



Queen Margaret University  
CONSUMER DISPUTE RESOLUTION  
CENTRE



Telecommunications  
Industry  
Ombudsman

## Telecommunications Industry Ombudsman

### Independent five-year review

**Public Consultation 21 March 2022 - 15 May 2022**

The Telecommunications Industry Ombudsman (TIO) has appointed Queen Margaret University from Edinburgh, Scotland to conduct its independent five-year review. As part of this review, Queen Margaret University is conducting a public consultation of which this is part. Both the TIO and Queen Margaret University would be grateful if you could take the time to complete the questions within this Issues Paper. The issues contained within this paper are based primarily upon the Australian 'Benchmarks for Industry Based Customer Dispute Resolution'. The Board of TIO determined that this review should not consider the TIO's complaint handling technology nor its funding structure. Please note that you need only answer questions where you have a view or opinion you wish to provide. The answer boxes will expand as you complete the questions. Please send the completed paper to [TIOreview@qmu.ac.uk](mailto:TIOreview@qmu.ac.uk) by close of business 15 May 2022

It is the policy of the TIO that it should be as transparent as possible at all times. Therefore, at the same time as the final Independent Review report is published, or shortly thereafter, the TIO will publish all submissions received by Queen Margaret University as part of this consultation. You may wish to take this into consideration when completing the form. If you wish to keep your submission confidential, please indicate this below.

Name of submitting organisation: **NBN Co**

Would you like to request confidentiality? ~~Yes~~ / No

## **Industry Benchmark 1: Accessibility**

**Intention:** The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

### **Possible issues for consideration:**

- The TIO's complaint handling materials.
- Ease of using the scheme.
- Simplicity of the TIO's processes.
- Raising awareness of the TIO scheme to disadvantaged and vulnerable consumers.

### Website

The TIO's website and member portal is user friendly. One suggestion for further development is to create a consumer and member portal for real time updates, information and status reports of a complaint. The ability for consumers to self-serve clear information from the TIO about complaint types, how the TIO would handle them and what outcomes may be reasonable would be beneficial for all parties.

### Advise to consumers and members

The TIO's position statements and other information available to consumers on its website has, quite rightly, been amended and changed over time. Unfortunately, some of the information that has been made available now tends to lack specificity and as a result can lead to ambiguity in how TIO officers may consider or decide on specific case matters.

For instance, earlier versions of the TIO's position statements provided more clarity than the current versions about what circumstances the TIO would or would not consider are relevant to a complaint. We would also like to see a previous consultation process on these position statements reinstated. This opportunity for industry members to review position statements prior to publishing was valuable so that industry could provide feedback on the processes industry members used to address a customer issue or comply with a particular regulation the TIO has referred to when considering the merits of a complaint.

We consider that the TIO's processes should reinforce the importance of the need for consumers to first approach their provider or the relevant TIO member in order for that member to have an opportunity to resolve the complaint before engaging in the formal referral EDR process.

We understand a large proportion of complaints that are referred by the TIO back to a service provider are resolved without further escalation within the TIO. The TIO's assistance in providing further education to consumers and small businesses about the need to contact their provider first is likely to further reduce the volume of initial referrals and help to alleviate the TIO's resources.

## **Industry Benchmark 2: Independence**

**Intention:** To ensure that the processes and decisions of the office are objective and unbiased and are seen to be objective and unbiased.

**Possible issues for consideration:**

- The independence and impartiality (actual and perceived) of the TIO's case-handling and decision-making processes.

Currently, the model requires the TIO to make decisions based on the claims and evidence of the complainant and the responding member, occasionally supported by additional information from other parties, but consistently on a good faith basis on the initial referral of consumer complaints to TIO members.

As a result, where more complicated matters or complaints are presented to the TIO but where there is insufficient evidence or information to make a finding of fact even on the balance of probabilities, both members and complainants experience delays in receiving a decision. The delay experienced in receiving reasons for a decision from the TIO can make it difficult for parties to discern whether an objective and unbiased outcome has been achieved.

## **Industry Benchmark 3: Fairness**

**Intention:** To ensure that the office performs its functions in a manner that is fair and seen to be fair.

**Possible issues for consideration:**

- The fairness of the policies and procedures used when considering a complaint.
- Does the TIO utilise fair and reasonable decision-making.

There are occasions where the decisions made as part of the reclassification process and during case handling have been inconsistent. If not already doing so, it may be of benefit for the TIO to compare decisions of similar cases. This may also assist in reducing delays to reach a decision.

For example, the TIO conciliated a case for several months before deciding that the matter was out of its jurisdiction due to the location of the infrastructure. In another example the TIO withdrew from a complaint at a late stage having been previously advised that the customer had lodged a concurrent complaint with another dispute resolution scheme (AFCA). The TIO concluded that it was not the appropriate forum for the matter to be considered and that the amount in dispute was over \$50,000. Both issues were known for some time prior to the TIO withdrawing from the complaint.

[Reclassifications](#)

In recent years, the TIO has removed the right for members to request to review reclassification decisions. While a reclassification request may be considered a review, in reality it is not. This is because the reclassification request is often the first time that the TIO is considering its jurisdiction in light of evidence after taking the initial claims made in a complaint in good faith. If a member then believes that the TIO has assessed the provided evidence incorrectly, there is no opportunity to pursue a review of this decision.

To illustrate, in January 2022 a complaint was referred to **nbn** with the consumer seeking repairs to telecommunications cabling at their property. **nbn** investigated the issue and determined that the cable was owned by another telecommunications provider. **nbn** contacted the consumer to advise them of the ownership of the cable. **nbn** submitted a request to the TIO for the matter to be deregistered against **nbn** on the basis that it had been lodged with the incorrect member.

The TIO responded to the reclassification request by advising that at the referral stage they did not consider the complaint issue beyond whether it fell within the TIO's terms of reference. The TIO advised that based on the merits of the complaint and the decision at referral, the classification of the complaint being directed to **nbn** was reasonable as they had not investigated the matter at that point. **nbn** was not afforded the opportunity to review this decision and the complaint remains lodged against **nbn**, despite **nbn** not owning the telecommunications asset that was the subject of the complaint.

**nbn** suggests it would be of benefit to members for the TIO to have an established avenue for cases like these to be reviewed. We anticipate such a process will be of great benefit once the process to 'join members to a complaint' under the new Terms of Reference is worked through.

#### **Industry Benchmark 4: Accountability**

**Intention:** The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

**Possible issues for consideration:**

- Awareness of, and satisfaction with, the TIO publication of its decisions.
- The reporting by the TIO on its systemic investigations.
- Publication by the TIO of complaint data and supporting analysis.
- Public accountability for its performance.

The TIO's published reports focus on raw volumes of complaints and complaint issues from consumers, with important contextual information such as relative customer numbers, build and connect volumes provided in accompanying commentary. We note this commentary is now only provided in the TIO's annual report, rather than the quarterly releases. Volume data without appropriate

clarifications can create misconceptions about the relative performance of TIO members or the industry as a whole. Therefore providing context to help the broader public interpret the published data remains particularly important.

That being said, **nbn** has greatly appreciated the TIO's engagement with **nbn** over the past few years in providing an opportunity to provide comment on **nbn**-related data and commentary it intends to publish in its annual reports prior to release. This opportunity has allowed **nbn** to appropriately clarify its role within the underlying causes of complaints.

With the TIO being highly accessible to consumers, it would be useful for the TIO to publish more information about the nature of outcomes and the decisions it makes. From a reporting perspective, complaints escalated for conciliation can be seen as a failure of a member to resolve, whereas the member's position is also often supported by the TIO.

The TIO's complaint data that it provides to members on a confidential basis serves to demonstrate month on month industry performance is very helpful to contextualise TIO complaints and the opportunity for members to review their own trends and performance. We suggest regular reviews and updating of complaint keywords and subcategories may assist to better reflect trends and complaint drivers which could enhance the TIO's and the industry's accountability.

It would also be beneficial if the TIO confirmed that it will notify members and allow right of reply prior to any referral to regulators.

### **Industry Benchmark 5: Efficiency**

**Intention:** The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance and provides value for money.

**Possible issues for consideration:**

- Timeliness of TIO complaints resolution activities.
- The quality of the TIO's complaint resolution services.

In recent months **nbn** has found that the time taken by the TIO to respond to members and make decisions on conciliated cases has been lengthy, which can exacerbate negative consumer experiences and can make resolution between a member and the consumer more difficult.

During conciliation, **nbn** has observed that TIO officers withhold guidance on their initial thinking about the complaint resolution in question until an outcome is close to being required. Earlier guidance on what the TIO considers to be a fair and reasonable outcome and key evidence it wishes to consider would assist consumers and members in resolving matters earlier.

Earlier notification to potentially involved parties (including utilising 'reasonable assistance' powers provided under the ACMA Complaint Handling Standard) could also assist in a more efficient resolution of complaints.

## Industry Benchmark 6: Effectiveness

**Intention:** To promote community confidence in the office and ensure that the office fulfils its role.

### Possible issues for consideration:

- The impact of the TIO's new powers and jurisdiction on consumer and member experience. **DN some detail here**
- The TIO's ability to consider the vast majority of complaints arising from the telecommunications sector including its ability to consider the whole of any such complaint.

**nbn** has experienced instances of the TIO withdrawing from matters due to them being raised in parallel by the consumer with AFCA after a significant effort had been made to resolve the complaint through the TIO. It would be beneficial to the complainant and to members if the TIO could directly liaise with other dispute resolution schemes to provide clarity on which matters each party would manage, including for individual cases to confirm which aspects of a complaint each body will consider and decide on if needed.

### Delays in decision making

During the conciliation and investigation process, it has also been observed that there is a reluctance from the TIO staff to make decisions. Confidence in the TIO office and its complaint resolution process could be improved if steps could be taken to improve the perception that the TIO was actively progressing a complaint toward a resolution and decision while allowing the parties to reach an agreement prior.

**nbn** notes that point 8 of the TIO's response to 2017 Independent Review of the Telecommunications Industry Ombudsman, included the following for future implementation: "*The Telecommunications Industry Ombudsman will continue to work with industry and other stakeholders to improve timeframes and compliance with response deadlines. The Telecommunications Industry Ombudsman will also continue to investigate and implement system improvements and new capability to reduce conciliation and investigation timeframes.*"

Over the past five years, **nbn** has observed instances where a delay from the TIO in reaching a decision during conciliation or in providing guidance has substantially contributed to conciliation timeframes. For example, a recent consumer case was made involving claimed damage to a property during a **nbn** installation appointment. **nbn** provided a response to the TIO officer in December detailing **nbn's** investigation which concluded there was no evidence that **nbn's** technician

had caused the damage. **nbn** and the consumer did not receive the TIO's assessment of this information until March.

Further training of TIO staff, including by members where appropriate, could assist the TIO in its assignment of complaints and decision making. In some instances additional training tools that help TIO staff correctly identify the owner of network infrastructure will assist in the effectiveness of the TIO's complaint resolution process.

## Additional issues

### **Issue:** Revised Terms of Reference

#### **Possible issues for consideration**

- The TIO has recently introduced new Terms of Reference (effective from 1 January 2022). Do you have any comments or feedback concerning these new Terms of Reference, including the implementation of the revised financial limit and the new power to award compensation for non-financial loss?

**nbn** does not have any comments to make about the financial limits or for non-financial loss amendments made to the new Terms of Reference.

With regard to the consultation process for the new Terms of Reference, **nbn** notes a lengthy process was conducted in which the TIO engaged consumer interest groups, members and industry associations so they had the opportunity to make submissions in respect of the proposed amendments to the Terms of Reference. Unfortunately, after the initial consultation period, the process of providing feedback to members was somewhat inconsistent. We note there was ongoing engagement with the TIO Board which influenced the final outcomes of the new Terms of Reference. However, it is not clear whether feedback and additional discussion about the more controversial elements of the proposed Terms of Reference were afforded to all members in the same manner.

Once the final Terms of Reference were approved and published, there was limited time allowed for members to make any changes necessary to their own processes as a result of the amendments enacted upon publication. This meant there was limited time to help TIO members prepare for the new changes or to understand the impact of their implementation.

We note and thank the TIO for deciding to delay implementation of the new powers to add more than one member to a complaint to ensure the processes are developed correctly and all issues that will impact members can have time to be addressed. In **nbn**'s view, this element of the newly introduced Terms of Reference is likely to create additional complexity to the TIO's processes with more members being added to complaints. Therefore we look forward to the opportunity of working through with the TIO in more detail what a new process of



adding multiple members to complaints might look like and how this is likely to be implemented.

## **Issue:** Systemic investigations

### **Possible issues for consideration**

- The TIO's ability to identify potential systemic issues for investigation.
- The conduct of systemic investigations by the TIO.
- The ability of TIO's systemic investigations to contribute to system improvement.

It would be beneficial for the TIO to clarify in its guidelines on the factors that lead to a potential systemic investigation being instigated, as well as the factors that lead to decisions not to investigate potentially systemic issues. The TIO definition of a systemic issue includes "concerns about a system, process or practice that may impact a significant number of consumers". **nbn** notes the current guidance also includes the following parameters of determining whether there is a possible systemic issue 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."

In **nbn**'s experience the TIO has triggered an enquiry into a possible systemic issue where there was a slight increase of complaints experienced due to a particular event but it was not necessarily evident that the cause of their concern was sufficient to indicate a 'complaint trend'.

Further **nbn** suggests it would be more appropriate for the TIO to rely on its own data to identify a trend of increasing complaints over a reasonable period of time before triggering a systemic enquiry. Anecdotal evidence derived from media sources that cannot be backed up by the TIO's own complaint data, for example, should not be considered a reasonable catalyst for a possible systemic issue.

We note the TIO's new guidance on their treatment of systemic investigations commits to nominating the member prior to any referral being made to regulators or other organisations.

To provide greater transparency, it would also be helpful for the TIO to report on matters considered to be potential systemic issues but were not actioned after preliminary investigation or triage.



**Issue:** Government and regulator engagement

**Possible issues for consideration**

- Have you any views of the degree and nature concerning the TIO's engagement with government and relevant industry regulators?

The telecommunications industry would benefit from increased transparency regarding the TIO's engagement with regulators, including the issues that have been referred for further action from the regulator. In **nbn**'s view, early notice of these concerns affords members the opportunity to investigate and address issues that lead to consumer detriment and provide clarification to the relevant parties where necessary.

**Issue:** Governance and authorising environment

**Possible issues for consideration**

- The TIO operates within a complex governance and authorising environment. Do you have any views on how this environment impacts upon the TIO and its ability to operate in accordance with the industry benchmarks for consumer dispute resolution?

No comments

**Issue:** Member and stakeholder engagement and outreach activities:

**Possible issues for consideration**

- Does the TIO sufficiently engage with and respond to members?
- Does the TIO conduct sufficient stakeholder engagement and outreach activities. What more could be done?
- Are there any changes required to current approaches?

**nbn** greatly values its engagement with the TIO at all levels of the organisation. However, the TIO does not appear to have consistent engagement with all wholesale carriers, including for the use of requesting assistance as available under the *Telecommunications (Consumer Complaint Handling) Industry Standard 2018*.

Where one wholesaler has identified an issue requiring another wholesaler's assistance to resolve a complaint, **nbn** has noted there has been a perceived reluctance to engage the other wholesaler by some TIO staff.

**Issue:** Land access

**Possible issues for consideration**

- TIO has jurisdiction to consider objections to telecommunications carriers entering onto land to inspect, install or maintain low impact telecommunications infrastructure. Do you have any views on the TIO's role in this area? Do you have any comments about the TIO's handling of land access objections?

**nbn** notes the TIO has recently updated its Land Access Guideline to reflect the latest reforms to the *Telecommunications Code of Practice 2021*. It is too soon to determine whether those amendments have been successful or whether they have any teething issues. However, while we appreciate the TIO would reasonably require time to review the supporting material provided to it by either the carrier or the landowner, **nbn** suggests the TIO include guidance on their own response times to the parties to facilitate the timely resolution of objections referred for the TIO.

The process for the TIO to consider issues and decide on next steps for their investigation can be lengthy and this delays a carrier's infrastructure program, which can impact consumers and communities' access to services. Failure to adjudicate and make a decision on these objections in a timely manner can significantly delay and add cost to carrier infrastructure projects.

Thank you for taking the time to complete this Issues Paper. The Queen Margaret University research team.