

# Systemic Issue Guidelines

## 1. Purpose

The purpose of these guidelines is to provide information about how we handle systemic issues and exercise our systemic issue powers under the [Terms of Reference \(TOR\)](#).

We may publish guidelines on how we handle systemic issues (clause 4.7 of the TOR).

## 2. Our systemic issues role

- 2.1. In addition to resolving individual Complaints, we also support improvements in industry practice by identifying and investigating systemic issues (clause 4.1 of the TOR).
- 2.2. A systemic issue is one that has or is likely to have a negative effect on a number of consumers or a particular type of consumer, including about:
  - (a) members' systems, policies, processes, or practices
  - (b) repeated conduct by a member that indicates potential non-compliance with the law, regulatory requirements, or good industry practice, and
  - (c) widespread issues driving complaints, which may arise from general industry practices, gaps in consumer awareness, or the broader regulatory and telecommunications operating landscape (clause 4.2 of the TOR).

## 3. How we handle systemic issues

We can identify and investigate a systemic issue with or without a complaint (clause 4.3 of the TOR).

### 3.1. Identification

We identify possible systemic issues through a range of methods, including through:

- handling complaints
- analysing complaint trends, or

- receiving other information that may suggest a systemic issue, including information from members, consumer groups, the media or regulators.

We may identify a systemic issue from seeing an increase or change in complaint patterns, multiple complaints about the same issue, or disproportional impact on consumers experiencing vulnerability.

We decide whether we will handle a possible systemic issue and, if so, how it is prioritised in our program of work. This decision may be influenced by:

- the potential impact or risk of the issue,
- the resources required to handle the issue, and
- whether another body is more appropriate to handle the issue.

If we decide not to handle a possible systemic issue, we may still raise awareness about it or refer it to a more appropriate team at the TIO or external body.

## **3.2. Investigation**

### **3.2.1 Notifying members**

If we decide to investigate a systemic issue about a member, we:

- (a) will inform that member; and
- (b) may request information or documents from that member at any time (clause 4.4 of the TOR).

We will inform the member about a systemic issue we have decided to investigate by writing to a relevant representative of the member.

We will specify any relevant complaints we have identified, explain our observations of the impact of the issue on consumers and ask the member for a response.

### **3.2.2 Requesting information from members**

We will seek information and documents to help us assess the nature of the systemic issue, its causes, and the level of consumer detriment. The types of information and documents we may request include customer interaction records, data, contracts, voice recordings, and policy or procedural information.

As part of handling and investigating a systemic issue, we may require a member to share investigation findings, including any underlying causes and trends (clause 4.6(a) of the TOR).

Members must cooperate with and respond to our investigations and processes within the timeframes we specify (clause 6.2 of the TOR). The cooperation we expect includes considering improvement opportunities, responding in detail and providing supporting evidence where relevant.

Members must provide information or documents within the timeframe we specify (clause 6.3 of the TOR). For an initial request for information, we usually consider *20 business days* to be a reasonable timeframe.

Where a member is unable to meet a timeframe, the member must contact us before the timeframe passes to request an extension and provide reasons for the request. We will only grant an extension of time where we consider it is reasonable to do so (clause 6.3 of the TOR).

### **3.2.3 Taking further steps in a systemic investigation**

Based on the member's response and information available to us, we will assess if the systemic issue is resolved or if further steps are required. In our assessment, we will consider:

- if we need more information,
- if we have outstanding concerns,
- what action is appropriate to best address any outstanding concerns, and
- if it continues to be appropriate for us to handle the systemic issue.

### **3.3. Working with members to address concerns about a systemic issue**

We will address our concerns about a systemic issue primarily by working with the member.

#### **3.3.1 Working towards resolution**

Where appropriate, we will work with the member through consultation and negotiation to reach an agreed resolution.

We can suggest or discuss improvement and remedial actions a member should take (clause 4.6(b) of the TOR). We may meet with member representatives with to discuss the issue and its resolution. Where an agreed resolution cannot be reached, the issue may be escalated to a

meeting between the Ombudsman or Assistant Ombudsman and senior representatives of the member.

We can ask the member to commit to suitable timeframes set out for any agreed actions (clause 4.6(c) of the TOR). Once we have reached an agreed a resolution, we usually consider a timeframe of *one to three months* to be reasonable for the member to implement the resolution.

We may continue to monitor the systemic issue until implementation is complete. Once resolution is implemented, the member should confirm to us the actions taken to resolve the issue.

### **3.3.2 Making systemic issue recommendations**

If a systemic issue cannot be resolved by agreement with the member, we can recommend a member does or refrains from doing anything necessary to address a systemic issue (clause 4.8 (a) of the TOR). This may include notifying and remediating consumers who have been affected by the systemic issue.

We will provide written reasons to the member for a systemic issue recommendation (clause 4.8 of the TOR). Our reasons will consider relevant law, good industry practice and what is fair and reasonable in the circumstances.

When we make a systemic issue recommendation, we will ask the member whether it accepts the recommendation within a specified timeframe (usually *20 business days*). If the member accepts the recommendation, we ask the member to provide details of how it will implement the recommendation. If the member does not accept the recommendation, we ask the member to respond to the matters raised in the recommendation.

All systemic issue recommendations are signed by the Ombudsman or Assistant Ombudsman.

### **3.4. Other actions to address concerns about a systemic issue**

It is not always possible or appropriate for all our concerns about a systemic issue to be resolved by the member.

In any systemic investigation, we can:

- Recommend the telecommunications industry (or segment of the industry) makes improvements that deliver better outcomes to consumers and occupiers (clause 4.8 of the TOR)
- Publish reports on systemic issues to improve member and industry practices (clauses 5.1, 5.2 and 5.3 of the TOR)
- Publish systemic issue recommendations, including the names of members (but not consumers or occupiers), and the reasons for our view (clause 5.2 of the TOR)
- Share information with regulators (clauses 5.6 and 5.7 of the TOR), and
- Share information to promote good practice with regulators, government bodies, members, and community and industry groups (clause 5.8 of the TOR).

## 4. Public reporting on systemic issues

We publicly report on a range of matters to increase awareness and understanding of our scheme and improve member and industry practices (clause 5.1 of the TOR).

Our reports may include statistics and trends analysis, as well as case studies or scenarios and insights from enquiries, complaints, and systemic issues (clause 5.3 of the TOR).

From time to time, we publish systemic investigation reports into widespread issues driving complaints within the telecommunications industry. Systemic investigation reports may make recommendations to the industry for improvements that deliver better outcomes to consumers and occupiers (clause 4.8 (b) of the TOR).

## 5. Publication of systemic issue recommendations

We may publish systemic issue recommendations, including the names of members (but not consumers or occupiers), and the reasons for our view (clause 5.2 of the TOR).

The publication of systemic issue recommendations is at the discretion of the Ombudsman. When considering whether to publish a systemic issue recommendation, the Ombudsman will consider:

- whether the member has accepted or implemented the systemic issue recommendation,
- the impact on consumers if the actions in the systemic issue recommendation are not taken by the member,
- whether regulators or other bodies have had or intend to pursue involvement with the member about the systemic issue that is the subject of the systemic issue recommendation, and
- the public benefit of publishing the systemic issue recommendation.

We will provide the member with *5 business days'* notice of publishing a systemic issue recommendation.

## 6. Working with regulators

We can tell a regulator about the conduct of a member (or anyone who should be a member) when that conduct may be relevant to the regulator's compliance and enforcement role (clause 5.6 of the TOR).

We may share information with regulators to address systemic issues, reduce complaints and contribute to industry improvement (clause 5.7 of the TOR).

We also have regular liaison meetings with regulators where systemic issues are discussed at a high level.

We may refer a specific systemic issue to a regulator for consideration after forming the view that:

- it is more appropriate for the systemic issue to be handled by the regulator,
- the conduct of the member may be relevant to the regulator's compliance and enforcement role,
- the systemic issue is unlikely to be resolved with the member,
- the member does not implement an agreed resolution, or
- the member does not accept or implement a systemic issue recommendation.

The type of information we provide to regulators and how we provide that information is governed by our Terms of Reference, Complaint Handling

Procedures, Privacy Policy, these guidelines and Memoranda of Understanding with regulators.