of the previous owner and the transaction and even ask to see the most recent account and the receipt of payment.

3.2.5

Directories

White Pages:

Inquiries: 329 Consultations: 51

Complaints: 23 Disputes: 4

All Public Switched Telephone Network (PSTN) subscribers are entitled to listing in directory services including both White Pages and Directory Assistance. This free entry includes the customer's name, address and telephone number.

Additional listings, enhancements or additions to this information are charged at a tariff rate. The TIO is unable

to investigate or question tariffs that are approved and regulated by AUSTEL. However, the TIO can ensure that charges are in accordance with the listed tariffs.

The bulk of cases relating to directory services are cases of omission or errors in information. Whilst this may be an inconvenience to residential customers who can have changes made quickly to directory assistance listings, these problems are more serious for business.

Telstra claimed not to have received a fax sent by a customer advising of a change of address for an entry in the White Pages directory. The complainant claims to have sent the fax well in advance of the deadline for changes. Directory Services subsequently advised that changes to listings can only be made in writing.

The following year, the complainant wrote to Telstra to advise that his professional and residential numbers had been changed. Due to a misunderstanding, Telstra removed his listing altogether. The removal was rectified, in part, with a listing on '013' and '0175' Directory Assistance.

Telstra, admitting liability for the mistake in omitting the listing from the White Pages directory, offered compensation including paying costs involved in notifying existing clients of the change and a financial contribution toward costs of advertising already placed. The only condition placed upon this compensation was that the complainant was required to sign a deed of release and indemnity waiving any further claim.

While the carrier increased the amount it was prepared to offer in ex gratia payment, the complainant refused to waive the right to any further claim due to concern for potential loss of income relating to the omission.

Since the parties were not able to agree, the Ombudsman made a determination awarding \$10,000 to the claimant on the basis of costs involved in notification of clients, advertising costs and also on the basis that the complainant's livelihood was affected by the error.

Omissions for both residential and business customers are listed as speedily as possible with Directory Assistance. However, businesses who are omitted from the printed directory are generally very concerned about the impact of this on their level of trade. Defining the level of liability for such errors or omissions and quantifying loss is generally extremely difficult given

A complainant had moved from Queensland to Melbourne, redirecting his Queensland phone to his new number. There was an enhanced bold listing on the service in the White Pages directory. Whilst call diversion was costly, the customer felt it was the most reliable way of informing callers of his new number.

Problems arose when routine reprinting of the White Pages listings included his enhanced bold listing. The customer complained that he had not been given an opportunity to modify or discontinue the service. Even though inclusion of the listing was incorrect, White pages insisted on full payment, threatening to disconnect his current telephone service if he did not settle the account.

The TIO has concluded that accounts from Telstra White Pages are quite separate from those issued by Telstra Australia for telephone services. Outstanding amounts on accounts relating to one service should not jeopardise the continued supply of services of the other.

Telstra claimed that customers receive a bill insert for amendments or alterations to directory listings although it was clear in this case that the customer did not receive the insert as he had moved interstate.

The onus is clearly on customers to modify or discontinue directory services. While a debt with White Pages should not jeopardise a current phone service, the outstanding amount was payable by the customer.

the range of factors. A copy of the prospective entry is sent to the business customer and it should be checked thoroughly before being returned to Telstra.

Businesses should be aware that when they ask for the listing of supplementary information or enhancements in White Pages, this is on an opt out basis. The changes, as well as the associated charges, will continue until such time as Telstra is notified otherwise.





A complainant discovered when he switched over to a service provider recently that he had been charged for an enhanced listing in the White Pages directory since 1988. In clarifying the position, Telstra admitted that, while charges had been levied (and paid in full), no request had been made for the enhancement in the directory, nor had any enhancement appeared.

The complainant requested a full reimbursement for the charges, but Telstra said it was only able to back date credit for the preceding year, not for the intervening years since 1988. Telstra also stated that it would only be able to provide a credit to his account rather than a full refund.

While the complainant is currently the customer of a service provider and thus outside the jurisdiction of the office, the TIO took up this case as one that related even if retrospectively to the problem with the carrier.

Subsequently, Telstra offered to refund an amount of \$1,504.25.

Yellow Pages

Inquiries: 83 Consultations: 0

Complaints: 0 Disputes: 0

Yellow Pages is published by Pacific Access, a joint venture in which Telstra is the majority shareholder. Telstra holds copyright in this and all its other Directory Services.

Cases concerning Yellow Pages remain outside the formal jurisdiction of the Ombudsman. However, following discussions with both Pacific Access and the Commonwealth Ombudsman, Council of the TIO and the Ombudsman decided to accept a compromise proposal by Pacific Access. Under the proposal, which is now in operation, cases to the TIO and the Commonwealth Ombudsman about Yellow Pages are referred to a dedicated contact at Pacific Access, to be dealt with internally. Pacific Access has agreed to report back to the TIO on the resolution of cases.

The operation of this compromise is subject to review in March 1996 and the TIO will pay close attention to any matters where the complainant remains dissatisfied.

3.2.6

Faults

Inquiries: 943 Consultations: 83

Complaints: 81 Disputes: 18

This keyword relates to faults in Telstra's Public Switched Telephone Network (PSTN) and underlines the reliance people have on basic telephone services. Cases relating to the level of technical faults in the network were 8.43% for the 1994/95 financial year, ahead of service provision and privacy, but behind the core areas of billing, mobiles and basic carriage service cases.

Since the deregulation of customer premises equipment (CPE), faults may be generated through the use of a range of privately owned hardware and customers are responsible for the repair and maintenance of their own equipment. The TIO has no jurisdiction over CPE. Faults may also be located in the exchange or in the local cabling. Network faults range from simple through to difficult network faults and are of most concern to business. Telstra is responsible for the repair of all faults within its network up to and including the first telephone, if rented from Telstra.

Seasonal factors can affect the incidence of faults in particular areas and the TIO appreciates that bad weather can not only cause technical problems but hamper Telstra's ability to repair faults. Telstra has standard time frames in which it aims to rectify faults; one working day in urban areas, two days in rural areas and three days in remote areas. The TIO is often able to speed up work to ensure the reconnection of customers who are in situations of need. Some faults are recurring and some intermittent and these factors also determine the speed with which they can be fixed.

Evaluation of faults and their impact is a difficult process for small businesses who have unresolved cases with the quality and constancy of their service. It can be difficult for businesses to verify the nature and frequency of faults that they believe have affected them.

3.2.7

Land Access

Inquiries: 164 Consultations: 20

Complaints: 31 Disputes: 8

The Telecommunications Act gives telecommunications carriers extensive powers to access land for the installation and maintenance of telecommunications infrastructure. Specifically, carriers have comprehensive rights to construct a facility on, over, through and under any land in order to carry out their prime function, to provide telecommunication services.

The TIO does not have jurisdiction to deal with cases concerning the exercise of these statutory powers by carriers but does have jurisdiction to deal with cases concerning lack of, or the adequacy of, compensation payments by carriers to complainants whose land is directly affected.

Between 1 July 1994 and 30 June 1995 cases related to land access by carriers represented 1.45% of total cases. For complainants, the issue of land access often develops into serious grievance and considerable expense. As a result, land access cases go on to represent a proportionally much higher number of disputes. Of the total number of disputes handled by the TIO during the year, 12.3% related to land access.

The TIO has dealt with cases about the laying of cables across land, siting of telecommunications facilities, severing of telecommunication cables and disputes regarding the responsibility for associated costs. There is an onus on customers to take reasonable steps to inform themselves of the site and depth of cables, otherwise costs for damage are automatically incurred by them.

A caller complained that telecommunications cable lay above ground on the nature strip outside his home for approximately four months. The caller felt this was, in principle, wrong and complained about the increased risk to public safety. After lodging a complaint with Telstra six weeks prior to calling the TIO, the caller had still not received a response.

The TIO waited a further four weeks for Telstra to respond. After a visit to the site by the Local Office Manager in the third week of the investigation, Telstra reported that the cable was connected to provide an interim service, as there was a fault in cabling. Telstra considered there was 'no risk to public safety' and explained that the delay was caused by the surveys and permits from other statutory authorities required to complete the work.

This seems a little curious considering the extensive immunities that the carriers hold in the right to access land and erect infrastructure bypassing local and State planning laws.

The TIO would like to see greater awareness and understanding of the implications of carrier rights for the community. Certainly, the core area of complaint to this office is the accidental severing of cables by farmers and suburban gardeners some of whom were unaware that they should check for the location of cables. In other cases the severing was due to inappropriate

Numerous callers make complaints to the TIO regarding the location of Telstra cables. Gardeners and home renovators who know nothing of the obligation to 'dial before you dig', plunge shovels into the ground only to find cables. Fortunately, damage is often slight and repair work speedy. For many of these DIY enthusiasts the invoice is the first serious jolt.

One caller was charged \$90.80, although the cables were located only centimetres from the surface. For another customer charged \$97, the cable lay precisely ten centimetres from the surface. Telstra cables should be laid at a reasonable depth and be clearly marked. If damage occurs to unmarked cables or those found too close to the surface, liability should be accepted by Telstra for any damage occurring.

Two years after cabling work had been done on the nature strip at the front of his property, a resident contacted the TIO to pursue damages. The installation of cables had, the claimant said, caused extensive flooding of his driveway and after two years had lead to erosion, destabilising the stone fence at the front of his property.

Telstra argued that the trench was far enough away from the fence not to have had an impact. This was not supported by an inspection of the site by the TIO.

The TIO believes that Telstra have a duty of care not to damage private property when undertaking work such as this. The TIO determined the case in favour of the complainant, requiring the carrier to pay two thirds of the cost of the demolition and replacement of the fence.

cable depth or lack of indication of siting on the part of the carrier. Suffice to say that the 'ring before you dig' message is not reaching those who end up at the TIO.

One anomalous interpretation of the Act highlighted in a case this year relates to the cost for relocation of cabling incurred as a result of subdivision of land. Many cases have come to the TIO in the past year where the costs for relocation of telecommunication facilities and cables are disputed.





The Act places these costs for relocation, replacement or removal of a facility on the original subdivider of the land. This is further complicated by the fact that some land has been subdivided several times.

Areas of environmental sensitivity can be under-valued even by the owners themselves. A complainant to the TIO objected to damage caused during the installation of cables on her rural property. Holes up to one metre deep were made and extensive damage was caused to plant cover in wet-lands.

The complainant estimated the damage at \$5,000 and Telstra, after its own inspection, offered compensation of \$3,000. Since the two parties could not agree on the sum, the TIO sought agreement from both that they would accept the advice of an independent assessor. The assessor recommended the sum of \$10,995 for remedial environmental work to the property.

The Ombudsman determined that the carrier should pay \$10,000 to the complainant, the maximum amount that can be awarded by the Ombudsman.

3.2.8

Mobiles

Inquiries: 1,086 Consultations: 111

Complaints: 57 Disputes: 2

The three carriers (Telstra, Optus and Vodafone) provide mobile telephone services in Australia via two technical standards, analogue (AMPS), and digital (GSM).

The AMPS network is operated by Telstra and provides mobile phone services to both Telstra MobileNet and Optus analogue customers. The GSM network provides services for all three carriers.

AMPS was the first technical standard introduced into Australia and carries the largest number of mobile phone users, GSM is the standard in Europe and many Asian countries. It has some advantages over the AMPS network, including a higher level of security, but the relative merits of the two standards, while a lively topic of debate, is not a matter for the TIO. What is of importance to the TIO is that subscriber numbers on both networks are growing rapidly, with an average of 15% take up rate amongst the Australian population.

Phase out of the AMPS network is planned to be completed by the year 2000 and will be managed by the Spectrum Management Agency. Both industry and the TIO are concerned to

raise awareness of the phase out in the community so that there is not an excess of users on the AMPS network causing congestion and poor service and so that consumers are aware of the potential limitations of the network.

The TIO receives many cases common to both networks including contractual problems, issues relating to security and network coverage, call drop out and congestion.

Contracts

The mobile phone market is quite distinct from that of the fixed telephone network as companies providing mobile phone services are seeking to secure customers over the longer term through contracts.

Some contracts offset the capital cost of purchasing the phone through minimum monthly repayments. In some cases, the contract actually penalises customers should they terminate a contract before time.

Like all contracts, these agreements are legally binding.

Termination of contracts for mobile phones is generally only possible when there is clear evidence of a breach by one or other party. This may occur through inadequate service or non-existent network coverage to an area integral to a customer.

The TIO regularly advises the public to read contracts carefully before signing, paying particular attention to the duration of the contract, any disconnection penalty, the warranty and after sales service conditions, as well as rights should service provision be faulty or the network have limitations.

Security

The big advantage of mobile phones is that they allow person to person contact regardless of location. And like all items of personal security, they are easily forgotten or lost. Approximately one in seven people will lose or have their mobile phone stolen at some time and can subsequently find themselves responsible for the cost generated on that account. Insurance for the handset is usually offered at the point of sale and the TIO recommends customers consider this.

Quality of Service

Network coverage, call interruption (drop out on GSM and fade out on AMPS) and network congestion are all technical limitations on both networks, although they vary in degree. It is not the role of the TIO to make broad statements regarding the quality of each network which may be affected by a range of variables including network development and maintenance, network traffic flows and geographic areas.



Whilst cases suggest that congestion is probably higher on the AMPS network, because of the higher number of users, many people complain of the very limited development of the digital network and complain of call drop out just as frequently.

3.2.9 Operator

*Inquiries: 83 Consultations: 3
Complaints: 2 Disputes: 0*

This category relates to the failure or fault in the provision of information by Operator Assisted Services. On occasions, callers allege that they have been given incorrect international call prefixes and have incurred costly call charges. In many cases, it is difficult for the TIO to discern the merit of a case. The TIO assists by making a representation to the carrier and mediating resolution of cases.

3.2.10 Privacy

*Inquiries: 977 Consultations: 74
Complaints: 43 Disputes: 6*

Introduction

Privacy related cases have been on the decrease in the financial year from 1 July 1994 to 30 June 1995. In the last half of 1994 privacy cases were 10.67%, decreasing to 6.54% in the first half of 1995.

Privacy is just one of the many very serious concerns of the TIO. It is an area where rapid technological development sometimes conflicts with social and cultural values. Whilst the number of cases relating to privacy has decreased slightly since the first year of operation, a number of significant initiatives have been established to deal with technological development in an effort to anticipate and moderate change according to values acceptable to the population at large.

The TIO is represented on the Privacy Advisory Committee, (PAC) chaired by AUSTEL. Most of the concerns raised by the TIO in its first Annual Report continue to be addressed, however, new issues constantly emerge. The following items represent significant changes to ongoing issues or new developments.

CND (Calling Number Display)

Over the next year or two, Australian telephone services will receive an additional

facility called CND or Calling Number Display. This facility will transmit the telephone number of the caller and display the number for the receiving party. This provides the receiving party with the choice of whether or not to receive a call.

The development and application of CND has been planned carefully by the carriers in conjunction with the Privacy Advisory Committee and has involved extensive trials and a Privacy Impact Statement. The Wauchope Trial, run by Telstra as a pilot study of CND, considered the facility and alerted industry and regulators to its impact.

This new facility uses the Calling Line Identification (CLI) of the caller to generate a Calling Number Display (CND) in a window on the telephone or a device attached to the telephone of the receiving party. The facility will only be available for those connected to a more modern exchange and will be implemented nationally on an exchange by exchange basis.

There will be a capacity to 'block' the facility on a 'line' or 'per call' basis. Subscribers will be able to 'opt out' of using the facility by requesting a 'line block', through the exchange, or on a 'per call' basis, using a code to block transmission of their number. It is intended that the CLI be automatically blocked from all silent telephone lines unless their owners 'opt in' to the system.

These recommendations by the PAC reflect the delicate balance between privacy concerns and the necessity to have a sufficiently large potential customer base to justify proceeding with the facility.

Many see positive aspects to CND, citing a range of advantages such as the ability to screen undesirable calls and actively manage communication. The service business sector and its customers are most likely to benefit from the facility which could be linked to customer databases, removing the need for repetition of personal information and achieving speedier transactions for all involved.

In Australia, calls to 000 emergency services in most major metropolitan centres carry the CLI of the caller so emergency services know the origin of the call without the caller having to speak.





A major public education campaign will precede the introduction of CND. Whilst the TIO anticipates a number of inquiries regarding the service, there is optimism that diligence on the part of industry in providing education and awareness of the options will mean that CND can be introduced with a minimum of impact.



Silent Lines

Silent lines are numbers that customers have requested to be omitted from directory services including both White Pages printed directory and directory assistance. People requesting silent lines do so in order to protect their privacy, and in some cases, their safety. The TIO regards breaches of silent line information disclosure as serious and deals with all inquiries with sensitivity.

Telstra's Privacy Audit Trail

In response to the serious nature of the cases received, the TIO has consulted with Telstra on the matter of access to silent line information. This has resulted in the proposal of a Privacy Audit Trail that would track the use of this information.

The TIO has received a number of cases alleging that a breach of privacy has occurred and alleging Telstra's directory services as the likely or probable point of the breach. In the majority of cases this allegation has not been proven and it is often a case where the number has inadvertently been made available to an unwanted caller. This is a sensitive subject since silent line customers have made a conscious decision to protect their privacy. These customers often have serious security concerns and pay a fee for the removal of their number from directory services.

A privacy audit trail would be beneficial to both customers and carriers who wish to indemnify themselves against alleged breaches of security. Telstra has justified charges for the removal of silent line information by arguing that searches through directory assistance take longer if a customer's line is silent as the caller usually requests alternative spellings of a customer's name, or a range of possible addresses, in an attempt to identify possible alternatives.

The value of direct access to customers is constantly rising for many businesses and transferral of customer data between marketing companies is now commonplace. Random or systematic dialling computer software has also been developed and this cannot distinguish between silent and listed lines.

Directory Listings for Mobile Phones

Mobile phone numbers are currently unlisted numbers rather than silent lines. In contrast to fixed telephone services, mobile phone numbers are automatically omitted from the directory and customers must pay a fee for their inclusion. There is currently no directory assistance for mobile phones although if a number has been listed in the White Pages it will also be available through Directory Assistance. Clearly the costs associated with running directory services including White Pages and directory assistance must be offset by proportional contributions by other industry players.

Contacting Third Parties to Chase Accounts

The TIO has taken up several cases regarding a dubious practice in relation to outstanding accounts where it has been alleged that a frequently called number on the outstanding account is contacted in pursuit of the account holder.

This practice may not constitute a breach of The Privacy Act Part IIIA, but the TIO regards it as inappropriate. The inference that may be drawn from such calls by third parties may well be damaging to either business or reputation. Unpaid accounts are the result of a broad range of factors many of which are perfectly reasonable, unexpected illness, incomplete or incorrect address information, personal or professional commitments requiring the person to be called away etc. In one case brought to this office the complainant's mail had not been forwarded by Australia Post and they had not received the bill.

Recording and Monitoring of Telephone Calls

There is considerable misunderstanding and confusion about this subject, especially about the acceptability of recording telephone conversations when one is actually taking part in the conversation (a participant), and monitoring them as a silent listener to the conversation. (At the TIO, we find that monitoring is a term also used by the carriers when they attach Call Charge Accounting Equipment (CCAE) to a line, in order to check the accuracy of billing. This has nothing to do with the audio monitoring or recording of a conversation, but is often mistaken to be so by our complainants.)

The confusion is not surprising when one examines the varying Federal and State legislation on the matter. While it seems clear that a participant in a conversation may record it, the use of pip tones to indicate that recording is taking place is less than clear. The relevant AUSTEL technical standard refers to intrusion tones where a third party is monitoring, and to the pip tones when anyone is recording, respectively.

Although this standard states that intrusion and pip tones shall be used, there are exceptions allowed such as with bomb threats, threats to human life, serious property damage, extortion etc. and when callers have been clearly informed that a conversation is being recorded.

Some issues being teased out in AUSTEL's Privacy Advisory Committee at the moment are whether the pip and intrusion tones are achieving their purpose; whether the tones allow for informed consent; whether the tones are actually intrusive on conversations; are the guidelines for exemptions adequate; are the standards adequate; and are the requirements being ignored?

Nuisance Calls

The TIO receives calls and written documentation from complainants in regard to varying issues that can be classified as nuisance calls. These type of cases range from continuous dialling by incorrectly preprogrammed facsimile machines, through to perceivably life threatening situations.

The TIO has received approximately 200 calls in relation to this area since 1 January 1995. Understandably, the TIO does not always have jurisdiction over the matters raised by complainants when they contact this office. In one

case the complainant had to be referred to the Victorian State Ombudsman for assistance, as the issue involved a member of the Victorian Police force being accused of making the nuisance calls.

Telstra can place tracing equipment on a resident's or business' telephone to determine from where nuisance calls are originating. Telstra can then warn the nuisance caller in writing to cease making these type of calls and that this type of call is punishable under legislation.

3.2.11

Provision of Service

*Inquiries: 891 Consultations: 85
Complaints: 43 Disputes: 3*

The total number of cases relating to 'provision of service', that is, the connection of new or supplementary telephone services has risen significantly during this year to account for 7.65% of cases. However, cases rose from 5.50% of the total in the first half of the year to 9.18% of cases in the second half of the 1994/95 year. There has been a total of 1,022 cases during the year.

Whilst levels of complaint increased from every State, most increases could only be considered marginal and in line with the overall increase in complaints. However, in NSW, Victoria and Queensland, levels of complaint rose far in excess of the natural growth of the Scheme throughout the year.

In particular, the quality of delivery of new and supplementary telephone connections has declined significantly in Western Australia where it accounts for 13.85% of total cases, compared to 5.6% of the total cases in South Australia.

Caution must be exercised in interpreting trends in case statistics, particularly as the TIO is a relatively new Scheme and where case numbers are increasing across the board, as public awareness of the Scheme increases.

Nevertheless, the Ombudsman is concerned at the overall increase in the percentage of cases about provision of service and intends to monitor this area closely.

Matters brought to the TIO relate to delays in connection and complaints that appointment times and dates for technical work are being made and broken. Customers regard standard time frames and levels of service in relation to basic telephone services as a primary function and obligation of a carrier.





In June 1995, Telstra reviewed its Public Switched Telephone Service / Basic Carriage Service tariff, outlining a change in provision of service from the customer 'requested date' to the customer 'agreed date'. Telstra states in this document that 'because of the work involved with some new services, it may not be possible to connect the service by the date requested'.

In areas with adequate telephone network capacity, Telstra aims that service be provided:

- in urban areas, within seven days of the requested date;
- in rural areas, within one month of the requested date;
- in remote areas, within two months of the requested date.

In areas with no or inadequate network capacity, Telstra aims that service be provided:

- in town with over 2,500 population, within one month but with a maximum delay of three months of the requested date;
- in towns with less than 2,500 population, within six months or a maximum delay of nine months of the requested date;
- in all other cases within 27 months or a maximum delay of 30 months of the requested date.



In describing areas of 'inadequate' network coverage, Telstra uses the term 'insufficient'. It is difficult to discern the criteria by which an area may be deemed as having 'inadequate' or 'insufficient' network coverage.

In many cases, complainants say they are told there is simply a shortage of cable in their area and no date for connection of the service is given. Delays of up to five or six weeks are becoming commonplace with longer delays unsurprising.

For many people, the telephone is regarded as an essential service for reasons of security or personal health and in all cases based on this kind of need and dealt with by this office, Telstra has endeavoured to shorten delays.

3.3

Issues

Introduction

An increasing number of issues are emerging that while not necessarily directly related to the jurisdiction of the TIO, clearly impact on its role as an alternative dispute resolution mechanism for consumers of telecommunications services.

3.3.1

Mobile Towers

The siting of mobile telephone towers by the carriers has generated a deal of adverse community reaction. Carriers' powers to erect telecommunications facilities or infrastructure are governed by the Telecommunications Act and procedures laid down by the National Code established under the Act. The Code is administered and is currently being reviewed by AUSTEL.

The TIO has no jurisdiction to deal with cases about infrastructure development, other than from directly affected land owners concerning the adequacy of compensation payments.

The TIO Council and the Ombudsman are concerned at the current level of disputes and await the outcome of AUSTEL's review of the Code with interest.

The issue of co-location of mobile telephone towers assumes great importance in an area where a fine balance is needed between establishing an efficient network and maintaining community amenity.

3.3.2

Number Portability

The AMPS phase out highlights the importance of the issue of number portability in the wider community. The portability of, or ability to transfer, telephone numbers is regarded as being important for consumers and business alike. Consumers of all sorts will derive benefit from being able to change carrier with the security that they will retain their phone numbers. Business would overcome the significant disadvantages of number changes and be free to take advantage of the competitive environment.

AUSTEL has established the Portability Study Group (PSG) in conjunction with its Numbering Plan Committee to examine the technical and economic feasibility of introducing number portability. A key limitation to number portability is the transfer of numbers away from their geographic area, since geographic portability would erode the useful geographic information in numbers.



In the longer term, at a technical level, full network implementation of number portability will be achieved through the use of Intelligent Networks (IN). In the shorter term however, and in the establishment phase, portability will occur within existing networks by software developed to facilitate redirection of calls.

A member of the Chinese community recently contacted the TIO unhappy that he had after a one week connection, been notified by Telstra MobileNet of a change to his number because it had been discovered that the number was reserved for Optus.

The caller had been delighted with the original number that he said was very lucky in Chinese culture. He had just written Christmas cards to all his friends advising them of his good fortune in being allocated the number.

The TIO contacted Telstra which confirmed that the number was mistakenly given and had actually been allocated to Optus. MobileNet then took it upon itself to arrange transfer of the customer over to Optus, so that he could retain the use of the number.

Following the purchase of a small business, a complainant discovered that the telephone number to the business had considerable outstanding debts attached. Not wishing to delay re-connection of the service any further, the new owner settled the outstanding amount.

As a matter of financial necessity and principle, the complainant felt that it was unfair that he had to settle bad debts for which he was not responsible. Telstra said its decision was in line with its numbering policy and that its only alternative option would have been to withhold the number so that it had no advantage to anyone.

However, as a matter of policy, AUSTEL clarified that carriers and service providers must not withhold reallocation of numbers against which outstanding payments may be owed at the time a service was terminated.

The TIO determined that the carrier should refund fully the amount paid for the reconnection of the service plus interest at the standard bank overdraft rate.

So far as mobile phones are concerned, whilst analogue users can currently move between Telstra and Optus without changing number, this

will not be possible beyond the year 2000, following the AMPS network phase out. Portability for the digital network is said to be technically more difficult. Particularly in relation to mobile phones, the TIO supports portability of numbers since it increases the range of options available to customers. Nowhere is this more evident than in small to medium sized businesses where overhead costs have a direct effect on the viability of the business. It will be a considerable advantage to these customers to be able to secure their telephone numbers.

3.3.3 AMPS Phase Out

The AMPS, or analogue mobile phone network is due to be phased out by the year 2000. However, because of its low cost and high coverage, consumers are not only continuing their patronage of the network but increasing it. Current industry estimates suggest that new AMPS subscriptions match the take up rate of the GSM or digital network.

It should be clearly understood that the TIO has no position or policy, official or unofficial, on the relative merits of the two networks, nor on the decision to phase out AMPS. The TIO is particularly concerned, however, at the potential for cases concerning network congestion to increase if subscribers continue to join the AMPS network at the current rate.

In this situation, the timetable for and publicity of the AMPS phase out will be critical and the TIO will be seeking detailed briefings from the Spectrum Management Agency, AUSTEL and Telstra on these issues.





3.3.4

Carrier Associates

Under a Ministerial Direction called the Telecommunications (Service Providers Class Licence) Direction No.1 of 1995, 'carrier associates' were designated. These are organisations in which a carrier has 'a direct or indirect interest' such that the carrier is in a position to 'have significant influence on the business activities of that entity'.

Whilst the networks are installed and maintained by the general carriers (Telstra and Optus), in accordance with the Telecommunications Act, carrier associates are service providers and as such, are not subject to interconnection obligations of carriers to other service providers.

Carriers and carrier associates are currently undertaking significant network development and installation, primarily for Pay TV, but also for eventual use for telecommunications services. Optus Communications, for example, will soon offer local calls to business and residential customers.

3.3.5

Codes of Practice

The Statement of Policy Principles: Post 1997 by the Minister for Communications and the Arts on 1 August 1995 placed considerable emphasis on the future development of various Codes of Practice as a way of achieving self-regulation in an increasingly competitive industry.

AUSTEL, in conjunction with the carriers and consumer groups, has been working on a draft Code of Practice for Mobile Churning. AUSTEL consulted the TIO during the development of the draft Code and the Ombudsman has agreed to deal with consumer cases about breaches of the Code by carriers and service providers.

Reverse Directories

The Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies has inquired into the use of 'Reverse Phone Directories', enabling subscribers to match telephone numbers with specific residential addresses.

Both the Senate Select Committee and the Privacy Commissioner have expressed concern about reverse directories containing private information. Telstra also recognises this as an infringement of individual privacy.

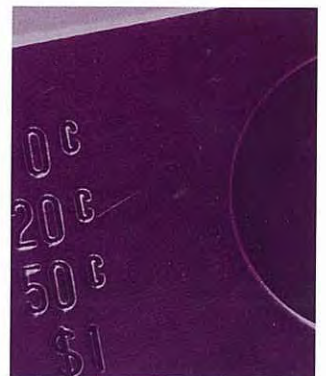
However, in the absence of privacy laws controlling the use of reverse directories both the Senate Select Committee and the Privacy Commissioner have recommended that Telstra use legal strategies to assert ownership of directory information, thus curtailing the availability of customer information and the operation of reverse directories.

F I N A N C I A L S T A T E M E N T S



Demand driven funding is a mechanism by which costs are recovered in line with the number of cases against each participant. This mechanism ensures that funding is equitable with quantifiable standards.

It also provides the discipline and financial incentive for participants to resolve issues speedily by effectively costing them more each time a matter is elevated to the next stage of the case process.



4.1 Financial Statements

Income and Expenditure to 30 June, 1995

	1995	1995	1994	1994
	\$	\$	\$	\$
Funds received/ receivable from participants		1,772,316		1,809,885
Other Income		15,089		6,043
Total Income		1,787,405		1,815,928
OPERATING EXPENDITURE				
Audit / Accountancy Fee	18,861		26,300	
Bank Charges	5,685		3,001	
Books and Publications	4,468		5,562	
Computer Expenses	49,449		46,933	
Conferences / Seminars	450		2,595	
Consultants	25,641		216,516	
Depreciation	96,441		60,254	
Entertainment and Goodwill	6,905		5,440	
Fringe Benefits Tax	3,751		1,616	
Legal	20,662		53,295	
Maintenance	1,908		2,112	
Insurance	8,685		4,816	
Marketing / Public Relations	265,634		159,380	
Other Expenses	41,001		8,076	
Payroll Tax	15,000		1,545	
Postage	8,254		9,259	
Premises: Rent / Outgoings	144,405		47,395	
Printing and Information Expenses	13,996		40,317	
Recruitment Fees	66,080		104,077	
Relocation Expenses	11,657		4,745	
Salaries	862,333		510,554	
Staff Training	16,381		14,383	
Stationery	13,963		15,624	
Superannuation	39,642		21,050	
Telephone and Fax	77,085		43,548	
Travel and Accommodation	72,173		40,500	
Workcover	10,424		2,540	
Total Expenditure	1,900,934		1,451,433	
SURPLUS / (DEFICIT)		(113,529)		364,495

Audited Financial Statements and Directors' Report for the Telecommunications Industry Ombudsman Limited have, in accordance with legal requirements, been filed with the Australian Securities Commission and are available for public scrutiny.

Balance Sheet as at 30 June, 1995

	1995	1994
	\$	\$
CURRENT ASSETS		
Cash	203,104	124,332
Receivables	59,638	89,333
Other	1,753	1,233
Total Current Assets	<u>264,495</u>	<u>214,898</u>
NON-CURRENT ASSETS		
Plant and equipment	180,489	255,988
Total Non-Current Assets	<u>180,489</u>	<u>255,988</u>
TOTAL ASSETS	<u>444,984</u>	<u>470,886</u>
CURRENT LIABILITIES		
Creditors and borrowings	164,733	95,034
Provisions	29,285	11,357
Total Current Liabilities	<u>194,018</u>	<u>106,391</u>
TOTAL LIABILITIES	<u>194,018</u>	<u>106,391</u>
NET ASSETS	<u>250,966</u>	<u>364,495</u>
SHAREHOLDERS' EQUITY		
Retained Profits	250,966	364,495
TOTAL SHAREHOLDERS' EQUITY	<u>250,966</u>	<u>364,495</u>

Statement of Cash Flows for the Period Ended 30 June, 1995

	1995	1994
	\$	\$
	Inflows	Inflows
	(Outflows)	(Outflows)
CASH FLOWS FROM OPERATING ACTIVITIES		
Payments to suppliers and employees	(1,717,386)	(1,334,738)
Receipts from sundry sources	3,463	3,360
Receipts from expenses recovered	1,802,011	1,720,553
Interest received	11,626	2,683
Net Cash inflow from operating activities	<u>99,714</u>	<u>391,858</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Payment for plant and equipment	(20,038)	(267,526)
Net cash (outflow) from investing activities	<u>(20,038)</u>	<u>(267,526)</u>
Net increase in cash held	78,772	124,332
Cash at beginning of the financial year	124,332	0
Cash at end of the financial year	<u><u>203,104</u></u>	<u><u>124,332</u></u>

A P P E N D I C E S



*Pursuant to the licensing agreements,
both general and mobile
telecommunications carriers are
required to establish, participate in
and comply with the TIO Scheme.*

*This obligation arises under Section
64 of the Telecommunications Act
and is enforced as a condition of the
telecommunications carrier licence
granted by the regulator AUSTEL, the
Australian Telecommunications
Authority.*



5.1

Appendix A: Telecommunications Industry Ombudsman Constitution

A: Introduction

1 The TIO Scheme

- 1.1 The General Carrier and Mobile Carrier Licence issued pursuant to the Telecommunications Act 1991 contain inter alia the following provisions:

Industry Ombudsman

1. A licensee must, in association with other carriers, enter into and comply with, an Ombudsman scheme, providing for investigation in relation to complaints by consumers about all matters relating to service, billings and the manner of charging for telecommunications services.
2. In spite of subclause 1, the Ombudsman scheme is not to involve investigation of the setting of tariffs.

- 1.2 The Telecommunications Industry Ombudsman ("TIO") scheme has been established by means of a company limited by guarantee, the Telecommunications Industry Ombudsman Limited. The Memorandum and Articles of Association of the company establish:

- a Board of Directors, composed primarily of directors appointed by the members and vested with traditional corporate governance responsibilities;
- a Council, composed of an equal representation of member representatives and of consumer interests, chaired by an independent Chairman, and with responsibility for:
 - complaint-handling policy issues;
 - maintaining the independence of the TIO; and
 - acting as an intermediary between the TIO and the Board; and
- a Telecommunications Industry Ombudsman vested with authority under this TIO Constitution to receive, investigate and facilitate the resolution of complaints. An Acting Telecommunications Industry Ombudsman ("Acting TIO") and a Deputy Telecommunications Industry Ombudsman ("Deputy TIO") are also provided for.

2 Participants

- 2.1 All general and mobile carriers are participants in the scheme, namely, Telstra Corporation Limited, Optus Communications Pty Limited and Vodafone Pty Ltd. Certain related corporations of a carrier may also be nominated as participants in the scheme by the carrier concerned.
- 2.2 In addition, a provider of telecommunications services under a class licence may participate in the scheme either as a member of the company, the Telecommunications Industry Ombudsman Limited, or by contracting into the TIO scheme.

- 2.3 The TIO shall ensure that an accurate and up-to-date list of all participants is readily available to the public.

B: Telecommunications Industry Ombudsman

3 Functions of the TIO

- 3.1 The functions of the TIO are to receive, to investigate and to facilitate the resolution of:

- (a) complaints as to the provision or supply of (or the failure to provide or supply) telecommunications services by a participant, other than complaints in relation to the general telecommunications policy or commercial practices of a participant;
- (b) complaints from owners or occupiers of land in respect of which a carrier has exercised its statutory powers, other than complaints in relation to the policy or commercial decision of a carrier to exercise its statutory rights in relation to that particular land; and
- (c) such other complaints as may, by agreement with the complainant, be referred to the TIO by a participant.

- 3.2
- (a) Complaints may be made to the TIO by consumers of telecommunications services and by persons directly affected by the provision or supply of (or the failure to provide or supply) such services provided by scheme participants.
 - (b) Complaints may not be made by an intermediate user of a telecommunications service except where the complaint relates to a telecommunications service provided or supplied for the complainant's own use.
 - (c) Complaints may be made to the TIO on behalf of a complaint by an authorised representative of the complainant.
 - (d) The focus of the TIO scheme is on individual complaints which may be oral or in writing.
 - (e) A complaint must have arisen from events which became known to the complainant less than one (1) year prior to the complaint. However, subject to any transitional arrangements in place at the commencement of the TIO scheme, the TIO has a discretion in relation to a complaint which has arisen from events which became known to the complainant between one (1) and two (2) years prior to the complaint.

4 Jurisdiction of the TIO

- 4.1 For guidance, the functions of the TIO to receive, to investigate and to facilitate the resolution of complaints as to the provision or supply of (or the failure to provide or supply) telecommunications services include, but are not limited to, complaints as to the following:

- basic carriage services;
- higher level services;
- eligible services;
- public mobile telecommunications services and public access cordless telecommunications services;

- operator services;
- directory assistance;
- fault reporting and repair and maintenance services;
- printed and electronic white pages;
- billing not in accordance with a tariff;
- billing for a higher level service for an eligible service not in accordance with the contracted price;
- failure to supply a service in accordance with a tariff; and
- interference with the privacy of an individual in terms of non-compliance with the Information Privacy Principles contained in s.14 of the Privacy Act 1988 or any industry specific privacy standards which may apply from time to time.

4.2 Also for guidance, the functions of the TIO to receive, investigate and facilitate the resolution of complaints from owners or occupiers of land include, but are not limited to complaints as to the following:

- failure by a carrier to give notice of its intention to exercise its statutory rights;
- failure to take all reasonable steps to cause as little detriment, inconvenience and damage as reasonably practicable; and
- inadequate compensation.

4.3 The functions of the TIO do not extend to complaints relating to:

- the provision or supply of customer premises equipment, other than the non-switching handset that terminates the standard telephone service and other network terminating equipment supplied as part of a tariffed service;
- cabling beyond the network termination point, other than cabling from the network termination point to the first telephone and, in the case of residential telecommunications services, to other standard telephone services within the residential premises;
- business directories, including but not limited to "Yellow Pages";
- commercial activities which do not include the provision of telecommunications services;
- the setting of tariffs;
- the 000 emergency service;
- Universal Service Obligation policy matters;
- matters of telecommunications policy;
- matters which may involve anti-competitive behaviour or restrictive practices potentially in breach of the Trade Practices Act 1974; and
- complaints which are specifically under consideration by AUSTEL, the Australian Competition & Consumer Commission or any court or tribunal, or which have been considered by any of those bodies previously.

5 Procedures of the TIO

5.1 The TIO, in handling complaints, must pursue the objective of "fair, just, economical, informal and expeditious" resolution. In consultation with the Council, the TIO is responsible for developing procedures which best achieve this objective. However, these procedures must include the following:

- The TIO on receiving a complaint, will verify with an officer designated by the participant concerned whether the participant has had the opportunity to consider the complaint;
- The TIO may proceed to investigate the complaint only after the participant has had this opportunity, subject to reasonable time limits to avoid undue delay in dealing with the complaint, and the participant has been notified that the TIO intends to investigate the complaint;
- Within twenty-eight (28) days of receiving notification of an investigation by the TIO, the participant concerned shall provide to the TIO all documentation relevant to the complaint other than documentation containing confidential information of a third party, who despite the reasonable efforts of the participant, has refused to consent to disclosure of the information to the TIO;
- With respect to all information concerning or relating to a complaint, the TIO must act in accordance with the Information Privacy Principles specified in the Privacy Act 1988 (Cth); and
- In complying with any subpoena, the TIO must notify the person who has provided the information which is the subject of the subpoena so that the person concerned is afforded the opportunity to appear in court to oppose production of the documents or the giving of evidence, as appropriate.



6 Powers of the TIO

6.1 Binding Decisions

After completion of an investigation and in the absence of a conciliated settlement of a complaint, the TIO shall resolve a complaint:

- (a)
 - (i) by making a determination that the participant the subject of investigation pay compensation to a complainant,
 - (ii) by directing a participant to provide a telecommunications service,
 - (iii) by directing a participant not impose or amend a charge in relation to a service,
 - (iv) by directing a participant to provide specified operator services,
 - (v) by directing a participant to include or omit an entry in any electronic or printed directory,
 - (vi) by directing a participant to supply goods or services the subject of the complaint or undertake any necessary corrective or other work to resolve the complaint,
 - (vii) by directing a participant to make an appropriate correction, deletion or addition to a record,
 - (viii) by directing a participant to attach to a record a statement provided by the complainant of a correction, deletion or addition sought by the complainant, and/or
 - (ix) by directing a participant to do, not to do, or to cease doing, an act,provided that the total of such determinations or directions in relation to an individual complaint are not to exceed in value \$10,000; or
- (b) by dismissing the complaint.

All decisions by the TIO under paragraph 6.1 shall be automatically binding upon participants. However, the complainant may elect whether or not to accept the decision of the TIO within twenty-one (21) days of the TIO's decision. If the complainant accepts the decision of the TIO, the complainant shall fully release the participant from all claims, actions etc in relation to the complaint. In the event that the complainant does not accept the decision of the TIO, the complainant may pursue his or her remedies in any other forum the complainant may choose and the participant is then fully released from the TIO's decision.

6.2 Recommendations

After completion of an investigation and the unsuccessful conciliation of a complaint, the TIO may also make recommendations to a participant in relation to any or all of those matters identified in paragraph 6.1 up to the total value of \$50,000 and a participant shall be obliged to consider whether or not to give effect to any such recommendation provided that a decision not to give effect to any such recommendation shall not be the subject of further complaint to the TIO from a complainant.

6.3 Reasons

The TIO shall provide only such written reasons as give effect to any decision or recommendation under paragraph 6.1 or recommendation under paragraph 6.2.

6.4 Findings of Fact

Where a complaint involves a total amount in excess of \$50,000, the TIO may make findings of fact but shall make no determinations, directions or recommendations about compensation or other remedial actions.

6.5 Arbitration

Where a complaint involves a total amount in excess of \$50,000, if the complainant and the participant agree, the TIO may, if he or she so agrees, exercise arbitration powers in respect of the complaint.

6.6 Discretion Not to Investigate

The TIO has the discretionary power to decline to investigate a complaint if in the opinion of the TIO:

- (a) the complaint is frivolous or vexatious or was not made in good faith;
- (b) the complainant does not have a sufficient interest in the subject matter of the complaint; or
- (c) an investigation, or further investigation, is not warranted.

The TIO may also decline to investigate a complaint where, under paragraph 6.7(b) *inter alia*, the complaint is more conveniently or effectively dealt with by AUSTEL, the Australian Competition & Consumer Commission the courts or any other body.

6.7 Referral of Complaints

- (a) At any time before a binding decision is made by the TIO, a participant may notify the TIO:
 - (i) that the participant considers that a complaint has given rise to:
 - an issue of importance to the participant's business, or
 - an issue involving an important or novel point of policy or law; and
 - (ii) that the participant, or the complainant, will be seeking advice from AUSTEL, the Australian Competition & Consumer Commission, or another person or body will be instituting legal proceedings within ninety (90) days; and
 - (iii) that, in the case of legal proceedings instituted by a participant, the participant will:
 - pay the complainant's costs and disbursements (to be taxed, if not agreed, on a solicitor and own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the participant (except by way of respondent's notice, cross appeal or other similar procedure); and

- make interim payments on account of such costs if and to the extent that it appears reasonable to the participant to do so; and
- (iv) that the participant will not take the action on which the complaint is founded pending resolution of the wider issue.

On receipt of such notice, the TIO shall not proceed with the complaint unless:

- (i) the TIO forms the opinion that any delay would jeopardise a fair resolution of the complaint or would cause unreasonable hardship to the complainant; or
- (ii) the participant, or the complainant, fails to seek advice from AUSTEL, the Australian Competition & Consumer Commission or another person or body to institute legal proceedings within the time specified in the notice.

(b) Where, at any time after receipt of a complaint, the TIO:

- (i) forms the opinion that the complaint could have been made by the complainant to AUSTEL, the Australian Competition & Consumer Commission or another body; and
- (ii) forms the opinion that the complaint could be more conveniently or effectively dealt with by AUSTEL, the Australian Competition & Consumer Commission or such other body; and
- (iii) obtains the consent of the complainant to refer the complaint to AUSTEL, the Australian Competition & Consumer Commission or such other body;

the TIO may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be.

If the TIO so decides, the TIO must:

- (i) refer the complaint to AUSTEL, the Australian Competition & Consumer Commission or such other body as appropriate;
- (ii) give written notice to the complainant and the participant stating that the complaint has been so referred; and
- (iii) give to AUSTEL, the Australian Competition & Consumer Commission or such other body all information or documents that relate to the complaint and that are in the TIO's possession or under the TIO's control.

- (d) liaising with AUSTEL, the Australian Competition & Consumer Commission and other relevant government authorities and, in consultation with the Council, developing working procedures with these bodies where appropriate;
- (e) in consultation with the Council, developing procedures for the fair, just, economical, informal and expeditious handling of complaints;
- (f) in consultation with the Council, promoting the TIO scheme and its complaint handling procedures;
- (g) making recommendations to the Council on the TIO Constitution;
- (h) in consultation with the Council, preparing financial budgets and business plans and any subsequent amendments thereto;
- (i) submitting proposed financial budgets and business plans and any subsequent amendments thereto to the Council for referral to the Board with recommendations and/or comments as the Council thinks fit;
- (j) controlling and monitoring expenditure within the agreed budget and for providing regular reports to the Council and the Board on expenditure;
- (k) preparing the annual report of the TIO;
- (l) at the TIO's discretion, making ad hoc confidential reports to participants and the Council;
- (m) at the TIO's discretion, making general observations about the operation of the TIO scheme in any public forum;
- (n) acting as an interface with the public for the receipt and referral of complaints;
- (o) keeping adequate data on complaints or requests for information, both for reporting purposes and to identify the sources of practices giving rise to similar complaints;
- (p) for ensuring that an accurate and up-to-date list of all participants in the TIO scheme is readily available to the public; and
- (q) the nomination to the Council of the Deputy TIO.

7 Other Powers and Responsibilities of the TIO

7.1 The TIO is responsible for:

- (a) the overall performance of the TIO scheme including, but not limited to, meeting such objectives as are determined by the Council from time to time;
- (b) managing the day to day operations of the TIO scheme, including but not limited to, the appointment and termination of employment of staff;
- (c) attending, in a non-voting capacity, meetings of the Council at the invitation of the Council;



7.2 The TIO also has the power:

- (a) to delegate such of the TIO's functions as may be convenient for the efficient day-to-day operation of the TIO scheme, other than the power to:
 - (i) make binding decisions under paragraph 6.1,
 - (ii) make recommendations under paragraph 6.2,
 - (iii) provide written reasons under paragraph 6.3,
 - (iv) make findings of fact under paragraph 6.4, and
 - (v) exercise arbitration powers under paragraph 6.5,which powers may only be delegated to a person occupying the position of Deputy TIO; and
- (b) to make a report to a participant where, in the TIO's opinion, the general telecommunications policy or commercial practices of a participant:
 - (i) have contributed to a complaint; or
 - (ii) have been identified as the source of a number of similar complaints;
 - (iii) have impeded the investigation or handling of a particular complaint; or
 - (iv) operate in such a manner that the TIO considers that the policy or practice should be referred to AUSTEL.

7.3 In exercising the powers of determination or recommendation under paragraph 6.1 and 6.2 respectively, the TIO shall not make a determination or recommendation which, when given effect, would involve a participant contravening any law of the Commonwealth or of a State or Territory.

8 Budgets

It is the function of the Board to:

- (a) set global limits for funding; and
- (b) approve budgets and any additional expenditure not provided for in their current budget.

Global limits for funding will initially be set by the Board following preparation of a business plan by independent experts.

In deciding whether or not to approve any proposed budget, the Board shall be entitled to consider:

- (a) the ongoing financial stability or viability of TIO Limited; but
- (b) otherwise shall only be concerned to ensure that the particular budget comes, or is likely to come, within the global limits it has set.

The Board shall not otherwise take into consideration the business decisions of the TIO or Council (as the case may be) in determining how those funds should be allocated within any particular budget. Nothing shall preclude the Board from seeking or receiving information about the budget and expenditures, both past and projected, to assist the Board in setting funding limits appropriate to the operation of the TIO scheme.

Because the TIO has responsibility for managing the day-to-day operations of the TIO scheme, the TIO is responsible for the preparation of financial budgets and business plans and any subsequent amendments, in consultation with the Council. The TIO must submit proposed budgets, plans and/or amendments to the Council. The TIO is responsible for controlling and monitoring expenditure within the agreed budget and for providing regular reports to the Council and the Board on expenditure.

The Council must consider the proposed budget plans and/or amendments submitted by the TIO. The Council must then refer these to the Board with such comments and/or recommendations as the Council thinks fit.

C: The Council

9 Role and Responsibility of the Council

9.1 The primary responsibilities of the Council are the oversight of the TIO scheme and maintenance of the independence of the Ombudsman. The Council is to act as an intermediary between the TIO and the Board. The Council's role is complementary to that of the TIO. While the TIO will have responsibility for the day to day operation of the scheme, it is the function of the Council to provide advice to the TIO on policy and procedural matters.

Council members are selected for their knowledge of consumer interests and customer service issues within the context of the telecommunications industry. These resources will assist the Council in fulfilling its role of providing policy and procedural advice to the TIO.

9.2 Specifically, the duties of the Council are:

- (a) To recommend to the Board a person to be appointed as the TIO. Similarly, the Council may recommend to the Board the termination of the appointment of the TIO.
- (b) To make recommendations, if it thinks fit, to the Board concerning the appointment and termination of an Acting TIO and a Deputy TIO.
- (c) Within the framework of the TIO Constitution, to determine policies and practices relating to the administration of the TIO Scheme.
- (d) To monitor the TIO Constitution and, from time to time, recommend to the Board amendments to the TIO Constitution as the Council thinks fit.
- (e) To receive and consider recommendations from the TIO for amendments to the TIO Constitution.
- (f) To provide advice to the TIO on the allocation of resources within the framework of global resources approved by the Board.
- (g) To receive and consider financial budgets and business plans (and any subsequent amendments thereto) prepared by the TIO.

- (h) To refer the financial budgets, plans or amendments to the Board and to comment and/or make recommendations to the Board as the Council thinks fit.
- (i) Within twelve (12) months of commencement of operation of the TIO scheme, to review the financial limits on the determinative and recommendatory powers of the TIO as referred to in paragraphs 6.1 and 6.2.
- (j) To make recommendations to the Board as to the appropriateness, scope and timing of a review of the TIO scheme.
- (k) To provide advice to the TIO on the promotion of the TIO scheme and the preparation of the Annual Report.

10 Relationships Between the Council and the TIO

The Council acts as intermediary between the TIO and the Board and in this way ensures the independence of the TIO. The Council has prime responsibility for policy matter and oversight of the TIO scheme's operation. The TIO has responsibility for the day to day operation of the TIO scheme and the resolution of individual complaints. These roles are complementary and, as a general rule, the TIO would attend Council meetings as an observer.

11 Relationship Between the Council and the Board

- 11.1 The Board is responsible for the formal administration of the Company, the Telecommunications Ombudsman Limited, and exercises final authority in relation to the financial affairs of the Company. These matters are most appropriately exercised by Directors. Responsibility for complaint handling, policy matters and the day to day administration of the TIO scheme rests with the Council and the TIO, and not the Board.
- 11.2 From time to time, the efficacy of the TIO Constitution will need to be reviewed. It is the role of the Council, in consultation with the TIO, to prepare recommendations for amendments of the TIO Constitution. Final authority for approval of amendments to the TIO Constitution rests with the Board after consultation with the Federal ministers responsible for communications and consumer affairs policy.
- 11.3 It is the responsibility of the Board to guarantee sufficient funding for the operation of the TIO scheme. Appropriate funding will be established in accordance with the principles set out in clause 8 (Budgets). It is the joint responsibility of the Council and the TIO to ensure the TIO scheme is operated efficiently within the global limits for funding set by the Board.

D: Transitional Arrangements

The TIO will accept all new complaints on and from the date of commencement.

Complaints already before the Commonwealth Ombudsman as at the date of commencement will remain with the Commonwealth Ombudsman and will be dealt with under the Ombudsman Act 1976. New complaints made to the Commonwealth Ombudsman on and from the date of commencement will be referred to the TIO.

The intention of the arrangements is that there will be a transitional period during which time the number of complaints with the Commonwealth Ombudsman will gradually decline and those with the TIO will gradually increase.

Complaints already handled by the Commonwealth Ombudsman would not be able to be revived by a new complaint to the TIO.

It should be noted that the functions of the TIO contain the following limitation in paragraph 3.2(e):

'A complaint must have arisen from events which become known to the complainant less than one (1) year prior to the complainant. However, subject to any transitional arrangements in place at the commencement of the TIO scheme, the TIO has a discretion in relation to a complaint which has arisen from events which became known to the complainant between one (1) and two (2) years prior to the complaint.'

In addition, under paragraph 6.6 the TIO has a discretion to decline to investigate a complaint if, in the opinion of the TIO (inter alia), an investigation, or further investigation, is not warranted.



5.2

Appendix B:
Council and Board Attendance

TIO COUNCIL ATTENDANCE

Hon. L. Bowen AC	<i>Chairman</i>	•	•	•	•	•	•	•
Andrew Bailey	<i>Optus</i>				•	•		
RESIGNED 21/06/95								
Ted Benjamin	<i>Telstra</i>	•	•	•		•	•	•
John Rohan	<i>Vodafone</i>					•	•	•
Elizabeth Morley	<i>Consumer rep.</i>	•		•	•	•	•	•
Ewan Brown	<i>Consumer rep.</i>	•	•	•	•	•		•
Robert Morsillo	<i>Consumer rep.</i>	•	•	•				
RESIGNED 5/2/95								
Holly Raiche	<i>Consumer rep.</i>				•	•	•	•
APPOINTED 15/2/95. 6MNTN LEAVE FROM 23/6/95								
Pam Marsh	<i>Consumer rep.</i>							
APPOINTED 23/06/95								
David Clarke	<i>Vodafone</i>			•	•			
ALTERNATE FOR JOHN ROHAN								
Hugh Littlewood	<i>Consumer rep.</i>						•	
ALTERNATE FOR EWAN BROWN								
Alan Petts	<i>Optus</i>						•	
ALTERNATE FOR ANDREW BAILEY								
Andrew Bedogni	<i>Optus</i>	•	•	•				•
APPOINTED 22/6/95 FOR ANDREW BAILEY								

27/07/94
28/09/94
06/12/94
15/02/95
20/03/95
17/05/95
22/06/95

TIO BOARD ATTENDANCE

Ross Ramsay	<i>(Chairman)</i>		•	•	•
<i>Optus</i>					
Rob Simpson	<i>Optus</i>	•		•	•
John Fries	<i>Vodafone</i>	•	•	•	
Jim Holmes	<i>Telstra</i>	•			
RESIGNED 06/10/94					
Graeme Ward	<i>Telstra</i>		•	•	•
APPOINTED 06/10/94					
Gillian Welshe	<i>Telstra</i>	•	•	•	
Phillip Edwards	<i>Vodafone</i>				•
ALTERNATE FOR JOHN FRIES					

23/08/94
30/11/94
07/03/95
01/06/95

Bankers

Commonwealth Bank of Australia

Solicitors

Corrs Chambers Westgarth

Auditors

Coopers & Lybrand

Information Technology

BHA Computers Pty Ltd

Special Legal Counsel for Casualties of Telstra

Minter Ellison

Mr Peter Bartlett

Ms Pia Di Mattina

Special Arbitrator

Deacons Graham & James

Mr Jonathon Mott

Hunt & Hunt

Dr Gordon Hughes

Special Resource Unit

Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd

Lane Telecommunications Pty Ltd

DMR Group Inc. (Montreal, Canada) subcontracting to

TBH Management Consultants

Mr Paul Howell