Telecommunications Industry Ombudsman

14 June 2024

Ms Heidi Richards
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

By email: creditreporting@ag.gov.au

Dear Ms Richards,

Review of Australia's Credit Reporting Framework

Thank you for the opportunity to comment on the Department's Review of Australia's Credit Reporting Framework (**the Framework**). It is important the Framework achieves the right balance between both protecting consumers and maintaining an effective credit reporting scheme.

The TIO's 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 carriage service providers) are required to be members and fund the dispute resolution scheme operated by the TIO.

Since many telecommunications services are sold as post-paid services, the TIO regularly handles complaints involving credit assessments and credit defaults. In the 2022/23 financial year we received 970 complaints registered under our 'Credit default report' keyword.[1] Most of these complaints related to a mobile service (at least 660 complaints).[2]

Our submission offers feedback based on our data and provides practical observations on the operation of the current Framework based on our unique perspective handling complaints about telecommunications. We highlight potential areas of improvement around the credit default rules, and how the Framework operates within the External Dispute Resolution (**EDR**) context.

[1] This data was obtained from our Annual Report 2023 (interactive dashboard).
[2] This data was obtained from our Annual Report 2023 (interactive dashboard).

1. The Department should review whether $150 is still an appropriate amount for a credit default

The 'default information' definition in section 6Q of the *Privacy Act 1988* (the Privacy Act) allows credit providers to disclose default information and initiate the listing of a credit default when the overdue payment amount is $150 or greater.

We note that $150 can often represent the value of one or two months' service charges for a telco consumer, especially if the consumer has a combination of a home internet service, a mobile service, and perhaps a handset repayment. This means that if a consumer fails to pay one or two months' service charges, their telco can initiate a credit default listing against them. However, a default listing lasting several years in this context can cause a consumer disproportionately high detriment, which may outweigh any benefit of protecting that consumer from financial overcommitment.

To ensure a fair and balanced approach, we recommend the Department consider whether the $150 amount in the 'default information' definition is still appropriate in the context of what telco services and other essential services currently cost in 2024.

Case study – Amelie* was declined an electricity service due to an incorrect default listing

Amelie is a refugee who had an internet service with RingTime Telco.

One year ago, Amelie tried to cancel her internet service. Although RingTime Telco confirmed it had cancelled the service, it continued to charge Amelie after the cancellation – including for a device she had returned by post. Amelie spent several months talking with RingTime Telco to try to fix the issues with the cancellation and the missing device.

During this long cancellation process, Amelie moved house and applied for a new electricity service. The electricity provider rejected her application due to the information on her credit file. Amelie then checked her credit file, which showed RingTime Telco had listed a credit default against her for under $200 in unpaid fees.

Amelie felt humiliated that she was unable to get an electricity service with her chosen provider and she was worried the default would affect her for a long time. Amelie struggled with feelings of stress and depression, and she sought support from a counsellor.

After we referred Amelie's complaint to RingTime Telco, the telco initially agreed to remove the default listing and partially refund Amelie, but declined to pay her any compensation. Through our conciliation process, RingTime Telco eventually agreed to pay Amelie over $1,400 in compensation.

* Names of all parties have been changed.

2. Credit providers should use multiple communication tools to inform consumers about impending defaults where they have that information

We see complaints where consumers do not receive default warning notices from their telco and as a result are impacted by a default listing.

A telco (or other business) may not always have the most up to date address details if the consumer has moved over the course of a 24-month contract. We see complaints where consumers were unaware they had a default listing on their credit file, and they only discovered this default years later when they applied for credit, often in time-sensitive contexts, such as when applying for a house or car loan.

While it should be the responsibility of the consumer to keep their details up to date with their telco, the impact of a default listing for such a mistake can be severe. It is in the interests of both credit providers and consumers that default warning notices are communicated effectively. If a telco (or other relevant business) has on record multiple communication avenues to contact their consumer, such as an address, email or phone number, then they should use those tools before a default listing is applied.

Subparagraph 9.3(d) of the *Privacy (Credit Reporting) Code 2014 (Version 2.3)* (the CR Code) requires default warning notices to be sent to an individual's last known address. We recommend amending the requirements under the CR Code to require a credit provider to use a combination of at least two separate contact methods available to them (such as post *and* email) where the credit provider has those details.

At least one of the two contact methods should be based on the consumer's preferred contact method, if that preferred method is known to the credit provider. For example, if a telco consumer receives most of their communications via email, they should be contacted by that method regarding any warning notices.

This accessible approach could increase the likelihood of consumers receiving these important notices in a timely way.

Case study – Terence* was contacted by a debt collector about a default listing he was unaware of

Terence has a mobile service with BranchTel and has been a customer for over 10 years. Recently, Terence was contacted by a debt collector about a default listed on his credit file by BranchTel for $275. Terence was unaware of this credit default and said BranchTel never contacted him about any overdue bills, and the debt did not show on his customer account. Terence was concerned about his chances of applying for a loan in the future, and paid the default amount immediately, incorrectly thinking the default would be removed from his credit file.

Terence contacted BranchTel to question the default, and BranchTel said it had sent Terence several emails warning about the default listing. Terence said he did not receive these emails, and said he had never received any calls or letters from BranchTel warning about the default, despite being a long-standing customer. He believes BranchTel either did not send him any notices, or sent

the notices to an older address. Either way, he claimed BranchTel did not do enough to contact him about the impending default listing.

Terence approached our office for help. After we referred the complaint to BranchTel, the telco said it sent several default notices to Terence's verified email address, and therefore it would not remove the default listing. After this time, Terence decided to discontinue the complaint through our office.

* Names of all parties have been changed.

3. Credit providers should explain the role of EDR schemes to consumers, including that they are free to use

Complaints can be resolved faster, more affordably, and with better outcomes when consumers understand the role of EDR schemes and how these schemes can assist them throughout their dispute.[3] While various obligations in the Privacy Act and the CR Code require credit providers and credit reporting bodies to advise consumers about their option to contact recognised EDR schemes, consumers do not always understand the role of EDR schemes, and that these schemes are (typically) free of charge for consumers.

This lack of understanding could limit the number of consumers who utilise EDR schemes, or could lead to consumers paying third party agencies like credit repair agencies, for a dispute resolution service they could otherwise receive at no cost. Our office receives complaints from credit repair agents on behalf of consumers, where consumers may not be aware our service is free of charge.

The Framework should include clear requirements for credit providers and credit reporting bodies to tell consumers that EDR schemes can assist with the resolution of their complaint and that they are free of charge for consumers.

4. Debt collection agencies should cease credit management action during open EDR complaints

Our office receives complaints from consumers who are being pursued by debt collection agencies for the payment of their telco debt. Our 2022-23 Annual Report data highlighted we received 1,282 complaints recorded under our 'Sold debt' keyword during the 2022–23 financial year.[4]

We handle complaints where a provider may suspend credit management action while our complaint is open, but due to various reasons, such as a lack of communication between a telco and debt collection agency, a debt collector continues to contact the consumer for payment during the open complaint. This occurs even when there are obligations under the *Telecommunications Consumer Protections Code* for telcos to take steps to ensure that debts sold or assigned to third parties or listed with a credit reporting body do not include any specified disputed amounts that are the subject of an unresolved complaint.[5]

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[3] See, for example, the benefits of EDR schemes listed in the *Five-year Independent Review of the Telecommunications Industry Ombudsman* (August 2022), pages 16–19.

[4] This data was obtained from our Annual Report 2023 (interactive dashboard).

[5] See section 6.9.3 of the *Telecommunications Consumer Protections Code*.

The ACCC and ASIC Debt collection guideline: for collectors and creditors (2021) also outlines that collection activity relating to a dispute that has been referred to an EDR scheme must be suspended while the scheme considers the dispute, and states that a debt should not be sold, or passed to an external agent for collection, while a scheme is considering a dispute in relation to it.[6]

Despite this guidance, our office continues to handle complaints where a debt collector does not cease credit management action throughout our complaint process. Improved communication between telcos and debt collection agencies is required, and obligations should be strengthened so any credit management action is ceased during our open complaints.

Case study – Sergei* was contacted by a debt collector during his TIO complaint

Sergei entered into a contract with JiveNet for an internet service for $40 per month. His brother and representative Raymond later found out that Sergei had entered into the contract with JiveNet without the appropriate mental capacity to do so, and he found Sergei had been charged incorrectly by JiveNet for the wrong plan and excess data usage.

Raymond contacted JiveNet who agreed they could pay two months' service charges to finalise the contract. After they paid JiveNet these charges, Sergei continued to receive monthly bills from JiveNet. Despite trying many times, Raymond could not resolve the complaint for Sergei with JiveNet. Eventually, Sergei received an SMS saying a debt of $1,000 had been assigned to a debt collector.

Once Raymond came to our office, we referred the complaint to JiveNet. During this process, Sergei continued to be contacted by a debt collector demanding payment of the debt, even though our office told JiveNet to place the disputed charges on hold. This caused him and his brother great distress.

During our conciliation process, JiveNet agreed to credit all charges on Sergei's account, and agreed to ask the debt collector to stop pursuing the debt.

* Names of all parties have been changed.

We look forward to the outcome of this consultation.

Yours faithfully

Cynthia Gebert
Telecommunications Industry Ombudsman

[6] Pages 40-41.