



Telecommunications
Industry
Ombudsman

Submission from the
Telecommunications
Industry Ombudsman to
the Treasury's
consultation on the final
Digital Platforms Inquiry
Report
September 2019

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Executive summary

The Telecommunications Industry Ombudsman (TIO) welcomes the ACCC's Digital Platforms Inquiry and the recommendation that an independent ombudsman for digital platforms be established, and the ACCC's preference that the TIO take on this role.

The proposal for a Digital Platforms Ombudsman is a timely alignment with current government actions to safeguard individuals and businesses and their transactions in the digital space.

We welcome the opportunity to contribute to the Government's consideration of Recommendation 23 and to work with the Australian Communications and Media Authority (ACMA) on the feasibility of the proposal.

This submission outlines our in-principle view that the TIO is a logical vehicle to undertake the digital platforms ombudsman function. However, this work will require detailed consideration in close partnership with government, regulators, industry and consumer stakeholders to ensure that digital platform users have access to an effective complaint resolution framework. The TIO will also need to ensure any new role complements rather than detracts from the delivery of dispute resolution for the telecommunications sector.

Part 1 of this submission outlines the value of **ensuring that digital platform users have access to a single complaint framework** that can accommodate the converging communications landscape. A single end-to-end service for escalated complaints about communication services would be significantly beneficial for digital platforms and their users. While complaint frameworks are well established in other essential service areas, there are no formalised complaint escalation pathways to help achieve a satisfactory outcome about a digital platform dispute. There are growing community and user expectations that these services should provide an acceptable solution for raising and escalating complaints. We already receive complaints from digital platform users who expect us to be able to handle such escalations.

In Part 2, this submission outlines the **benefit of a proven and preferred industry-based ombudsman model** for escalated dispute resolution. The model has been continually endorsed by government and independent reviews and has been successfully introduced into new industries.

Digital platforms have all the elements the Productivity Commission identified as supporting the case for an ombudsman model. An effective industry-based ombudsman needs to operate across government, regulators, and consumer and industry stakeholders with clear roles and responsibilities. Australia's industry-based ombudsman schemes are guided by the Government Benchmarks for Industry-based Customer Dispute Resolution (**Government Benchmarks**).

As an industry-based ombudsman, the TIO was the world's first external dispute resolution scheme for telecommunications complaints. In Part 3 we demonstrate how the **TIO is a respected and effective scheme**, that continues to be dynamic in responding to the continually changing communications and technology landscape.

The TIO has responded to emerging technology and an evolving communications sector for more than two decades. Our complaint numbers demonstrate that we can operate at volume and can

adapt to change. Beyond dispute resolution, our strength is in investigating and reporting on systemic issues. These publications reach consumers, media and industry, lifting best practice benchmarks and driving better industry outcomes for everyone.

Digital platforms present new complexities to be navigated. Part 4 acknowledges that, for an independent ombudsman to be effective in dealing with complaints about digital platforms, we will **need to work through several considerations with government, regulator, industry and consumer stakeholders** to navigate uncharted territory. This includes determining the scope of the Ombudsman's remit and the powers and remedies needed to address detriment suffered.

The digital platform landscape is complex and the appropriate regulatory and legislative reform will take time to settle. Introducing a Digital Platforms Ombudsman with a clear remit to support users already experiencing detriment is a step that can be taken while the broader issues continue to be assessed.

The TIO welcomes the opportunity to consult on our submission and to work with the ACMA on the feasibility of taking on the role of the Digital Platforms Ombudsman. We look forward to contributing to the next steps in determining the best outcome for digital platform users, and the communications industry.

Judi Jones, Telecommunications Industry Ombudsman

Michael Lavarch, Chair of the Board of Telecommunications Industry Ombudsman Limited

1 The time is right to introduce a Digital Platforms Ombudsman

Technology focused communication channels are becoming integral to people's daily lives. Most Australians could not imagine their world without using digital platforms to communicate and these platforms now play a vital role in the delivery of essential communication services in modern society.

The time is right for Australia to introduce an effective complaint handling framework for users of these services and for the digital platforms industry.

1.1 Digital platforms form part of the converging communications landscape

We rely on digital platforms to engage and belong socially, to keep ourselves informed and as a means of communicating our views. Small businesses understand that communicating with consumers through digital channels is essential for success, and many businesses are now built to operate entirely on digital platforms. As marketplaces continue to move online, small businesses have no choice but to rely on digital platforms to reach their customer base.

In many ways, digital platforms are converging with communications services. Digital platforms rely on reliable telecommunications infrastructure and connectivity. Phone calls (particularly international calls) are increasingly made through digital platforms like Skype, WhatsApp, Viber or Facebook's Facetime and Messenger, rather than through traditional telephone services. Some traditional telecommunications services such as online and paper telephone directories and business listings are already virtually extinct.

Digital platforms enable individuals and small businesses to self-service their needs in a few clicks of a keyboard, or touch of a screen. At the same time, these platforms inherently lend themselves to being exploited by scammers, much like telecommunications services.

1.2 Access to an effective complaint handling framework is needed

While complaint handling frameworks are well established in other essential service areas, digital platform users appear to have limited pathways to resolve complaints.

Internal dispute resolution (IDR) for complaints about digital platforms includes automated responses and decision-making algorithms, supported by self-help tools and community forums. We also understand that digital platforms have resources for complaint handling outside these methods, but these options do not appear to be easily visible to the average user.

There are no formalised accessible resolution pathways to help achieve a resolution to a complaint where the digital platforms' IDR has failed. Scanning the online environment reveals widespread frustration with digital platform complaint processes.

Where IDR does not resolve a complaint, users have moved to crowd sourcing for help and advice. Dissatisfied users turn to chat rooms and message boards and other public online forums where people vent their frustrations and try to help each other find answers or workarounds.

The interconnected nature of business models employing complexity theory require us to:

... acknowledge a degree of self-regulation will emerge from seeming chaos, and that no one organization or individual will ever be able to be aware of all the complexity involved in the system, let alone control it.¹

¹ Colin Armistead, Paul Pettigrew and Sally Aves, *Exploring Leadership in Multi-sectoral Partnerships* (2007) vol. 3(2), p. 226.

This emerging trend supports the need for access to an effective complaint handling framework that can deal with complexity. Digital platforms have an interest in resolving these complaints quickly and effectively.

1.3 The community expects a single external dispute resolution service

A single end-to-end service for escalated complaints about communication services would offer a significant benefit for users and for digital service providers.

While digital platforms operate through innovative business models, many services are provided under some form of agreement with the digital platform user. There is a societal expectation that people should be able to raise and resolve complaints about these essential services.

One of the three pillars of the United Nations' *Guiding Principles on Business and Human Rights*² is the right of an aggrieved person to a mechanism to make a complaint and have it resolved. Automated IDR systems may not fully satisfy this requirement.³

The TIO has observed that a growing number of digital platform users already expect the TIO to be able to handle escalated complaints about digital platforms. Complaints we have received involve:

- scammers using bots run through fake social media accounts
- individuals or scammers impersonating the user via social media
- small businesses disputing charges for advertising
- small businesses receiving misleading point of sale advice for advertising services
- individuals or small businesses being locked out of their digital platform account
- small businesses being incorrectly categorised in search engine results
- having difficulty in getting negative comments or fake reviews of small businesses removed
- someone hacking the user's account.

The TIO recently published a report on a systemic investigation into mobile phone fraud which highlighted some of the methods scammers use to impersonate consumers, deceive providers, and steal consumer's mobile numbers.⁴ The ACMA has also been active in this space, consulting on technological solutions to combatting scams in May 2019.⁵

The TIO already handles privacy complaints. In 2013 the TIO became the first EDR scheme recognised by the Office of the Australian Information Commissioner (OAIC) to handle privacy complaints. If we were to handle complaints about digital platforms, we anticipate that our OAIC recognition would extend to cover privacy complaints involving digital platforms.

As convergence becomes more pervasive in the communications and utilities sector, there is a need and opportunity to ensure the framework for EDR does not contribute to confusion and poor outcomes.

The strong connection between telecommunications and digital platform services as essential communication services supports adopting a single end-to-end service for escalated

² United Nations, *Guiding Principles on Business and Human Rights* (2011).

³ Luca Belli and Nicolo Zingales (editors), United Nations Internet Governance Forum, *Platform Regulations – How Platforms are Regulated and How They Regulate Us* (December 2017) pp. 71-74.

⁴ TIO, *Systemic Spotlight: Reducing fraudsters' theft of mobile numbers* (March 2019).

⁵ ACMA, *Technological solutions to combating scams* (accessed 6 September 2019) <<https://www.acma.gov.au/theACMA/technological-solutions-to-combating-scams>>.

communications complaints. If the TIO became a single end-to-end service for escalated complaints, this would help to ensure that:

- individuals and small businesses do not fall through gaps in jurisdiction
- individuals and small businesses do not get lost pursuing multiple and related complaint escalation pathways
- consistent and reliable information can be collected to inform systemic investigations about communications services
- contributions to the development of policy and regulatory consultations benefit all parties involved
- the benefits of cost efficiency and administration gains are realised.

This approach has been endorsed in other industries. For example, the Government's *Final Report: Review of the Financial System External Dispute Resolution and Complaints*⁶ (**Ramsay Review**) recognised a one-stop-shop for escalated complaints in the same industry as a benefit and driver for the Government's recent consolidation and redesign of Australia's EDR model for the financial services industry.

The Ramsay Review advocated strongly for the amalgamation of multiple financial service complaint handling bodies, and strongly endorsed the importance of a single scheme to reduce confusion and achieve fair and reasonable outcomes. The Review found that the multi-body framework that existed in the financial services sector:

*... imposes unnecessary costs on consumers because it results in: inconsistent outcomes and processes for similar disputes; difficulties where a dispute involves financial firms that are members of different EDR schemes; and consumer confusion as to where they should seek redress.*⁷

EDR schemes that work effectively are clear in their consumer remit. For example, the Ombudsman Service in the UK provides external dispute resolution for a number of consumer areas, but the EDR for the financial industry sits clearly with the UK's Financial Ombudsman Service. A single end-to-end service EDR scheme needs to ensure a clear and obvious pathway for users of digital platforms.

⁶ Australian Government, *Final Report: Review of the Financial System External Dispute Resolution and Complaints Framework*. (2017)

⁷ Ramsay Review, p. 109.

2 The industry-based ombudsman scheme is proven

The industry-based ombudsman model is a proven mechanism for effective escalated dispute resolution. It has been introduced successfully in many emerging industries and has continued to be endorsed by government, consumer advocacy bodies and peak industry groups.

The model is based on the principle that individuals and small businesses who have limited choice of services should have free access to justice for low dollar value disputes with service providers that is efficient and fair. Without this service, individuals and small businesses are often left without redress, as the courts are an inadequate avenue for such disputes.

Industry-based ombudsman schemes are established with support and funding from industry. This adds value to the scheme and ultimately benefits the industry, digital platform users and the community.

2.1 Ombudsman schemes have been introduced into new industries before

The industry-based ombudsman model is nimble, adaptable, and can work in any industry. It was introduced into Australia in the 1990s in banking, utilities, and telecommunications industries. The privatisation of these essential services created a challenge for complaint resolution. Taking these disputes to court was prohibitive for most consumers, and out of proportion with the amount in dispute and the type of remedies sought. The service providers involved had varying levels of sophistication in handling complaints and there was no practical means for a consumer to escalate their complaint.

The industry-based ombudsman model provided an avenue for consumers to have access to justice for these low dollar value disputes with service providers that was efficient and fair. The industry-based ombudsman has specific features that set it apart from consumer and industry advocacy bodies, from courts and tribunals, and from regulators.

In its 2014 report⁸ (**Productivity Commission Report**), the Productivity Commission especially emphasised the value of ombudsman schemes where a power balance is present, quoting Justice Sackville:

These kind of bodies would appear to be most valuable when a service sector has a large number of consumers who cannot easily 'shop elsewhere'.⁹

All the factors identified by the Productivity Commission support the case for an ombudsman model to apply to digital services:

- essential services are involved
- the market is characterised by large firms and limited competition, thus creating significant power imbalance
- there is significant asymmetry of information, such that consumers would have difficulty asserting their rights
- there is a large number of disputes.¹⁰

⁸ Australian Government, *Access to Justice Arrangements: Productivity Commission Report (2014)* vol. 1.

⁹ Productivity Commission Report, p. 334.

¹⁰ Productivity Commission Report, p. 334.

2.2 The ombudsman model requires clear roles and responsibilities

The industry-based ombudsman model is most effective when there is:

- an effective IDR with practical codes and standards
- an ombudsman for escalated disputes that meets the Government Benchmarks
- a strong regulator with powers to enforce decisions.

This means that the Ombudsman needs to operate in a complaint framework that involves a range of players with clear roles and responsibilities. An example is set out in Table 1 below.

Table 1 – Example of roles and responsibilities in an effective complaint framework

Industry groups	Consumer groups	Providers	Ombudsman	Regulator(s)
<ul style="list-style-type: none"> • drive industry-wide improvements through industry-led initiatives • publish industry guidance • support improvements in industry practices • provide feedback about good and poor industry dispute resolution practice. 	<ul style="list-style-type: none"> • advocate for the interests and rights of consumers • provide feedback about issues experienced by consumers • provide consumer education • contribute to policy development and research. 	<ul style="list-style-type: none"> • operate IDR in a way that meets requirements under codes and standards • develop IDR practices that meet the Australian/NZ Complaint Handling Standard.¹¹ 	<ul style="list-style-type: none"> • provide resolution when IDR does not resolve a complaint • provide systemic analysis and feedback about IDR to providers • offer training and support to improve IDR • publish and provide escalated complaint figures to the regulator(s) and providers as part of feedback loop. 	<ul style="list-style-type: none"> • set standards • monitor compliance with industry codes and standards • collect and publish information about IDR • enforce compliance with the ombudsman scheme • overseeing industry to hold it to account.

Effective and accessible internal dispute resolution

Effective IDR processes provide a clear, transparent avenue for people to pursue concerns with service providers. They allow disputes to be dealt with efficiently and effectively, often without the need for an external dispute resolution body to get involved.

The framework for industry IDR can be achieved through industry codes or standards. The ASIC model for internal dispute resolution¹² was highlighted in the ACCC's report, however other models could be considered. Given the overlap between telecommunications services and digital platforms, IDR processes and record keeping rules for digital platforms could be aligned with ACMA's requirements for telecommunications providers.

¹¹ Council of Standards Australia and Council of Standards New Zealand, *Australian/New Zealand Standard AS/NZS 10002:2014 Guidelines for Complaint Management in Organizations* (2014).

¹² Australian Securities and Investments Commission, *RG165 Licensing: Internal and external dispute resolution* (31 May 2018).

An ombudsman with decision making powers

Industry-based ombudsman schemes are established with support and funding from industry, which value the scheme as being of benefit to the industry and the community.

Participation in an industry-based ombudsman scheme is usually a legislated requirement (either as a licensing condition or based on the provision of defined services). Industry service providers then fund the scheme and agree to be subject to the independent decisions and processes of the Ombudsman through a contractual arrangement (for example, by accepting membership and the scheme's Terms of Reference).

A regulator with enforcement powers

An effective ombudsman scheme requires a regulator to support enforcing compliance with scheme membership, and compliance with ombudsman decisions.

Regulators must be sufficiently resourced and have appropriate powers to pursue enforcement action where participating organisations are not compliant with their obligations, and to support systemic decisions. In industries where no license is needed to operate, the regulator's powers could include the ability to issue fines or to take legal action to enforce the decisions and membership of the ombudsman scheme.

2.3 The ombudsman model makes good business sense

The model adopted by the TIO and other industry-based schemes (in Australia and globally) has operated successfully for almost 30 years. In that time, government and independent reviews have consistently endorsed the model as being in the best interests of consumers. Recent government reviews continue to support the industry-based ombudsman scheme as the most effective external dispute resolution (EDR) model.

The Ramsay Review of EDR in the financial sector commented:

*The establishment of industry-based schemes has been actively supported by government, recognising that EDR makes good business sense by improving industry practices while providing consumer redress and negating the need for government intervention.*¹³

Industry-based ombudsman schemes also play a strong role in contributing to improvement of the industry and supporting public trust in the system. Queen Margaret University's review of New Zealand's industry-based utilities EDR scheme commented:

*The work of a dispute resolution scheme is complex, as its primary objective, the delivery of justice, is intangible. Its work consists of much more than simply the handling of complaints. It includes a role to contribute to the improvement of the overall system in which it exists and the management of the expectations of complainants. A final role for alternative dispute resolution schemes is that they should contribute to the improvement of public trust in the overall system in which they operate.*¹⁴

A complaint handling framework helps quantify the number of complaints raised with digital platforms. In other essential service industries, frameworks exist for the reporting of complaint handling data, including data on escalated complaints handled by an external complaint handling

¹³ Ramsay Review, p. 34.

¹⁴ Gavin McBurnie and Dr Chris Gill, *Independent Review of Utilities Disputes Limited* (2017) p. 47.

body. Quantifying these complaints is important as digital platforms become increasingly critical to the delivery of essential communication services.

The Productivity Commission also observed that industry-based ombudsman schemes are consistently seen as better performers than government ombudsman schemes.¹⁵ They attributed this to design features such as mandatory service provider membership, independent boards, industry funding, systemic investigation and data collection.¹⁶

2.4 Clear benchmarks support better consumer outcomes

Australia's industry-based ombudsman schemes are guided by the following Government Benchmarks:

- accountability
- independence
- fairness
- accessibility
- efficiency
- effectiveness.¹⁷

The Government Benchmarks provide well established proven guidelines that can support the development of an ombudsman model for digital platforms and are supported by **Key Practices** that provide dispute resolution services with practical ways of implementing the Benchmarks.¹⁸

For example, to meet the Accessibility benchmark, the scheme must be free for a consumer to access and use.¹⁹ For this reason, Australia's industry-based schemes are free to consumers, and funded by the relevant industry. The Government Benchmarks provide clear measures designed to match community expectations whilst distilling the most important aspects for best practice external dispute resolution. For example, the Independence benchmark is viewed as a key strength for an ombudsman scheme:

The strong governance model of industry ombudsman schemes, with an independent chair and equal numbers of directors of consumer and industry backgrounds, ensures that boards are able to make decisions about funding and other matters in the best interests of the scheme.²⁰

Ombudsman services are not just a cost-effective alternative to consumers pursuing redress in a court, they also allow complex complaints to be assessed free of legalistic requirements and limitations that may otherwise create unnecessary delays:

Ombudsmen [sic] are also able to resolve non-legal issues. Ombudsmen [sic] do not determine disputes based on the law alone – they also consider good industry practice and what is just, fair and reasonable, as well as whether the matter was within the service provider's reasonable control.²¹

¹⁵ Productivity Commission Report, p. 337.

¹⁶ Productivity Commission Report, p. 338.

¹⁷ Government Benchmarks.

¹⁸ Australian Government, *Key Practices for Industry-based Customer Dispute Resolution* (2015).

¹⁹ Key Practices, p. 9 [1.15].

²⁰ Ramsay Review, p. 180.

²¹ Productivity Commission Report, p. 317.

The Australian and New Zealand Ombudsman Association (ANZOA) also sets out the criteria a dispute resolution scheme should meet if it is to use the name Ombudsman. Like the Government Benchmarks, these criteria include independence, noting further that the Ombudsman must not be subject to direction and must not be – or able to be perceived as – an advocate for a special interest group, agency or company.²² The accountability criterion also finds its equivalent in the Government Benchmarks, adding the Ombudsman must be responsible – if a Parliamentary Ombudsman, to the Parliament; if an industry-based ombudsman, to an independent board of industry and consumer representatives.²³

²² ANZOA (February 2010) *Essential Criteria for Describing an Ombudsman*.

²³ The criteria defines a Parliamentary Ombudsman as one 'who take[s] complaints from citizens and constituents about government agencies', and an Industry-based Ombudsman as one 'who take[s] complaints from customers of companies providing particular services': ANZOA (February 2010) *Essential Criteria for Describing an Ombudsman*.

3 The TIO is a respected and effective industry-based ombudsman scheme

The TIO has a strong level of trust and respect amongst consumers. As the 2017 Independent Review of the TIO observed:

The TIO is one of Australia's best known and arguably most influential ombudsman schemes. Over many years it has built a high level of awareness and credibility and contributed to better consumer outcomes in a critical sector that continues to grow in importance for all Australians.²⁴

The TIO has the infrastructure and expertise required to undertake a high volume of escalated complaints, and there are significant areas of overlap between telecommunications services and digital platforms that would benefit from a consistent approach.

The TIO continues to receive endorsement from reviews and government. Most recently, during the 2018 Safeguards Review Part A, the TIO received overwhelming support from both industry and consumers. The Government concluded that:

Near universal support from both consumers, industry, and other industry ombudsman schemes for EDR in the telecommunications sector to continue being provided by the TIO...²⁵

In an unprecedented move, the peak telecommunications bodies for both industry and consumers expressed their support for the TIO in a joint letter to the 2018 Safeguards Review Part A.²⁶

In 2018, the TIO commissioned an external party conducted a consumer awareness survey on behalf of the TIO. The survey confirmed consumers and small businesses actively work with their providers to resolve their complaints. When unresolved, consumers and small businesses know to raise their complaints with the TIO. The results confirmed that the TIO is a catalyst for providers to take action and that the broader community benefits of the TIO's intervention should not be underestimated.

3.1 The TIO provides access to justice where IDR fails

It is critical that IDR processes are not just available but work for everyone, including vulnerable and disadvantaged consumers who may not be able to navigate the modernised automated IDR systems that digital platforms tend to have in place. It is also critical that all consumers have access to justice where IDR fails. The Productivity Commission found that ombudsman services are capable of addressing a significant proportion of unmet legal needs, improving access to justice for consumers.²⁷

The TIO provides a way forward for consumers and service providers who are unable to reach a resolution. In doing so, the TIO meets the Benchmarks, as confirmed by the 2017 Independent Review of the TIO.²⁸

²⁴ cameron.ralph.koury, *Telecommunications Industry Ombudsman Independent Review Report* (2017) p. 5.

²⁵ Australian Government, *Part A: Complaints handling and consumer redress – Consumer Safeguards Review – Report to the Minister for Communications and the Arts* (September 2018) p. 2.

²⁶ Communications Alliance and the Australian Communications Consumer Action Network, *Joint Letter Re: Consumer Safeguards Review Part A (6 August 2018)* p. 1.

²⁷ Productivity Commission Report, p. 320.

²⁸ cameron.ralph.koury, *Telecommunications Industry Ombudsman Independent Review Report* (2017), p. 91.

For example, the TIO meets the Independence benchmark as it is not controlled by industry, consumers or government. The TIO's Board is comprised of equal numbers of industry, independent and consumer directors. This structure enables strong and independent governance for setting strategy and monitoring the performance of the TIO. The structure supports the exchange of information and perspectives between industry and consumer organisations.

The TIO also meets the Effectiveness benchmark, which is particularly important with the increasing convergence in the communications sector. The TIO can consider the vast majority in the relevant industry, as required by the Key Practices for Effectiveness.²⁹ We can handle complaints about service quality, contracts, representations, equipment, property damage, and deal with land access notices.

Through our complaint handling work about these issues, we gather data and insights. The data gives us visibility of systemic issues. Our strength is in investigating and reporting on these issues – reaching individuals, small businesses, media and industry to lift best practice benchmarks and drive better industry outcomes for everyone.

3.2 The TIO has large scale capacity for complaints and industry improvement

The TIO has the capacity and expertise to deal with large numbers of complaints. As demonstrated in Table 2 below, large numbers of complaints are a constant for the TIO. We are further equipped to adjust where changes to the communications landscape cause our complaint levels to fluctuate significantly.

Table 2 – Comparison of complaint levels between EDR schemes

EDR Scheme	FY2015-16	FY2016-17	FY2017-18
TIO	112,518	158,016	167,831
Financial Ombudsman Service (FOS)*	34,095	39,479	43,064
Credit Investment Ombudsman (CIO)*	31,719**	31,766**	32,258**
Energy and Water Ombudsman Victoria (EWOV)	36,152	32,002	34,524
Energy and Water Ombudsman NSW (EWON)	23,760	23,613	24,416

* These schemes were replaced in November 2018 by the Australian Financial Complaints Authority (AFCA). AFCA has not been operating for 12 months; its six-monthly report notes that 35,263 complaints were received in their first six months.

**This figure includes enquiries and complaints received.

²⁹ Key Practices, p. 21 [6.2(a)].

We have collaborative and established working relationships with regulators such as the ACMA and ACCC, and the OAIC. We also have established relationships with other EDR schemes to facilitate conversations about EDR best practice and ensure a no wrong door approach where we can refer individuals and small businesses that contact us about out of scope complaints to the appropriate scheme. Our relationships with consumer and industry groups are also highly developed, ensuring the TIO understands consumer issues and challenges faced by industry.

3.3 The TIO is well positioned to extend our existing capabilities

While we would need to broaden our skills, we are experts in dispute resolution and already employ staff with the right skill sets. We invest in the continuous development of our people to empower them to be effective contributors to the rapidly changing communications industry.

Through a partnership with the Box Hill Institute the TIO has designed and delivers the Graduate Certificate in Dispute Resolution (Industry). TIO members can also access certain modules to improve their IDR capabilities and are increasingly taking up this option. The certificate is updated regularly to remain relevant as industry or the regulatory framework changes.

The TIO handles high volumes of calls, emails and online enquiries daily. The TIO also has established processes for prioritising urgent and high priority complaints to ensure that complaint issues that may create a high risk to an individual or small business are addressed quickly.

A variety of avenues are utilised by the TIO to foster improvements with providers to benefit industry and consumers alike. Our systemics team identifies complaint trends and raises them with providers, working together in the first instance to find a reasonable way to address the problem.

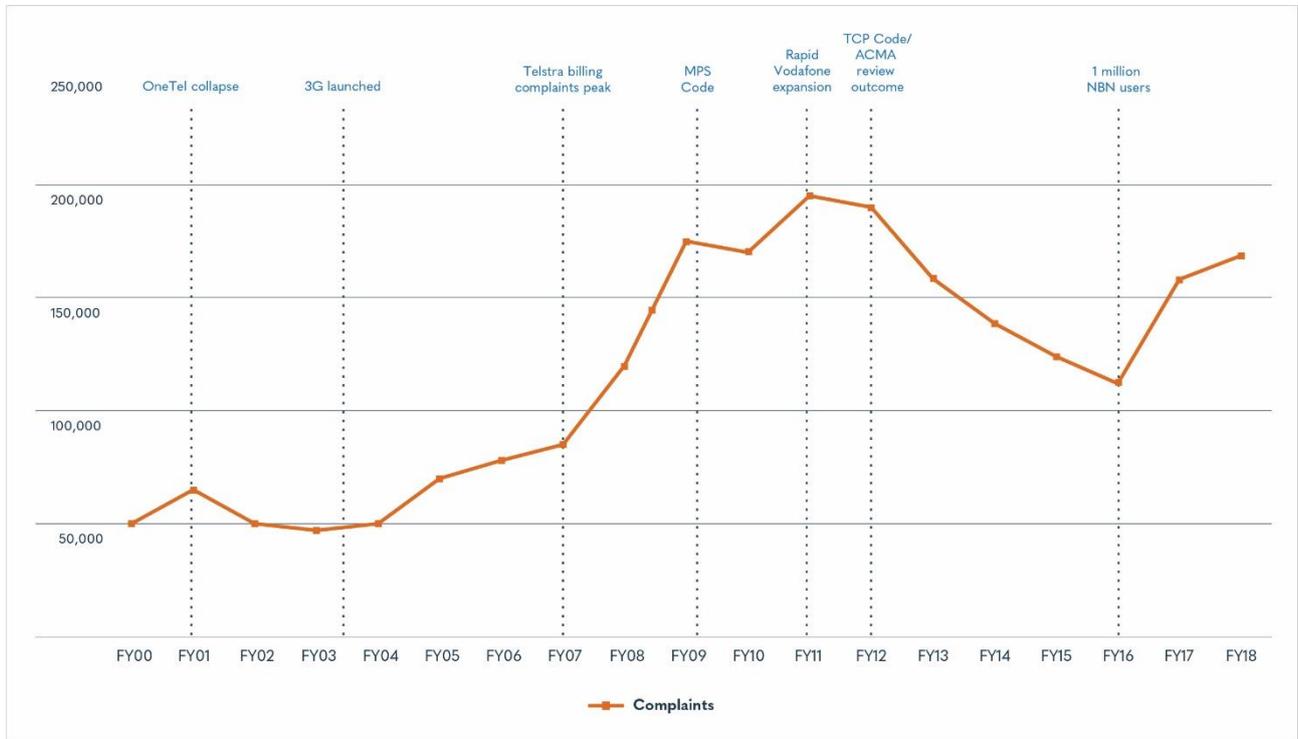
Our systemics function is well positioned to provide a one picture view of how individuals and small businesses are interacting in different communications markets and drive improvements by including digital platforms.

3.4 The TIO continues to evolve in response to the changing landscape

By building on its existing foundations, the TIO has successfully navigated a constantly changing communications and technology landscape.

The TIO has continued to be an effective complaint handling mechanism in the face of significant marketplace events including successive mobile network launches, product and service innovations, regulatory responses to industry issues and the rollout of the NBN (illustrated in **Figure 1**). The continuing effectiveness of the TIO in the face of these upheavals has shown it is well placed to adapt to changing marketplaces.

Figure 1 – How the TIO has evolved in response to the changing communications and technology landscape



The TIO responds to rapid changes in the communications sector by continually modernising our processes and structures. We are currently preparing to modernise our Terms of Reference, including consulting on how our jurisdiction can be updated to meet new challenges (for example, smart devices). The TIO has experience in adjusting our parameters in response to industry developments. For example, we expanded to accommodate the emergence of bundled pay TV and telecommunications services.

As customer service expectations have developed, we continue to evolve to provide effective complaint handling services. We have introduced specialist small business and technical dispute resolution teams to address complaint trends in these areas.

We have adjusted our data collection practices to accommodate new and emerging issues in the communications sector to ensure our reporting remains relevant and useful to industry, government and consumers. As the telecommunications industry matured, we adjusted our governance model in 2014 to address these developments.

We have adjusted our workforce as complaint numbers have risen and fallen as required. To enhance our efficiency, we introduced pre-investigation conciliation in 2011 and in 2018 added a variety of pre-conciliation dispute resolution tools designed to speed up resolution times.

4 Considerations for the TIO to act as Digital Platforms Ombudsman

The scope of the Digital Platforms Ombudsman will need to be carefully considered and is likely to evolve over time. To be an effective scheme, the Ombudsman needs to be able to handle the vast majority of complaints in the sector.³⁰ This would include, but not be limited to, complaints about digital platform advertising services, and complaints about scams.

Some complaints about digital platforms align more closely with the TIO's current remit, and some fall clearly outside the scope for what an external dispute resolution scheme could reasonably consider.

In addressing the unique challenges presented by the digital platforms industry, the TIO will need to work collaboratively with government, regulators, and consumer and industry groups to ensure the outcome is in the best interests of digital platform users and industry, as well as the TIO's existing consumers and members. This will require:

- a detailed cost/benefit analysis (including the benefits of sharing common resources)
- establishment of separate funding arrangements by the digital platforms involved
- careful management to ensure the TIO's existing core functions and services continue to be delivered effectively.

4.1 Access to the Digital Platforms Ombudsman scheme

The pervasive presence of digital platforms in the everyday lives of people means that potential harm extends beyond a contractual consumer agreement. For example, an individual that has never used Facebook could be impersonated on the platform in a way that causes them distress. An appropriate remedy may be to have the offending content or fake account taken down by Facebook, even though the person is not a consumer of Facebook. For this reason, and to be effective access to the Ombudsman scheme should be extended to:

- small businesses consumers
- individual consumers
- any person or small business suffering harm from the action or inaction by a digital platform.

4.2 Complaints about consumer or small business detriment

An ombudsman model is well suited to resolving escalated disputes that involve consumer detriment where a provider fails to comply with consumer law. Such disputes are most clearly aligned with the existing remit of the TIO and other industry-based ombudsman schemes.

This remit could comfortably extend to include situations where a digital platform fails to adequately resolve a complaint where a person or business suffers a detriment.

Individuals and small businesses interact with digital platforms in different ways and this is likely to affect the types of complaints they may escalate. For example, some small businesses pay for services such as advertising and are more likely to raise complaints about advertising performance and billing. Individuals who are non-paying users of the platform, are likely to complain about other aspects such as scams, scam content, data control or access, and privacy.

³⁰ 'The scope of the office (including the decision-maker's powers) is sufficient to deal with: the vast majority of complaints in the relevant industry or service area and the whole of each such complaint...': Key Practices, p. 21 [6.2(a)].

We acknowledge that the Ombudsman scope will need to evolve over time. To achieve this, we will work with government, regulators, and consumer and industry groups to reach the right balance for digital platform users in terms of the complainant experience and outcomes.

For the immediate term — the following complaint types are likely to be in scope:

- account access and control
- advertising – billing and performance
- small business search results
- charges and billing
- data access and control
- misrepresentation of a small business
- financial hardship
- identity theft, hacking or impersonation
- privacy concerns or breaches
- unwelcome notifications or communications.

4.3 Complaints about scams

Digital platforms provide an avenue for scams to be perpetrated against users of those platforms. The impact of scams can be devastating, particularly those who are most vulnerable.

A Digital Platforms Ombudsman could handle complaints involving detriment suffered through scams that are not adequately addressed by a digital platform. In handling complaints that involve scams perpetrated through telecommunication services, the TIO seeks to find a solution that addresses the detriment suffered as a result of the scam (for example, retrieving a number appropriated by a scammer), as well as undertaking systemic investigations to improve provider practices and systems.

An Ombudsman makes determinations based on what is fair and reasonable in the circumstances. This could include requiring the digital platform to take down scam content. However, the power to compel this action by enforcing the Ombudsman's determination should properly rest with the relevant regulator.

4.4 Complaints that are likely to be out of scope

Some complaints are clearly out of scope for an ombudsman scheme. For example, complaints from medium to large enterprises, business-to-business disputes and disputes that arise between individuals on the digital platform.

Some complaints about digital platforms will not be appropriate for an ombudsman scheme but could be addressed by a regulator or other agency. The TIO already has an established practice of referring out-of-jurisdiction complaints to appropriate avenues.

Existing pathways may include:

- Complaints about misleading advertising may be more appropriately addressed by ACCC and Ad Standards.
- Some business to business complaints may be dealt with by the Small Business and Family Enterprise Ombudsman.
- Bullying and online safety complaints already sit with the Office of the eSafety Commissioner.

- Complaints involving breach copyright or intellectual property will be dealt with by the appropriate authority.
- If implemented, algorithm setting may sit with a newly established ACCC function.

Some other complaint types that are likely to be out of scope include:

- anti-competitive behaviour or price setting
- censorship
- criminal activities
- personal reputation or defamation.

4.5 Fair and reasonable outcomes

Determining outcomes may not be straightforward. Convergence of digital platforms with everyday activity presents challenges for our existing frameworks and understanding of what is fair and reasonable.

The Digital Platforms Ombudsman may consider several factors when handling a complaint about a digital platform and deciding on an appropriate remedy including:

- the nature of the complaint
- the detriment caused, and the information available to substantiate this
- the likelihood of achieving a reasonable outcome
- the investment the user has made — financial or personal data.

Industry-based ombudsman schemes have traditionally dealt with complaints about purchased services. In such cases, an appropriate remedy could include requiring a provider to waive fees. While such a remedy may be appropriate in the context of paid small business advertising on digital platforms, a different remedy would need to be considered for those who use the service for no monetary fee but in exchange for their personal data.

An ombudsman's powers can include the ability to award compensation for non-financial loss.

Other remedies may include:

- offering information, education or advice
- referral to the appropriate regulator or other complaint handling agency
- restoring pages or content to rectify an error
- issuing directions to take down content (for example, scams or fake reviews)
- ability to remove footprint (deletion of data).