

17 November 2023

Senate Environment and Communications References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Sent by email to ec.sen@aph.gov.au

Dear Environment and Communications References Committee

**TIO submission to the Senate Environment and Communications References Committee (ECRC)
regarding the Optus network outage**

The Telecommunications Industry Ombudsman (TIO) offers information to assist the ECRC with its inquiry and report on the role of the TIO and its compensation scheme as relevant to the 8 November 2023 Optus network outage.

The role of the TIO is to help people, small businesses and not-for-profit organisations (consumers) resolve their phone and internet disputes. The TIO's dispute resolution services are free, fair, independent and accessible and comply with the [Government Benchmarks for Industry-Based Customer Dispute Resolution](#). Telecommunications service providers (including carriers and eligible carriage service providers) are required to be members and fund the dispute resolution scheme operated by the TIO.

The complaints the TIO can and cannot handle, and how we handle them, are set out in the [TIO Terms of Reference](#). The TIO has jurisdiction to handle complaints about telephone and internet services. The TIO also has the authority to make decisions that are binding on its members¹. In exercising its powers, the TIO assesses what is fair and reasonable in the circumstances having regard to the law, relevant industry codes, guidelines and good practice.

The value of financial loss compensation the TIO can award cannot exceed \$100,000. For non-financial loss relating to privacy, the TIO cannot provide compensation that exceeds \$100,000. For all other non-financial loss, the TIO cannot provide compensation that exceeds \$1,500.

When a telecommunications event affects consumers, the TIO aims to respond quickly by communicating with the relevant member and the public, as well as preparing our complaint handlers to assist consumers.

This submission provides the following information about the TIO's role and our approach to complaints about the 8 November 2023 Optus network outage:

1. The TIO's communications with Optus
2. The TIO's public communications, including about compensation claims
3. The TIO's approach to complaints

¹ See section 132 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth)

4. High level initial complaint insights.

1. The TIO's communications with Optus

To inform the advice the TIO provides to consumers and our approach to handling complaints, the TIO liaised with Optus to request and receive updates on the outage. This section covers communications between the TIO and Optus up to close of business on Thursday 16 November 2023.

The TIO reached out to Optus at 8:12am on 8 November 2023 to request any available updates. Optus provided an update at 11:32am that morning that confirmed:

- available contact avenues for consumers
- triple zero was not working for landline services but would work for mobile services where other carriers were available
- Optus was working on a webpage to keep customers informed
- Optus was working to restore services as soon as possible.

The TIO reached out to Optus in the early afternoon of 8 November 2023 to request information to help the TIO plan how it would respond to consumers contacting the TIO for assistance, such as a dedicated contact number and Optus' resourcing for responding to TIO complaints. Later that afternoon, Optus provided updates that confirmed Optus:

- services were gradually being brought back online and were mostly but not yet fully restored
- was still testing the best options for service recovery
- had plans to setup a dedicated onshore team to handle TIO queries
- would have more information the following day.

On 9 November 2023 the TIO confirmed it would use its standard complaint handling processes. Optus reached out to the TIO twice in the afternoon with further updates:

- the network was now fully restored with the exception of some NBN services
- Optus was exploring ways to thank its customers for their patience
- a dedicated onshore team has been setup for the TIO to refer consumers if they wanted to escalate their complaint
- all communication channels to Optus remained open – retail, voice and messaging
- Optus was mobilising resources to optimise capacity for preferred communication channels, boosting customer resolution team resources, and protecting the availability of its onshore specialist care team for vulnerable consumers
- contact volumes remain high but were expected to decrease early the following week
- Optus provided links the TIO could share or publish about contacting Optus
- Optus was available if the TIO needed any further information.

The TIO reached out to Optus on 13 November 2023 with queries about Optus' website and app functions to claim the data offer and Optus requests for the TIO to reclassify complaints.² Optus confirmed it would monitor the website and app functions to claim the data offer but they appeared operational. Optus also agreed to pause reclassification requests and discuss further the following day.

² A member may request the TIO review how a TIO complaint has been classified. In this context, the requests relate to Optus querying some complaints the TIO had classified as Referrals rather than Enquiry Referrals on the basis that the consumer had not given Optus a chance to consider the complaint before coming to the TIO. The classification of a complaint can impact the fee a member is charged for complaint handling as well as the time to resolve a complaint. More information about classifications can be found in the TIO's [Complaint Handling Procedures](#) and in section 3 of this submission – The TIO's approach to handling complaints.

The TIO reached out to Optus on 14 November 2023 to inform Optus that the TIO had provided the following statement in response to individual media queries:

“Consumers and small businesses should contact their provider first and try to resolve their complaint. If the complaint remains unresolved or the consumer is unhappy with the outcome, they should make a complaint with the Telecommunications Industry Ombudsman.

“At the moment, we are seeing a 30% increase in contacts to our office above usual volumes. We anticipate this demand will continue to grow over the coming weeks and have allocated additional resources to assist with the resolution of complaints.”

The TIO attended two meetings with Optus on 14 November 2023. These meetings were part of a regular schedule of meetings in place prior to the outage. At these meetings:

- Optus provided updates on contact levels, complaint resourcing adjustments and efforts made to contact customers who were unable to contact triple zero.
- Optus agreed to suspend TIO complaint reclassification requests.
- The TIO confirmed it had a high volume of complaints lodged over the weekend and was monitoring and resourcing complaint levels accordingly.
- Optus agreed the TIO could include the number for its dedicated onshore team for TIO queries in the TIO’s IVR (the recorded message consumers hear when they call the TIO).
- The TIO agreed to update its website information to include a link to Optus’ specialist care webpage to assist vulnerable consumers.
- The TIO requested regular meetings to assist with staying up to date as Optus’ approach develops and Optus agreed to set up touch points with the TIO twice per week.

At the first of these touch point meetings on 16 November 2023:

- Optus confirmed its contact centres are slowly returning to normal, and it had increased its staff levels to support the increased case demand.
- Optus said its vulnerable contact centre is fully operational and has been sending through cases to its complaint handling teams.
- Optus said its CEO has been calling customers that have been directly impacted by the outage, in addition to its standard complaint handling processes.
- The TIO confirmed there had been an increase in consumer contacts, which was slowly tapering off.
- The TIO said it expected to see an increase in unresolved complaints³ next week.
- Optus has been exploring ways to tailor its solutions to resolve consumer complaints.

2. The TIO’s public communications, including about compensation claims

To raise public awareness of how the TIO can assist consumers, including with compensation claims, the TIO published information on its website and spoke to the media. We also used these channels to inform consumers about their rights.

The TIO reached out to Optus early on 8 November 2023 and continued to communicate to request updates that would assist us to process complaints and keep consumers informed.

³ These are complaints the TIO has referred to Optus for resolution and the consumer has contacted TIO again because the complaint has not been resolved.

On the morning of 8 November 2023, the TIO published a webpage on the [Optus phone and internet network outage](#) about contacting the TIO for help. We published two further updates on this webpage about Optus' advice on triple zero functionality and its progress in restoring services.

Between 8-10 November 2023, I made myself available as the TIO's spokesperson for media enquiries that could facilitate the TIO reaching consumers who may need assistance to resolve complaints following the Optus network outage. During this time, I gave 23 radio, print and TV interviews.

On 10 November 2023, the TIO published a webpage on [Support for consumers and small businesses impacted by the Optus network outage](#).

The focus of this webpage is to equip consumers with:

- links to information published by Optus and Optus communication pathways
- the types of consumers, small businesses and not-for-profit organisations we can help
- what the TIO can help with, noting:
 - telcos do not offer a fault free service
 - remedies available vary based on individual circumstances, but could include refunds, compensation or a release from contract
 - when the TIO considers compensation, it will be proportionate to the extent of harm suffered and non-financial loss compensation is likely to be modest
 - we deal with financial loss claims where the loss was caused by a breach of an obligation a telco owes a consumer and require evidence to show the loss
 - we deal with non-financial loss related to privacy breaches or where an individual has suffered unusual amounts of stress or inconvenience
 - the types of compensation claims the TIO handles, for example, lost business or costs of paying for alternative services
 - the types of compensation claims the TIO does not handle, such as costs for making a TIO complaint, loss of business reputation or claims made to penalise a telco
 - non-financial loss compensation limits - \$100,000 maximum for complaints about privacy rights, and \$1,500 for all other complaints.
 - links to other information that may assist consumers – the TIO's position on compensation and faulty services and ACCC guidance on consumer guarantees.

On 14 November 2023, we updated the [Support for consumers and small businesses impacted by the Optus network outage](#) to include a link to Optus' specialist care webpage to assist vulnerable consumers. We also updated the webpage with information about faulty services:

- The Australian Consumer Law sets out consumer guarantees where something fails to perform as expected.
 - When assessing complaints, the TIO assesses whether these guarantees have been met, the extent of the failure and which remedies may be fair and reasonable in the circumstances.
- On 14 and 16 November 2023, I gave two further radio interviews with the aim of updating the public on how the TIO is handling complaints about the outage, complaint levels generally and small business complaints.

3. The TIO's approach to complaints

The TIO is using its standard [Complaint Handling Procedures](#) (CHPs) to process enquiries and complaints about the Optus outage.

Our standard process involves assessing a consumer query and classifying it as:

- an Enquiry where we decide we cannot handle the complaint or we need more information to decide whether we can handle the complaint
- an Enquiry Referral where the consumer has not previously contacted their telco about the complaint or the telco has not had a reasonable opportunity to consider the complaint. Under this classification, we send the complaint to the provider's designated escalation point and allow a 15 business day referral period for the telco and consumer to attempt to resolve the complaint.
- A Referral where the consumer has tried to resolve their complaint with their telco but has been unable to do so or is dissatisfied with the telco's response. Under this classification, we send the complaint to the provider's designated escalation point and allow a 10 business day referral period for the telco and consumer to attempt to resolve the complaint. For complaints that are urgent due to a medical or safety risk, the telco has 2 business days to resolve the complaint.

Please note "Enquiry Referrals" and "Referrals" are classified as complaints the TIO can handle.

Early in the morning of 8 November 2023, we created internal guidance for our contact centre employees to prepare them for queries about the Optus outage. This internal guidance mirrors our public facing guidance explored above, but it also:

- confirmed complaints would be processed as usual per our CHPs
- reminded our people we cannot consider issues involving:
 - compensation claims relating to other services such as the train network – these complaints should be directed toward the entity responsible for the service
 - complaints from consumers that are not on an impacted network
- informed our people about expectation setting relevant to outage queries:
 - The TIO's role is to handle disputes, we are not an emergency service and cannot influence how quickly the outage is resolved.
 - Optus does not offer 'priority assistance' (a service for landline customers that is provided by Telstra under the Universal Services Obligation).

To prepare for a potential influx in calls and written queries from consumers on 8 November 2023, we reallocated employees from other areas of the TIO. We also instructed our contact centre team leaders to monitor call and email queues and assist where needed. We also offered overtime to our contact centre people on 8 and 9 November 2023 to assist with processing complaints submitted by consumers electronically.

On 9 November 2023 we spoke to Optus and confirmed we would use our standard complaint handling process. Optus acknowledged this and informed us it had made a dedicated onshore team available by phone and email and that the TIO could provide these contact details to consumers to escalate their complaints. Optus said this number was not able to be published.

On 14 November 2023, Optus agreed the TIO could include the phone number for the dedicated onshore team in the TIO's IVR. We updated our IVR accordingly on 15 November 2023 encouraging consumers that have not yet contacted Optus about their outage complaint to call Optus on the number Optus provided to the TIO.

4. High level initial complaint insights

The Optus Inquiry terms of reference lists, as a particular reference point, the role of the TIO and its compensation scheme.

The TIO has received and processed complaints from consumers about the outage, including claims for compensation.

At this stage, the TIO can only provide high level initial complaint insights because:

- The referral period for complaints received from 8 November 2023 onwards has not concluded. Most complaints referred by TIO to Optus on 8 November will not be handled by TIO unless and until these consumers contact us again on or after 22 November 2023.
- Consumers may also make complaints at a later stage if they are currently using Optus' internal dispute resolution processes but are later unable to resolve their complaint this way.
- The only information we have about specific complaints is received from consumers and cannot be verified further at the first instance as we only record the information necessary to process the complaint.

In a preliminary review of complaints sent to Optus about the outage on 8 November 2023, the majority of consumers said they are seeking some kind of compensation. Compensation consumers referred to includes compensation generally and, in some complaints, specific requests for account credits, refunds of service charges paid, non-financial loss and financial loss.

Consumers requesting compensation have referred to a variety of harms in their complaint that they say warrants compensation and costs incurred to mitigate loss, such as purchasing prepaid SIM cards. Harms consumers referred to included being unable to:

- work due to the lack of internet or phone connection
- make sales or otherwise operate their small business
- pay for food, bills and other essentials
- attend, make or reschedule medical or other appointments
- contact friends, family and support services
- study for exams or assignments at school or university
- get information or a response from Optus about the outage and when it would be resolved.

Some consumers sought to be released from their contract without cost. It varied from consumer to consumer whether this went further than the termination fee, such as exiting without cost including the costs of outstanding device repayments and service charges.

Other remedies consumers requested included:

- reconnection of services
- Optus providing information about how the outage happened and when it would be resolved
- an apology from Optus.

Thank you for the opportunity to provide a submission to the Senate Environment and Communications References Committee. If you require addition information to support this submission, please contact my office.

Yours sincerely,



Cynthia Gebert
Telecommunications Industry Ombudsman