



Telecommunications  
Industry  
Ombudsman

TIO Submission to  
Part C of the Consumer  
Safeguards Review  
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## Introduction

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The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to respond to the proposals for reform in the Department of Infrastructure, Transport, Regional Development and Communications' (the Department) Consumer Safeguards Review Part C Consultation Paper (Consultation Paper).

We welcome the Department's holistic review of the way consumer protection rules are made and enforced, and how these rules operate in the market to enhance choice and fairness. Since the inception of the existing consumer protection framework, the telecommunications market has changed significantly. Telecommunications services are increasingly essential to modern Australian life, and the market is dynamic and fast moving. To be fit for purpose, it is important essential consumer protection rules reflect the current state of the market, its participants, and the continuously evolving nature of telecommunications products and services.

This year, the critical nature of telecommunications services has been emphasised by the COVID-19 pandemic. Our July 2020 publication, *Impact of COVID-19 on phone and internet complaints*,<sup>1</sup> detailed the problems consumers told us they experienced during the pandemic. The report also highlights consumers' heavy reliance on these services to continue working, studying, and connecting with loved ones.

As the independent external dispute resolution (EDR) service for the telecommunications industry, the complaints we receive put us in a unique position to provide insights about choice and fairness. All carriers and carriage service providers (providers) in the telecommunications market must be members of the TIO scheme.

In Financial Year 2020, we received 127,151 complaints from residential, small business, and not for profit consumers.<sup>2</sup> The top five complaint issues were: service and equipment fees, no or delayed action by the provider, no phone or internet service, delay in establishing a service, and resolution agreed but not met.<sup>3</sup>

We work closely with the Australian Communications and Media Authority (ACMA) and the Australian Competition and Consumer Commission (ACCC) to identify emerging problems and improve the telecommunications sector. To support this work, we have memoranda of understanding with both the ACMA<sup>4</sup> and ACCC<sup>5</sup> that outline a clear and transparent approach to collaboration and information sharing. In Financial Year 2020, we referred five systemic issues impacting consumer choice and fairness to the regulators. The issues included misleading sales conduct, services not being supplied with due care and skill, unfair contract terms, unexpected service disconnections, and non-compliance

<sup>1</sup> TIO, *Impact of COVID-19 on phone and internet complaints* (July 2020). See: <https://www.tio.com.au/sites/default/files/2020-07/TIO%20Systemic%20Report%20Impacts%20of%20COVID-19%20on%20phone%20and%20internet%20complaints%20July%202020.pdf>

<sup>2</sup> TIO, *Annual Report 2019-20*, p39. See: <https://www.tio.com.au/sites/default/files/2020-09/TIO%20AR2019-20%20High-Res.pdf>

<sup>3</sup> TIO, *Annual Report 2019-20*, p42. See: <https://www.tio.com.au/sites/default/files/2020-09/TIO%20AR2019-20%20High-Res.pdf>

<sup>4</sup> TIO, *Memorandum of Understanding between the ACMA and the TIO* (April 2020). See: <https://www.tio.com.au/sites/default/files/2020-05/ACMA%20and%20TIO%20MOU%20%28April%202020%29Final%200.pdf>

<sup>5</sup> TIO, *Memorandum of Understanding between the ACCC and the TIO* (April 2020). See: <https://www.tio.com.au/sites/default/files/2020-05/EO%20-%20ACCC%20-%20TIO%20-%20Memorandum%20of%20understanding%20-%20signed%20by%20TIO%20and%20ACCC.pdf>

with telecommunications complaint handling rules. The regulators also took enforcement action on five systemic issues we had referred in previous years.

We welcome enhancements to the framework that will better reflect the essential nature of telecommunications products and services and strengthen consumer protection.

## Summary of recommendations

### 1. A well-functioning telecommunications market includes self-regulation

**Recommendation 1:** We recommend retaining self-regulation for all matters that require industry-specific expertise and collaboration between supply chain members (technical, process, and secondary matters)

**Recommendation 2:** We recommend strengthening the code-making process by allowing the ACMA to:

- set shorter timeframes for code development
- refuse registration of sub-optimal codes or provisions

**Recommendation 3:** We recommend giving the ACMA a reserve power to make standards where it sees fit

### 2. Direct regulation will ensure and enhance choice and fairness

**Recommendation 4:** We recommend direct regulation for essential consumer protection matters where there is a likelihood of consumer detriment if consumers are not treated fairly, not provided good service, or are prevented from making informed choices

**Recommendation 5:** We recommend consolidating all essential consumer protection matters into one legislative instrument that are covered by effective minimum standards where possible

**Recommendation 6:** We recommend the Department use matters covered in the Telecommunications Consumer Protections Code and Part 6 of the Telecommunications Act 1997 as a starting point for essential consumer protection matters

**Recommendation 7:** We recommend retaining telco-specific consumer protection rules as they play their own important role and complement the Australian Consumer Law

**Recommendation 8:** We recommend retaining legacy obligations about untimed local calls and itemised billing

**Recommendation 9:** We recommend expanding Telstra's low-income measures to include data and internet services while retaining measures for fixed voice services

### 3. Designing a regulatory toolkit to drive better consumer outcomes

**Recommendation 10:** We recommend giving the ACMA two additional enforcement options as part of its regulatory toolkit:

- raising the maximum penalty amounts for breaches of codes and standards to align with the maximums for breaches of determinations
- removing the requirement to issue a direction to comply with a code before seeking penalties for breaching that direction

**Recommendation 11:** We recommend setting up a registration scheme with minimum market entry requirements for retail service providers

**Recommendation 12:** We recommend enhancing the ACMA's data collecting and reporting capabilities by:

- providing definitions for 'complaint types' that facilitate greater insight into complaint issues
- providing for reporting by individual retail service provider

## 1. A well-functioning telecommunications market includes self-regulation

**Recommendation 1:** We recommend retaining self-regulation for all matters that require industry-specific expertise and collaboration between supply chain members (technical, process, and secondary matters)

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The current regulatory framework was designed over 20 years ago. We support the Department's view that it is time to reconsider the balance between self-regulation<sup>6</sup> and direct regulation. While we support direct regulation for essential telecommunications consumer protections, there is still a place for self-regulation in a well-functioning telecommunications market. In our experience, industry is effective at formulating its own codes where technical processes and supply chain coordination is needed.

The peak body representing telecommunications providers, Communications Alliance, creates codes, guidelines, technical standards, specifications, and industry guidance notes. Compliance with codes is voluntary unless the code is registered with the telecommunications regulator, the ACMA. Compliance with guidelines, technical standards, specifications, and industry guidance is also voluntary.

In some circumstances, industry codes and standards have resulted in good outcomes for the consumer experience and industry's ability to deliver services fairly. Industry codes on technical matters have helped us resolve complaints.

### 1.1 Self-regulation is effective for secondary, process, and technical matters requiring industry cooperation

We agree with the Department's view that industry is well placed to create codes about secondary, process, and technical matters. If self-regulation is reserved for these matters, then what comprises secondary, process, and technical matters will need to be clearly defined.

In our view, secondary, process, and technical matters are those that require industry-specific expertise, as well as cooperation and collaboration between members of the supply chain. These are matters where industry can positively impact fair service delivery by collaborating with each other. By contrast, direct regulation could deliver better outcomes for consumers in areas where there are

<sup>6</sup> Following the Department's lead, we use the term 'self-regulation' in place of 'co-regulation'. As the Department notes in its Consultation Paper, this is 'to reflect the terminology in the Telecommunications Act 1997 (Cth). Co-regulation is where industry develops its own codes with legislative backing. Australia's system of industry codes can be categorised as co-regulation because the system is authorised through legislation'.

insufficient market incentives to encourage their fair treatment, as discussed in Part 2 of this submission.

The NBN Access Transfer Code<sup>7</sup> and the NBN Migration Management Guideline<sup>8</sup> are examples of effective industry rules that benefit from industry cooperation. These rules support the transfer and migration of NBN services. These rules outline the minimum requirements for supply chain members in the NBN migration and transfer process. Allowing technical experts and telecommunications business practitioners to design these rules helps ensure they are fit for purpose and up to date with industry practices and technology.

The External Telecommunication Cable Networks Industry Code<sup>9</sup> is another example of an effective set of industry rules that benefit from technical expertise. These rules are clear and set minimum safety requirements. They also incorporate industry expertise in wiring and cabling from both a safety and reliability standpoint.

## 1.2 Industry codes about secondary, process, and technical matters help us to resolve complaints

We receive complaints from consumers about connection delays and faults with their telecommunications services. These complaints consistently appear in our annual report as top complaint issues. In Financial Year 2020, complaints about having no phone or internet service and delays in establishing a service were in our top five complaint issues.<sup>10</sup>

Some complaints involve a dispute between a consumer and a provider about responsibility for cabling, wiring, or equipment. There is often disagreement about which party is responsible for telecommunications infrastructure at a consumer's property and where a network boundary point is located. In resolving these complaints, industry rules such as the Wiring Rules<sup>11</sup> are clear and easy to apply. The rules help us conciliate and make fair and reasonable decisions.

Case study A details a complaint where we relied on the Wiring Rules to help a consumer and provider reach a fair and reasonable resolution of a complaint.

### Case study A – Wiring Rules clearly show who is responsible for wiring in a telecommunications network

In 2019, Dario\* contacted the TIO about internet service problems. He told us his internet service worked well for around six months, but then suddenly stopped working.

Dario contacted LineUp\* and reported a fault. LineUp sent three technicians to investigate. LineUp told Dario the service was working properly on its side of the main distribution frame (MDF). LineUp said if there was a problem, it was likely on Dario's side of the network. LineUp said it was Dario's responsibility to fix any wiring problems on his side of the network.

<sup>7</sup> Industry Code C647:2017 NBN Access Transfer 2017.

<sup>8</sup> Industry Code G652:2016 NBN Migration Management 2016.

<sup>9</sup> Industry Code C524:2013 External Telecommunication Cable Networks 2013.

<sup>10</sup> TIO, *Annual Report 2019-20*, p42. See: [https://www.tio.com.au/sites/default/files/2020-09/TIO%20AR2019-20\\_High-Res.pdf](https://www.tio.com.au/sites/default/files/2020-09/TIO%20AR2019-20_High-Res.pdf)

<sup>11</sup> Australian Standard AS/CA S009:2013 Installation Requirements for Customer Cabling (Wiring Rules) 2013.

LineUp charged Dario \$220 for the three appointments, and continued to charge Dario for the faulty internet service.

Dario asked us to investigate and confirm if LineUp's advice was correct. Dario also wanted LineUp to waive the technician fees and service charges.

We referred to the Wiring Rules and found LineUp was responsible for the wiring and cabling from the A-side through to the B-side of an MDF. Under the Wiring Rules, LineUp had an obligation to fix any faulty cables impacting Dario's internet service.

We told LineUp it should fix Dario's service and refund the technician and service charges.

\*Names of individuals, organisations and companies have been changed.

### 1.3 The ACMA should be empowered to address gaps in code development

We support the Department's proposal to strengthen the code-making process as it will provide clear regulator-led pathways to address gaps in code development.

We support the Department's proposals to strengthen the code-making process by:

- providing the ACMA with the ability to set shorter timeframes for code development and fixing code deficiencies. This will ensure industry has clear parameters to deliver effective fit for purpose codes
- strengthening the code registration test and allowing the ACMA to refuse registration of sub-optimal codes and code provisions. This will enhance the impact industry codes have on fair service delivery.

Code-making reform is important if codes are reserved for technical and secondary matters. However, reform is even more important if essential consumer protection rules continue to be delivered through industry codes.

The telecommunications market changes quickly and consumer problems can arise and proliferate suddenly. The time taken to develop codes can affect the complaints made to us. Problems occurring while codes are being developed may result in more consumers contacting us with unresolved complaints. It can also be more challenging for us to help consumers and providers reach fair and reasonable resolutions where registered codes are difficult to apply or have ambiguous provisions.

Where industry cannot agree through the consensus-based code development process, this may slow down measures and prevent problems being addressed in a timely and fit for purpose way. The ACMA should be able to step in to address these problems directly and promptly. This will help reduce complaints about problems as and when they arise.

Another way to address gaps in code development is for the ACMA to make standards. We support the Department's proposal to give the ACMA a reserve power to make standards where appropriate.

## 2. Direct regulation will ensure and enhance choice and fairness

**Recommendation 4:** We recommend direct regulation for essential consumer protection matters where there is a likelihood of consumer detriment if consumers are not treated fairly, not provided good service, or are prevented from making informed choices

**Recommendation 5:** We recommend consolidating all essential consumer protection matters into one legislative instrument that are covered by effective minimum standards where possible

**Recommendation 6:** We recommend the Department use matters covered in the Telecommunications Consumer Protections Code and Part 6 of the Telecommunications Act 1997 as a starting point for essential consumer protection matters

**Recommendation 7:** We recommend retaining telco-specific consumer protection rules as they play their own important role and complement the Australian Consumer Law

**Recommendation 8:** We recommend retaining legacy obligations about untimed local calls and itemised billing

**Recommendation 9:** We recommend expanding Telstra's low-income measures to include data and internet services while retaining measures for fixed voice services

We support the Department's proposal for direct regulation of essential consumer protection matters. We encourage the Department to consider consolidating all essential consumer protection rules into one legislative instrument. This instrument should include clear minimum standards and requirements. This will help consumers and providers achieve better outcomes.

The structure of the telecommunications market has changed significantly over the last 20 years. Many consumer protection rules were devised at a time the state of technology and the number of participants in the market was very different. Part C provides an opportunity for the Department to evaluate the effectiveness and fitness for purpose of the existing consumer protection framework.

### 2.1 Essential consumer protection rules should be consolidated in one instrument

Consolidating all consumer protection rules and strengthening certain obligations could result in better outcomes, and clarity for both providers and consumers.

The current suite of consumer protection rules for many essential areas is patchwork in nature, where rules reside in different instruments with inconsistent definitions. This poses several challenges for market participants:

- New market participants may find the rules framework can be difficult to locate, understand, and comply with
- Industry members may prioritise and interpret obligations inconsistently
- Consumers can find it difficult to know and understand their rights.

Clarity will be required when defining which matters are essential and must be directly regulated, and which matters can be dealt with through self-regulation. We consider essential consumer protection matters cover areas where there is a likelihood for any consumer detriment if consumers are not treated fairly, not provided good service, or are prevented from making informed choices. As observed by the Department, there may be limited market or commercial incentives to drive customer-focused behaviour in these areas.

Consumer detriment we see in complaints relevant to choice and fairness matters include:

- providers promising consumers something and failing to deliver it
- financial hardship resulting from unclear or incorrect charges
- misunderstandings or unfair outcomes due to incorrect or ambiguous information about products and services
- consumers not being able to report problems to their provider.

We support the Department's suggestion that the matters covered by the Telecommunications Consumer Protections Code (TCP Code)<sup>12</sup> and the matters outlined in Part 6 of the Telecommunications Act 1997 are the right starting points.

In designing a new framework, we encourage the Department to consider effective legislative design and the benefit of consolidating consumer protection obligations.

Consideration should also be given to empowering the ACMA to receive information directly from consumers about breaches of the laws and instruments that it administers. This would provide the ACMA with direct intelligence which it can then investigate and act upon. Information given directly to the ACMA by consumers is to be distinguished from consumer complaints that are resolved through EDR.

### **(a) Number transfer rules contain essential consumer protections that should be consolidated and simplified**

Rules for transferring numbers are essential because consumers may experience detriment such as losing a number permanently, being without services, or being pressured to make payments to avoid those consequences. We see complaints about numbers being transferred from one provider to another, and number transfers between people.

We see situations where a consumer affected by family violence, who is the end-user of a mobile number, cannot transfer their number because the perpetrator is the account-holder for the service.

Regulatory obligations<sup>13</sup> may create barriers to assisting consumers experiencing family violence to transfer the mobile number they are using away from a perpetrator's account. We have seen some providers devise innovative solutions to allow numbers to be transferred in these circumstances.

It is encouraging that industry is seeking to find solutions to this important consumer issue. However, technical rules and consumer protection rules should not prevent critical protection for telecommunications consumers during a time of vulnerability.

Transferring phone numbers from one provider to another (porting) involves coordination between industry members but is also an area that should also be considered an essential consumer protection

<sup>12</sup> Industry Code C628:2019 Telecommunications Consumer Protections Code 2019.

<sup>13</sup> In particular: Industry Code: C566:2005 Rights of Use of Numbers Code; Telecommunications Numbering Plan 2015.

matter. Porting problems can affect the ability of a consumer to act on informed choices. This is because a consumer may be prevented from porting their number and moving to another provider.

Rules around porting are in several documents including:

- Telecommunications Numbering Plan 2015
- Mobile Number Portability Code<sup>14</sup>
- Local Number Portability Code<sup>15</sup>
- Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2018.

In complaints we have received, we have observed that some providers are not aware of or do not properly understand their porting obligations. We have seen situations where providers do not follow their obligations and use their control of mobile numbers to influence a broader negotiation about fees, charges, or debt.

Consolidating and simplifying the existing porting rules would address some of these issues. The rules could be consolidated into a centralised legislative instrument containing essential consumer protections. This would help limit confusion around disputes about number ownership, pre-porting identity verification, and losing and gaining provider responsibilities. This would make it more likely providers would understand and comply with the relevant obligations.

Systemic investigation 1 shows a provider not following its porting obligations and refusing to release phone numbers as a debt enforcement tactic.

### Systemic investigation 1 – Porting practices

We identified an issue about WorkNet's\* porting and credit management practices. Consumers were telling us that WorkNet was preventing the transfer of their numbers to another service provider when there was an outstanding balance on their account.

It appeared WorkNet was using its control of consumers' numbers to influence negotiations about disputed charges and debt. We were concerned the complaints showed this was a common WorkNet practice when it came to porting and debt disputes.

We raised the issue with WorkNet and asked questions to better understand WorkNet's practices.

During the systemic investigation, WorkNet admitted some of its representatives were not giving correct information to customers about reasons for delays in ports. WorkNet said this included the representatives giving consumers information that was at odds with WorkNet's obligations under porting rules.

<sup>14</sup> Industry Code C570:2009 Mobile Number Portability 2015.

<sup>15</sup> Industry Code C540:2013 Local Number Portability 2016.

WorkNet acknowledged there were areas for improvement and delivered staff training to ensure correct information is given to customers. WorkNet also reminded its staff about its obligations under the relevant code and put together guidelines for porting scenarios.

\*Names of individuals, organisations and companies have been changed.

## **(b) General and telco-specific consumer protection rules complement each other**

We support the Department's proposal that both the Australian Consumer Law (ACL) and telco-specific consumer protections should continue to apply in the telecommunications market.

The ACL and telco-specific consumer protections are consistent and complement one another. Both play separate roles in the telecommunications framework and should continue to do so.

The ACL promotes fair trading and competition through consumer protection. Telco-specific consumer protections can set minimum requirements within the industry. The ACL is more outcomes-based than telco-specific consumer protections because it provides clearer remedies.

Telco-specific consumer protections contain important market-specific obligations on providers. For example, obligations about the minimum information to be included in a Critical Information Summary (CIS).<sup>16</sup> The CIS forms a key part of the contract between a consumer and provider and provides key information consumers need to help them make informed choices. The information required includes minimum standards, early termination, and data charges. We look at the CIS to help resolve complaints where there may be problems determining what a consumer has agreed to or is entitled to.

Market-specific obligations on providers set out in telco-specific consumer protections can reduce the likelihood of providers breaching the ACL. For example, the responsible selling approach provisions of the TCP Code contain obligations for training and offering consumers information products and services based on their needs.<sup>17</sup> Meeting these obligations means providers are more likely to comply with ACL consumer guarantees and other ACL prohibitions.

We find the ACL provides clearer guidance on consumer remedies in situations where misleading conduct is relevant, compared to the TCP Code. Consumer remedies under the TCP Code for misleading conduct involve the provider giving accurate or corrected information to the consumer, or an otherwise 'appropriate' remedy.<sup>18</sup> Without clear obligations to offer specific remedies, providers may misinterpret what an appropriate remedy is for a consumer in their particular circumstances.

In 2019, we published a report on misleading sales conduct in telemarketing of NBN services.<sup>19</sup> Where we had outstanding concerns about potential breaches of the ACL and telco-specific consumer protections such as the TCP Code, we referred our systemic investigations to both the ACCC and the ACMA. This allowed regulators to assess which regulator was most appropriate to take enforcement action.

<sup>16</sup> Industry Code C628:2019 Telecommunications Consumer Protections Code 2019 clause 4.2.

<sup>17</sup> Industry Code C628:2019 Telecommunications Consumer Protections Code 2019 clause 4.5.

<sup>18</sup> Industry Code C628:2019 Telecommunications Consumer Protections Code 2019 clause 4.4.

<sup>19</sup> TIO, *Systemic Spotlight: Misleading telemarketing of NBN Services* (July 2019). See: [https://www.tio.com.au/sites/default/files/2019-07/TIO%20Systemic%20Spotlight\\_Misleading%20telemarketing%20NBN%20services.pdf](https://www.tio.com.au/sites/default/files/2019-07/TIO%20Systemic%20Spotlight_Misleading%20telemarketing%20NBN%20services.pdf)

## 2.2 Clear minimum standards will help consumers and providers achieve better outcomes

If essential consumer protection matters are directly regulated, we encourage the Department to consider setting clear and simple minimum standards to cover these areas, where possible. This could make it easier for providers to understand their obligations and for consumers to understand what they can expect from market participants offering products and services.

Part C also offers a timely opportunity to align telecommunications regulation with other essential services such as energy, where essential consumer protection rules are directly regulated.

We receive complaints that show there are gaps in the existing consumer protection framework around choice and fairness. We see situations where telecommunications providers either are not aware of TCP Code obligations, or do not adequately understand and incorrectly apply these obligations. We also receive complaints where ambiguous and non-prescriptive obligations make it more difficult for us to assess fair and reasonable outcomes.

Introducing a minimum standards approach would provide an opportunity to address deficiencies we see with essential consumer protections, for example:

- credit assessments
- financial hardship
- accessibility.

### (a) Credit assessments

Credit assessment rules have been the subject of reform discussions for many years. While some changes have been made to address consumer concerns, the current rules in the TCP Code are still broad. If credit assessment rules are kept broad, consumers are at risk of overcommitting and falling into hardship.

We have received complaints from consumers who have signed up to telecommunications services they cannot afford. Some consumers have told our office they have competing financial commitments and are unable to maintain their monthly bills.

Since its most recent revision in 2019, the TCP Code now requires providers to conduct a credit check and to assess a consumer's income before selling post-paid telecommunications products and services. Where consumers have several competing financial commitments, a credit check and income data may not tell the whole story about a consumer's ability to pay.

Enhanced minimum requirements could include a more holistic assessment of a consumer's ability to pay. This could reduce the risk of selling products to consumers with no ability to pay.

Case study B shows an example of a consumer being approved for post-paid telecommunications services they could not afford.

#### Case study B – Danielle's income information did not tell the whole story about her ability to pay

In February 2020, Danielle\* contacted the TIO about mobile and tablet charges she could not afford to pay. Danielle told us she was falling behind on her monthly GoPhone\* bill of around \$200. Danielle said she was financially overcommitted and sought our help.

At the time of signing up for her GoPhone services, Danielle told us she was receiving Centrelink payments and did not have a consistent or steady income. She told us that she was finding it difficult to balance her various financial commitments and that she was concerned she would fall behind on her \$200 per month GoPhone bill.

When we raised the complaint with GoPhone, it told us that Danielle had agreed to the monthly minimum cost of her telecommunications services and had passed its internal credit check. GoPhone said Danielle was liable for the contract for her mobile service and tablet, even if she could not afford it. GoPhone did not tell us about how its credit check system operated, or the types of information it based its approval system on.

To resolve the complaint, GoPhone allowed Danielle to cancel her services and return the tablet at no cost.

\*Names of individuals, organisations and companies have been changed.

## **(b) Financial hardship**

Existing consumer protection rules about financial hardship are broad and non-prescriptive. While the TCP Code outlines some effective options providers may offer to help customers experiencing financial hardship, the TCP Code stops short of prohibiting types of conduct that would increase financial stress.

Consumers experiencing financial hardship or debt management problems are generally unable to know what type of financial support to request and may agree to an arrangement that is not suitable for them. Minimum standards should clearly prohibit a provider from responding to financial hardship in a way that would increase financial stress for consumers.

Case study C gives an example of how open-ended TCP Code obligations for financial hardship can have unintended consequences.

After identifying a trend in complaints like the one identified in Case study C, we conducted a systemic investigation of the issue. Although the systemic investigation resulted in the provider adopting our recommendation to change its hardship practices, including not charging late fees on a repayment plan, the provider maintained the TCP Code did not require this.

### **Case study C – ‘Promise to pay’ arrangements not covered by TCP Code**

Mya\* contacted the TIO about TelStar\* and its approach to hardship. Mya asked for help to negotiate a hardship arrangement with TelStar for an outstanding amount of almost \$1,500. During conciliation, TelStar initially offered a 15 month repayment plan that added a late payment fee of \$20 each month, adding \$300 in late fees to the repayment plan.

When we questioned this, TelStar said the TCP Code did not cover ‘promise to pay’ arrangements and TelStar could legitimately charge late payment fees. TelStar said the late payment fee was to incentivise against continued late payment or payment delinquency.

In querying TelStar's practice, we pointed out that if TelStar and Mya were agreeing to a payment plan, then Mya was likely to meet the definition of being in financial hardship under the TCP Code. We also cited the TIO Guideline for assisting and responding to customers in financial hardship, which recommends providers waive any fees for late payments in a bill.

\*Names of individuals, organisations and companies have been changed.

### (c) Accessibility

At times, we hear from consumers who say they are unable to access assistance from their provider. This can exacerbate the detriment they experience when they are not treated fairly or face challenges making informed choices. During COVID-19, the case studies below show how consumers' inability to contact their providers magnified the detriment they experienced.<sup>20</sup>

We recommend drawing on these experiences to enhance minimum requirements for accessibility in the Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (**Complaints Handling Standard**). Enhanced minimum requirements could ensure providers have multiple channels available for consumers to contact them, particularly for consumers who are vulnerable. When unexpected circumstances arise that impact these channels there should be clear requirements ensuring providers adapt to circumstances in a transparent way that supports keeping multiple channels for contact open to consumers. Prescriptive minimum requirements for accessibility should be balanced against the risk of limiting innovation and the adoption of new technologies.

Case study D and systemic investigation 2 about consumers being unable to report urgent complaints demonstrates detriment and problems arising from consumers being unable to contact their provider during COVID-19.

#### Case study D – Jessica could not contact her provider for a payment extension

Jessica\* lives in a rental share house. In the early days of COVID-19, Jessica's housemates moved out leaving her responsible for all costs for the house, including the phone and internet service.

Jessica received a bill for her phone and internet but could not afford to pay it until after the due date. When she called her provider's billing line to ask for more time to pay her bill, she received a recorded message asking callers to use online chat or her provider's App.

Over several weeks, Jessica frequently tried to contact her provider using online chat and its App but could not get through to anyone. During this time Jessica received emails and texts from her provider saying her services would be restricted if she did not pay the charges.

\*Names of individuals, organisations and companies have been changed.

<sup>20</sup> TIO, *Impact of COVID-19 on phone and internet complaints* (July 2020). See: <https://www.tio.com.au/sites/default/files/2020-07/TIO%20Systemic%20Report%20Impacts%20of%20COVID-19%20on%20phone%20and%20internet%20complaints%20July%202020.pdf>

## Systemic investigation 2 – Consumers could not report urgent complaints

We identified an increase in urgent complaints from consumers who could not contact Mode Telco\* to report service problems. These complaints were urgent because the consumers had serious medical conditions and not having access to a landline, mobile or internet service presented a safety risk. Customers said they had tried to contact Mode Telco by phone, online chat, and using Mode Telco's App.

We raised a systemic investigation with Mode Telco. Mode Telco said, due to government lockdowns, a significant number of its offshore call centre staff were unable to travel to the office.

Mode Telco created temporary contact centres staff could travel to. In Australia, Mode Telco redeployed staff from its retail outlets to contact centres and recruited new staff, many from an industry that had been significantly impacted by COVID-19.

\*Names of individuals, organisations and companies have been changed.

Even in the absence of large-scale events like COVID-19, clear minimum standards will help providers make the right choices to establish effective accessibility channels and systems. This will benefit new providers entering the market, and existing providers updating their communication systems. If minimum accessibility standards are clear, providers can more confidently make choices about communication channels that do not detriment consumers.

Systemic investigation 3 shows problems with a provider's accessibility for making general enquiries and complaints by telephone.

## Systemic investigation 3 – BriteTalk's communication channel update creates communication barriers

We identified a possible systemic issue when consumers reported being unable to raise complaints with BriteTalk\* through its main contact phone number. When consumers called this number and selected the Interactive Voice Response (IVR) option for general enquiries, the IVR informed consumers that these enquiries were handled exclusively via online chat. We were concerned about consumers being left without a clear way to lodge a complaint by phone.

In response to the systemic investigation, BriteTalk set up a new complaints line which was added to its Complaint Handling Policy. While this was an improvement, we found the main contact line still directed consumers to online chat without providing the new complaint phone number, and the complaint phone number was very difficult to locate on BriteTalk's website.

BriteTalk maintained it had met its obligations under the Complaints Handling Standard.

The Ombudsman issued a formal recommendation that BriteTalk should prominently display its new complaints phone number on its webpage, and provide customers calling the main phone number with the option to speak with a representative about a general complaint or enquiry.

While BriteTalk maintained that the recommended changes were not required under its Complaints Handling Standard obligations, BriteTalk ultimately made changes consistent with the Ombudsman's recommendation.

\*Names of individuals, organisations and companies have been changed.

## 2.3 The time is right to review and update legacy obligations

We support the Department reviewing legacy obligations to ensure regulatory settings remain relevant and fit for purpose. As the market has evolved, some legacy obligations have declined in relevance and could be removed, while others should be retained and adjusted.

Legacy obligations we agree have declined in relevance include:

- pre-selection services obligations
- directory assistance service obligations
- operator service obligations.

### **(a) Obligations around untimed local calls and itemised billing should be retained**

The Department should retain obligations for untimed local calls. We continue to receive complaints from consumers who have untimed local call plans. In these complaints, consumers typically raise billing disputes with their providers about excess charges for local calls.

While our complaints suggest these types of plans are declining in relevance in the market, there are still consumers using untimed fixed voice-only plans. These consumers may suffer if the untimed local call legacy obligations are removed before all consumers are transitioned to plans that include local calls.

The Department should also retain the obligations for itemised billing. We continue to receive complaints about consumers on fixed voice-only plans about bills that make it difficult for them to check charges.

### **(b) Expanded low-income measures should reflect modern consumer needs**

We support the expansion of Telstra's low-income measures to include data and internet services, as well as retaining low-income measures for fixed voice services. While voice services remain essential for many consumers, the universal availability of data services for all consumers is now also critical. Consumers need these services to access basic services such as banking and government assistance, as well as to work, study, and stay socially connected.

It is appropriate for these expanded low-income measures to be incorporated into Telstra's carrier licence conditions while Telstra is the contracted Universal Service Obligation supplier (until 2032). However, in future, we encourage the Department to consider a broader range of providers to offer low-income measures.

### 3. Designing a regulatory toolkit to drive better consumer outcomes

**Recommendation 10:** We recommend giving the ACMA two additional enforcement options as part of its regulatory toolkit:

- raising the maximum penalty amounts for breaches of codes and standards to align with the maximums for breaches of determinations
- removing the requirement to issue a direction to comply with a code before seeking penalties for breaching that direction

**Recommendation 11:** We recommend setting up a registration scheme with minimum market entry requirements for retail service providers

**Recommendation 12:** We recommend enhancing the ACMA's data collecting and reporting capabilities by:

- providing definitions for 'complaint types' that facilitate greater insight into complaint issues
- providing for reporting by individual retail service provider

As regulator of the telecommunications market, the ACMA should be empowered with a complete regulatory toolkit so it can most effectively enforce compliance. This should include tools, methods, and powers the ACMA needs to address industry problems as appropriate.

We consider a registration scheme for market participants could be an effective additional regulatory tool. This tool would support the ACMA in discharging its compliance and enforcement priorities and provide visibility over market participants.

We also agree with the Department's suggested amendments to the ACMA's enforcement options. Finally, we recommend expanding and aligning the ACMA's data collection and reporting capabilities.

#### 3.1 Regulatory tools should support proportionate and efficient enforcement options

We support the Department designing a broader and more flexible regulatory toolkit. The ACMA should have a range of tools to respond to different problems in the most appropriate way.

As an EDR scheme, we work closely with regulators to make them aware of systemic issues we identify across industry. Our systemic investigation function involves requesting a response from a provider and assessing the provider's response. If the provider's response is unsatisfactory and involves a breach of telco-specific consumer protection rules, we may refer the matter to the ACMA.

The ACMA's compliance and enforcement policy says the ACMA's regulatory action will be proportionate to the seriousness of the breach and the level of harm.<sup>21</sup> It also notes a range of other factors the ACMA considers when determining the right enforcement option or combination of options.<sup>22</sup>

<sup>21</sup> ACMA, *Compliance and Enforcement Policy 2020-21*, See: <https://www.acma.gov.au/compliance-and-enforcement-policy>

<sup>22</sup> As above.

### **(a) The ACMA should have a wider range of compliance and enforcement tools**

When designing a broader and more flexible regulatory toolkit, the Department should consider a range of consequences for non-compliance, including:

- serious consequences, such as revoking or suspending registration, authorisation or licensing, or civil penalties
- moderate consequences, such as enforceable undertakings or infringement notices
- minimal consequences, such as education or compliance support.

Other regulatory tools could provide regular incentives for performance, such as enhanced reporting capabilities (covered in more detail later in Part 3.3 of this submission).

We support the Department's suggested enforcement options being added to the regulator's toolkit:

- raising the maximum penalty amounts for breaches of codes and standards to align with the maximums for breaches of determinations to ensure consistency between penalties
- making code enforcement more efficient by removing the requirement to issue a direction to comply with a code before seeking penalties for breaching that direction.

### **(b) Maximum penalty amounts should be aligned**

We support aligning the maximum penalty amounts. Issuing larger providers with higher penalties for breaches may incentivise compliance that protects a larger number of consumers.

However, many of our members are smaller providers who may not have the financial resources to pay the maximum penalty amounts. There may be unintended consequences for the customers of smaller providers if they are subject to maximum penalties and cannot continue to trade as a result of enforcement action. In such cases, other regulatory tools may be more appropriate.

As discussed later, minimum market entry requirements for retail service providers could also ensure that all providers meet minimum financial capacity requirements.

### **(c) Code breaches should be directly enforceable**

We support code breaches being directly enforceable. A quicker and consistent enforcement process may reduce risks associated with delayed regulatory action.

When we refer systemic non-compliance with codes to the regulator, the current two-step enforcement process can take time because the ACMA must issue a direction to comply with a code before proceeding to any further enforcement action. Reducing the length of this process may mean better outcomes for consumers experiencing problems, greater certainty for providers, and fewer complaints to our office. It may also reduce the risk of other consequences from delays, such as a provider transferring its customer base to another entity.

### 3.2 A registration scheme would enhance accountability and visibility of telecommunications market participants

We believe the time is right to introduce a registration scheme for providers of telecommunications services. We have raised this option previously, most recently in our submission to Part A of the Consumer Safeguards Review.<sup>23</sup>

A registration scheme could alleviate several of the challenges the Consultation Paper raises. For example, the Consultation Paper says it is difficult for consumers to navigate the increasing array of market players in the telecommunications sector. It also notes the ACMA's compliance and enforcement actions appear to have been constrained by many factors, including the number and nature of providers (in particular, the large number of small providers).

We see a particular need for a registration scheme for retail service providers because retail service providers have direct relationships with consumers. The Department may wish to consider whether a registration scheme would also be useful for other intermediaries who play a role in the supply chain.

#### **(a) The telecommunications market has outgrown policy settings that prioritised competition**

The original policy intent of having no barriers to market entry and no registration requirement for providers was designed to open up competition after Telstra's privatisation.

There are currently 1,390 members of the TIO scheme.<sup>24</sup> Although our member register does not provide a complete picture of the number of market participants, it is clear the telecommunications sector is now a competitive marketplace.

Telecommunications services have also evolved significantly since deregulation. Both voice and internet services are increasingly essential to the everyday lives of individuals and businesses. Technological developments and innovative product choices have also evolved significantly. While this means more options for consumers, it can also make it harder for consumers to engage with the market and make informed choices about an essential service.

There is currently no publicly accessible register of telecommunications market participants in Australia. While all carriers and providers must join the TIO scheme, our member register only shows the telecommunications market participants who have joined. We only learn about providers who should be members when a customer contacts us wanting to lodge a complaint, when the provider contacts us or when the ACMA tells us about the provider. When a provider fails to join the TIO scheme, we refer the matter to the ACMA. Our website allows consumers to check whether their provider is a member of the TIO scheme.<sup>25</sup>

Given the broad changes to products and service delivery and healthy competition, it is now time for renewed policy settings to ensure there is visibility over the telecommunications market. This could also ensure there is a level playing field for market entrants and ensure all providers can meet minimum requirements.

#### **(b) A registration scheme should ensure providers can meet minimum requirements**

<sup>23</sup> TIO, *Submission to Consumer Safeguards Review Part A* (July 2018). See: [https://www.tio.com.au/sites/default/files/2019-05/Consumer-Safeguards-Review-TIO-submission\\_0.PDF](https://www.tio.com.au/sites/default/files/2019-05/Consumer-Safeguards-Review-TIO-submission_0.PDF)

<sup>24</sup> TIO, *Annual Report 2019-20*, p63. See: [https://www.tio.com.au/sites/default/files/2020-09/TIO%20AR2019-20\\_High-Res.pdf](https://www.tio.com.au/sites/default/files/2020-09/TIO%20AR2019-20_High-Res.pdf)

Unlike other essential service sectors, the telecommunications sector does not have a registration, authorisation, or licensing scheme for service providers that sell directly to consumers should be required to demonstrate that they can satisfy the minimum capabilities required to participate in the market.

Information required for the registration process could be balanced to ensure a disproportionate burden is not imposed on new providers. An appropriate balance would allow competition and innovation, but also not represent an unreasonable barrier to market entry. Many of our members are small innovative providers who do satisfy their obligations, and whose customers never or rarely contact our office to make complaints.

The Department could consider adopting minimum entry requirements from authorisation<sup>26</sup> or licensing schemes in other essential service industries. Minimum entry requirements for a telecommunications registration scheme could include:

- organisational/compliance capacity<sup>27</sup>
- technical capacity<sup>28</sup>
- financial resources<sup>29</sup>
- leadership meeting a suitable person criteria<sup>30</sup>
- EDR scheme membership and compliance.<sup>31</sup>

A registration scheme with minimum market entry requirements could address problems with new providers being unaware of their obligations and phoenix activity in the telecommunications market.

We have seen new providers come into the market who are unaware of their obligations under the TCP Code. We note the work of Communications Compliance Ltd (**CommCom**) to assist and offer guidance to these new providers on how to comply with the TCP Code. However, where there is no minimum requirement for new providers to demonstrate their ability to comply with regulatory obligations, many customers could experience prolonged detriment before contacting our office.

Systemic investigation 4 shows that sometimes providers do not have the organisational capacity, or administrative or financial resources to fulfil their TCP Code Obligations. This can lead to prolonged consumer detriment.

<sup>26</sup> National Energy Retail Law (South Australia) Act 2011 (Cth) National Energy Retail Law Schedule, pt 5 – Authorisation of retailers and exempt seller regime. Corporations Act 2001 (Cth) vol 4, pt 7.6, div 2, ss 911A (section 912A(j) also allows regulations to set additional general obligations on financial service licensees).

<sup>27</sup> National Energy Retail Law (South Australia) Act 2011 (Cth) National Energy Retail Law Schedule, pt 5, div 2, s 90(1)(a). Corporations Act 2001 (Cth) vol 4, pt 7.6, div 2, s 912A(1)(d)(ca)(e)(h).

<sup>28</sup> National Energy Retail Law (South Australia) Act 2011 (Cth) National Energy Retail Law Schedule, pt 5, div 2, s 90(1)(a). Corporations Act 2001 (Cth) vol 4, pt 7.6, div 2, s 912A(1)(d).

<sup>29</sup> National Energy Retail Law (South Australia) Act 2011 (Cth) National Energy Retail Law Schedule, pt 5, div 2, s 90(1)(b). Corporations Act 2001 (Cth) vol 4, pt 7.6, div 2, s 912A(1)(d), (section 912B also requires licensees to have compensation arrangements in place for loss or damage suffered by retail clients due to breaches of licensee obligations).

<sup>30</sup> National Energy Retail Law (South Australia) Act 2011 (Cth) National Energy Retail Law Schedule, pt 5, div 2, s 90(1)(c),(4). Corporations Act 2001 (Cth) vol 4, pt 7.6, div 2, ss 913B(1)(b), 913BA.

<sup>31</sup> National Energy Retail Law (South Australia) Act 2011 (Cth) National Energy Retail Law Schedule, pt 4, s 86(3). Corporations Act 2001 (Cth) vol 4, pt 7.6, div 2, ss 912A(1)(g)(i), (2)(c).

#### Systemic investigation 4 – Small provider unable to fulfil its TCP Code obligations

We identified a systemic issue about Forest Mobiles\* not offering a spend management tool to its customers. We noticed a trend of complaints from consumers saying they were not told when they had reached 50/85/100% of their included data allowances for their plans.

We raised this issue with Forest Mobiles and told Forest Mobiles it was required to offer a spend management tool under TCP Code section 6.5.1(a) and TCP Code section 6.5.2(d)-(f).

Forest Mobiles responded to the TIO and said it offered its customers access to an online portal where they could manage their data usage and expenditure. Forest Mobiles told us it did not send data usage notifications at the necessary increments. Forest Mobiles told the TIO it previously had a practice of sending spend management and data allowance notifications, but the process was burdensome and it found customers would lie about receiving the notifications.

Forest Mobiles told the TIO it was a small provider and indicated it did not have the necessary systems in place to comply with all of its regulatory obligations.

As this systemic issue could not be resolved, we referred the matter to the regulator.

\*Names of individuals, organisations and companies have been changed.

We also see phoenix activity in the telecommunications market. Phoenix activity may become apparent when we are handling a complaint, or where we see changes to TIO membership or member details. Existing legislative measures to disrupt and deter phoenix activity could be complemented by a registration scheme.

Such problems could be avoided if directors were required to satisfy a fit and proper person test under a registration scheme.

#### Case study E – Phoenix activity leads to prolonged consumer problems

Between April 2016 and March 2017, the ACCC successfully took enforcement action against SoleNet, Sure Telecom and the director of these companies, James Harrison, in the Federal Court of Australia.<sup>32</sup>

The court ordered the payment of \$250,000 in pecuniary penalties, that James Harrison be disqualified from managing corporations for three years, and that consumers be refunded.<sup>33</sup>

<sup>32</sup> ACCC v Harrison [2016] FCA 1543.

<sup>33</sup> ACCC, *Media Release MR 21/17, SoleNet and Sure Telecom banned from operating telco services* (3 March 2017). See: <https://www.accc.gov.au/media-release/solenet-and-sure-telecom-banned-from-operating-telco-services>

The court found Mr Harrison had engaged in a system of conduct or pattern of behaviour that was unconscionable in all the circumstances by restructuring companies to avoid regulatory sanctions and unpaid debts.<sup>34</sup>

The court found the key elements of the system of pattern of conduct were:<sup>35</sup>

- successively transferring the customer contract to another provider without the customer's knowledge or informed consent. Customers were unaware they had been transferred because the successor company used the same trading name, letterhead, address and logo as the previous company
- gaining providers made successive demands of customers for early termination and cancellation fees without any contractual basis when customers sought to cancel their contract, and if consumers did not pay, they were threatened with legal action or referral to debt collection agencies or law firms
- some of the affected consumers included those who were in a weaker bargaining position because they could not afford early termination fees, such as pensioners.

The case charts how the timing of insolvency and deliberate use of the corporate vehicle were used to avoid earlier regulatory action and paying significant debts owed to upstream wholesale service companies (some of which became insolvent). The timing of unauthorised transfers of the customer base coincided with the wholesaler taking credit management action.<sup>36</sup>

### **(c) A registration scheme could support TIO scheme membership and compliance**

A registration scheme with an entry requirement to join and comply with the TIO scheme could address problems we see with scheme membership and compliance.

The Telecommunications (Consumer Protection and Service Standards) Act (TCPSS Act)<sup>37</sup> sets out the legislative framework for the TIO scheme. This framework makes it mandatory for all carriers, and all eligible carriage service providers, to join the TIO scheme.<sup>38</sup> It is mandatory for all TIO members to comply with the TIO scheme.<sup>39</sup>

While the TCPSS Act is clear about the requirement to join the TIO scheme, it is not clear about the status of a TIO member who is expelled from the TIO scheme for non-compliance with the TIO scheme. For example, if a TIO member is expelled, it is unclear whether the former TIO member is still allowed to operate. There is a lack of clarity around the obligations of former TIO members if they continued to trade under the current framework.

<sup>34</sup> ACCC v Harrison [2016] FCA 1543 [10]. See also: <https://www.accc.gov.au/media-release/solenet-and-sure-telecom-banned-from-operating-telco-services>

<sup>35</sup> ACCC v Harrison [2016] FCA 1543 [125]-[131].

<sup>36</sup> ACCC v Harrison [2016] FCA 1543 [32]-[79].

<sup>37</sup> Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth).

<sup>38</sup> Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) s 128(1). The ACMA can also exempt a carrier or carriage service provider from this requirement. See: <https://www.acma.gov.au/tio-scheme-requirements-and-exemptions>

<sup>39</sup> Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) s 132.

A registration scheme could prevent or support the resolution of issues we see with members not complying with TIO decisions, providers failing to join the TIO scheme, and members failing to pay TIO fees.

### *Non-compliance with TIO decisions*

If a member of the TIO scheme does not comply with a TIO decision, this amounts to a failure to comply with the TIO scheme in contravention of the TCPSS Act. The ACMA can and has pursued non-compliance with a TIO decision in Court, but it is a time-consuming and costly exercise. For example, the ACMA initiated proceedings against Red Telecom Pty Ltd that are still ongoing.<sup>40</sup> Red Telecom Pty Ltd remains a member of the TIO scheme.

### *Failure to join the TIO scheme*

When a consumer contacts us about an eligible carriage service provider who is not a member of the TIO scheme, we are unable to handle their complaint. We will then contact the provider about joining the TIO scheme. If the provider does not respond or does not believe they need to join the TIO scheme, we may then refer the matter to the regulator.<sup>41</sup> This process takes time and may leave a consumer or consumers experiencing ongoing harm without access to EDR services.

#### **Case Study F – Edgar’s service provider was not a member of the TIO scheme and we were unable to handle his complaint**

Edgar\* raised a complaint with the TIO about Pan Phones\*. Edgar told us he received an unsolicited call from Pan Phones and that Pan Phones transferred his telecommunications services without his consent.

Edgar told us that he is elderly and was not fully aware of what was happening during the unsolicited phone call. Edgar told us he had tried several times to speak to Pan Phones, but could not get through. When Edgar finally could reach Pan Phones, Edgar told us Pan Phones maintained Edgar had agreed so he needed to keep the services or pay early termination fees. Edgar told us he was misled and is being charged for a service that he did not agree to.

Edgar wanted our assistance to help him cancel his arrangement with Pan Phones.

We were unable to help Edgar because Pan Phones was not a member of the TIO scheme. The TIO contacted Pan Phones requesting that it join the TIO scheme; however, the process took some time, and Edgar was left without access to an independent EDR service.

Edgar continued to be billed by Pan Phones for the unauthorised transfer.

\*Names of individuals, organisations and companies have been changed

<sup>40</sup> ACMA, *ACMA takes Red Telecom to Federal Court* (28 January 2020). See: <https://www.acma.gov.au/articles/2020-01/acma-takes-red-telecom-federal-court>. See also our statement: <https://www.tio.com.au/reports-updates/statement-acma-federal-court-action-against-red-telecom-pty-ltd>

<sup>41</sup> ACMA, *Telcos warned for failing to join TIO scheme* (24 July 2020). See: <https://www.acma.gov.au/articles/2020-07/telcos-warned-failing-join-tio-scheme>

### *Failure to pay TIO scheme complaint or membership fees*

At times, members of the TIO scheme may fail to pay fees (whether membership or complaint fees or both). When this happens, we continue to handle complaints from the member's customers, leading to additional fees accruing, and take action to have the debt paid.

We take action against members who have outstanding debts; however, this is costly and while we are pursuing debts owed to us further debts are accrued as additional membership and complaint fees are incurred by the member and the cycle continues. These additional costs increase fees for other members who continue to comply with our scheme and pay their fees.

#### Case Study G – Mercury Internet stopped paying TIO complaint and membership fees and was taken to court

The TIO identified that Mercury Internet\* was not paying TIO complaint and membership fees. This meant Mercury Internet was accumulating a debt to the TIO.

We tried to work with Mercury Internet over nine months to resolve the issue. During that time, Mercury Internet did not pay any fees to the TIO and we continued to handle complaints from Mercury Internet's customers about their telco services.

Ultimately, we were unable to resolve the issue and we subsequently issued court proceedings against Mercury Internet to recover the unpaid fees accrued over that nine-month period. The court ordered Mercury Internet to pay the debt it owed the TIO as at the date we issued court proceedings.

Mercury Internet eventually paid the debt. However, from the date we issued court proceedings against Mercury Internet, we continued to handle complaints from Mercury Internet's customers about their telco services. This resulted in additional fees accruing which were not the subject of the court proceedings.

Mercury Internet did not pay these fees and we have since commenced fresh proceedings.

\*Names of individuals, organisations and companies have been changed

A registration scheme could include a requirement to belong to and comply with the TIO scheme. This could ensure the regulator has options available when members fail to pay fees.

The Department may wish to consider a system where the regulator can issue a warning with a timeframe to pay fees. If the provider does not comply with the warning, the ACMA could then consider proportionate enforcement activity as the next step.

### 3.3 The ACMA's data collection and reporting capabilities should be enhanced to enable market performance transparency

The ACMA collects valuable information about telecommunications complaints raised directly with providers. The ACMA's data collection and reporting capabilities should be enhanced to improve transparency and visibility of telecommunications market performance.

The Telecommunications (Consumer Complaints) Record-Keeping Rules 2018 (Cth) (**Record Keeping Rules**) currently require retail service providers to keep records and provide quarterly reports to the ACMA providing:

- number of services in operation
- number of services in operation by service and technology type
- number of complaints received but not referred to our office
- number of complaints per service type that are not referred to our office
- the average number of days taken to resolve complaints that are not referred to our office
- number of NBN broadband complaints about connections, faults or speed
- number of NBN voice only complaints about connections and faults
- the top three complaint types by volume for complaints not referred to our office
- number of complaints referred to our office.

Although information collected under the Record Keeping Rules is valuable, the regulatory framework should be enhanced to ensure the ACMA has both the information that it needs, and the tools to action the information it receives from retail service providers. For instance, the Department could consider enhancing the ACMA's data collecting and reporting capabilities by:

- expressing clearly what information the ACMA's public reports can and should include
- providing definitions for 'complaint types' that allow greater insight into issues driving complaints in the market
- providing for public reporting by individual retail service provider.

The current Record Keeping Rules are unclear about how complaints about multiple service types will be captured. The Record Keeping Rules are also unclear about how complaints about services using emerging technology types, such as 5G, will be captured.

A public view of the complaints landscape that is more comprehensive would give consumers, industry, and other stakeholders visibility over issues driving complaints, and provide market visibility and transparency. This visibility could enhance informed choice for consumers.

The data collection and reporting framework should provide ACMA with the capability to publicly report by issues. This capability would be assisted by express definitions for complaint issues reported by retail service providers. The ACMA's Record Keeping Rules currently allow for the 'complaint types' to be sorted according to each individual provider's internal definitions. Clearly expressed definitions will ensure reporting by complaint issues can be standardised across the market, ensuring more accurate public reporting of complaint trends.

The TIO reports on complaints quarterly. Among other things, our quarterly reports provide insight into:

- the service type most complained about
- top complaint issues by volume
- the split between residential and small business consumer complaints.

Most consumer complaints are resolved by providers through internal dispute resolution (IDR). The complaints we receive (and report on) are those not resolved by IDR where consumers then raise the complaint with our office. Complaints received by providers through IDR may differ from the types of complaints received by our office.

Current reporting frameworks do not allow for consistent categorisation of complaints raised by consumers. For instance, the Record Keeping Rules are focused on collecting data on technology type, and not on the specific issues that drive consumer complaints. This makes it difficult for stakeholders to track the consumer complaint journey from IDR through to EDR. All stakeholders would benefit from the ACMA being able to collect and publish data on issues driving complaints. This data, along with technology type, would provide greater visibility and more meaningful insights into industry complaint trends.

Reports on complaints published by the TIO and Communications Alliance include data by individual retail service provider (top 10). The ACMA should have the same capability to ensure its public reports function as both an information tool for the public and a performance incentive for retail service providers. Reporting by retail service provider is also consistent with the approach taken in other essential service industries, such as energy.<sup>42</sup>

These enhancements to the current framework will allow for better alignment in reporting between ACMA, ACCC, TIO and Communications Alliance and will provide all stakeholders with comprehensive information on the telecommunications market.

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<sup>42</sup> Australian Energy Regulator, *Retail Markets Quarterly Q2 2019-20*. See: [https://www.aer.gov.au/system/files/AER\\_Retail%20Markets%20Quarterly\\_Q2-2019-20.pdf](https://www.aer.gov.au/system/files/AER_Retail%20Markets%20Quarterly_Q2-2019-20.pdf)