



28 August 2020

Telecommunications Industry Ombudsman
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Collins Street West VIC 8007
Via email: PublicConsultation@tio.com.au

Re: Consultation on Modernising the Telecommunications Industry Ombudsman Terms of Reference July 2020, V 1.1¹

The Australian Communications Consumer Action Network (ACCAN) thanks the Telecommunications Industry Ombudsman (TIO) for the opportunity to respond to the questions raised in the Discussion Paper Modernising the Telecommunications Industry Ombudsman Terms of Reference July 2020.

As the Discussion Paper highlights, evolving technologies, changing consumer needs, and the growth of smart devices are significantly transforming the way the telco sector designs and offers products and services to consumers.⁽²⁾ It is essential that the TIO keeps pace with this rapidly changing landscape so that it continues to meet community and consumer expectations. ACCAN therefore welcomes the proposed adjustments to the TIO's Terms of Reference, including an increase in compensation for consumers; extending the ability to accept complaints about devices and equipment; and the ability to refer a consumer's complaint to more than one service provider.

Q1 – Is the proposal to link the small business definition to the Australian Consumer Law the most appropriate test to use, or is there a better definition? What else should we consider when deciding whether a small business consumer is eligible to access our scheme?

ACCAN welcomes the proposal to link the definition of small business in the TIO Terms of Reference to the definition for small business used for unfair contract terms protections in the *Australian Consumer Law* (ACL). A consistent definition of small business across sectors is a key priority to make it easier for small businesses to navigate the regulatory landscape.

The definition of small business as comprising less than 20 employees captures 97% of Australian businesses. By not restricting the volume of annual turnover of small businesses in the definition, the full spectrum of small businesses will be covered by the TIO's complaints process.

¹ V 1.1. updates the previous version in which data on page 3 was incorrect.

² Telecommunications Industry Ombudsman, Modernising the Telecommunications Industry Ombudsman Terms of Reference, July 2020, p6
Australian Communications Consumer Action Network (ACCAN)

ACCAN notes that as small businesses change over time, this definition will need to be open to ongoing revision, and it is appropriate that the TIO's proposed definition will be adjusted as the definition of small business adopted by the ACL changes.

Q2 – Is \$100,000 an appropriate financial limit for Telecommunications Industry Ombudsman decisions?

Q3 – If not, what would be the more appropriate financial limit for Telecommunications Industry Ombudsman decisions and why?

ACCAN welcomes an increase in the amount of compensation available from \$50,000. However, we would not support capping compensation at \$100,000 because it has the potential to limit the adequacy of compensation and obstruct consumer access to justice.

Inadequate compensation

The full amount of compensation a consumer is entitled to may need to exceed \$100,000 in cases where both financial and non-financial losses are taken into account. A \$100,000 cap would compromise the adequacy of compensation in these instances.

It takes valuable time for both consumers and small businesses to continually follow up the status of their complaints to providers and TIO complaints, and when this is quantified the non-financial loss suffered by parties seeking a complaints resolution is considerable. In terms of compensation for small business, although a \$100,000 cap may cover most claims, there are a small percentage of cases – for example, small manufacturing businesses – where adequate compensation would exceed \$100,000, particularly when non-financial loss is quantified. Similarly, in the case of service disputes, adequate compensation may need to exceed \$100,000 when both financial and non-financial losses are taken into consideration.

Consumer access to justice

A cap of \$100,000 compensation may serve as a disincentive for consumers to seek financial redress for telecommunications issues. Once the TIO has been exhausted as an avenue of redress, consumers may be hesitant to pursue claims over the \$100,000 limit in court – the only other avenue of redress available – due to lack of confidence and financial resources.

Q4 – Should we include a financial limit for non-financial loss compensation? If so, what is an appropriate financial limit?

Providing compensation for non-financial loss is a welcome move. ACCAN is aware that the time taken by consumers in dealing with service providers to resolve complaints is an important consideration in calculating compensation for non-financial loss.

Long customer service wait times and poor reliability are significant issues facing telecommunications customers, and this has a non-financial cost for consumers. Recent research by ACCAN (as yet unpublished), undertaken in 2019, conservatively estimates the average cost to a consumer of

waiting to have telecommunications service issues resolved.³ The average cost to consumers was \$18.58 per phone call, \$8.83 per in store visit, \$5.46 per email contact, \$4.38 per discussion forum, \$10.51 per live chat and \$3.81 per social media engagement with customer service assistants. In 2019, the total cost in time foregone by consumers waiting to have an issue resolved with a service provider was \$106- \$132 million. The total time consumers spent on having these issues resolved is estimated to be over 7.6 million hours.⁴

In the interests of fairness, consumers are entitled to compensation for non-financial loss arising from time spent in customer service queues and aggravated by the inconvenience and stress resulting from service providers failing to meet customer service standards. ACCAN would be concerned if any financial limit for non-financial loss compensation became restrictive.

Q5 Are there any other things the Telecommunications Industry Ombudsman should consider when updating our remit for complaints?

Complaints resolution

Currently under Part 3 of the TIO's Complaints Handling Process (1 July 2020), after a complaint is referred to a service provider the TIO allows the service provider a maximum of ten days to resolve the complaint by responding directly to the consumer. However, service providers are not obligated to inform the TIO about the outcome.⁵ There is a need for increased oversight by the TIO of the action taken by the service provider to ensure that resolution is offered within the ten-day timeframe.

In circumstances where consumers do not have their complaints resolved within the specified timeframe, do not receive a satisfactory complaints resolution outcome or may not be able to advocate for themselves, more accountability by the service providers is required. Service providers should be obligated to report back to the TIO about the outcome of dispute resolution after referral to increase the transparency of the process. For example, a service provider might be required to copy the TIO in on any correspondence regarding complaints resolution with the consumer to allow the TIO to have oversight of the complaints handling process.

Enhanced EDR Role

Under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* carriers and eligible carriage service providers are required to provide a dispute resolution service under the TIO scheme to deal with complaints. However, ACCAN sees benefit in an enhanced role for the TIO in providing a timely systemic feedback mechanism for service providers, industry and regulators, given

³ ACCAN, *The cost of Still Waiting*, 2020, unpublished

⁴ Ibid

⁵ Telecommunications Industry Ombudsman, *Complaints Handling Process*, 1 July 2020, ss 3.1 to 3.3 – accessed at www.tio.com.au/about-us/policies-and-procedures#pt3

its unique insights based on complaints data and analysis, with the intelligence gained from TIO feedback forming the basis for proactive change in the industry

The revised TIO's Terms of Reference provides an opportunity for the implementation of such improvements, modelled on the United Kingdom's energy industry. The scheme takes a three-pronged approach:

1. Resolution of individual complaints;
2. Identification of issues in individual service providers to enable improvement in complaint handling processes; and
3. Identification of systemic industry-wide issues which can either be resolved or referred to the appropriate regulatory body.⁶

We note that the TIO's Terms of Reference already allows these functions to be performed under section 4.11. The TIO may share information with regulators, government bodies, the community and industry (in compliance with privacy legislation and policies) in order to:

- Assist the investigation or enforcement roles of a regulator;
- Increase legal compliance or promote good practice;
- Provide an independent voice about consumer telecommunications issues.

Under Section 5 the TIO can also work with members to resolve any systemic issues in their consumer-facing practices.

However, while these are good principles, they are tentatively expressed. ACCAN would like to see such practices explicitly included in the TOR as an integral part of the TIO's remit. This would facilitate a complaints feedback mechanism that provided valuable industry insights to regulators, forming the basis for improvement of practices across the industry.

Increased public reporting and service provider accountability

ACCAN believes the introduction of enhanced public reporting practices by the TIO, formally recognised in the Terms of Reference, would support behavioural change by service providers. Public reporting practices drive change in EDR schemes because individual service providers are faced with the threat of reputational damage and, consequently, a decline in sales to consumers if they do not adequately deal with complaints. Reporting by the Australian Financial Complaints Authority (AFCA) sets a useful precedent⁷, in identifying the number of complaints received by AFCA by firm, level at which complaints were resolved, rate of resolution, and broad area of complaint. This level of

⁶ Lucerner Partners, *Review of ombudsmen services: energy. A report for Ofgem*, July 2015, p18 – accessed at https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/review_of_ombudsman_services_energy_2.pdf

⁷ <https://data.afca.org.au/complaints-by-firm>

granularity drives greater accountability by firms performing poorly, while at the same time showing which firms promptly resolve complaints at an early stage of the process.

While ACCAN values the complaints statistics and trend analyses that the TIO publishes in accordance with section 6.6 of the TOR, we would welcome more detailed information in the TIO quarterly reports. More detailed information about the nature of complaints by service provider would be a very useful resource for ACCAN's work, as it assists in identifying key industry issues in need of advocacy and reform.

Fair and accessible complaints process

A one size fits all complaints handling model is not adequate for the needs of all consumers. An effective complaints handling process needs to take account of accessibility issues for all consumers, including those with disability. To this end, the accessibility of the TIO complaints system needs resourcing as much as possible to enable all consumers to make complaints, both during and after standard business hours and in a range of formats. Information about how to make a complaint must also be made available in multiple languages, and a range of digital and non-digital accessible formats, including for instance, plain English, Easy English, braille, large print and Auslan resources.

Q6 – Are there any particular devices and equipment that should be explicitly excluded from or included in the Telecommunications Industry Ombudsman's remit? If yes, what are these and why?

ACCAN welcomes extending the TIO's jurisdiction to include complaints about devices and equipment that are offered and supplied by a member (e.g. new smart devices and equipment such as smart home controls, smart fridges and other products) including products provided in non-traditional ways such as redemption by customer loyalty points. This extension will provide more appropriate and comprehensive coverage for consumer complaints in accordance with the industry-based dispute resolution Benchmark and allow the TIO to deal with the 'vast majority of complaints' in the telecommunications industry and the 'whole of each such complaint'.

The rapid increase in smart device ownership in Australia, and the current rollout of 5G technology across the country enabling the use of a greater range of smart devices in the future,⁸ means there will be an increased volume of complaints about these devices. The TIO will play a crucial role in managing complaints and dispute resolution about issues arising from these devices, including the consumer threats posed by breaches of data privacy and cybersecurity.

ACCAN notes that there is inevitable discrepancy in consumer protection that arises from the fact the jurisdiction of the TIO's complaints resolution scheme only extends to TIO members. However, the solution to this issue lies outside the framework of the TIO's Terms of Reference.

⁸ Sivaraman, V. Gharakheili, H. and Fernandes, C. *Inside job: Security and privacy threats for smart-home IoT devices*, May 2017 - accessed at https://accan.org.au/files/Grants/UNSW-ACCAN_InsideJob_web.pdf

Q7 – What issues are raised by joining more than one member to a complaint and how can we address these issues?

ACCAN welcomes changes to the Terms of Reference that allow more than one party to be joined in dealing with a complaint. The joining of more than one party to a complaint will make it easier to resolve complaints involving more than one service provider, such as issues with the NBN and issues with mobile and local number porting from one service provider to another. In some cases, to achieve a reasonable outcome for consumers, there may be a need for parties to be compelled to participate in complaints handling.

In addition, ACCAN supports the TIO's position that it may be reasonable in some circumstances to split the costs of complaint handling between more than one joined member.

Q8 – Looking at the Terms of Reference as a whole, are there other changes we should consider to ensure our scheme continues to meet community expectations for best practice external dispute resolution in the telecommunications sector?

Consumer education and accessibility

The telecommunications complaints handling landscape is complex and difficult for consumers to navigate. For example, where a consumer is being pursued for non-payment by a third-party debt collector on behalf of a service provider, the consumer must lodge a complaint with AFCA. On the other hand, in cases where a consumer is being pursued for non-payment directly by a service provider, the TIO can accept this complaint.

For the average consumer, the distinction between the appropriate avenues for redress in a case such as this are difficult to understand and may serve as a deterrent for consumers seeking to make a complaint. Accessible consumer information is crucial to enable consumers to understand not only what they are buying and how to use their service, but also allow them to constructively solve future issues that may arise.

Simple educational materials explaining the role of the TIO and the variety of complaints handling processes would help people from all backgrounds to understand where and how to lodge complaints, empower them to act and provide a guide to which avenues need to be pursued in various circumstances.

For maximum accessibility, this information must also be made available in a range of digital and non-digital formats.

Q9 – Are the proposed Terms of Reference easy to follow and understand?

While the Terms of Reference are clearly set out, ACCAN considers more work is required to ensure that the Terms of Reference are accessible and easy for consumers to understand. The document



could be produced in different formats such as easy English, different languages including Auslan, and accompanied by infographics where appropriate.

Thank you again for the opportunity to provide feedback on the proposed Terms of Reference. We look forward to discussing our feedback with you in more detail.