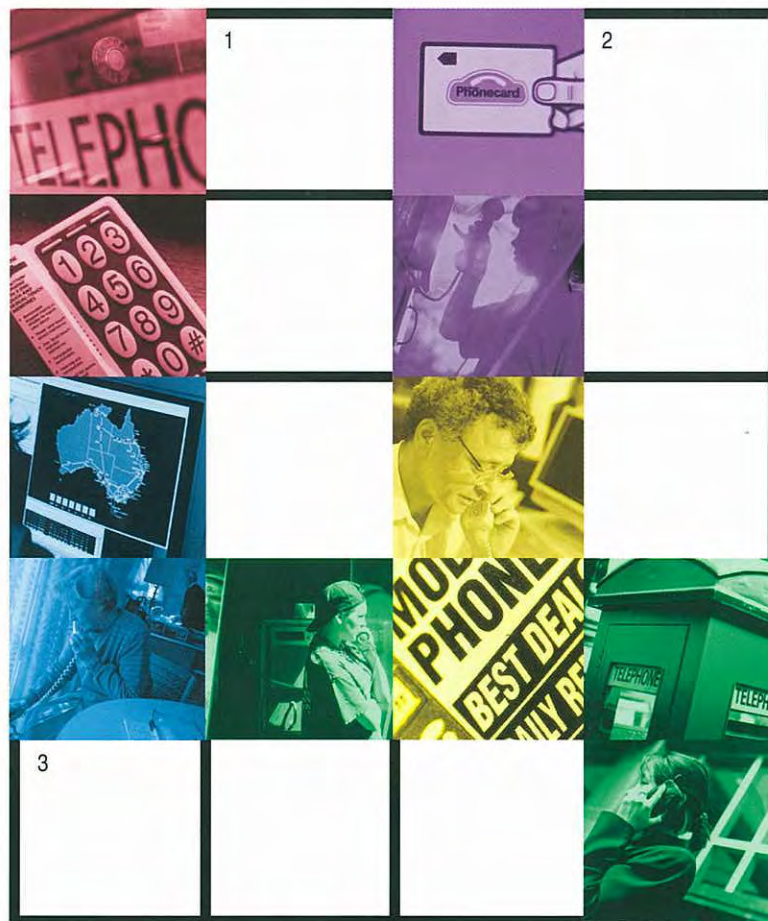




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Annual Report



Telecommunications Industry Ombudsman

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



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

The TIO is an office of last resort — customers must first give their telephone company a reasonable opportunity to resolve their complaints. Independent of government, carriers, service providers and other interested bodies, the office of the TIO is accessible to residential and small business 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 a number of service providers are participating in the Scheme voluntarily.



Telecommunications Industry Ombudsman

315 Exhibition Street Melbourne Vic 3000
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TRANSLATOR AND INTERPRETER SERVICE 13 14 50

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

1.1

STATEMENT FROM CHAIRMAN OF THE COUNCIL

This annual report for the year ended 30 June 1996 is the third since the inception of the TIO Scheme in December 1993.

The Ombudsman Scheme is proving most effective in assisting consumers, with approximately 86,000 calls since its commencement in December 1993.

The rate of growth continues, with more than 26,000 cases generated from some 44,000 contacts during this last 12 months. As a performance indicator of the effectiveness of the Scheme, 99.78% of the consumer contacts during the year were resolved before reaching the dispute stage. These statistics could not be achieved without the leadership, understanding and cooperation of John Pinnock as Ombudsman, his Deputy Wally Rothwell and a dedicated front-line staff. Consumers who need urgent assistance require people who have skill, patience and understanding. The good results

are directly due to the Ombudsman and his staff, readily assisted by the carriers, in appreciating consumer difficulties.

The Service Provider Sector is the fastest growing area of telecommunications because of penetration of the small business and residential consumer market by mobile telephony. Council has invited service providers to participate voluntarily in the Scheme and a number have joined. It is significant that currently service providers have accounted for 5.4% of all cases raised by the Ombudsman since their admission to the Scheme.

The Scheme is very successful as an alternative method of dispute resolution. This has been achieved by the interest and cooperation of the TIO, his staff, the Board Members and my fellow Councillors.

My term as a member of the Council is ending. My announced successor is the Hon. Tony Staley. He is a former Federal minister with extensive experience in communications. I wish him well.



The Hon. Lionel Bowen AC
Chairman



1.2

STATEMENT FROM CHAIRMAN OF THE BOARD

The third full financial year of operations of the Telecommunications Industry Ombudsman saw the achievement of a number of important milestones, the most visible of which was the production and publication, during March 1996, of the second annual report covering a full financial year.

The Board had occasion to thank the inaugural Chairman of the Council, the Hon. Lionel Bowen at the conclusion of his three-year term for his wonderful contribution to the formation and successful operation of the Council. His stewardship during the formative years and his commitment to the success of the Scheme contributed significantly to its standing in the community and throughout the industry.

The Board is fortunate to have obtained the agreement of the Hon. Tony Staley to be the new Chairman of the Council. He is well known in the industry for his contributions as Minister for Communications, Chairman of ATUG and Member of the Telecommunications Industry Development Authority.

A number of planned changes occurred within the membership of the Board. Mr Ross Ramsay relinquished the Chairmanship in March 1996, after a very successful three-year term during which he personally invested a great deal. The Board, in expressing their thanks and in acknowledging his central role in the conception and establishment of the Scheme, were delighted that he decided to continue as a Director and that his unique knowledge and expertise were not lost by the company.

Other pleasing developments that occurred during the period were the acceptance of service providers who have begun to join the Scheme and the endorsement by the Government, in the post-1997 review, for a stronger role for the Ombudsman.

During the period, the office became more visible to the public and the industry through appearances of the Ombudsman at industry events and through a growing list of significant and relevant press releases.

Mr John Pinnock, following his appointment as Ombudsman in May 1995, has gained the respect of the industry and has established a reputation as a forthright commentator and independent conciliator of consumer affairs.

We move into 1996/97 with a strong and effective team.



Adrian Coote
Chairman



1.3

OMBUDSMAN'S OVERVIEW

The most important aspects of the TIO Scheme for consumers is that it is free and independent. Together with the other ideals set out in its mission statement — just, informal and speedy resolution of complaints — these hallmarks continue to be the best guide for the TIO in the way it provides a practical redress mechanism for consumers of telecommunications services.

Service Providers

The major issue confronting the TIO over the next year is the position of service providers and their relationship to the Scheme. The service provider sector is the fastest growing part of the retail sector in the provision of telecommunications services, both in terms of revenue growth and customer numbers. Already, the sixteen service providers who are voluntarily participating in the TIO account for more than 5% of all cases in the past year and more than 10% of cases in the last quarter of the financial year 1995/96.

A fundamental test of an industry-based Ombudsman Scheme, and hence of its credibility with consumers, is the extent to which it has coverage of the relevant industry. The Government's Discussion Paper on the post-1997 legislative framework, while indicating that service providers will be required to comply with the TIO from 1 July 1997, does not go far enough. Full membership of the Scheme should be required if the financial discipline on participants to resolve cases at an early stage is to be maintained. Currently, more than 92% of cases are finalised at the first, or Inquiry, stage of the four-tiered case process.

Consumer Focus

In the last annual report, I noted that the focus of the TIO is providing residential and small business consumers of telecommunications services with a forum for redress of complaints.

That focus is central to a consideration of whether the TIO should develop as an alternative dispute resolution forum for consumers, or evolve into something else. My firm view is that the consumer focus should be the sole focus and that the TIO should not become a forum for industry complaints, ie complaints by carriers and service providers against one another.

There are several reasons for this view. Firstly, industry complaints and their resolution are fundamentally different from consumer complaints, often cutting across the jurisdictions of other agencies such as AUSTEL and/or the ACCC. Secondly, an industry-based Ombudsman should not be expected to deal with complaints by participants who have the obligation to maintain and fund the Scheme. Finally, and most importantly, accepting industry complaints would inevitably lead to a dual focus, with consequent arguments about the division of resources and a loss of both efficiency and effectiveness.

Customer Service Guarantee

The TIO will have a central role under the proposed Customer Service Guarantee included in the Telstra (Dilution of Public Ownership) Bill 1996.

The Guarantee would enable AUSTEL to set performance standards for carriers for timeliness of installations and fault rectification. Customers will have a right to sue for damages for breach of a performance standard and the TIO will be able to issue an evidentiary certificate setting out the nature of any breach of a performance standard. However, these are intended to be 'reserve' powers, with an intention that customer complaints will be resolved by a carrier in the first instance. Failing that, it is intended that the TIO will be able to deal with complaints about breaches of performance standards in the same way that it handles current complaints.

Back-Billing

During the year several disputes concerning back-billing by Telstra were determined in favour of complainants. Telstra subsequently issued a new policy on this topic, details of which are given later in this report.

Back-billing, or delays in bringing to account call charges within a reasonable time, is emerging as an issue in the industry. Many service providers claim that Telstra is unable to provide timely billing information which, in turn, leads their customers to complain to the TIO about the performance of service providers. For its part, the TIO has adopted a policy of charging its investigative services to the participant, carrier or service provider, which has the relationship with the customer.

With the likely advent of new carriers entering the industry after 1 July 1997 and the requirement for carriers to provide any-to-any connectivity, the TIO is concerned that current delays in billing will become a serious problem for consumers. Customers will rightly expect their telephone company to provide timely accounts for calls made within the relevant billing period, irrespective of how many networks might be traversed by any particular call. It is essential, therefore, that the industry resolve these problems as soon as possible.

Similarly, current delays in transferring or churning customers have the potential to create consumer dissatisfaction, and this problem must be resolved speedily.

GSM Contracts

A recent upgrade to the TIO's Complaint Management System (CMS) now enables us to provide a detailed matrix of case statistics. One of the most important revelations has been the recent increase in cases concerning GSM, or digital mobile phone, contracts. In the last quarter of the financial year complaints of this nature accounted for 43.4% of all mobile cases.



1.3

OMBUDSMAN'S OVERVIEW

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While this statistic appears to reflect the recent rate of increase in GSM subscriptions, which for the first time has overtaken the rate of AMPS subscriptions, it is of concern, because AMPS subscribers still outnumber GSM subscribers by a factor of almost 3:1.

Generally, GSM contracts cover the purchase of a digital handset and the provision of services on one of the three GSM networks for a fixed period of time, commonly 12 months, with the overall cost of the handset 'spread' over the period of the contract. This has the advantage of reducing the relatively high upfront handset costs.

However, consumers are telling the TIO that they find GSM contracts hard to understand, lacking in flexibility (because they are locked into either a fixed term or fixed level of use, or both) and generally confusing.

This is not simply an issue of 'let the buyer beware'. It is a trend which, if it were to continue, would indicate a problem created by the carriers and service providers offering GSM contracts. Consumer resistance to, and dissatisfaction with, GSM contracts can only rebound on carriers and service providers.

Staff, Council and Board

As Ombudsman, I am constantly impressed by the professionalism and commitment of the TIO staff to the Scheme. My view of the staff is reflected in the Scheme's performance statistics, highlighted in the next section of this report, which are a remarkable testament to the enthusiasm of the people who are the heart of the office.

Several new Investigation Officers and other staff have recently joined the TIO and all have demonstrated an ability to master complicated issues speedily, maintaining the high standards of the office.

The Council of the Scheme continues to provide tremendous support to the office and has dealt with a number of important policy issues over the last year. I am very grateful for this support, which is fundamental to the independence of the Ombudsman.

I farewell the outgoing and inaugural Chairman of the Council, the Hon. Lionel Bowen. His personal welcome to me and support on the Council have made my job a great deal easier.

I welcome the new Chairman of Council, the Hon. Tony Staley. His experience in, and enthusiasm for, communications issues are a by-word and will be needed as the TIO enters an important phase of its development.

Similarly, the Board has provided great support and commitment to the Scheme and has demonstrated a scrupulous regard for the Ombudsman's independence.

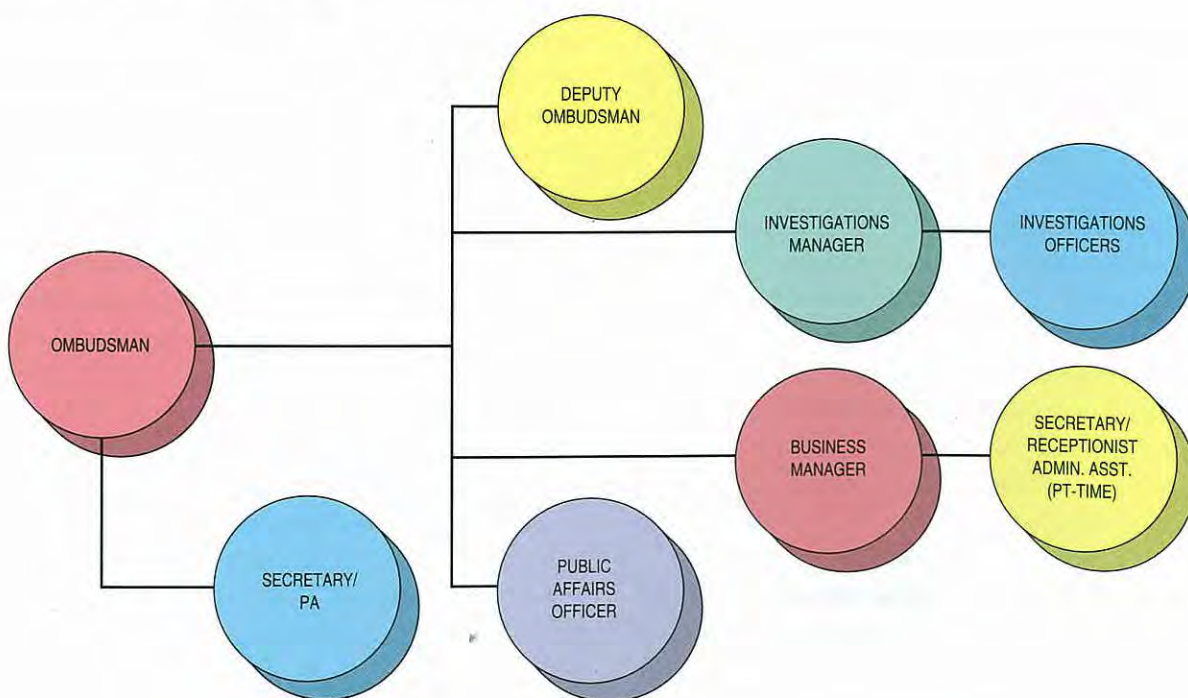
Again, I farewell the outgoing inaugural Chairman and welcome a new Chairman. Mr Ross Ramsay contributed unstintingly of his time and experience in guiding the Board in the early development of the Scheme. Fortunately, that experience will not be lost, as he continues as a director of the Board.

Adrian Coote has not only joined the Board, but has also become its new Chairman. His interest in, and commitment to, the Scheme and knowledge of the industry are obvious to all who deal with him.



John Pinnock
Ombudsman

Telecommunications Industry Ombudsman Ltd





2



The TIO is the world's first telecommunications industry-based Ombudsman's Scheme and operates independently of government and industry.

2.1

INTRODUCTION

The Telecommunications Industry Ombudsman (TIO) Scheme is an industry-based alternative dispute resolution forum for complaints by residential and small business consumers of telecommunications services.

Telstra, Optus and Vodafone, the foundation members of the TIO, are required to participate in and fund the Scheme, as a condition of their licences under the Telecommunications Act.

Any future carriers will have a similar obligation and relevant service providers will also be under an obligation at least to comply with the TIO, from 1 July 1997. In the interim, a number of service providers have accepted an invitation to participate in the Scheme voluntarily.

The TIO acts as an office of last resort — customers must give their telephone company a reasonable opportunity to resolve complaints in the first instance.

2.1.1

Complaint Procedures

The TIO has a four-tier case resolution process, categorising cases as Inquiries, Consultations, Complaints and Disputes. A case will typically move through this process until resolved. The cumulative costs of each tier provide an important incentive for Scheme members to resolve cases quickly.

The TIO has also introduced a policy of billing its services to the carrier or service provider that has the direct relationship with the customer, irrespective of whether the cause of any particular problem lies with another Scheme member.

While Inquiries are typically dealt with over the telephone within 24 hours, the TIO has established time frames for dealing with Consultations – 14 days – and Complaints – 28 days. Where a carrier or service provider has not resolved a case within the relevant time frame the case is upgraded to the next stage.

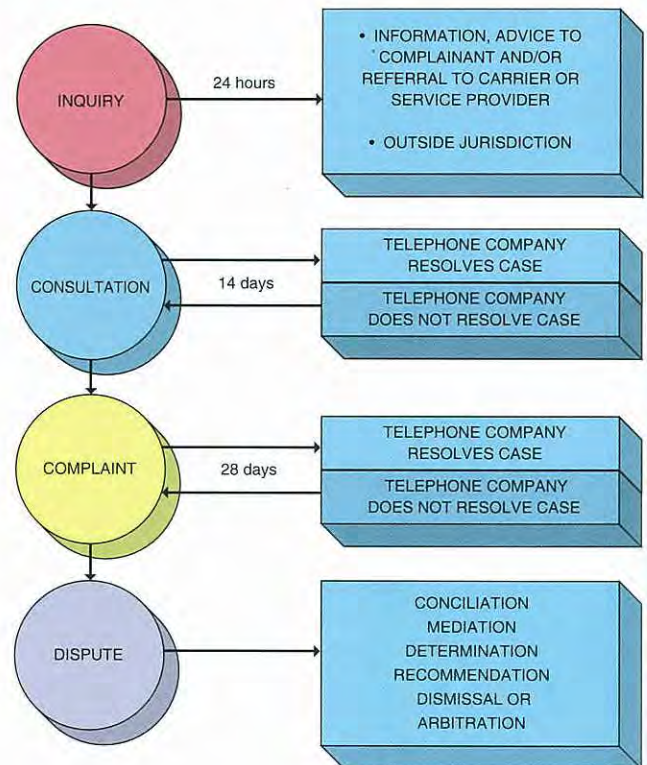
Disputes are case-managed by the Deputy Ombudsman, with the Ombudsman making formal determinations on these cases. Time frames have also been introduced for Disputes, with the Council recently adopting a policy that unresolved cases involving an amount less than \$250 may be determined either at the expiration of the Complaint stage or immediately upon being raised to Dispute.



The high degree of delegation and discretion given to Investigations Officers and the flat hierarchy of the office are aids to efficiency and effectiveness and are balanced by simple checks and balances. Any complainant dissatisfied with a decision, at any level within the office, is entitled to have that decision reviewed at the next level. The exception to this is that Determinations by the Ombudsman are final.

The Council may not reconsider a decision by the Ombudsman but it does have a direct say in the setting of case-handling policy.

The Journey from an Inquiry to a Dispute



2.1.2

Dispute Resolution

The Scheme emphasises a flexible approach, using conciliation, negotiation or mediation to achieve a resolution to the satisfaction of the parties.

Where the TIO is otherwise unable to resolve cases, it may exercise a formal power of Determination or Direction, up to \$10,000, which is binding on participants. (A complainant may elect either to accept such a determination or have recourse to legal action.) In addition, the TIO may make a Recommendation to a participant to pay a complainant a further amount of up to \$40,000.

Where the subject matter of a Dispute exceeds \$50,000, the TIO may make a finding of fact or a complainant may ask a participant to arbitrate the Dispute under a Standard Arbitration Agreement and Rules developed by the TIO.

2.1.3

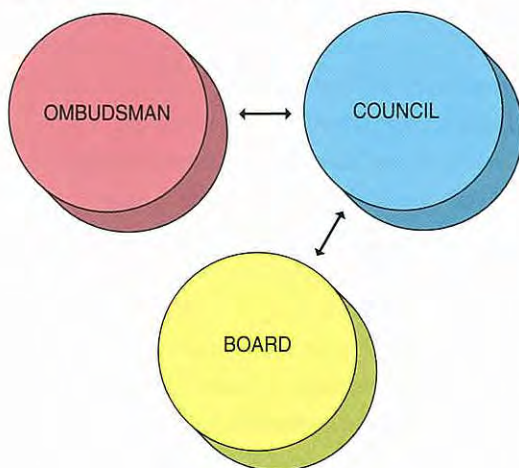
Statistical Information

The Complaint Management System (CMS) used by the TIO is unique in its ability not only to record cases but in the creation of a comprehensive database which can produce detailed statistical breakdowns of cases.

Over the next 12 months, the TIO will continue the development of its statistical reporting with emphasis on the analysis of trends in cases:

- as between residential and small business consumers
- producing regional variations not only between States but also on the basis of distinct geographic areas
- leading to greater detail in key issues using the newly developed matrix of cases.

Ombudsman – Council – Board Relationship



2.1.4

Structure

The Telecommunications Industry Ombudsman Ltd is a company limited by guarantee, with the Memorandum and Articles of Association establishing:

- a Council with equal representation of participants and community interests, with an independent Chairperson chosen by the Board, after consultation with the Federal Minister for Consumer Affairs, AUSTEL, and other bodies from which members of the Council may be drawn
- a Board of Directors comprised of Scheme members; there is also provision for an independent director
- the Telecommunications Industry Ombudsman with authority under the TIO Constitution to independently conduct the day-to-day work of the Scheme.

2.1.5

The TIO Council

The Council is responsible for:

- overseeing the TIO Scheme
- matters of policy
- selecting and recommending to the Board the appointment of the Ombudsman
- maintaining the independence of the Ombudsman.

The Members of Council are:



The Hon. Lionel Bowen AC
CHAIRMAN OF THE COUNCIL



Mr Ted Benjamin
DIRECTOR, CONSUMER AFFAIRS, REGULATORY &
EXTERNAL AFFAIRS, TELSTRA CORPORATION LTD



Mr Ewan Brown
EXECUTIVE DIRECTOR, THE SMALL ENTERPRISE
TELECOMMUNICATIONS CENTRE LTD



Ms Elizabeth Morley
AUSTRALIAN CONSUMERS ASSOCIATION



Ms Pam Marsh
DIRECTOR, COMMUNITY INFORMATION
& REFERRAL SERVICE OF ACT



Mr John Rohan
MANAGING DIRECTOR,
VODAFONE PTY LTD



Mr Andrew Bedogni
MANAGER, REGULATORY AFFAIRS,
OPTUS COMMUNICATIONS PTY LTD



2.1.6

The TIO Board

The Board is responsible for:

- traditional corporate governance issues, including the financial affairs of the company
- funding of the Scheme on a demand-driven or volume-related costs basis
- the formal appointment of the Ombudsman. The Board may not dismiss the Ombudsman except on the specific recommendation of the Council.

The Members of the Board are:



Mr Adrian Coote
CHAIRMAN OF THE BOARD, TECHNICAL &
OPERATIONS DIRECTOR, VODAFONE PTY LTD



Mr Rob Simpson
DIRECTOR, LEGAL & REGULATORY AFFAIRS,
OPTUS COMMUNICATIONS PTY LIMITED



Ms Deirdre Mason
DIRECTOR, CORPORATE AFFAIRS,
TELSTRA CORPORATION LTD



Mr Graeme Ward
GROUP DIRECTOR, REGULATORY & EXTERNAL
AFFAIRS, TELSTRA CORPORATION LTD



Mr Ross Ramsay
SENIOR GOVERNMENT LIAISON CONSULTANT,
OPTUS COMMUNICATIONS PTY LIMITED

2.1.7

Staffing

The TIO has a staff of 17 – the Ombudsman, Deputy Ombudsman, Business Manager, Public Affairs Officer, Investigations Manager and nine Investigations Officers. The Ombudsman has a full-time Personal Assistant and the office is supported by a Receptionist and part-time Administrative Assistant.



- John Pinnock, *Ombudsman*
- Wally Rothwell, *Deputy Ombudsman*
- Helen Bailey, *Business Manager*
- Melinda Dundas, *Public Affairs Officer*
- Julia Hickey, *Investigations Manager*
- Investigations Officers:
 - Nick Davies (*Mobiles*)
 - Sarah Nye (*Outreach*)
 - Laura Spencer (*Basic Carriage Service*)
 - Silvia Superina (*Complaint Management System*)
 - Mike Tapper (*Billing and Credit Management*)
 - Jim Tilkeridis (*Land Access*)
 - Louise Wardlaw (*Privacy*)
 - Sally Williams (*Directories*)
 - Lissa Worthington (*Service Providers*)
 - Astra Taurins, *Personal Assistant*
 - Orietta di Fabio, *Receptionist*
 - Val Tosolini, *Administrative Assistant*

In addition, a solicitor from Minter Ellison is seconded to the office to advise the Ombudsman in his role as Administrator of the COT Case Arbitrations.

- Pia di Mattina, *Solicitor, Minter Ellison (to March 1996)*
- Matt Deeble, *Solicitor, Minter Ellison (from March 1996)*

In the 1995/96 financial year, the TIO handled 26,905 cases, a large increase on the previous year due almost entirely to increasing public awareness of the Scheme and its role. As might be expected, the vast majority of contact with the public is through the Office's 1800 FREECALL™, FREEFAX™ and TTY facilities. The TIO does not require complaints to be in writing.

At the outset, Investigations Officers stress the need for customers to give their carrier or service provider a reasonable opportunity to resolve a matter and will refer callers to the appropriate carrier or service provider customer service officer.

Where a complainant has not been able to resolve a matter, Investigations Officers will make a preliminary assessment to confirm that the TIO has jurisdiction. In the event that the TIO does not have jurisdiction, Investigation Officers will refer the matter to the appropriate authority — the ACCC, AUSTEL, or state offices of Fair Trading and Consumer Affairs.

Where jurisdiction is clear, Investigations Officers have wide delegations to take the matters up as cases and they have carriage of cases until resolution.

2.1.8

Performance

The case mix table confirms the continuing performance of the Scheme, with 92.6% of all cases resolved at the Enquiry stage over the last 12 months. This performance has been achieved despite a 56% increase in cases over the previous year.

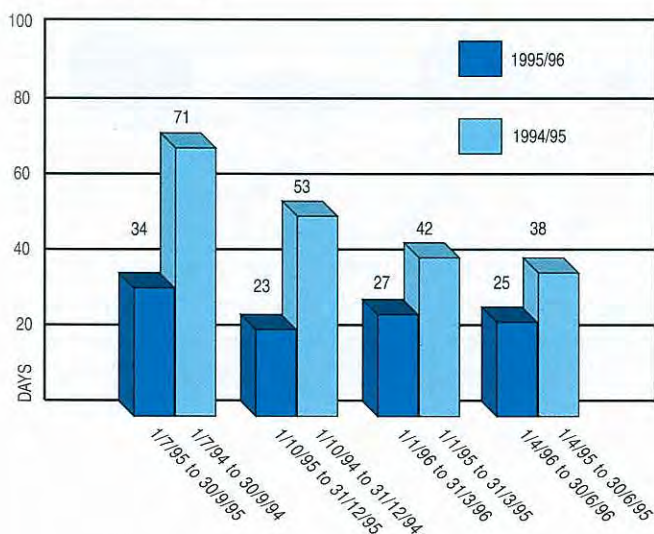
More detailed measures of efficiency are shown in the comparisons of resolution times for Consultations and Complaints between 1994/95 and 1995/96.

Although there has been some variation during 1995/96, overall resolution times for Consultations show a continuing improvement when compared with 1994/95.

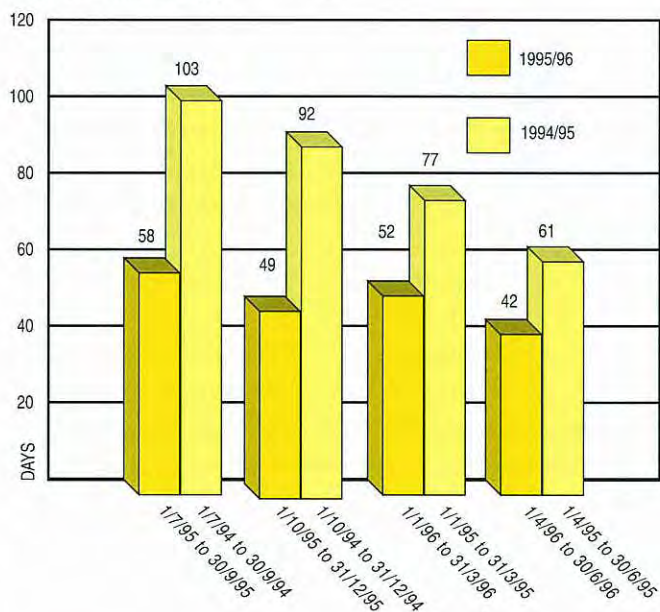
A similar pattern is shown for resolution times for Complaints over the past year when compared with 1994/95. This is particularly pleasing, given that Complaints are, by definition, more difficult to resolve than Consultations.

The picture concerning resolution times for Disputes is less favourable. Ignoring the statistics for the last quarter of 1994/95 (which are distorted because the COT Special Arbitrations had been registered separately as Disputes for some time), there has still been a considerable blowout in the time taken to determine Disputes.

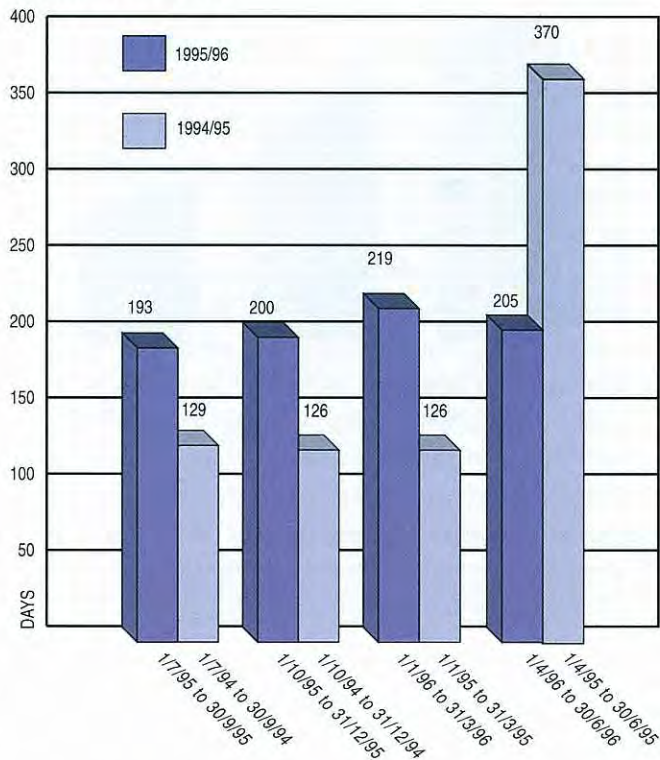
Comparison of Consultation Resolution Times. 1995/96 – 1994/95
(Figures shown in days)



Comparison of Complaint Resolution Times. 1995/96 – 1994/95
(Figures shown in days)



Comparison of Dispute Resolution Times. 1995/96 – 1994/95
(Figures shown in days)



Case Mix. 1 July 1995 – 30 June 1996

Inquiries	92.36%	92.35%	91.78%	92.46%	92.18%	94.23%	92.34%	92.98%	92.46%	93.51%	92.72%	91.88%
Consultations	2.67%	3.93%	3.03%	2.95%	3.09%	2.62%	3.59%	4.22%	4.13%	3.49%	4.06%	5.00%
Complaints	4.81%	3.31%	4.94%	4.50%	4.46%	3.10%	3.78%	2.58%	3.10%	2.79%	3.09%	3.04%
Disputes	0.16%	0.41%	0.25%	0.09%	0.27%	0.05%	0.29%	0.22%	0.31%	0.21%	0.13%	0.08%
	July 1995	August 1995	September 1995	October 1995	November 1995	December 1995	January 1996	February 1996	March 1996	April 1996	May 1996	June 1996



While this is partly explained by the increasing complexity of Disputes being handled by the TIO, performance in this area has not matched that in relation to Consultations and Complaints. With a view to improving in this area, the TIO has now adopted a 90-day target for the determination of all Disputes.

In addition, Council's recently approved policy concerning unresolved cases involving amounts under \$250 should lead to an improvement in performance in this area.

The Office will closely monitor performance over the coming year.

2.1.9

Outcomes

Although care must be taken in assessing the effectiveness of an alternative dispute resolution forum such as the TIO, a traditional measure of success of such schemes is based on the percentage of cases resolved in favour of complainants.

On this measure, the TIO is a more than effective consumer redress mechanism.

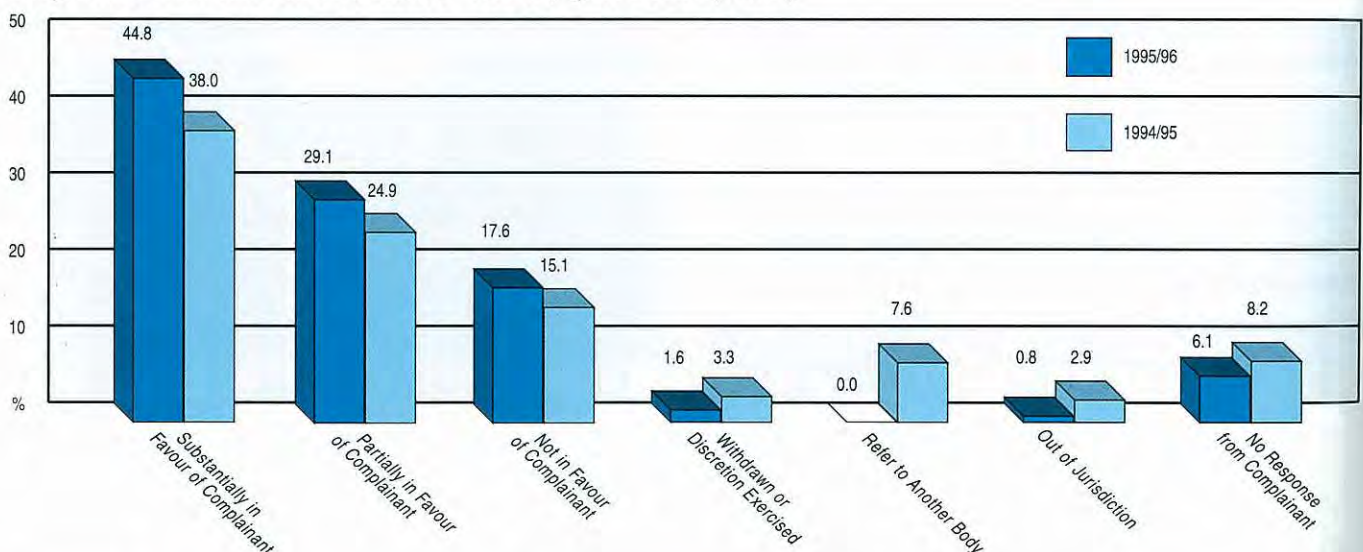
73.94% of Consultations were resolved either substantially or partially in favour of complainants in 1995/96, compared with 62.88% for the previous financial year.

There was little change in the resolution of Complaints either substantially or partially in favour of complainants, with 63.65% of cases resolved in this way in 1995/96, compared with 64.07% for the previous year.

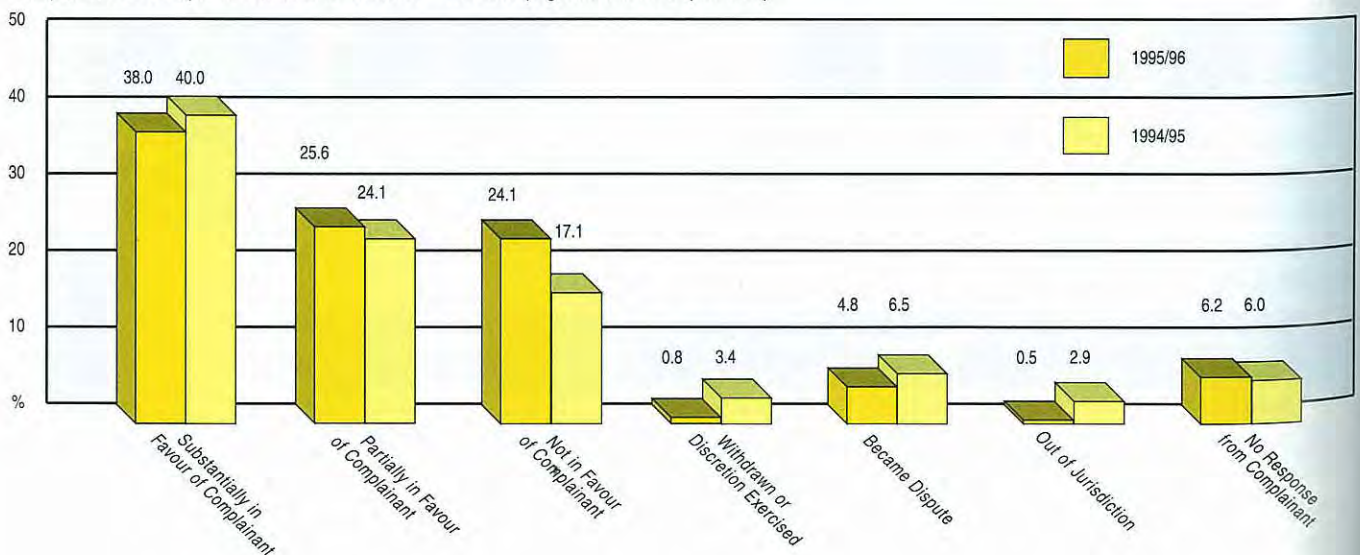
Outcomes for Disputes are reported on the basis of actual numbers rather than percentages, because the small number of cases in this category means that even a slight change in numbers can lead to significant percentage changes.

On this score, the TIO again rates highly on an effectiveness measure, with 50 out of 54 Disputes determined substantially or partially in favour of complainants in 1995/96, compared with 47 out of 52 cases determined in this manner in 1994/95.

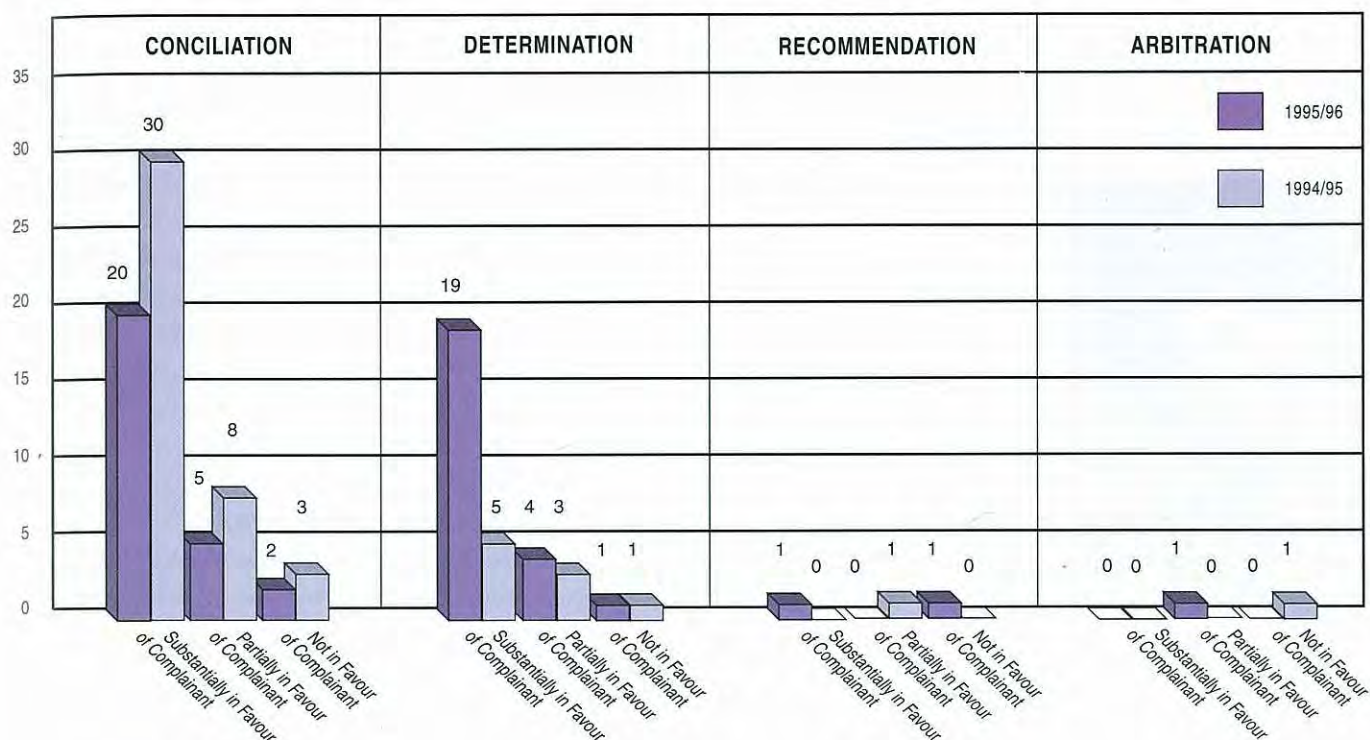
Comparison of Consultation Outcomes. 1995/96 – 1994/95 (Figures shown in per cent)



Comparison of Complaint Outcomes. 1995/96 – 1994/95 (Figures shown in per cent)



Comparison of Outcomes of Disputes.1995/96 – 1994/95 (Figures shown as actual case numbers)



2.1.10

Public Affairs

Despite the considerable growth in cases to our office this year, research commissioned by the TIO in January 1996 indicates a relatively low level of awareness of the TIO in the community. A total of 31% of those surveyed recognised the name of the TIO when it was quoted to them, although only 7% of people could name the TIO, without prompting, as the place they would take an 'unsolved' phone problem.

Currently, awareness and therefore access to the scheme, is skewed toward higher socio-economic groups, in particular upper white or upper blue collar workers, males, trade or tertiary qualified, on incomes above \$40,000. Lower awareness was found among lower socio-economic groups, in particular people under 24 years and over the age of 50, females, with lower or part-time incomes no higher than \$20,000. Research also identified geographic areas with low awareness including rural and metropolitan Western Australia and rural New South Wales. Clearly, the TIO must focus on groups and areas of low awareness when promoting the Scheme to ensure equitable access to the Scheme, both geographically and socio-economically.

The broad promotion of the TIO for the 1995/96 year has occurred through publicity campaigns, including regular radio and print campaigns and print advertising. Production of a community service announcement for commercial television is now complete.

The TIO has also established a regular weekly column in *The Australian* newspaper which provides an opportunity for the TIO to play an educative role by explaining

issues more fully to consumers. The column has detailed such things as silent lines, customer transfers, mobile phone theft and coverage, billing and service providers. Monthly talk-back sessions on ABC regional radio in Victoria are also regular events.

The TIO has consolidated its links with the community over the past year by establishing a central database of consumer and community organisations and agencies including financial counsellors, legal advice centres, community information offices, small business advice services, interpreter services and special needs groups. Regular TIO information is now supplied to representatives who advise and refer consumers with unresolved phone problems and printed material is provided for supply direct to consumers. The TIO also maintains close contact with AUSTEL, the ACCC and Federal and State Consumer Affairs offices.

The TIO has also been keen to address more diverse sectors of the community, and following consultation with the Ethnic Communities Council of Victoria, will launch a promotional campaign targeting people from non-English speaking backgrounds. The TIO is currently considering the details of recent recommendations from research prepared for the Federation of Ethnic Community Councils, Telstra and the Consumer Telecommunications Network.

The TIO will also play a greater role in relation to small business which needs to maximise the opportunities of telecommunications and ensure that the highest levels of service delivery are maintained. From the statistics available, it is clear that the TIO scheme is providing a very important service for small business users of telecommunications but the extent of awareness by this sector of



the Scheme is largely unknown. Those that know about it and have experienced problems appear to be using it effectively but there may be a widespread lack of awareness. Typically small business only seeks assistance of this nature when the need arises. This problem may need to be addressed by more focused promotion of the Scheme through the small business sector.



A major finding from the TIO research, and one reinforced by research for similar alternative dispute resolution schemes, is that well-handled complaints are likely to lead to greater customer retention and profitability for members and voluntary participants of the Scheme. The TIO informs both carriers and service providers of issues causing problems for consumers, as well as reporting directly to consumers. The TIO believes that a positive working relationship between our office and carriers and service providers — in resolving consumers' problems speedily and fairly — will benefit both consumers and the telephone companies.

Given the relatively limited resources for promoting the TIO Scheme to Australia's 8.25 million phone-users, a crucial issue for the awareness, and therefore effectiveness, of the TIO Scheme is industry support of this task.

A review of the TIO Scheme after its first twelve months of operation, by KPMG Consulting, recommended that the TIO explore with Scheme participants the potential for cooperative marketing of the Scheme. The consultants noted that this potential had not been realised and that telephone bills provided a major avenue for distribution of TIO information to consumers.

This view was reinforced by the consultant who conducted the public awareness research commissioned by the TIO this year. The consultant recommended that a message about the existence and role of the TIO be placed on all carrier bills. The consultant concluded:

In addition to raising awareness and accessibility of the correct complaints procedure, placing this information on bills would have the major advantage of making all consumers aware of their rights in terms of using the TIO. At the present time awareness is heavily skewed in favour of upper socio-economic groups.

It has taken a long time to reach this point and the TIO intends to pursue this issue with Telstra, Optus and Vodafone as a matter of priority.

The TIO is regularly represented at conferences and other public events, raising awareness of the role of the office and delivering updates to consumers, industry and public sector representatives. Both the Ombudsman and Deputy Ombudsman have been active in this area and in the past

year, the TIO has conducted numerous forums and briefings for consumer and community representatives, including to the Consumers Federation of Australia, the Consumer Law Centre and as part of the Telstra Consumer Consultative process. The TIO also took part in the major industry forum, ATUG '96.

A recent initiative, the Industry ADR Group brings together a range of industry-based alternative dispute resolution schemes including the Australian Banking Industry Ombudsman (ABIO), the Life Insurance Complaints Service (LICS) and Insurance Enquiries & Complaints Ltd (IEC Ltd) to outline their different structures, jurisdictions and methods to consumer and community representatives. Forums have already been held in Hobart and Adelaide with further meetings planned in other capital cities.

2.2

SERVICE PROVIDERS

(A Fast Growing Industry)

Service Providers have become an integral and rapidly growing part of the competitive telecommunications industry over the last four years.

They comprise organisations that both supplement and compete with the three carriers, Telstra, Optus and Vodafone. They can be very small businesses or they can be large like AAP Telecommunications.

These companies offer a variety of competing services, differentiating themselves from the carriers by providing customised billing and a more personalised and often a greater range of services. Many also offer discounts on standard carrier tariffs.

During the year, 16 service providers opted to join the TIO Scheme, following an invitation from the Council and Board to the whole service provider community. When legislation governing the post-1997 open competition era is introduced, it has been indicated that service providers will be expected to comply with the Scheme, although that falls short of a requirement for full membership.

Such a requirement will also foreshadow a new era for the TIO, as service provider participants are currently accounting for more than 12% of TIO cases in the last quarter and 5.38% in the full year. With a high number of service providers still outside the jurisdiction of the TIO, the case load will need careful monitoring and management.

Even though it has been in existence since the 1991 Telecommunications Act, the service provider industry is still in its infancy. Only very recently for instance, has a draft Service Level Agreement, between Telstra and service providers come into being. Issues such as churn between carriers and service providers, billing, faults and restoration and payment of accounts are covered by this draft agreement.

It is essential that these matters be placed on a firm footing. Currently, there are delays on the part of Telstra in processing transfer of accounts, although a significant backlog has apparently been cleared. Similarly, there are delays in providing timely billing information to service providers and hence to end-users.

The service providers claim that, in addition, the billing information provided to them continues to contain many errors, resulting in incorrect billing to customers.

This is a conundrum for the service providers, some of whom are having difficulty handling the number of resulting complaints. These eventually come to the TIO. For its part, the TIO deals with cases on the basis that responsibility lies with the carrier or service provider which has the direct relationship with the end-user.

Once the industry matures, the level of complaint should drop away, but that does not seem likely to occur in the near future. Indeed, the prospect of continued delays in billing and transfers would be a matter of serious concern to consumers.

The breadth of the service provider industry for telecommunications is quite surprising, comprising not only those who deal with reselling, aggregating or rebilling carrier services but also those who have their own switched carriage networks.

Other service providers offer voice mail, audio and video conferencing, interactive voice response, value added image, video and fax, telex, E-mail, EFTPOS, database access and managed network services and training.

On top of this, there are the Internet Access Providers (IAPs) and information content providers.

It is a question for the near future as to where injured parties might complain, if they are customers of these providers. The TIO currently only handles complaints about carriage providers and whilst IAPs should probably fall within its jurisdiction, information or content providers should not be covered by the TIO Scheme.

2.3

COT ARBITRATIONS

The TIO is the administrator of three types of confidential arbitration procedures. The development of these procedures originally arose out of claims made by a group of small business people calling themselves the COT (Casualties of Telecom) Cases. In April 1994, AUSTEL released a Report on the COT Cases which recommended that Telstra implement an arbitration procedure to resolve these and other cases. The TIO was involved with AUSTEL, Telstra and the COT claimants in finalising the Fast Track Arbitration Procedure. Four claimants entered into this confidential arbitration procedure in April 1994. Subsequently, the TIO developed the Special Arbitration Procedure, in conjunction with AUSTEL and Telstra. This procedure was offered to a further 12 claimants in June 1994. In December 1994, the TIO, Telstra, Optus, Vodafone and consumer representatives agreed on the terms of the Standard Arbitration Procedure. To date, only one claim has been heard under this procedure.

At the time of writing, four claims have been settled by direct negotiation between the parties, five awards have been delivered and one claimant elected not to pursue its claim. These procedures have not met the expectations of the parties or the Ombudsman as a speedy, simple and cost effective resolution of these Disputes. The reasons for this are numerous and complex.

The confidential nature of these arbitration procedures and the fact that determinations have still to be made in some cases precludes the TIO from making detailed comments, however, some observations are appropriate at this time.

In these arbitrations, both claimants and Telstra have displayed an attitude of mistrust, mutual antagonism and an inability to address the Dispute in a commercial fashion. This approach has had a number of unfortunate consequences.

There have been delays in the provision of claim and defence materials and further information from both claimants and Telstra. Many claimants have made extensive use of FOI applications to obtain documents to prepare their claim, rather than seeking these documents under the arbitration process. Telstra's administration of these FOI requests has been criticised in two reports by the Commonwealth Ombudsman. As neither the Arbitrator nor the TIO has any power over FOI applications, the provision of materials requested under FOI cannot be reviewed or enforced within the arbitration procedure. In the Ombudsman's view, the use of the FOI procedure has significantly delayed the arbitration process.

The TIO believes that Telstra has responded to most claims in an overly legalistic manner. It has lodged lengthy and detailed requests for further and better particulars of claims and has shown a tendency to deny liability by the use of perceived contractual and statutory immunities and a strict reliance on legal principles not in keeping with the spirit in which these arbitrations were instituted. It has submitted voluminous and detailed defences, often out of proportion to the size or complexities of claims. This approach has, in turn, led many claimants to respond in kind.

Claimants have felt compelled to engage expensive technical, legal and financial advice in order to properly present their claims and reply to Telstra's defence. This has resulted in further complexity, legalism and delay. Claimants have expended large amounts of money on these services, often well beyond their financial capacity. There is no provision in the arbitration procedures for the recovery of these costs in the event that a claimant obtains an award in its favour. The TIO believes that this is an issue which must be addressed for reasons of both equity and finality and has advised Telstra and the Minister for Communications and the Arts, of this view.

The administration of these procedures is a significant burden on the Ombudsman's time. However, the resolution of these Disputes remains a matter of priority for the TIO. The revision and amendment of the Standard Arbitration Procedure for future arbitrations, in light of the experience in the current Disputes, is also imperative. The TIO is committed to pursuing every avenue, within its power, to facilitate the just, equitable and final resolution of these Disputes.



2.4 ISSUES

2.4.1

Telecommunications Working Forum

Following the issue of a discussion paper on post-1997 telecommunications legislation, the Ombudsman attended a telecommunications working forum chaired by the Minister, Senator the Hon. Richard Alston, in Sydney on 16 May 1996.

The discussion paper gave the first general outline of the Government's proposals for the post-1997 legislative regime and the working forum gave interested parties an opportunity to present their views and responses.

The matter of most immediate and greatest relevance to the TIO concerned the position of service providers under the new legislation.

The TIO was concerned that the proposals in the discussion paper about service providers' involvement in the TIO showed a lack of understanding of the Scheme and would be difficult to implement.

The discussion paper noted:

- *Service provider rules would replace the current service provider class licensing scheme. These rules would operate in the same way as class licence conditions.*
- *Carriers, along with other service providers, would need to comply with the following service provider rules in supplying carriage or content services:*
 - *an obligation to comply with the TIO Scheme and, for service providers who are not carriers, to enter into the Scheme where directed to do so by AUSTEL. (emphasis added)*

Later clarification of the proposals established that the TIO would continue with its role of handling complaints about the provision of carriage services and would not be expected to deal with complaints about content services.

In subsequent discussions and correspondence,

the Ombudsman addressed a number of outstanding issues. In particular, the Ombudsman sees the proposal that carriage service providers be required merely to comply with the TIO Scheme as deficient. In essence, the model would enable the TIO to deal with complaints about carriage service providers, but would have to recover the cost of its investigative services from the carrier to which the service

provider was linked, rather than directly from the service provider.

Currently, the financial inducement provided by the TIO's rapidly escalating and cumulative cost four-tier case process means that more than 92% of cases are resolved at the first, or Inquiry, stage of that process.

The flaw in the compliance model is that it removes the immediacy of this financial inducement from a service provider and will inevitably lead to a blow-out in the time frames for resolving cases.

For these reasons, the Ombudsman has made it clear that carriage service providers, or at least appropriate classes of service providers, should be required to be full members of the TIO, by virtue of a service provider rule.

Similarly, the proposal that AUSTEL should be able to direct classes of service providers to join the TIO Scheme, while appropriate as a reserve power, introduces an unnecessary element of uncertainty for consumers and for the TIO.

2.4.2

Customer Service Guarantee

The *Telstra (Dilution of Public Ownership) Bill 1996* was introduced in the House of Representatives on 2 May 1996. The Bill proposes to amend the *Telecommunications Act 1991* by establishing a Customer Service Guarantee to apply to all carriers. Amongst other things, the Guarantee would:

- *enable AUSTEL to establish performance standards relating to the times within which carriers should comply with requests for connection of, and rectification of faults in, specified telecommunications services,*
- *enable a customer to recover damages from a carrier in court for breach of a performance standard,*
- *allow a carrier to discharge its liability for breach of a performance standard by giving a customer a credit in an account with the carrier, or in any other manner agreed between the carrier and the customer,*
- *allow for AUSTEL to make provision for a customer to waive the Guarantee, in whole or in part,*
- *enable the TIO to provide to a customer an evidentiary certificate setting out the particulars of any contravention of a performance standard by a carrier. The certificate would be prima facie evidence of its contents.*

With reference to the last point, the Explanatory Memorandum to the Bill stated:

Given the nature of the TIO's role, it would be appropriate for it to investigate complaints about breaches of performance standards. The involvement of the TIO is expected to reduce the need for customers to take action in the courts. However, if such action were necessary, it is proposed to provide a mechanism to assist the customer.

Following discussions between the Ombudsman and the Department of Communications and the Arts about this aspect, the Minister advised in his second reading speech in the Senate, on 9 May, that:

The Government expects that the Telecommunications Industry Ombudsman, when investigating complaints about matters that constitute a contravention of a performance standard, would make determinations that reflect the



customer's rights to damages under the Customer Service Guarantee. This should minimise the need for customers to take court action.

The Bill does not, however, directly confer the power on the TIO to make decisions that carriers have failed to meet a performance standard and the imposition of a penalty as a result. Such a decision is judicial in nature and the Constitution prevents the Commonwealth conferring the power on a body other than a court.

At the subsequent telecommunications working forum, the Minister's advisors made it clear that service providers would also be bound by relevant performance standards under the Customer Service Guarantee from 1 July 1997.

2.4.3

Senate Committee Inquiry

After the *Telstra (Dilution of Public Ownership) Bill 1996*, was referred to the Senate Environment, Recreation, Communications and the Arts References Committee, the Ombudsman made a written submission and gave evidence to the Inquiry, at the invitation of the Committee.

In relation to the Customer Service Guarantee, the Ombudsman made the following points:

- *The Guarantee did not give sufficient emphasis to what should be the primary obligation of a carrier to resolve a customer's complaint about a breach of a performance standard, in the first instance, and the role of the TIO as an office of last resort.*
- *The right of the TIO to issue an evidentiary certificate should be seen as a 'reserve' power.*
- *The role of the TIO as an alternative dispute resolution forum should be made clear, either by devising a form of words to overcome the constitutional difficulty adverted to in the Minister's second reading speech, or by inserting a specific provision in the Guarantee ensuring the right of a customer to complain about a breach of a performance standard.*
- *Having regard to the generally unequal bargaining power of a carrier and a customer, the clause allowing for AUSTEL to provide for a customer to waive a breach of a performance standard was questionable.*

So far as the position of service providers after 1 July 1997 was concerned, the Ombudsman advised the Committee that:

- *the service provider sector was the fastest growing area of the telecommunications industry in terms of annual turnover and customer growth,*
- *the importance of the service provider sector was recognised when the TIO was established, with provision in the TIO's Articles of Association for service provider membership, and the invitation to all service providers on 1 October 1995 to join the scheme,*
- *the TIO's role is to deal with complaints about the provision of carriage services,*

- *there should be a specific service provider rule under the new telecommunications legislation requiring all carriage service providers to be members of the TIO from 1 July 1997,*
- *the government's 'model' whereby service providers would have to 'comply' with the TIO, rather than be members of the Scheme, was flawed in that it removed from service providers the immediate financial inducement to resolve complaints speedily.*

2.4.4

Back-Billing

Last year's annual report drew attention to the increasingly important issue of back-billing, ie where a carrier is unable to bring all call charges to account within the relevant billing period and bills its customers for those calls at a later time.

The effect of the practice on customers is exacerbated where the carrier fails to notify its customer of the fact and of the reasons for the back-billing.

During the year the Ombudsman made a number of formal determinations of cases raised to Dispute level, directing Telstra to remit all call charges outside a period of 90 days additional to the relevant billing period. The TIO took this stand after being advised by Telstra that it would introduce such a period by August 1995.

The Ombudsman's decision generated considerable debate and led Telstra to re-examine what appeared to be an unwritten policy, to back-bill for a period of 12 months additional to the relevant billing period.

Telstra then advised the TIO of a new policy, to take effect from 1 June 1996, whereby Telstra would adopt:

- *an 'extended billing period' of six months, based on a quarterly billing cycle, ie all call charges should be included in a bill within two billing periods,*
- *a 'back-billing period' of a further six months.*

Where call charges are brought to account during the back-billing period, Telstra will, from now on, advise customers of this fact and provide reasons for the back-billing in the form of a generic bill message. The functionality to enable automatic bill messaging is expected to be available by 31 December 1996.

The policy also requires notification of and reasons for the back-billing to be given to Telstra Customer Service staff, so that they will have sufficient information to discuss and resolve issues with customers. In addition, the policy gives Customer Service staff the authority to negotiate payment arrangements for those customers who may not be able to pay the call charges included within the back-billing period within standard credit terms.

Leaving aside arguments as to the adoption of an 'extended billing period', the overall effect of the new policy is that Telstra has reduced the period during which it will back-bill from 12 months to nine months, additional to the standard quarterly billing period.



Although the TIO regards the policy as a modest advance, the Ombudsman has advised Telstra that the TIO will have regard to the policy; will deal with cases falling outside the policy, or which have not been dealt with in accordance with the policy, on their individual merits; and will 'reserve' the right to again consider the question of a reasonable back-billing period after an appropriate time.

It should not be thought, however, that Telstra is the only carrier bedevilled by the problem of back-billing. The TIO has also received complaints from Telstra customers about delays in bringing to account call charges from the Telstra PSTN network to the Optus Mobile GSM network. Investigation of these delays by the TIO revealed a complex set of reasons, which can best be summarised as a lack of ready compatibility between the Optus and Telstra billing systems.

The TIO is also aware of delays experienced by service providers in obtaining timely billing information from Telstra, a matter which has attracted the interest of AUSTEL and which has been the subject of a working party convened by the Service Providers Action Network (SPAN) and Telstra.

The principal concern of the TIO is that, with the move to industry self-regulation, the likely emergence of new carriers and an increase in the number of service providers, the potential for back-billing to become a major consumer issue will grow. From a consumer perspective, there is little point in any-to-any connectivity producing seamless telecommunications if it comes at the cost of increased delays in billing. This will be one of the acid tests of self-regulation.

2.4.5

AMPS Phase-Out

The recent confirmation by the Minister for Communications and the Arts of the phase-out of the AMPS (analogue) network by the year 2000 ends a period of uncertainty in telecommunications.

The TIO has no view, official or unofficial, on the decision by the previous government to phase out the AMPS network, nor on the relative merits of the respective analogue and digital (GSM) networks, or the technology on which they are based.

However, the need for confirmation of, and a timetable for, the AMPS phase-out, had become pressing. The development and early publication of a timetable by the Spectrum Management Agency will be welcomed by the TIO and by its small business complainants particularly.

Perhaps more than any other segment of Australian society, small business has become heavily dependent on AMPS telephony both to maintain and to develop its customer base. The ability to retain customers and to gain repeat business is often a matter of life and death for small business, where competition is fierce.

It appears that AMPS customers may not have the benefit of number portability to assist in the migration to the GSM networks. The absence of number portability means that a phase-out timetable is all the more important to small business customers. Only then will they be able to plan the changeover to digital mobile telephony and advise their customers of their new numbers.

Although GSM has outgrown AMPS in recent months, AMPS customers outnumber GSM customers by a factor of almost 3:1. As noted later in this report, recent TIO statistics show that in the last quarter of the financial year, 14.4% of mobile cases relate to the AMPS network, while the GSM networks account for 85.6% of mobile cases, and more than 43% of the GSM cases now concern mobile phone contracts.

If this statistic continues, it will confirm an alarming trend for an industry faced with the task of migrating the vast majority of AMPS users to GSM, allowing for the possibility of some rural and remote customers remaining on the AMPS network after the year 2000, or at least ensuring an adequate alternative.

With the exception of those rural and remote customers, it is also necessary that a decision be taken as to whether, once the timetable for phase-out is under way, further sign-up of customers to the AMPS network should be prohibited.

2.4.6

Number Portability

Retaining one's telephone number, when changing from one carrier or service provider to another, is regarded in the industry as an issue of competition policy. If the number has to change because of transfer of service account, then a carrier or service provider is more likely to keep its customer.

It is an issue for the TIO, because many residential and small business customers are sensitive to reducing their telephone costs and they want to have the freedom to move between providers of their services without having to change their telephone numbers.

They complain to the TIO when they are told that they do not actually own their telephone number and, where they are customers of some service providers, they do not even own their line. This contradicts the feeling, held by most, that to take away their phone number would be a violation of their rights.

Currently, consumers are told that if they want to change their digital (but not analogue) mobile carrier, or if they want to take up Optus' local call connection, they will need to accept that their number will be changed. That, of course, means informing friends and business contacts, changing stationery and advertising, and checking that directory services get it right.



The issue of number portability is complicated by wider issues of the universal personal telephone number, soon to confront the policy makers, and of geographical portability and whether changing one's number when one moves locations is a significant concern or is expected to occur anyway. These aspects, however, are matters for the industry regulator, AUSTEL.

2.4.7

Optus Local Calls

One of the main billing problems dealt with by the TIO is that of disputed charges for metered (local) calls. Because Telstra is at present unable to itemise the numbers called for local calls, it is almost impossible to resolve absolutely a complaint of overcharging.

Often, Telstra attaches Call Charge Analysis Equipment (CCAE) to a customer's line, in order to verify that calls are getting through, that there are no crossed lines and that the metering equipment is operating correctly. In these circumstances, customers are able to verify with any records they might maintain, exactly who they called and when.

But CCAE monitoring is always 'after the fact' and complainants frequently claim that the meter was not operating correctly before CCAE was put on.

It is therefore with a sense of some welcome that the TIO has observed Optus' venture into local call service. The all-digital Optus network will allow its customers, for a fee, to request local call itemisation if they want it, although at the risk of receiving a bill running to many pages.

The great benefit seen by the TIO though is that, even if itemised bills are not provided, customers who feel that they have been overcharged can be satisfied by provision of the records of local calls which have been kept by the carrier.

Telstra too, advises that it will soon provide itemised local calls and this can only benefit its customers and reduce the number of complaints.

2.4.8

Telstra ServiceNet

Wiring Repair Plan (WRP)

In November 1995, the TIO received numerous inquiries from Telstra customers concerning a Telstra service then known as the ServiceNet Wiring Maintenance Plan, where they and Telstra were unable to reach agreement.

The Plan was a maintenance agreement designed to ensure the repair of faulty internal cabling and sockets which are customer premises equipment (CPE), ie cabling etc which is the customer's responsibility. This area is open to competition which means that a customer could engage either Telstra or a licensed private cable repairer to carry out repairs.

Many customers had received letters from Telstra advising that services provided under the Plan were to be enhanced immediately and that, as from 1 January 1996, fees were to be increased from \$0.60 to \$0.95 per month. Customers were also notified that, unless they elected to 'opt-out' of the service within 15 days, they would automatically be upgraded.

Customers complained to the TIO that:

- they were unaware that they were already receiving and paying for the Plan
- they objected to the 'opt-out' provision, a form of inertia selling which put the responsibility on them to elect not to receive the service
- there was no evidence, or very little evidence, of any enhancement to the service under the Plan which would justify the increase in fees.

A number of customers sought and received refunds of fees paid in the past.

The TIO, AUSTEL and the ACCC all raised the issue with Telstra. Following discussions between Telstra and the ACCC, Telstra agreed to establish an independent procedure to refund fees paid by current and past customers under the Plan.

Subsequently, the TIO, ACCC and Telstra agreed that Telstra would confer jurisdiction on the TIO from 16 September 1996 to deal with cases concerning the Wiring Repair Plan Refund Program, on the following basis:

- to determine whether a person is a current customer, non-current customer (or never was a customer) within the WRP Refund Program
- to determine the extent of entitlement of a current or non-current customer to a refund under the WRP Refund Program
- the refund to current and non-current customers to be \$0.60 per month for each month a customer was on the Plan (or an earlier version)
- claims to be limited to a period commencing 21 November 1992, having regard to the relevant limitation period under the Trade Practices Act
- claims by current and non-current customers to be lodged by 15 February 1997
- the TIO's jurisdiction under this procedure to expire on 30 June 1997.

Telstra also agreed to an extensive program of notification to past and current customers of their entitlements under the WRP Refund Program.



2.4.9

Telstra in Confidence

Fundamental to both the concept and practice of independence, is that an Ombudsman should be free to pass on to consumers information relevant to their cases. Any attempt to unduly limit the Ombudsman's discretion in this area would be a matter for concern.

Accordingly, the TIO's Operations Policy Manual stipulates that requests from carriers and service providers that information provided by them be treated as confidential are only to be treated as such by the TIO where:

- the carrier's or the service provider's security measures are threatened; or
- the carrier's or the service provider's competitive position may be prejudiced outside the context of the Dispute; or
- the material may reveal information about a third party which, for confidentiality reasons, should not be released to a complainant.

Concerned that material received from Telstra was often marked *Telstra in Confidence*, the Ombudsman raised the issue of claims of confidentiality in light of the Operations Policy Manual.

After discussions and some clarification, the TIO and Telstra have now agreed that information provided to the TIO will fall into one of the following classes and will be treated accordingly by the TIO:

- Information which relates directly to the customer and for which Telstra will not claim confidentiality. The TIO will be free to pass material in this category to complainants. Included under this class would be documents such as: billing information (eg CABS and FLEXCAB); fault records for customer services; various exchange documents (eg call data results such as SMART 10, CCAS, ELMi and CCS7 that have been gathered during the testing of the customer's service from the exchange); any Service History Documents prepared by Telstra; exchange documents relating to the Customer Access Network or customer's cable; NNI information that relates specifically and directly to the customer's service.
- Information considered commercially sensitive and which the TIO would only make available to the customer if the customer agreed to confidentiality. Information in this category would include various Exchange testing reports and traffic data, Trouble Report Testing; NNI records relating to other customers.
- Information that would not be provided to the TIO in the normal course of business. This category would cover Telstra's strategic planning targets (eg 013 service performance targets); strategic marketing information and future exchange cut-over information.

2.4.10

Mobile Churn Code of Conduct

After detailed discussions and consideration under the aegis of AUSTEL, the industry's first Code of Conduct is nearing completion.

The importance of Codes of Conduct in a self-regulated telecommunications industry was highlighted by the Government's discussion paper, released in May this year, which noted:

- In the first instance, initiation of Codes should rest clearly and solely with industry. Once a Code is initiated, its development would be monitored by AUSTEL and industry would be expected to adhere to a reasonable development time frame. It could otherwise expect AUSTEL to intervene. Genuine public consultation and ACCC agreement would be criteria for AUSTEL registration of draft Codes.
- Compliance with a code would be subject to industry self-regulation. AUSTEL, however, would have the power to direct a carrier or service provider to comply with a Code to address 'renegades' or to declare a standard if there is widespread non-compliance.

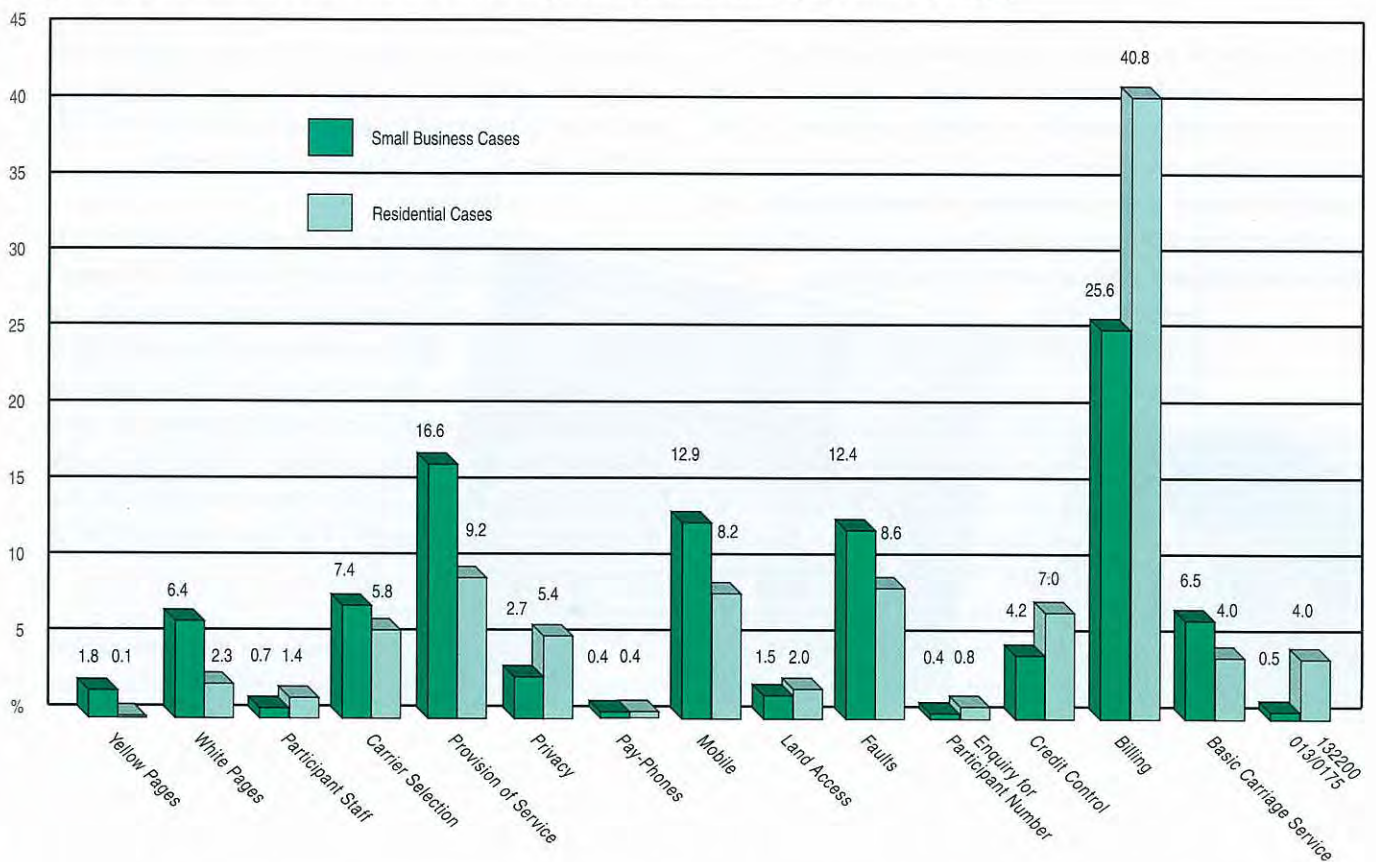
As the industry Ombudsman, the TIO has agreed to handle consumer complaints about breaches of the Mobile Churn Code of Conduct by carriers and service providers. The carriers have agreed that the TIO should also handle complaints about dealers by referring those complaints to the dealer's or agent's carrier for resolution in the first instance.

It is likely that the TIO will be asked to carry out a similar role under some other Codes of Practice/Conduct to be developed in the future and it will be essential for the TIO to be fully consulted in this area.

However, despite suggestions from some parts of the industry, the TIO will not handle industry complaints, ie a complaint by one participant against another, of breaches of Codes of Practice/Conduct.



Comparison of Small Business and Residential Cases. 1 July 1995 – 30 June 1996 (Figures shown in per cent)



2.5

SMALL BUSINESS AND THE TIO SCHEME

The TIO Scheme was established to provide a last resort complaints resolution process to residential and small business consumers of telecommunications services who had not been able to satisfactorily resolve their complaints with the carrier concerned. There are 1.6 million small and home based business telephone users in Australia, compared with six and a half million households with telephone services. Efficient and reliable telecommunications services, in one form or another, are a vital component of the operations of all small businesses and the differences in the types of inquiries and complaints received by the TIO reflect these needs.

Small business cases raised with the TIO Scheme exceeded 4,100 during 1995/96, representing 15.2% of all cases, whereas small business users account for nearly 20% of phone users. The breakdown of the various types of cases reveals further important features. Small Business Inquiries were 14.4% of total Inquiries, Consultations involving small businesses accounted for 25.7% of total Consultations, while business Complaints amounted to 26.1%

of all Complaints. The most involved form of case handled by the TIO is a Dispute and business accounted for a substantial 35.2% of this category. Cases can escalate to a Dispute due to complexity or lack of progress on resolution. It is indicative of the importance to small business of efficient telecommunications, that the proportion of Disputes applicable to the sector is higher than that for the residential sector.

Small businesses experienced similar problems to the residential consumers, with billing issues predominating, but the relative importance of this issue for small business was lower, as other service issues scored highly. The top four categories of concerns for small business were Billing (25.6%), Provision of Service (16.6%), Mobiles (12.9%) and Faults (12.4%). These issues covered nearly 68% of all small business cases. Small business cases were rated higher than residential cases, in relation to Provision of Service, Mobiles, Faults, White Pages, Basic Carriage Service, Yellow Pages and Carrier Selection.

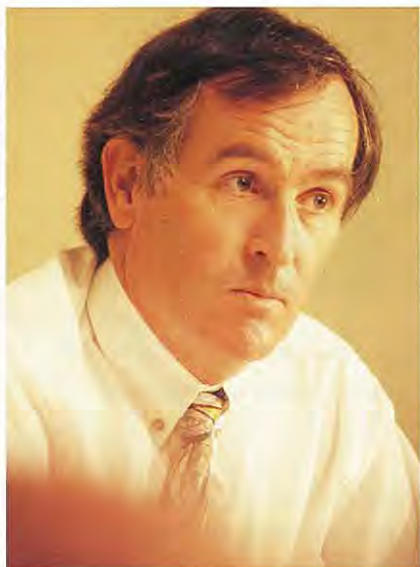
TIO performance figures are not separated into small business and residential consumers of telephone services, but the overall figures indicate the worthwhile nature of the process for small businesses who lodge a complaint. Outcomes of the Consultation category either substantially or partially in favour of the complainant rose from 62.9% to 73.9% of all Consultations between the 1994/95 and 1995/96. The proportion of outcomes not in favour also increased, from 15.6% to 17.6%.



The next category (up the scale of seriousness), Complaints, showed virtually no change in outcomes in favour, or partially in favour, of the complainant and the percentage of Complaints not in favour of the complainant increased from 17.1% to 24.1%. However the proportion of Disputes, the most complex category, resolved substantially or partially in favour of the complainant increased from 90.4% to 92.6% of all cases. The important feature is the percentage of cases favouring the complainant (over 90% in both years) thus proving the value of the Scheme for both small business and residential customers.

Service Providers and Small Business Customers

The advent of service providers into the industry



has been welcomed by small businesses long seeking discounts on their telecommunications costs in a simple form. However, the proliferation of resellers and various types of service provider has resulted in much confusion in the small business sector largely unused to the range of competitive offers. Inevitably, the changed structural arrangements in the telecommunications industry, as telecommunications wholesaling evolved, has led to even greater confusion. Small business representatives have

urged that service providers be included in the TIO Scheme and have welcomed the voluntary entry by the 16 companies which have joined.

Following the inclusion of service providers in the TIO Scheme the number of cases reveals a growing problem area, with the category registering about one-eighth of all cases during the last quarter. Of further concern is the fact that 3% of cases involve service providers who are not members of the Scheme, thus leaving consumers with no effective last resort complaints resolution process.

Mobiles

Small businesses are prominent users of mobile telephony and are placing increasing reliance on this mode of communication to improve business operations. The number of cases in this category also causes great concern. It is assumed that the majority of small business users are AMPS customers, but the current state of uncertainty about the proposed withdrawal of the AMPS service by the year 2000 is having an effect on marketing tactics, with complaints from small business about confusion among mobile users changing systems from AMPS to GSM (digital).

GSM handsets are still relatively expensive due to the early stage of the market and the volumes of handsets sold to date, but real prices are being 'disguised' in longer term contracts with specified usage levels. Many problems arise when users seek to

change carriers and face breaches of contract. Differences in technology are also causing problems with network performance and quality of service. The majority of complaints on these issues concern GSM and the statistics on the uptake of this technology suggest that the pricing packages now match those for AMPS services and phase-out of the AMPS service will create problems for small business as a change of number will be required.

Directories

Case statistics reveal a small but consistent number of cases relating to White Pages and Yellow Pages directories. The concerns tend to come from small business owners who can be greatly affected by listing errors or omissions. The jurisdiction of the TIO Scheme does not formally cover the Yellow Pages but an informal arrangement has been reached between the TIO and Pacific Access (the operating company) whereby the complaints handling process in place for Yellow Pages is monitored by the TIO thus providing an extra degree of 'de facto' protection for Yellow Pages customers.

Competition

Small business consumers of telecommunications services are facing a dilemma. The introduction of competition, plus advances in technology are rapidly changing the telecommunications industry and the range and types of services available. A relatively limited range of services once provided by one national carrier is developing into a bewildering array of new and improved services combined with a range of pricing options. New carriers and service providers will seek to differentiate themselves in the market by offering attractive new products and services. Old expectations about service and carrier responsibility will have to change as more choices are offered. As is the case with many other markets, small business consumers will need to become more aware of their rights for choice but also of the ramifications of making a particular choice, as it may affect other telecommunications services they use.



3



The TIO uses conciliation, mediation, determination and arbitration to deliver free, just, informal, speedy resolution of complaints from residential and small business people across Australia.

3.1

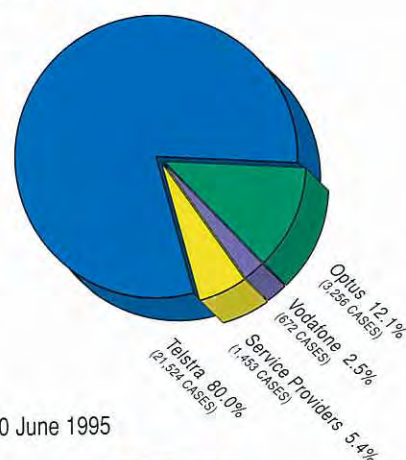
THE YEAR IN REVIEW

Of the 26,905 cases logged, 24,563 were as a result of calls via our FREECALL™ lines and reception area, 2,256 were in writing, and 86 were in person. We received a total of 45,472 calls during the period.

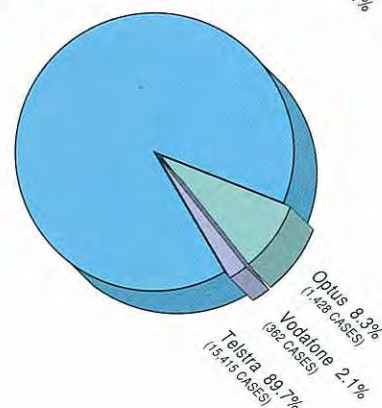
It is important to explain the distinction between 'calls' and 'cases'. Calls includes people whose cases we are already investigating, thus there are many repeat callers. In addition, there are wrong numbers and many people do not leave messages on our answering machine when calling outside of business hours (this amounts to 100-150 calls per week). Thus, we focus on the number of cases logged in our Complaints Management System, (CMS) rather than on the number of calls received.

We have a total of nine investigations officers working full time. Their primary role is to take phone calls and deal with incoming mail from complainants. They are required to have a good broad understanding of the telecommunications industry, and to provide advice and make referrals where appropriate. Each investigations officer specialises in a particular investigative area, such as 'privacy' or 'service providers', thus providing an internal resource for more complex cases. They have carriage of cases from the outset, to ensure that callers are not 'given the run-around' between different staff members. We believe this is an important practice to maintain, and one which makes us a caller-friendly organisation.

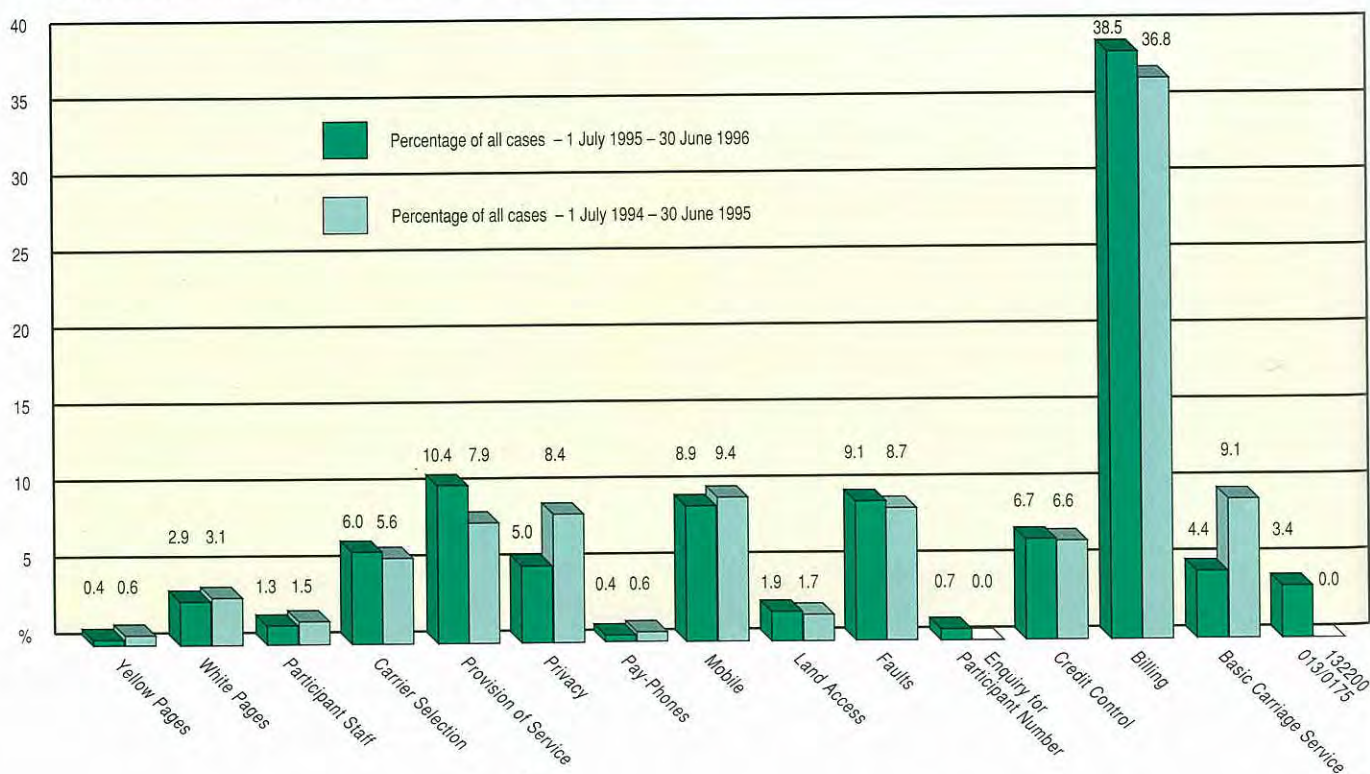
Comparison of Cases by Carriers and Service Providers. (%)
1 July 1995 – 30 June 1996



1 July 1994 – 30 June 1995

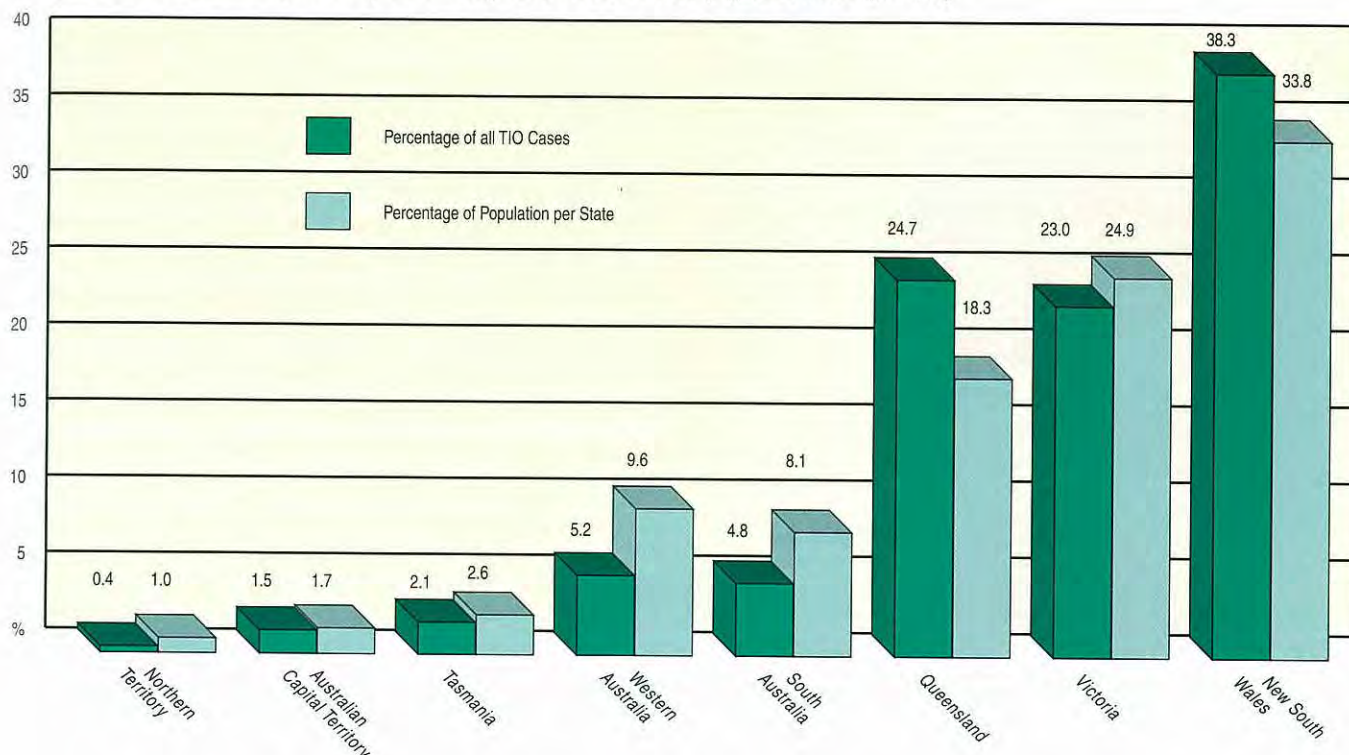


Comparison of Issues. 1994/95 – 1995/96 (Figures shown in per cent)



NB: Some figures for 1994/95 have been recalculated and new categories introduced for 1995/96 following the upgrade to the Complaints Management System (CMS)

Comparison of Cases and Population by State. 1 July 1995 – 30 June 1996 (Figures shown in per cent)



As well as resolving complaints on behalf of consumers, we also play an important role in answering simple questions. For consumers, it is often quite difficult to get a simple answer, let alone understand the increasingly complex nature and structure of the industry.

Investigations officers classify cases according to whether the caller has already complained to his or her carrier or service provider. We stress at all times that we are an office of last resort, ie that the carrier or service provider must first be given a reasonable opportunity to resolve the case. 92.6% of cases were Inquiries requiring information, advice or referral to a carrier or service provider or other bodies such as the ACCC or AUSTEL.

The next level of case classification is a Consultation which requires a response from the carrier or service provider within 14 days. These matters are more complex than Inquiries, but are not as serious as Complaints. It may be that the amount of information required is less than a Complaint, and we can reasonably expect a response within the 14 days. If no response is forthcoming, the case is upgraded to a Complaint, at an additional cost to the carrier or service provider. Responses to

In those instances where we request further information from the carrier or service provider after receiving the initial response, we 'stop the clock'.

Our complaints database, CMS, was enhanced on 16 February 1996 to provide a more comprehensive breakdown of cases. The tables which appear in the 'Billing', 'Mobiles' and 'Provision of Service' sections relate specifically to this period. As of the same date, we added two categories in our reporting: '013/0175/132200' and 'Enquiry for participant number', to reflect the number of calls we receive in the mistaken belief that we are Telstra.

CMS provides accurate and up-to-date information about what issues are of concern to consumers of telecommunications services, and we disseminate these statistics publicly in various forms. Internally, they provide us with guides to complaint trends, and thus allow us to focus on topical matters. CMS is also used as a case-management tool, ensuring that we continue to resolve our cases as quickly as possible. Externally, there are many uses to which these statistics can be put, for example comparing them with AUSTEL's 'Quality of Service' figures. Our figures can provide a quick snapshot, or can give an overall picture of trends in the industry which is a matter of importance both to consumers and participants in the Scheme.

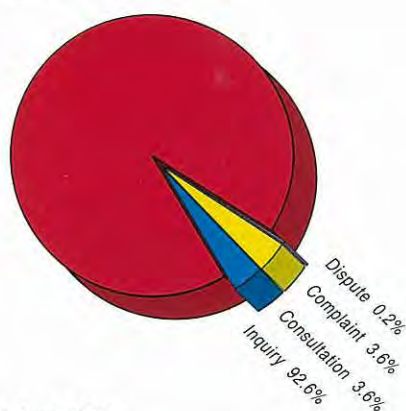
The proportion of cases logged against each carrier has changed compared with the previous year, and this is in part attributable to the entry of service providers into the Scheme. However, it is interesting to note that cases against Optus have increased from 8.28% to 12.13%, while cases against Telstra have decreased from 89.65% to 80%.



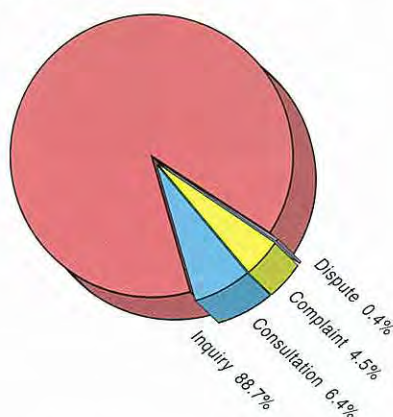
Complaints are required within 28 days, and if they are not received, these cases are upgraded to Disputes, and are then case managed by the Deputy Ombudsman.



Comparison of Total Case Breakdown. (%)
1 July 1995 – 30 June 1996



1 July 1994 – 30 June 1995



Inquiries represented a fairly consistent 92.6% in the current year, and 88.7% in the previous year. This is in part evidence that our investigative staff are able to satisfy callers at an earlier stage, and in part evidence that many people call us prior to contacting their carrier or service provider, or not having exhausted all possible avenues therein.

In terms of regional variations, it is apparent that both Western and South Australia are still under-represented in our statistics when compared with their respective populations. These variations are quite consistent with the previous year, in that Queensland and New South Wales are over-represented in terms of overall cases, and Victoria's cases are roughly in proportion to its population.

The figures relating to issues complained about are self-explanatory, and will be addressed in greater detail in the following section.

After receiving and resolving complaints about the industry for some time now, we are in an excellent position to be able to identify changing patterns and trends, as well as focus on areas such as billing, which feature on a consistent basis. Over time, our statistics will develop into a valuable resource for the industry as a whole.

3.1.1

Basic Carriage Service (BCS)

Inquiries: 843
Consultations: 37
Complaints: 14
Disputes: 3

This issue identifies the standard tariff schedules implemented by the three carriers — Telstra, Optus and Vodafone.

At the TIO, the major reference to this investigation issue is to Telstra services on the standard Public Switched Telephone Network (PSTN). However, Optus and Vodafone also have Basic Carriage Service guidelines which outline their products, services and tariff schedules which are used by the TIO in assessing cases.

The majority of the BCS cases at the TIO fall into the 'Miscellaneous' and 'Quality' categories which are broad classifications covering many issues such as:

- zoning and charging arrangements,
- problems with enhanced services such as Call Diversion and Call Waiting,
- contract terms and conditions,
- complaints about charges for new services,
- assistance with interpretation of carrier liability clauses.

Number allocation has also become a cause for concern for the TIO, falling under the BCS issue. Complaints involve redirection or provision of numbers to new businesses or those that have relocated premises. Often, complaints could be avoided if the location and history of numbers in question was more closely considered by the carrier before allocation.

Case note:

A complaint was received by the TIO from a customer who had established a new business. A number was allocated to the business which had previously been leased to a dating service. The complainant believed that his business was suffering due to the number of calls received which were for the previous dating service. The complainant stated that he had exhausted all avenues in resolving this matter and turned to the TIO as a last resort. The complainant estimated that it would cost approximately \$2,751 for printing and advertising to change the number. Telstra considered the complaint and \$2,751 was offered as a gesture of goodwill to pay for the costs in changing the business service number. The complainant was satisfied with this outcome.

A large number of the cases received by the TIO under the BCS classification require the TIO to give complainants informative and independent advice on the policy guidelines of the carriers and are usually resolved at an early stage, once the complainant has a broader understanding of technical, policy or legislative considerations.

However, cases at the TIO under the BCS classification may require Investigations Officers to make the appropriate referral to, for example, AUSTEL, to deal with issues relating to the setting and approval of tariffs. The Australian Competition and Consumer Commission is also a relevant body for initial referrals of BCS related complaints, for example, where advertising and general business standards can be examined which may involve matters such as false or misleading advertising and/or other possible breaches of the *Trade Practices Act*.

3.1.2

Billing

Inquiries: 6,800

Consultations: 431

Complaints: 575

Disputes: 24

Billing continues to make up the bulk of the cases handled by the TIO, consistently comprising more than one-third of the total cases, but approximately 45% of all Consultations and around 60% of all Complaints.

Of the billing Consultations and Complaints, the main issues raised by customers (in order of the number received) are:

- Metered calls 18.7%
- Payment 17.4%
- Information calls (1900/0055) (Australia) 14.7%
- Delay in billing 12.7%
- Overseas 'Partyline' calls 10.6%

In the TIO's last annual report, we noted that cases included under the heading of billing did not include queries from mobile customers. The method of recording cases has changed since the last report was issued and billing queries concerning mobile services are now provided in detail.

Of the total number of billing cases, queries concerning Public Switched Telephone Network (PSTN) services comprised around 86%, with billing queries for mobile services making up the remaining 14%. This is not surprising when looking at the number of customers connected to each type of service and seems to indicate a similar level of concern about billing issues by customers, regardless of the type of service provided.

One noticeable shift which appears to have occurred, based on case statistics over the past year, is that cases about itemised calls (eg STD, information calls, IDD) now exceed the number of cases concerning metered calls, whereas in 1994/95 the majority of billing complaints were about metered call issues. Of course, while cases concerning (primarily 1900 services) and overseas

Billing Cases Since 16 February 1996

PSTN	Call Charges Record	Cards	0.2%
	Call Charges Record	Delay	10.2%
	Call Charges Record	IDD	2.7%
	Call Charges Record	Info Calls (Australia)	12.7%
	Call Charges Record	Mobiles	0.7%
	Call Charges Record	Operator-assisted	1.8%
	Call Charges Record	Other Charges	5.6%
	Call Charges Record	STD	4.0%
	Call Charges Record	Partyline (IDD) Calls	9.1%
	Discount		1.9%
	Metered Calls	Delay	0.7%
	Metered Calls	Metered Calls Dispute	16.1%
	Payment		15.0%
Mobiles	S & E, F - Plans*		5.4%
	Call Charges Record	Delay	3.0%
	Call Charges Record	IDD	0.6%
	Call Charges Record	Info Calls (Australia)	0.2%
	Call Charges Record	STD	2.7%
	Call Charges Record	Partyline (IDD) Calls	0.5%
	Payment		6.5%
	S & E, F - Plans*		0.4%

* Service and Equipment, Flexi-plans

calls (primarily calls to 'Partyline' services) now make up a combined total of around 25% of all billing cases received by the TIO, not all of these cases necessarily raise the issue of accuracy of call charges.

'Partyline' is the term we use to identify calls to 'telecafés' and sex-lines or services operated overseas in countries such as Israel, Guyana and the Dominican Republic. These calls can be costly and, by their nature, often raise sometimes delicate domestic and other concerns, with a general reluctance on the part of some people to acknowledge that calls of this nature have been made. An example is where the lessee of a telephone service has strongly denied that anyone could have made such calls, but it has later been found that someone (for instance a family member) did in fact make the calls but was initially reluctant to admit doing so.

Partyline (IDD) Calls

Complaints about issues in relation to Partyline (IDD) calls have continued to receive considerable publicity and media coverage. Many customers who have been billed for calls to these services strongly believe that there must be some interference or manipulation of the call charging system which has led to them being incorrectly billed for Partyline calls.

The TIO investigates each complaint on an individual basis and in the majority of cases relies on the outcome of standard tests and checks which carriers can perform to check the integrity of their billing systems. (The TIO does not have the resources, except in exceptional cases, to perform testing of this nature itself.)



In the case of PSTN services, these tests might involve physical inspection of cabling and customer premises wiring to check for any evidence of unauthorised interference, testing by Call Charge Analysis Equipment (CCAE) on the operation of call charging equipment, and verification of charging by obtaining data on disputed calls from a carrier's international call switching equipment.

In general, the TIO takes the position that any fault condition associated with a telephone service which might result in a customer being charged for calls that were not made from their telephone service, would be evident in the reports provided by carriers outlining the range of tests performed by carrier technical personnel. That, however, is not necessarily the end of the matter. Customers themselves are often reluctant to accept that no technical evidence can be found of interference and/or error, particularly in cases where the lessee of the telephone service concerned did not make the calls and has no knowledge of the identity of the individual who may have made them.

The TIO will look at all the circumstances of the case and where there is a reasonable doubt as to the integrity of a customer's telephone service, or where some other element of doubt is raised, the TIO will seek to resolve a case in a customer's favour.

In the absence of such doubts, the TIO will conclude that there is no evidence to support an adjustment to charges.

Information calls (1900/0055)

From the cases the TIO receives about information calls, it would appear that there continues to be a lack of awareness by customers generally of the availability, nature and cost of calls to 1900 services. This is further complicated where a customer of a PSTN service may have preselected their long distance carrier as Telstra and then receives a bill from Optus for calls made to 1900 services provided through the Optus network.

There still appears to be a need for further customer education to advise customers generally that certain calls, including 0055 and 1900 calls, are not pre-selectable and will be billed by the telecommunications carrier whose network provides the particular service, regardless of which carrier a customer may have elected to carry their long distance calls. Of course, the same issue may confront some Optus customers who choose Optus as their sole carrier, both for long distance and local telephony.

The TIO receives many calls from customers concerned about the general availability of these services, their content and aspects of the advertising of the services. The TIO is, however, limited to pursuing issues of billing integrity and ensuring that customers are charged the correct tariff for calls. Issues involving message content and advertising do not fall within our jurisdiction. The Telephone Information Services Standards Council (TISSC) can assist customers in some cases with concerns about 0055 and 1900 message content and advertising.

As with Partyline calls, one significant difficulty is that in the majority of cases it is impossible for the TIO to establish the identity of a caller to a disputed telephone number. Rather, the TIO can only investigate the technical aspects of a telephone service to establish the telephone service from which the calls were made.

The starting point is that the lessee of a telephone service is liable for all calls made from a service connected in their name, regardless of whether they may have personally made the calls or have knowledge of the identity of the person who made the calls. This is clearly an issue which needs to be reinforced within the community generally. As noted earlier, the TIO will intervene when there is real doubt as to the origin of disputed calls.

A further aspect which would appear to require a heightening of customer awareness is the open access provided as a matter of course to the majority of telephone services. Many customers are not aware that 1900, 0055 and/or IDD calls can be made from their telephone service until after they receive a bill in relation to calls of that nature. Information on the availability of the various call-barring options which can be utilised at no charge are also issues which demand a far greater degree of customer awareness and this responsibility clearly rests with the carriers.

Metered Calls

With itemisation of timed calls now provided to nearly all Telstra customers, complaints about metered calls can generally be seen as a concern over billing for the number of untimed local calls made from a customer's telephone service.

As with all cases handled by the TIO, we are obliged to allow a carrier the opportunity to investigate a customer's concerns before we take action. In the case of metered calls, this often means that by the time a customer contacts us, Telstra (until very recently the only carrier providing local metered calls) has performed extensive testing of a customer's telephone service and call charging equipment. Those metered call complaints we receive are therefore found to be cases where Telstra has confirmed the integrity of its metering equipment through its investigations but the customer does not accept the outcome of Telstra's investigations.

In investigating complaints involving the accuracy of metered calls, the TIO will ensure that Telstra has performed the required testing of the cabling, telephone exchange and customer premises aspects of its network and also connected CCAE testing equipment to a customer's telephone service. CCAE is a generic term which covers a number of generations of call charge testing equipment which, in some cases, is totally separate to a customer's telephone service, or in other cases, is an integral part of a telephone exchange (as is the case with the more modern, computerised exchange equipment).

CCAE will provide details of all calling activity on a customer's telephone service during the period it is connected and provide data on the operation of the call metering equipment associated with the individual customer. This might be a physical meter (not unlike the odometer in a vehicle) or, in the case of more modern computerised telephone exchange equipment, a metering device incorporated into the software of the exchange. The TIO is presented with evidence and testing data across a wide range of telephone exchange technology and this requires a high degree of skill in the interpretation and analysis of data of this nature. In some cases, complainants have approached

the TIO with concerns following incorrect advice provided by Telstra staff as the result of either inexperience or misinterpretation of information.

Complaints about metered calls are perhaps the most difficult cases to resolve with customers, particularly in cases where there may be no technical evidence of fault or error, but where a customer remains strong in their belief that an overcharge has occurred. In this regard, while the TIO must rely on technical evidence provided by the carriers as to the reliability of the metering system as a whole, evidence provided by the customer in the form of either detailed handwritten records kept of telephone

use or, in some cases, separate customer-installed metering equipment, will be considered.

Billing Delays

Delays experienced by customers which have been brought to the attention of the TIO fall into two categories.

Firstly, where there has been a delay in bringing call charges to account and secondly, a failure to issue bills when a customer transfers from Telstra as their main carrier to a service provider or reseller, or vice versa.

For instance, in late 1995, Telstra experienced systemic difficulties in billing those of its customers who called an Optus digital mobile service. The nature of this delay arose partly from Telstra and partly from Optus. In these cases, the TIO sought a reasonable extension for customers to pay their accounts. In other cases, however, where an unacceptable delay might be able to be clearly attributed to a failure by Telstra, that carrier has told the TIO it will not bill customers for charges outside a 12 month period. Optus and Vodafone believe that they can bring all call charges to account within a period of 90 days outside the standard billing period with certain exceptions, eg international mobile roaming charges.

On the second issue, a number of factors have led to delays in service providers and resellers billing their customers. Part of this delay is in the change process itself which the TIO has generally found to be far from acceptable. Again, the TIO pursues a fair and reasonable extension of time to pay, for customers affected by billing delays stemming from changes to service providers or resellers.

Optus Local Calls

At this stage, Optus has only recently begun to offer a local call service and to date no complaints about the Optus local call service or local call billing have been received. However, it will be interesting to revisit this issue in the TIO's next annual report which will be issued shortly after the proposed deregulation of the industry and which will allow further carriers the opportunity to provide local call switching services.

3.1.3

Churning and Carrier Selection

Inquiries: 1,112

Consultations: 83

Complaints: 32

Disputes: 1

The sound of the word 'churning' conjures up the image of turning milk into butter for most of us, but the term, in telecommunications, means to change or transfer from one carrier or service provider to another carrier or service provider.

Before the advent of telecommunications service providers, churning was limited to transferring between telecommunications carriers such as Telstra, Optus or Vodafone with fixed or mobile services. With the inclusion of service providers, consumers are able to churn services to a variety of telecommunications companies, whether these services provide local, long distance or mobile services, or a combination of services.

The standard procedure for transferring services is to fill out a transfer form available from the carrier or service provider (or provided by door-to-door sellers and newspaper advertisements). The form is sent to the telecommunications company that one is transferring from. The forms are processed in this way so the service provider or carrier can then inform the company to which the customer is transferring, of the details and services the customer intends to transfer.

Customers have for the last few years had the opportunity of choosing their long distance carrier for their fixed services. Service providers opened up this market by offering discounts on long distance calls to customers and often giving customers the choice of long distance carriers from whom they get their discounts. In this instance the service provider has the direct relationship with the carriers. This may differ if service providers have their own switches upon which they direct their own traffic. With mobile services, service providers normally supply discounts with one mobile carrier, but this market trend is changing.

Confusion among customers is understandable given the number of ways they can approach churning and carrier selection. The best way to cope with possible problems that may arise is to ask questions at the beginning of any transfer or selection, including how will the service be transferred, when will it be completed, who will issue the bill and when will accounts begin arriving?

The TIO has received a number of Inquiries from people stating that they have not transferred their services away from their carrier/service provider and yet are being billed by telecommunications companies of which they know nothing. With these types of complaints the TIO normally finds that people have signed to have telephone bill discounts through a club, association or charity of which they may be a member.



Case note:

In one case a caller told the TIO that he was being billed by a service provider that he had not heard of; the TIO discovered that he had signed a transfer form at his RSL club. The TIO staff assisted him in transferring back to Telstra which he had not intended to leave. Customers often fill out these forms without reading the fine print or are not fully informed by the carrier/service provider at the point of signing for discounts.

On the other hand, there can be accidental churns, where the number of a service is quite similar to another customer's number who has requested to be churned and the wrong service churned. Such a case happened to a business in Melbourne which found that one of its rotary numbers had been accidentally transferred to Optus for long distance. This situation was easily rectified and Optus offered to waive the disputed account.

3.1.4

Credit Control

Inquiries: 1,233

Consultations: 71

Complaints: 32

Disputes: 3

The number of credit control cases received by the TIO in the last 12 months is equivalent to the number received in the previous financial year. As with the previous year, the predominant credit control issues relate to barring, debts and security deposits.

It is standard practice for Telstra to request that a security deposit be paid prior to the connection of a new service if the customer has not had an account in the past, or if they have a poor payment history on previous accounts.

Many of the calls the TIO receives regarding security deposits are from people who object to the practice, or who feel that a security deposit is not necessary in their circumstances. There have also been calls from people who have had difficulty retrieving their security deposit once the specified period (usually 12 months) has expired.

Security deposits also apply to the connection of mobile services. In a number of instances customers appear not to have been informed that a security deposit is required until after they have purchased and connected a mobile telephone. In many of these cases, customers have stated that they would not have proceeded with the sale had they been forewarned that a security deposit was required.

Case note:

When a customer requested the connection of a new service, she was informed that she had an outstanding debt in her name. The customer claimed that the debt was not hers, and consequently refused to pay the amount in question. Investigation into the matter revealed that the debt was in a name identical to the current name of the complainant, and the date of birth was also the same. At the time the debt was incurred, however, the customer had been unmarried and consequently using her maiden name. Upon being presented with the marriage certificate verifying this information, Telstra agreed to cease pursuing the customer for the debt.

In other cases, customers have been advised that they have an outstanding debt for a previous service, but little or no details of the debt are provided. In some of these cases, the debt was incurred years beforehand, and understandably the customer no longer has receipts to verify that the payment should it have been made. The TIO believes it is unreasonable to expect a customer to pay a debt without providing conclusive details of that debt.

Although credit control policies employed by carriers may not strictly be within the jurisdiction of the TIO, the TIO will consider cases where the practice of the carrier or its debt collection agency appears to be unreasonable. One such example is Optus' practice of calling frequently dialled telephone numbers on the account of a customer with an outstanding debt in an attempt to ascertain their whereabouts. This practice has serious privacy implications which are of concern to the TIO and which the Privacy Commissioner has advised are in breach of the Information Privacy Principles.

Unlike Telstra, Optus usually does not require a security deposit to be paid. The exceptions to this are if usage is very high or if international roaming is requested. Optus has other means of credit assessment, which in the case of connection of mobile phones includes a credit check with the Credit Reference Association of Australia (CRAA). It is also part of Optus' credit control procedures to suspend a service if there has suddenly been a significant increase in calls on an account. Although Optus will attempt to contact a customer several times prior to suspending the service, some of the calls received by the TIO are from customers who have had no notification from Optus, and who were not aware of this practice.

Barring is another means of credit control that is utilised by telecommunications carriers. In cases where a person does not pay a security deposit, or if there is an account in arrears, a bar can be imposed on a service, allowing restricted access only.

Barring can also be requested by customers if they wish to control the type of calls that are made from their service.

Case note:

A customer called Telstra and requested '0055' and '1900' barring on his service as his daughter called these services frequently and ran up considerable charges on the telephone account. The barring was not implemented until more than 10 days after the customer claimed to have requested it. Several hundred dollars worth of 1900 and 0055 calls were made in the interim period.

In response to the TIO's investigation into the matter, Telstra agreed to rebate the charges for 1900 and 0055 calls made after the date the customer claimed to have requested barring. As calls had also been made through the Optus network in this period, Telstra also credited the amount equal to the amount owing to Optus to the customer's account.

Telstra has also introduced the option of an 'Incontact Service' to allow customers who are financially disadvantaged to have a telephone service at no ongoing expense. In cases where there is an outstanding account, Telstra may restrict a customers' service to Incontact only, but customers can also request this option of their own volition. It should be noted however that the service is not available to all customers and that some conditions apply.

Many of the TIO's credit control cases relate to outstanding debts. In some instances customers have received a debt collection letter for a debt which they claim is not theirs. In such cases, Telstra takes the view that it is up to the customer to prove that they are not the same person to whom the debt belongs, by providing ID and also by verifying their whereabouts at the time the debt was incurred.

Some of the cases received by the TIO relate to barring not being activated by Telstra when the customer claims to have requested it. As barring needs to be implemented at an exchange level, until recently only Telstra could organise it.

3.1.5

Directories

Inquiries: 518

Consultations: 34

Complaints: 29

Disputes: 2

White Pages

Nearly 3% of the total cases in the last year have concerned directory problems. Cases continue to be received from residential customers who have a silent number or a suppressed address entry (the omission of the street name and number) in the directory, the matter can have serious privacy implications.

Case note:

A profoundly deaf complainant who is unable to use his service for voice transmission and only uses his service for communication by facsimile had been quoted \$30 to have the word 'fax' included in his White Pages entry. He objected to this standard charge and felt that he was being discriminated against as he is unable to use the service for voice transmission. He did not think Telstra had taken into consideration his individual circumstances. The case has been resolved and Telstra has agreed that, given his special situation, it will list the word 'fax' free of charge.

A large number of cases concern the omission of, or error in, a name or business directory. The TIO has found that in some circumstances it is the fault of the person concerned, perhaps because they have missed the publishing deadline for the new directory, or have incorrectly marked the confirmation form in the case of business entries. It is apparent that in some of the cases the problem may have been resolved by directory staff clarifying details with the customer.

Case note:

A business customer closed down one of his two businesses and consolidated all telephone lines into the remaining business. When he queried additional charges on his account he was informed that they were charges for his Commander system. He eventually found, however, that the additional charges were for a bold type listing for a company that had ceased trading three years earlier. He maintained that he had notified White Pages that he did not need the listing when the company ceased trading. Neither he nor Telstra have any record of this. With the TIO's involvement the customer was given a credit for the bold type charges for the previous three years.

A secondary issue is the associated charge for not having a number listed. The TIO is unable to investigate a set tariff, but it can ensure the correct tariff is being charged. Further concern has been expressed by consumers about charges for additional or highlighted information, on top of the standard free entry.



Case note:

A business customer returned his bold listing confirmation to White Pages. He decided that the company could not afford this added expenditure and thought he would rely on the ordinary free listing. He contacted Telstra to advise this and was informed he would need to cancel it in writing. He crossed out the sample listing shown on the form and added 'no entry required'. Directories staff took this to mean no entry at all and, consequently, the company did not have any entry in the new directory. This was satisfactorily resolved by TIO intervention and an agreement was reached with Telstra assisting with alternative advertising costs.

Telstra's entry policy and contract conditions have also caused confusion with customers. For instance, many customers do not realise that all changes for a standard entry will continue to appear in subsequent editions of the directory and will continue to be charged unless the listing with Directories is cancelled in writing.

3.1.6

Faults

Inquiries: 1,747

Consultations: 54

Complaints: 50

Disputes: 8

In the period 1995/96, cases relating to telephone network faults represented 9.14% of the TIO's total number of cases, a small increase from last financial year. Cases involving faults were the third highest, behind billing and provision of service.

Network faults can occur in the exchange or in the local cabling. Telstra is responsible for their repair and maintenance, which is provided for by the annual service charge. Included in this is the first handset, provided it is rented from Telstra.

Case note:

A complaint was received from a customer who questioned the charge for Telstra to repair damage caused to a Telstra plant by some of his staff when oxy-welding. Whilst the complainant acknowledged that his company was liable for the cost of repairing the damage, the complainant queried the level of that charge (\$200 for call out and a rate of \$150 per hour for 5.5 hours). The complainant pointed out that the repair was carried out in normal working hours. Telstra reviewed the charge applied and reduced the charge to \$350. The complainant was satisfied with this resolution.

Telstra states restoration targets in its Basic Carriage Service guidelines, aiming to return services to working order in accordance with specific standards. These targets are 12 hours for urban centres, two working days in rural areas and three working days in remote areas. The TIO can be useful in attempting to fast-track fault repairs when a complainant has a particular or urgent need. Repair has occurred when a service is returned to complete working order.

Recurring faults or a delay in their repair can be inconvenient and frustrating for domestic customers and potentially devastating for small businesses. The TIO is commonly approached by people in small business seeking compensation from Telstra for financial losses incurred while their telephone service was faulty. 12.38% of small business cases this financial year involved service faults, which highlights this concern.

Of all cases involving delay, 57.4% were requests for repair, while 8.7% included claims for compensation.

26.7% of cases in the fault category related to recurring faults, while 5.9% involved compensation claims for recurring faults.

The TIO's jurisdiction excludes telephone cabling beyond the network termination point, other than cabling between this point and the first telephone. Faults can obviously occur in customer premises equipment (CPE) or privately owned hardware, but this is also outside the jurisdiction of the TIO. Customers should be aware that they, rather than Telstra, are responsible for the repair and maintenance of their own telephone equipment.



3.1.7

Land Access

Inquiries: 342

Consultations: 12

Complaints: 33

Disputes: 7

In 1995 the TIO dealt with an interesting assortment of land access issues which represented 1.9% of all cases.

The Land Access rights granted to Telstra, Optus and Vodafone in the Telecommunications Act 1991 often cause concern to owner/occupiers of land. There appears to be a broad lack of understanding of the rights of the carrier to access land. A large proportion of complaints in 1996 regarding Land Access illustrated the broader community's disbelief that carriers are able to enter private land in order to inspect it for the purpose of constructing a facility on, over, through or under any land, in order to carry out their functions as telecommunications providers.

Case note:

Recently, the TIO dealt with a complaint from a couple who leased their farm while they took a trip around the world. The carrier had failed to issue the appropriate notice to the correct address, advising the owners of its intention to perform works on their property and proceeded to perform works. In the course of the work the carrier damaged a water pipe which resulted in the tenant having no water. The tenant advised the owners and cancelled the lease; the owners then had to cut short their holiday and return to Australia. The carrier admitted that its employees had damaged the pipe in a deep creek bed, but disagreed with the amount claimed for costs for repairs, loss of rental income, and costs associated with the return to Australia. The TIO determined the amount that should be paid to the complainants.

The TIO cannot prevent carriers from pursuing a route chosen when laying cable across a property or to relocate a facility because of perceived unsightliness of the structure. However, the TIO has taken the view that when carriers exercise their Land Access powers they may potentially be liable to pay for losses for diminution of value to properties in some cases.

The TIO's experience indicates the need for a more consultative approach on the part of carriers when exercising their Land Access powers, the necessity for more information to be provided in notices issued to owners/occupiers of land, and for a greater general awareness in the community of the rights of all parties involved.

It is hoped that the review of the Land Access Code will provide for a clearer and more consultative process in an effort to resolve complaints involving land access issues.

The variety of cases the TIO has dealt with in 1996 range from complaints relating to the laying of cables across land, severing of telecommunications cables, placement of facilities in front of suburban properties, damage to property, and responsibility for costs associated with relocation of cables and equipment.

The *Telecommunications Act 1991* provides that when a carrier wishes to exercise its Land Access powers, it must give reasonable written notice to the owner of the land, or to the occupier of the land in instances where the land is occupied by a person other than the owner. In the past year, the TIO received a number of cases relating to the issuing of notices by the carriers and more specifically, the lack of detailed information contained in the notices.

A large proportion of cases investigated by the TIO related to severing of cables by farmers, trades persons and even suburban gardeners. In many instances the issue of inappropriate cable depth and/or lack of indication of siting of cables within a specific vicinity are highlighted by the customer as reasons for

Case note:

A man rang the TIO for advice following an accident involving his 14 year old son who had, while driving his car, hit a telecommunications pillar and caused over \$10,000 worth of damage. The man wanted to know what his financial responsibilities were in relation to the damage. Unfortunately, the TIO was unable to help.

unintentionally damaging cables. In matters of this nature the TIO has taken the view that while the customer must take all reasonable steps to ensure that telecommunications equipment is not damaged, carriers should also take reasonable measures to ensure that cable locations are adequately identified.

The TIO has received complaints concerning alleged damage to private property caused by carriers as a result of exercising their Land Access powers. Carriers also have a duty and responsibility to do as little damage as possible and to rectify damage.

Many complainants to the TIO could testify to the need to ensure that all reasonable measures are taken and care is exercised before any works are performed. In many cases, the high cost paid to replace and or repair cables could have been prevented by making prior contact with the carrier. The TIO believes that the community needs to be made aware of the consequences of not exercising due care.

3.1.8

Mobiles

Inquiries: 1,612

Consultations: 111

Complaints: 83

Disputes: 1

Complaints about mobile phone services have grown, in line with the overall growth of the TIO Scheme. Mobile cases represent 8.89% of the total cases this year, just under 1% less than the preceding year.

Cases about mobiles include issues of network coverage, equipment (when handsets are sold as part of a contract or lease agreement), network performance, the AMPS phase-out and GSM contracts. Cases relating to mobile call charges are logged separately under 'Billing'.

Mobile phones continue to increase in popularity among personal and small business users in Australia. Latest estimates are that there are approximately 2.7 million AMPS, or analogue, phone users (supplied by Telstra and Optus) and 1.1 million GSM, or digital, phone users (supplied by Telstra, Optus and Vodafone) in Australia which now has one of the highest take-up rates of the technology anywhere in the world.



The upgrade of the TIO Complaint Management Software (CMS), in mid-February, has enabled a more detailed picture of complaints about mobile services since that time.

Cases logged since mid-February reveal, in particular, a disproportionately high number of complaints from GSM phone users. Surprisingly, while GSM users represent about one-third of all mobile phone users, they account for approximately 82.7% of mobile cases for this period, whereas AMPS users account for 17.3% of such cases.

The major problem for GSM users appears to be mobile phone contracts, which account for more than 42% of all mobile cases since mid-February 1996. While some consumers want to be released from contracts because of poor network coverage or performance in their local areas, many misunderstand the fixed-term contracts believing that they can terminate the agreement at any time, or suggesting that the requirements for notifying termination of the agreements are unreasonable. Many have not considered the nature of the financial commitment they have made and find payments difficult to sustain, yet others are indignant at having to pay for minimum call charges or monthly repayments when they may have lost or had the phone stolen.

The number of cases about GSM contracts shows that consumers are having trouble understanding the wording and/or sales conditions when purchasing GSM phones and services. The TIO recently highlighted these findings to industry.

On the question of coverage, consumers should request coverage maps and should consider insurance if they are concerned about security.



The TIO reports regularly on case statistics, but issues of network reach or technical performance (either of the AMPS or GSM networks) are matters for other agencies. AUSTEL publishes regular 'Quality of Service' Bulletins on network performance. However, cases about network performance accounted for 9.9% of the total mobile cases and the GSM network took the lion's share of these with 6.8%. These include complaints about call drop-out or fade-out and poor quality signal. A range of factors can affect network performance including the user's distance from the nearest base station, local geography, climatic conditions and obstruction of the signal by buildings.

Coverage is another concern, accounting for 17.5% of the mobile cases. Telstra's AMPS network (used by both Telstra and Optus) has been established longer and has greater geographic coverage. However, because of the increasing demand for GSM phones and the limits of the existing GSM networks, the TIO has received a high number of complaints about poor GSM coverage.

18.7% of equipment cases relate to GSM phones, whereas 3.5% relate to AMPS handsets. Brand names are not recorded for TIO cases. Another significant contributor to the high rate of complaint about GSM phones is the greater technical sophistication, requiring complex operation and programming.

Mobile Cases since 16 February 1996. (Per cent)

AMPS	Coverage	1.9%
	Equipment	3.5%
	Inducements	6.4%
	Network	3.1%
	Phase-out	2.4%
GSM	Contracts	41.6%
	Coverage	15.6%
	Equipment	18.7%
	Network	6.8%

For AMPS users, the largest area of complaint concerns inducements to churn or transfer across to the GSM networks. These statistics are particularly important to the TIO which will track complaint levels as AMPS users migrate to GSM networks in the phase-out of AMPS.

Reports of mobile phone theft, especially from parked cars, are increasing. The TIO recommends users adopt the following security measures to reduce the likelihood of receiving an alarming bill, should your phone go missing.

- Program a pin code into your phone
- Insure the unit
- Don't leave it in your car or unattended.

Carriers and police alike are searching for a deterrent and may have a partial solution in tracking the International Mobile Equipment Identifier of a phone. This IMEI, when combined with a locked-in SIM card allows the stolen phone to be identified by the mobile carrier immediately it is used. Telstra has publicised its ability to provide this service to police, and both Vodafone and Optus have indicated their ability to follow suit.

With cooperation between the carriers and police and with widespread publicity, this could prove to be a significant deterrent to thieves, as the phone will be useless to them.

3.1.9

Privacy

Inquiries: 979

Consultations: 24

Complaints: 19

Disputes: 2

The TIO received a total of 1,024 cases relating to privacy during the last financial year. This is a decrease of almost 3% compared with 1994/95, when the TIO recorded 1,100 cases relating to privacy. Despite the decrease in total cases, these figures continue to show that consumers are extremely concerned about privacy in the field of telecommunications. The TIO is represented

on the AUSTEL Privacy Advisory Committee and this allows the Office to remain informed of new privacy issues and developments relating to privacy that continue to emerge.

The upgraded Complaints Management System (CMS) is now broken down into the following privacy categories:

- non-specific
- nuisance calls
- silent lines
- telemarketing.

Between the upgrade and 30 June 1996, 166 cases were recorded relating to nuisance calls, representing a significant 38.6% of privacy cases over the period.

Under Section 85ZE of the *Commonwealth Crimes Act 1914*, it is an offence to knowingly use a telephone to harass another person. In circumstances where a customer claims to be receiving nuisance calls, the TIO will request Telstra to place malicious call tracing equipment on the telephone service receiving the calls, in accordance with its normal policy. Furthermore, the TIO can ensure that Telstra follows the correct procedure in terms of issuing warning letters to the lessee of the originating service. If nuisance calls continue after the carrier has issued the second warning letter, the TIO can no longer investigate and the matter must be referred either to the Australian Federal Police or the relevant State Police Force for further investigation.

The 'non-specific' privacy category encompasses complaints relating to the contact, by carriers, of third parties while investigating complaints, voice monitoring queries, allegations that Telstra staff have misused customer information, disclosure of 'B party' names on accounts and other general privacy concerns. Some 128 cases have been allocated to this category since mid-February 1996. In a recent case received by the TIO, it was alleged that a carrier representative contacted the next-door neighbour of a customer who had an outstanding account, in an attempt to locate the customer. The next-door neighbour called the TIO to express concern at this method of investigation. No further action was requested of the TIO and it is therefore unclear as to whether it was in fact a carrier representative that made the initial call. However, advice to the TIO and AUSTEL from the Privacy Commissioner is that such conduct is in breach of the Information Privacy Principles of Section 14 of the *Privacy Act*. The TIO intends to pursue any cases which raise this sensitive issue. Additionally, privacy concerns have been expressed regarding the provision of 'B party' names that appear on accounts issued by some service providers. The TIO considers that the provision of such information may indeed have privacy implications, although the service providers who offer this service say that their customers like it. The matter has been discussed with both AUSTEL and the Privacy Commissioner.

Silent line complaints accounted for 87 cases received at the TIO since the upgrade of CMS. Currently there are more than 850,000 silent line customers in Australia and there appears to be a lack of understanding regarding the level of security they can expect with an unlisted number. While silent lines do

indeed provide a higher degree of privacy, they do not necessarily preclude customers from receiving unsolicited phone calls. There is an expectation held by many with silent lines that only those people and organisations to whom they have personally divulged their silent line details will be able to call them. Silent line customers should be wary when providing details to organisations, including hotels and local businesses. In a case investigated by the TIO, a complainant advised that after changing his silent line three times, he continued to receive unwelcome calls. He indicated that he knew the identity of the caller who was living with a carrier employee. The complainant inferred that the carrier employee was providing his silent line details. As Telstra does not have an audit trail of access to silent numbers it is difficult, unless the complainant can provide the name of the employee, to investigate such cases. As technology changes it is likely that complaints received by the TIO, including those surrounding silent lines and privacy in general, will become increasingly complex.

Finally, the TIO continues to receive complaints relating to telemarketing which have accounted for 11.4% of privacy cases over the last five months. People often consider the receipt of calls from telemarketing companies promoting goods or services, requesting donations or undertaking surveys, as an invasion of their privacy. Often, these approaches are made in the evening which many customers consider extremely intrusive of their personal time. Another area of concern is that silent line numbers can be accessed by random or sequential dialling Automatic Calling Equipment (ACE); sequential diallers are unable to differentiate between unlisted and listed telephone numbers. It should be noted that the Telemarketing Code of Practice discourages the use of such devices. The TIO refers customers who are concerned about calls from telemarketing companies to the Australian Direct Marketing Association.

Clearly, for the TIO the issue of privacy is a multi-faceted and interesting one. In order to keep abreast of the situation, tighter and better defined security measures are often required to ensure customers' privacy and the TIO continues to liaise with AUSTEL and the Privacy Commissioner in this area.



3.1.10

Provision of Service

Inquiries: 1,915

Consultations: 106

Complaints: 81

Disputes: 3

The TIO has received many cases relating to the connection of new or additional telephone services during the last financial year. Although these cases are not specific to Telstra, as they can also relate to delays in gaining access, for instance, to a mobile network, the majority involve Telstra's fixed network. The TIO raised a total of 2,105 cases for 1995/96, which represents 10.4% of all cases. This is an increase of almost 3% compared with 1994/95, in which provision of service accounted for 7.65% of all cases.

Since the upgrading of the Complaints Management System (CMS), the TIO has received 515 cases relating to provision of service. Of these cases, almost 60% relate to the delay in providing a new service, compared with 15.5% regarding an in-place service. It appears that many of these delays have been caused by a lack of cable, and in some cases, a lack of communication on the part of the customer and Telstra. Customers often complain that Telstra is concentrating its resources on the Pay TV roll-out at the expense of new telephone connections, but this belief has not been borne out in cases investigated by the TIO.

Provision of Service Cases Since 16 February 1996 (CMS)

In-place	Delay	15.5%
	Standard	9.3%
New	Delay	59.0%
	Standard	16.2%

While cases concerning provision of service account for 9.2% of all residential cases, the total number of cases recorded for small business services amounted to 16.7%. A number of assumptions can safely be based on these figures. For example, as small businesses rely on the telephone for their day-to-day operations, any delay in the provision of a telephone for a business can have drastic effects. It is therefore more likely that small businesses will lodge a complaint with the TIO about any delay they may be experiencing. Furthermore, small businesses often request more than one line and additional telephone facilities, which increases the complexity of the connection and may result in delays due to a lack of cable or resources necessary to complete the connection.

The TIO has investigated a number of cases where a delay in having phone connections has been claimed to have caused loss of income and reputation. Any claim for loss of business must be fully supported by documentation to quantify any claimed loss and evidence must be provided which indicates that such loss was solely and directly as a result of actions or inaction, on the part of Telstra.

A common complaint received by the TIO regarding provision of service relates to the failure of Telstra to attend appointments made with customers. In an effort to provide

customers with realistic and firm appointment dates Telstra has redefined the term Customer Required Date (CRD) and introduced the concept of Agreed Commitment Date (ACD).

Case note:

The TIO recently investigated a case for a customer who had been receiving nuisance calls up to 20 times a day for a period of 12 months. As the calls were originating from several different payphones, Telstra and the police were unable to track the nuisance caller. The complainant, who was dissatisfied with the lack of assistance, requested that Telstra divert his home telephone number to his mobile service. Subsequently, he retreated to a hotel, opposite the payphones that the majority of calls had originated from. During the first two days, each time the complainant received a call he looked out the window and noticed the same person at the public telephone. On the third day, the complainant called the police who arrived at the scene and after the complainant received a further call, arrested the nuisance caller.

3.1.11

Staff (formerly 'Operator')

Inquiries: 248

Consultations: 3

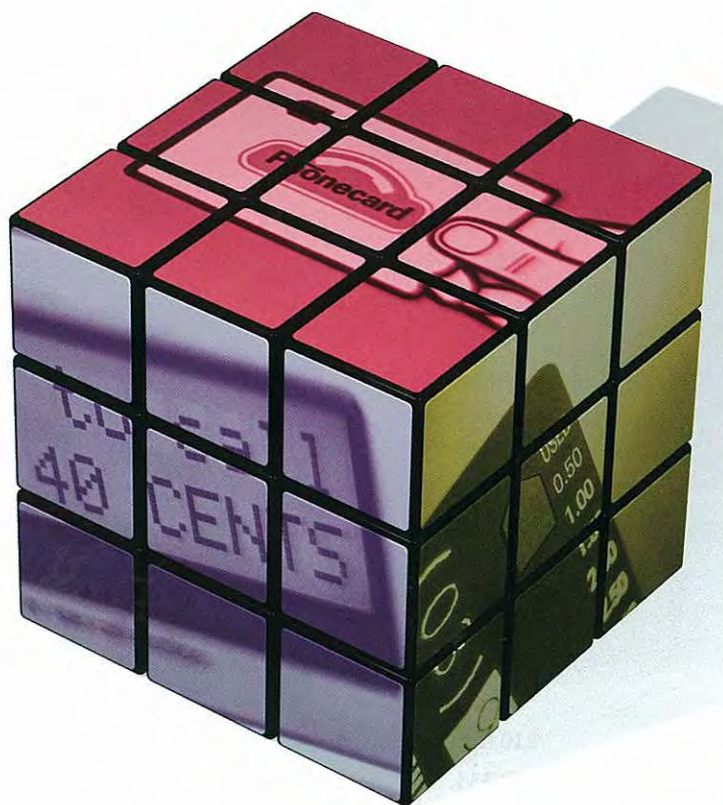
Complaints: 3

Disputes: none

This category relates to complaints that carrier or service provider staff have been rude or unhelpful, or that it is difficult to get through to a carrier or service provider due to congestion. If matters are urgent, TIO staff may ring the carrier or service provider concerned, and ask them to call the complainant directly. Complainants sometimes also allege that they were given false or misleading information by an operator or customer service representative, and that they have incurred unnecessary charges as a result.

Case note:

In a recent case investigated by the TIO, a customer requested that Telstra arrange for a new connection three months prior to the required date. Three months later, Telstra, having failed to meet a number of appointments, informed the customer that there were no cables available. Eventually, five months after the initial request, the customer's service was connected although all charges associated with the connection were waived due to the delay.



4



FINANCIAL STATEMENTS

Demand driven funding ensures that costs are recovered in line with the number of cases against the participant carrier or service provider. This provides a financial incentive for early resolution of cases.

4.0

FINANCIAL STATEMENTS

Unaudited Detailed Profit and Loss for Year Ended 30 June 1996

	1996	1996	1995	1995
	\$	\$	\$	\$
Funds Received/Receivable From Participants		1,928,262		1,772,316
Other Income		16,853		15,089
Total Income		1,945,115		1,787,405

OPERATING EXPENDITURE

Audit/Accountancy Fee	17,271	18,861
Bank Charges	7,144	5,685
Books and Publications	7,956	4,468
Computer Expenses	57,822	49,449
Conferences/Seminars	6,693	450
Consultants	54,039	25,641
Depreciation	109,614	96,441
Entertainment	7,966	6,905
Fringe Benefits Tax	3,096	3,751
Legal	29,770	20,662
Maintenance	2,180	1,908
Insurance	8,653	8,685
Marketing/Public Relations	210,054	265,634
Other Expenses	22,333	41,001
Payroll Tax	17,777	15,000
Postage	9,843	8,254
Premises: Rent/Outgoings	184,256	144,405
Printing and Information Expenses	24,853	13,996
Provision for Doubtful Debts	14,677	-
Recruitment Fees	11,620	66,080
Relocation Expenses	16,352	11,657
Salaries	893,731	862,333
Staff Training	20,742	16,381
Stationery	13,805	13,963
Superannuation	64,984	39,642
Telephone and Fax	80,680	77,085
Travel and Accommodation	60,235	72,173
Workcover	9,373	10,424
Total Expenditure	1,967,519	1,900,934

SURPLUS/(DEFICIT)

(22,404)

(113,529)

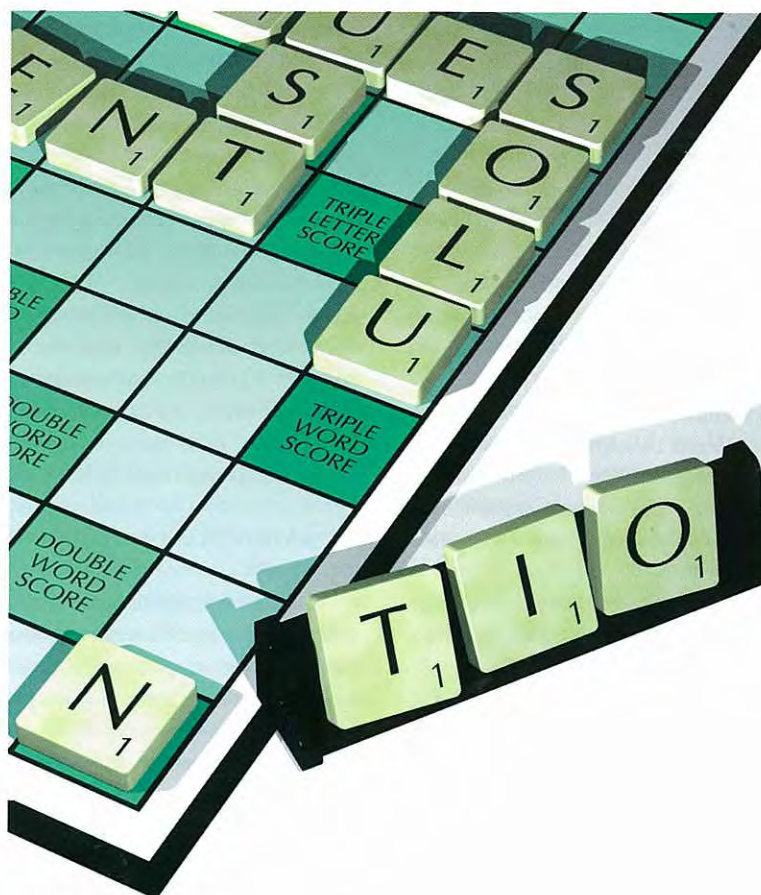
Audited Financial Statements and Directors' Report for the Telecommunications Industry Ombudsman Limited have, in accordance with legal requirements, been filed with the Australian Securities Commission and are available for public scrutiny.

Balance Sheet as at 30 June 1996

	1996 \$	1995 \$
CURRENT ASSETS		
Cash	304,671	203,104
Receivables	49,028	59,638
Other	2,734	1,753
Total Current Assets	<u>356,433</u>	<u>264,495</u>
NON-CURRENT ASSETS		
Plant and Equipment	110,372	180,489
Total Non-Current Assets	<u>110,372</u>	<u>180,489</u>
TOTAL ASSETS	<u>466,805</u>	<u>444,984</u>
CURRENT LIABILITIES		
Creditors and Borrowings	160,320	164,733
Provisions	28,776	29,285
Other	49,147	-
Total Current Liabilities	<u>238,243</u>	<u>194,018</u>
TOTAL LIABILITIES	<u>238,243</u>	<u>194,018</u>
NET ASSETS	<u>228,562</u>	<u>250,966</u>
MEMBERS' FUNDS		
Retained Profits	<u>228,562</u>	<u>250,966</u>
TOTAL MEMBERS' FUNDS	<u>228,562</u>	<u>250,966</u>

Statement of Cash Flows for the Year Ended 30 June 1996

	1996	1995
	\$	\$
	Inflows	Inflows
	(Outflows)	(Outflows)
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from members	1,898,501	1,802,011
Payments to suppliers and employees	(1,842,587)	(1,717,354)
Receipts from sundry sources	68,296	3,463
Interest received	16,853	11,626
Net cash inflow from operating activities	<u>141,063</u>	<u>99,746</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Payment for plant and equipment	<u>(39,496)</u>	<u>(20,974)</u>
Net cash (outflow) from investing activities	<u>(39,496)</u>	<u>(20,974)</u>
NET INCREASE IN CASH HELD	101,567	78,772
Cash at beginning of the financial year	<u>203,104</u>	<u>124,332</u>
CASH AT END OF THE FINANCIAL YEAR	<u><u>304,671</u></u>	<u><u>203,104</u></u>



5



APPENDICES

Our task is to give practical expression to the ideals of the Scheme by the integrity and professionalism of our decisions – so that the TIO Scheme is recognised, by both consumers and industry, as being of the very highest standard.

from AUSTEL, the Trade Practices 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 Trade Practices 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 Trade Practices Commission or another body; and
- (ii) forms the opinion that the complaint could be more conveniently or effectively dealt with by AUSTEL, the Trade Practices Commission or such other body; and
- (iii) obtains the consent of the complainant to refer the complaint to AUSTEL, the Trade Practices 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 Trade Practices 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 Trade Practices 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.

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;
- (d) liaising with AUSTEL, the Trade Practices 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; and
- (p) for ensuring that an accurate and up-to-date list of all participants in the TIO scheme is readily available to the public.

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:
 - (i) to make binding decisions under paragraph 6.1,
 - (ii) to make recommendations under paragraph 6.2,
 - (iii) to provide written reasons under paragraph 6.3,
 - (iv) to make findings of fact under paragraph 6.4, and
 - (v) to 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; or
 - (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 RESPONSIBILITIES 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 appoint and terminate the appointment of the TIO in accordance with the Memorandum and Articles of Association of the company, the Telecommunications Industry Ombudsman Limited and the TIO's contract of employment.

- (b) Within the framework of the TIO Constitution, to determine policies and practices relating to the administration of the TIO scheme.

- (c) To monitor the TIO Constitution and, from time to time, recommend to the Board amendments to the TIO Constitution as the Council thinks fit.

- (d) To receive and consider recommendations from the TIO for amendments to the TIO Constitution.

- (e) To provide advice to the TIO on the allocation of resources within the framework of global resources approved by the Board.

- (f) To receive and consider financial budgets and business plans (and any subsequent amendments thereto) prepared by the TIO.

- (g) 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.

- (h) 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.

- (i) To make recommendations to the Board as to the appropriateness, scope and timing of a review of the TIO scheme.

- (j) To provide advice to the TIO on the promotion of the TIO scheme and the preparation of the Annual Report.

10 RELATIONSHIP 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 matters 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 Industry 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 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 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.'

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

MEMBERS OF THE TIO

Optus Communications Pty Ltd
Telstra Corporation Pty Ltd
Vodafone Pty Ltd

5.3

VOLUNTARY PARTICIPANTS OF THE TIO

AAP Telecommunications Pty Ltd
ACW Services (resigned 15 August 1996)
Australian Communications Exchange
Call Australia
CorpTEL Communications
Digicall Direct
Digicall Fixed (formerly Prime Communications)
First Netcom Pty Ltd
Hutchison Telecoms
SITA Airline Telecommunications & Information Services
Spectrum Network Systems
Sprint Telecommunications (Australia) Ltd
switchtelecommunications (a division of TelePacific Pty Ltd)
United Telecommunications
Vodac
Worldxchange Pty Ltd

5.4

COUNCIL AND BOARD ATTENDANCE

TIO Council Attendance – 1 July 1995 to 30 July 1996

Hon. L. Bowen AC	Chairman	■	■	■	■	■	■	■
Ted Benjamin	Telstra		■		■	■	■	■
John Rohan	Vodafone		■			■		■
Andrew Begogni	Optus	■	■	■	■	■		■
Elizabeth Morley	Consumer Representative	■	■	■	■	■	■	■
Ewan Brown	Consumer Representative	■	■	■	■	■		■
Pam Marsh	Consumer Representative	■	■	■	■	■	■	■
Steve Monro <i>alternate for Ted Benjamin</i>	Telstra	●		●				
David Clarke <i>alternate for John Rohan</i>	Vodafone	●			●			
Graeme Holm <i>alternate for John Rohan</i>	Vodafone			●			●	
Anneleise Reinhold <i>alternate for Andrew Begogni</i>	Optus						●	
Allan Horsley <i>alternate for Ewan Brown</i>	Consumer Representative						●	

14/07/95 25/08/95 13/10/95 1/12/95 9/02/96 23/04/96 6/06/96

TIO Board Attendance – 1 July 1995 to 30 July 1996

Ross Ramsay	Optus	■	■	■	■
Rob Simpson	Optus	■	■		
John Fries <i>Resigned 21/11/95</i>	Vodafone	■	■		
Adrian Coote <i>Appointed 21/11/95</i>	Vodafone			■	■
Graeme Ward	Telstra	■	■		■
Gillian Welshe <i>Resigned 10/4/96</i>	Telstra	■		■	
Deirdre Mason <i>Appointed 4/6/96</i>	Telstra				■

14/09/95 21/11/95 5/03/96 4/06/96

Bankers

Commonwealth Bank of Australia

Solicitors

Corrs Chambers Westgarth

Auditors

Mann Judd

Information Technology

BHA Computers Pty Ltd

Special Legal Counsel for Casualties of Telstra

Minter Ellison

Mr Peter Bartlett
Ms Pia Di Mattina
(to March 1996)
Mr Matt Deeble
(from March 1996)

Special Arbitrator

Deacons Graham & James
Hunt & Hunt

Mr Jonathon Mott
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