

1 February 2024

Scams Taskforce
Market Conduct and Digital Division
The Treasury
Langton Crescent
PARKES ACT 2600

Sent by email to: ScamsPolicy@treasury.gov.au

Dear Scams Taskforce,

Thank you for the opportunity to provide feedback on the Treasury and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) consultation on mandatory industry codes for scams. We support the introduction of a scams Framework and leveraging existing external dispute resolution (EDR) schemes, such the Telecommunications Industry Ombudsman (TIO), to handle complaints about breaches under the Framework.

1. Our jurisdiction

1.1. How we handle complaints about scams

The TIO has jurisdiction to handle complaints about phone and internet services. Currently, we can only handle a complaint about a scam if part of the complaint relates to the actions (or inaction) of a telco provider who is a member of our scheme.

For example, we can handle complaints about:

- a telco's inadequate account security procedures
- unauthorised SIM swaps
- privacy breaches
- disputed charges incurred by a scammer on the consumer's account, or in their name, without the consumer's knowledge or authority
- number spoofing.¹

We may also consider a telco's compliance with the *Reducing Scam Calls and Scam SMS* Code when determining how a complaint should be resolved.

¹ Number spoofing operates by transmitting a false caller ID and by sending SMS or making calls to a consumer that appear to be from the actual phone number of a well-known brand the scammer is pretending to represent.

The TIO can also consider on a case-by-case basis whether the actions of the telco contributed to the consumer experiencing detriment as a result of a scam and directing the telco to provide a fair and reasonable outcome to the consumer.

We cannot handle a complaint where a scammer pretends to be acting for the telco. For example, in a situation where the consumer is tricked into authorising a transaction for the scammer. However, we may handle the complaint if the telco facilitated the authenticity of the scammer. For example, if a scammer impersonated a consumer to gain access to their telco account, then we would treat this scenario as a complaint about fraud. In this case, we would consider whether the telco took reasonable steps to protect the consumer's account before and after the fraud was committed (e.g. appropriate customer verification steps or closing down an account).

The TIO cannot handle complaints about a third party who is not a member of our scheme, or the contents of a scam call or SMS delivered over a telco's services. For example, a consumer may receive a scam SMS that purports to be from the ATO and while they are aware it is a scam, they report they do not like what the contents of the message said. We could not lodge a complaint against the consumer's telco provider because they found the contents of the scam SMS offensive.

1.2. Compensation limits

The TIO can award compensation up to a limit of \$100,000² for claims relating to financial loss or non-financial loss due to a privacy breach. For non-financial loss that does not relate to a privacy breach, our compensation award limit is \$1,500.³ For non-financial loss, we can consider situations such as where the consumer has suffered embarrassment or humiliation caused by a privacy breach, or unusual amounts of stress or inconvenience.

Additionally, we have the flexibility to come to an agreement with our members and consumers to handle complaints outside of our jurisdiction.⁴ This agreement can include an agreement for the TIO to make a binding decision that exceeds the maximum value of our compensation award limits.⁵

2. We support the introduction of a mandatory scams Framework

We welcome the introduction of an overarching scams Framework and mandatory sector specific rules.

Strengthening and consolidating rules to prevent scams would benefit consumers and provide clarity to telcos on the actions they need to take to reduce the impact of scams on consumers. Currently, the level of protection offered to consumers can vary depending on who their telco provider is. Having mandatory rules that apply to all of industry would be a positive step as this would mean all consumers would benefit from increased protections, regardless of which telco provider they choose to sign up with.

² TIO, [Terms of Reference](#) (effective from 1 January 2022) cl 2.10.

³ TIO, [Terms of Reference](#) (effective from 1 January 2022) cl 2.11.

⁴ TIO, [Terms of Reference](#) (effective from 1 January 2022) cl 2.5.

⁵ TIO, [Terms of Reference](#) (effective from 1 January 2022) cl 2.5.

Any obligations that are imposed by the Framework should be easily enforceable by a regulator, fit for purpose, and provide clear remedies for consumers for a telco's non-compliance with the Framework.

3. We support leveraging existing EDR schemes

We support the proposal to leverage existing EDR schemes, such as the TIO, to handle complaints about breaches under the proposed Framework. As the independent dispute resolution service for telcos complaints, we are uniquely positioned to provide insights into both the experiences of consumers who complain about being impacted by a scam and the telco providers who respond to complaints about fraud in the consumer's name or on their account.

We are also experienced in conducting systemic investigations across the telco industry and working with providers on improvements to their processes that benefit a range of consumers, including those that do not lodge a complaint with us. When we identify a systemic issue that is not adequately addressed by a provider, we have processes in place to refer these matters to the appropriate regulator.

However, before we could handle complaints about breaches under the Framework, it is important that the Framework provides clear jurisdiction in relation to obligations for different sectors under the Framework and apportioning liability and compensation.

3.1. Clear obligations on the different sectors are required

The consultation paper proposes that, under the Framework, EDR schemes will be able to consider whether a consumer should be compensated for losses they incurred to a scammer. The TIO can already award compensation if it finds that the actions of a telco caused the consumer financial detriment.

However, the principles for apportioning responsibility to a telco for detriment suffered by a consumer because of a scam involving potentially multiple responsible industry parties must be developed.

For example, a consumer might receive messages or calls from a scammer through their telco service, but the transfer of money is facilitated through banking services. In this scenario there may be multiple responsible parties, but our jurisdiction is limited to the actions of the telco only. The consumer may need to lodge complaints with multiple EDR schemes for the same matter to achieve a fair and reasonable outcome.

Clear regulatory obligations are required to support EDR schemes in determining responsibility across different industry parties. This would support EDR schemes in awarding compensation and determining a fair distribution of liability. This would ensure consumers receive consistent outcomes no matter which EDR scheme handles their complaint. Clear obligations would also support industry to resolve disputes sooner and via internal dispute resolution.

3.2. We support a 'no wrong door' approach to handling complaints

We support a 'no wrong door' approach to handling complaints to ensure consumers are not referred back and forth between EDR schemes, particularly where the facts of the complaint mean it could be handled by more than one EDR scheme.

This could be done by putting in place agreements for a referral process between EDR schemes.

3.3. Handling complaints about scams on Digital Platforms

The TIO has supported the proposal for a Digital Platform Ombudsman (DPO) scheme since the ACCC's Digital Platform Services Inquiry in 2019. We have previously made a submission to Treasury supporting the expansion of the TIO's jurisdiction to include digital platforms.⁶

We believe we are best placed to take on the functions of a DPO, which could include handling complaints about breaches of specific obligations on digital platforms proposed under the Framework. This is because we:

- have the relevant complaint handling experience and regulatory relationships to readily expand our jurisdiction to include digital platforms
- have a dispute resolution process that is fair
- have a history of responding quickly to market events and developments
- have the capacity and capability to handle complaints about digital platforms
- drive improvement through our systemic issues insights and reporting.

Our abovementioned submission to Treasury considers how our jurisdiction may be extended, either permanently or through a time limited pilot. As part of any extension of our scheme, we can develop new, and leverage existing, governance arrangements and explore funding options based on our current fee structure. As noted in our submission, the establishment of an appropriate fee structure would enable us to expand our jurisdiction to digital platforms while ensuring that our telco responsibilities are not impacted.

If the TIO were to take on the functions of the DPO, it would alleviate the need for consumers to have their complaint handled by more than one EDR scheme if their complaint involves both a telco provider and a digital platform.

For a DPO to be effective, whether it be through the TIO or a newly established body, mandatory membership would ensure that the DPO and the regulator can effectively manage membership of the scheme. This includes requiring digital platforms to join the scheme and comply with decisions. This approach is consistent with the Australian ombuds schemes for energy, water, telco, and finance, which all have regulatory backing to ensure compliance with the respective schemes.

⁶ [TIO submission to the Treasury: Consultation on ACCC's regulatory reform recommendations](#) (February 2023).

We are happy to work with the Department and Treasury further on the regulatory, governance, and funding arrangements for the TIO to extend its jurisdiction to digital platforms.

We look forward to the outcome of this consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', followed by a long, horizontal, sweeping flourish that ends in a small upward tick.

Cynthia Gebert
Telecommunications Industry Ombudsman