

19 February 2024

Environment and Communications Legislation Committee
Senate Standing Committees on Environment and Communications
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Parliament House
Canberra ACT 2600

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

Dear Environment and Communications Legislation Committee

TIO submission to the Senate Inquiry into Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023 [Provisions]

The Telecommunications Industry Ombudsman (TIO) offers information to assist the Environment and Communications Legislation Committee (ECLC) with its inquiry and report on reforms proposed in the *Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023* (Bill).

Our role is to help people, small businesses and not-for-profit organisations (consumers) resolve their phone and internet disputes. We operate as an alternative to a court or tribunal. Our 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 service providers) are required to be members and fund the dispute resolution scheme operated by the TIO.

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

As noted in our September 2022 submission to the Department on this Bill (prior submission), we welcome and support the proposed subsection 128(5A) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act).¹ This subsection will clarify and confirm our scheme's power to investigate, make determinations and give directions relating to complaints about the connection of eligible services by SIPs and will help us to avoid disputes around our jurisdiction to handle connection complaints.

¹ [TIO, Submission to DITRDC on the Telecommunications Legislation Amendment \(SIP and Other Measures\) Bill \(September 2022\)](#)

This submission offers views on four other areas:

- Evidentiary certificates issued by the TIO or ACMA
- ACMA performance reporting
- Notice requirements for SIPs
- Division 4 of the *Telecommunications Act 1997*.

1. Evidentiary certificates issued by the TIO or ACMA

In our prior submission, we raised concerns about the proposed section 360VF which would alter the *Telecommunications Act 1997* and relates to evidentiary certificates. We noted that while we are well-placed to issue evidentiary certificates, we would be grateful for further information about how and when evidentiary certificates may be used as part of the SIP consumer protection framework. This would help us better understand how the issuing of evidentiary certificates will fit within our existing complaint handling processes, and what impact this process will have on the possible outcomes for consumers.

We understand from the explanatory memorandum to the Bill that the intention behind this provision is to allow us or the ACMA to issue a consumer with a statement that the SIP has contravened a compensable standard or a designated compensable rule and how it has done so. This evidentiary certificate is intended to be prima facie evidence of the matters in the certificate that a SIP would be required to rebut if the consumer took the matter to a court or tribunal.

Before consenting to the conferral of these powers, ideally it would need to be made clear through subordinate instruments when it would be appropriate to issue this evidentiary certificate, supported by clear obligations and remedies in the compensable standards and rules.

Our existing process allows for a complaint to proceed through our dispute resolution channels and if it is unable to be resolved by agreement, may end with us issuing a decision on what must be done to resolve the complaint, which may include compensation payable. It is our understanding that a decision of the Ombudsman on a complaint under our usual process would not be considered an evidentiary certificate.

A consumer can reject a decision under our existing process and is then free to pursue the complaint through other channels. If the consumer accepts the decision, then it is binding on the member. If the member does not comply with the decision, the TIO can then refer the decision to the ACMA to enforce the decision.

Our complaint handling process is designed to provide an alternative to the consumer having to spend time or resources pursuing a complaint against their provider in a court or tribunal.

2. Schedule 3 of the Bill - ACMA performance reporting

We strongly support amendments to the *Australian Communications and Media Authority Act 2005* to empower the ACMA to link carriers and carriage service providers in public reports to their performance on key customer service issues.

In April 2023, for the first time since Roy Morgan began measuring trust and distrust in 2018, the telco sector replaced the social media industry as the most distrusted industry in the Australian economy.²

Improved transparency and accountability of telco market performance will benefit industry, consumers, and regulatory bodies and help build trust and confidence in the market. For example, it could provide transparency over the types of telco issues commonly experienced by consumers that do not contact the TIO for assistance.

We report on our complaints quarterly. Among other things, our quarterly reports provide insights about our complaints by provider, service type, issues, and the split between residential and small business consumer complaints.

While our data provides valuable insights into external complaints, our data alone cannot provide a comprehensive understanding of the performance of the telco sector. Most consumer complaints are resolved by providers through internal dispute resolution which is not reflected in our data. While the ACMA also report on complaints, their current reporting is limited to providers with 30,000 or more services and is reported at an aggregated level. The ACMA also does not currently report on types of telco issues.

Better reporting powers for the ACMA will help bring the telco market in line with the data collection and public reporting powers of other essential services regulators, for example, the Australian Energy Regulator.

3. Notice requirements for SIPs

Section 360HA of the *Telecommunications Act 1997* requires that SIPs must notify the ACMA when they declare service areas and when they exit from a service area. The Bill provides stricter rules for the exit of SIPs from a notice area, including a minimum notice period and format for notices.

Carriers (other than NBN Co) are also required to notify the ACMA when they enter contracts to install infrastructure in areas which, when completed, will make them the nominated SIP for that area. The ACMA's SIP register has copies of these 'anticipatory notices'.

Under the proposed new framework, we will have a key role in resolving disputes between consumers and SIPs, including potentially issuing evidentiary certificates. It is important that we have up to date information to enable us to fulfil our role efficiently and effectively.

We recommend that the Bill make amendments to the *Telecommunications Act 1997* to require carriers to also notify us when they declare service areas and when they are unable to fulfil their SIP obligations in a service area, just as they will be required to notify the ACMA.

² [Telecommunications industry overtakes Social Media as the most distrusted industry - Roy Morgan Research](#)

4. Division 4A of the Telecommunications Act 1997

Our prior submission expressed support for the compensation framework in proposed Division 4A of the *Telecommunications Act 1997*. However, we also highlighted several issues that could be addressed through minor drafting changes. These suggestions have not been reflected in the Bill.

We refer the Senate Inquiry to our comments on these matters as outlined in section 2 of our prior submission, which are still relevant, including:

- The use of the term “customer” in Division 4A should be replaced with “end-user” to make it clear that damages are payable to the end-user and not the Retail Service Provider (RSP);
- Clarifying the arrangements for the payment of compensation, as most SIPs do not have a direct contractual relationship with the end-user. We suggest a two-step process where the SIP must pay the RSP who must then pay the end-user.
- Subsection 360VD(4) provides for the provision of credit from the SIP to an end user via the end-user’s bill. This obligation may be difficult to carry out as consumers do not receive bills from SIPs.

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

Yours sincerely,



Cynthia Gebert
Telecommunications Industry Ombudsman