



Part A: Complaints handling and consumer redress

Consumer Safeguards Review

Report to the Minister for Communications and the Arts

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Letter of transmittal

Senator the Hon Mitch Fifield
Minister for Communications and the Arts
Parliament House
CANBERRA ACT 2600

Dear Minister

I am pleased to provide the enclosed report regarding Part A: Redress and Complaints Handling, of the Consumer Safeguards Review. The report details the Review's observations and recommendations for your consideration.

In undertaking this review, we sought detailed written submissions from a wide range of stakeholders and conducted many interviews, including multiple engagements with the Telecommunications Industry Ombudsman (TIO), Australian Communications and Media Authority (ACMA), Australian Competition and Consumer Commission (ACCC), Australian Communications Consumers Action Network (ACCAN) and Communications Alliance.

The Review identified significant opportunities for both industry participants and the TIO to improve the handling of consumer and small business complaints, reduce cycle times and reduce the overall number of complaints being accepted and handled by the TIO.

While the Review considered various options to establish a new, more focused external dispute resolution (EDR) body, we have concluded that, at this time, it would be in the best interests of consumers and industry to implement reforms to the current provider (being the TIO). A number of significant structural and process reforms have been recommended to transform the TIO to be a more effective EDR scheme in the current and emerging environment. These reforms will also properly elevate the TIO to be a truly independent reviewer of all eligible complaints escalated to that body.

I would like to express my deep appreciation to all stakeholders across the communications sector for their willingness to openly convey their views on the important issues examined by this Review. I would also like to note my sincere thanks to the staff of the Department of Communications and the Arts, who provided tireless support, dedication and professionalism throughout the Review process.

I trust this Review and resulting report will be a valuable input in your considerations for both immediate improvement actions that can be implemented as well as the further phases of the Consumer Safeguards Review. I look forward to the opportunity of discussing this report with you.

Sincerely

[Signed]

Andrew Dyer
Expert Lead Reviewer

26 September 2018

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Table of Contents

Background	1
Introduction	1
Stakeholder views	2
Recommendations	3
1. A strengthened TIO scheme	3
Improved processes	3
Representation and Authorisation	5
Stakeholder engagement	8
2. Clear enforceable rules.....	9
Amendments to the ACMA Complaints-Handling Standard	9
Improved industry processes	10
3. Empowered and active regulator	11
4. Data collection, analysis and reporting.....	12
5. Implementation.....	14
Appendix A—Submitters	15
Appendix B—Suggested reforms to TIO complaint handling processes.....	16
Process flowchart of suggested model for reformed TIO processes	17

Background

The telecommunications consumer safeguards in place today were mostly designed around fixed-line voice services supplied over the copper telephone network and primarily delivered end-to-end by a single provider. The ongoing relevance and currency of these original protections is decreasing as Australia's telecommunications industry, technology and consumers' use of telecommunications services evolves.

In response, the Australian Government is conducting a review to prepare the telecommunications consumer protections framework for a post-2020 environment—one in which the National Broadband Network (NBN) roll-out has been completed and is available to all Australian homes and businesses.

On 17 April 2018, the Minister for Communications and the Arts, Senator the Hon Mitch Fifield, announced the Terms of Reference for the Consumer Safeguards Review. The objective of the Review is to determine the appropriate mix of consumer protections that are needed now and into the future, and how these safeguards would be best implemented and governed, in the areas of:

- A. complaints handling and consumer redress;
- B. reliability of telecommunications services; and
- C. choice and fairness in the retail relationship between the customer and their provider.

This report is primarily focused on Part A of the Review.

Introduction

On 5 July 2018, the Minister issued a consultation paper on complaints handling and consumer redress. The proposals in the paper built on the Australian Communications and Media Authority's (ACMA) Complaints Handling Standard and associated Record Keeping Rules which came into effect on 1 July 2018.

The Part A consultation paper invited submissions from all stakeholders and submissions were accepted for a period of approximately six weeks. During that period, consultations and interviews were conducted with stakeholders.

This report summarises the outcomes of submissions, consultations and interviews regarding the proposals canvassed in that first consultation paper and proposes a number of recommendations and reforms to ensure that consumers have access to an effective and efficient complaints handling procedures as well as appropriate redress mechanisms.

Part A of the Review was led by an external expert lead reviewer, Mr Andrew Dyer, with support from staff of the Department of Communications and the Arts.

Stakeholder feedback, along with observations and analysis by the lead reviewer, supports a future framework for complaints handling and consumer redress based on the following policy pillars:

- 1) a transformed External Dispute Resolution (EDR) scheme, to be provided by the Telecommunications Industry Ombudsman (TIO);
- 2) clear, enforceable rules to facilitate significantly improved Internal Dispute Resolution (IDR) practices by industry;
- 3) an empowered and active regulator; and
- 4) publicly reported data that provides greater transparency to drive improved industry performance.

Stakeholder views

Substantial input to Part A of the Review was informed by written submissions on proposals canvassed in the consultation paper, as well as views expressed during interviews with a wide range of stakeholders (refer [Appendix A](#) for the list of submissions and consultations).

Over and above the specific issues on which comments were sought via the consultation paper, stakeholder feedback highlighted the significant differences in views between consumers and industry participants on the need for (and types of) changes required. There were also marked differences in views within the industry, with different perspectives generally expressed by the largest providers compared to some of the small to medium sized industry participants. This polarisation of views underscored that material issues remain to be resolved in the provision of effective Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) outcomes to consumers.

Consumer groups commented that industry could do more to look after their customers across all aspects of consumer interactions (not just complaints handling). The groups also sought a strong regulatory posture from the ACMA and expressed concerns that the current self-regulatory approach used in the telecommunications industry had largely failed to adequately protect consumers.

Individual consumers as well as consumer groups were also concerned about any proposals that would result in reducing direct access by consumers to EDR services, or proposals that would result in consumers being denied access to EDR if their complaint was not sufficiently 'complex'. These scenarios included the inability for the consumer to contact the TIO unless they had first contacted their provider; requirements for proof of this prior contact such as provision of a Complaint Reference Number from the provider; and concerns for the needs of vulnerable customers who may have difficulty dealing directly with their provider.

With regard to industry perspectives, there were mixed views on the effectiveness of the current EDR processes, both in terms of the TIO's handling and reporting of complaints as well as its ability to drive cultural change within the industry. In particular, there was a sharp contrast between views expressed by larger providers and the industry peak body, Communications Alliance, versus the views put forward by most small to medium-size providers that responded to the review.

Key themes emerging from stakeholder feedback and observations included:

- The need for continued improvement in IDR capability and execution by industry, noting that the ACMA Complaints-Handling Standard (CHS) is a relatively recent development and should be allowed to bed down and do its job;
- The importance of a strong regulatory posture by the ACMA, particularly in relation to enforcing compliance with the CHS¹ and the investigation of systemic issues that arise;
- The role that an ACMA audit regime could play in ensuring providers have documented and accessible complaint handling procedures in place, that the procedures are being followed by the provider and that consumers can readily contact a provider in a timely manner;
- 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, but acknowledgement that improvements could be made to the TIO Scheme;

¹ On 21 August 2018, the ACMA issued its statement of approach for compliance and enforcement of safeguards for consumers moving to services delivered over the NBN. This included how the ACMA will give early and effective attention to compliance with the new rules and its intention to deal promptly with non-compliance, and its intention to publish quarterly reports on its educational, compliance and enforcement activities. See www.acma.gov.au/theACMA/nbn-rules-compliance-approach.

- The importance of strong execution by the entity responsible for EDR of its role as an independent reviewer and resolver of complaints, while also being a champion of best practice industry complaint handling and persuasive in encouraging industry to act and solve systemic issues;
- The utility of a 'model' template for a complaint handling procedure for industry, that could be customised and used by individual providers;
- The importance of providers having easily navigable telephone menus that readily allow consumers to connect with a provider to lodge or progress a complaint; and
- The benefits of complaint data being collected and published by a central, trusted and independent body, noting there were varying stakeholder views as to the appropriate entity (i.e. TIO, ACMA, or both) that should be responsible for doing so, and on the frequency of publication.

Recommendations

1. A strengthened TIO scheme

The Review found that an ongoing, accessible EDR scheme for the telecommunications industry is essential to ensure unresolved consumer complaints have a pathway to resolution at no-cost to the consumer.

Overall, given the strong support by both industry and consumer groups for the TIO to continue in its role as the EDR scheme provider, the Review suggests that it would be appropriate to implement reforms to the current TIO Scheme rather than establish a new EDR body at this time. This approach would see the existing EDR arrangements maintained but further reformed and enhanced.

Improved processes

Stakeholder feedback as well as consumer correspondence to the Minister for Communications and the Arts indicated some consumer confusion about the TIO's processes, frustration with poor TIO response times and inadequate responses to systemic issues. Industry stakeholders also cited ongoing frustration with the TIO's referral process, and identified opportunities for the TIO to better triage complaints upon initial lodgement with the TIO.

The Review considers individual providers should retain the opportunity and obligation to address customer complaints and to resolve them as far as possible within their ability. However, stakeholder feedback found that some consumers believe they will get a better outcome by going straight to the TIO rather than contacting their provider.

In instances where a consumer contacts the TIO without first liaising with their provider, TIO staff members can either 1) encourage the consumer to contact their provider about their complaint or 2) lodge an 'enquiry referral' on the consumer's behalf. An enquiry referral gives the provider 15 business days (3 weeks) from the time the enquiry is lodged to contact the consumer. It is not clear what criteria the TIO uses to choose between the two options. A number of industry members raised concerns with the high number of enquiry referrals the TIO undertakes.

The current enquiry referrals process does not expedite a complaint and in fact extends the time available to a provider to resolve a complaint. Providers should take more direct and immediate responsibility for handling consumer complaints, rather than relying on the enquiry referral process to manage consumer expectations.

There are instances where a consumer is unable, or unwilling, to contact their provider, and often the TIO facilitates contact. In these instances the TIO is arguably acting as a contact centre and interim complaint handler for the provider. While this process may inadvertently contribute to conditioning a reliance on the TIO to expedite contact, it also presents an opportunity to strengthen the onus on providers to improve their customer contact arrangements. Systemic occurrences of a provider being difficult to contact and/or unresponsive to TIO requests should therefore be logged by the TIO and reported to the ACMA for potential compliance and/or enforcement action.

Where a consumer has attempted to resolve the matter with their provider and remains dissatisfied, the TIO usually accepts the complaint and refers it back to the provider again (with an associated TIO fee), for a further attempt at resolution. The TIO does not engage with the merits of the complaint at this time but does offer advice and assistance to the consumer.

Once a formal complaint is lodged, there would be benefit in the TIO doing an assessment of the merits of the provider's response to the consumer at this initial point of contact. A TIO assessment at an early stage would save time and frustration for the consumer, particularly if further investigation may not necessarily yield any improved outcomes for the consumer.

With the ACMA's Complaints Handling Standard (CHS) coming into force on 1 July 2018, the regulatory environment for the handling of consumer complaints has changed significantly. The CHS specifies the processes providers must follow in handling complaints from their customers. As these processes are now in a Standard they must be adhered to by providers or the regulator can take direct and immediate enforcement and compliance action. The CHS requires providers to have a written complaints handling process and to comply with it. The process must include, among other things:

- An internal process for prioritising complaints that is clear, accessible and transparent;
- A process for escalating complaints internally; and
- A dispute resolution process, which provides a consumer with a right to escalate a complaint to the TIO.

The CHS also requires providers to acknowledge all complaints within two working days, use their best efforts to resolve complaints on the first contact, and otherwise resolve all complaints within 15 working days.

Arguably, if providers are complying with the CHS, the TIO should not be receiving contacts from consumers who have not commenced a complaint process with their provider. While the current 'enquiry referral' process is intended to assist consumers, it does not necessarily align with individual provider obligations under the CHS which require industry to take ownership of, and seek to resolve the complaint initially. It is important to ensure that the TIO's processes are aligned with those required by the CHS, and that the two process streams do not inadvertently work to undermine each other.

Recommendations – Improved processes

- 1.1 *External referral*—The TIO should direct consumers who have not lodged a complaint with their provider (or who have not given their provider an opportunity to resolve the complaint) to make contact with (or re-contact) their provider immediately. The provider is then responsible for resolving the matter in line with the timeframes set out in the ACMA Complaints-Handling Standard. This process will offer a faster path of resolution for the consumer, underscored by clear regulatory protections. Such contacts should be recorded by the TIO as an “external referral” and not be categorised as a TIO complaint (as the provider has not yet had the opportunity to resolve the matter).
- 1.2 *Internal referral*—In the event that the consumer has made reasonable attempts to contact their provider, but has been unable to connect or speak to the provider, the TIO should contact the provider on a consumer’s behalf and request the provider to make contact with the consumer. The TIO should record this transaction as an “internal referral”, track this request and obtain confirmation from the provider that contact with the consumer has been made successfully. The TIO should report to the ACMA systemic occurrences of a provider being difficult to contact by consumers and/or being unresponsive to TIO requests.
- 1.3 *Acceptance of complaint*—The TIO should accept a matter as a potential complaint if the consumer has genuinely been unable to obtain a resolution to their complaint from their provider or if the consumer is dissatisfied with the provider’s proposed resolution. In doing so, the TIO should undertake an initial merits review and assess how the complaint has been handled by the provider and the appropriateness of any proposed resolutions offered. As part of this assessment, the TIO should determine whether the consumer should be advised to accept the proposed resolution(s) or if the TIO will formally accept the complaint. Further detail of the recommended reforms of the TIO’s processes is contained in Appendix B.

Representation and Authorisation

Representation

Under the TIO’s current governance arrangements, Board membership is made up of nine Directors—three with industry experience, three with consumer experience, two independent directors, and an independent Chair. Two of the three Directors with industry experience are nominated by the two largest providers. The remaining Board members are nominated by a nomination committee comprising two existing Board members (one Director with industry experience and one Director with consumer experience), a person nominated by a consumer body (generally ACCAN), a person nominated by a peak industry group (generally Communications Alliance), and the independent Chair. Nominated candidates are then recommended to the existing Board for selection.

Feedback from some stakeholders indicated concern that this selection process is not truly independent due to the involvement of existing Board Directors, and that it potentially skews Board decision making towards the interests of the largest providers. Arguably, this governance model also does not reflect the changing nature of the industry or the different environments in which the range of providers and consumers operate.

Assessments of other EDR schemes found that while other schemes required Board members to be drawn from particular sectors, they also required that Board members bring specific skills sets to the role of board member. Consumer interests and the interests of smaller providers would be better served by transitioning the Board to a model made up of non-executive directors with a balance of

skills and experience across industry and consumer sectors. To remove any actual or perceived conflicts of interest in relation to the decision making of the Board, Directors with industry experience should not be current employees of, or otherwise engaged by, participants in the TIO scheme.

To further strengthen the representativeness and independence of the Board selection processes, vacant Director positions should be externally advertised and preferred candidates selected by a Selection Committee chaired by the TIO Board's independent Chair and comprise one representative each of the ACMA, industry, and a consumer representative nominated by the Board. With the exception of the independent Chair, all members of the selection committee should be independent of the TIO Board. Decisions regarding the appointment of a person from the pool of preferred candidates put forward by the selection committee should continue to be made by the Board.

Decision making

Ownership of the TIO Scheme emerged as an area of significant stakeholder feedback. TIO Limited is a company limited by guarantee—a type of public company registered under the *Corporations Act 2001*. Rather than shareholders, companies limited by guarantee have “members”, each of whom have a limited (or guaranteed) liability² corresponding to the amount they agree to contribute if the company is wound up. In this way, the organisation's members have a stake in the company. The liability amount is typically nominal and set out in the company's constitution (the TIO constitution specifies the amount must not exceed \$100).

While primary responsibility for decision making rests with the TIO Board, decisions on important matters such as the funding model have in the past been referred to the membership³. Decisions put to the membership can be decided by vote (where each member has one vote) or, if so demanded by a member, via a ‘poll’ (where each member has one vote per whole dollar of its contribution to the TIO's operating costs in the preceding financial year).

A search of publicly available information highlighted a lack of clarity in relation to how and why decisions are referred from the TIO Board to the membership, other than a requirement in the TIO Constitution that a proposal to amend the Company Constitution may only be put to the membership by a Special Resolution of the Board. Rules around how the TIO makes decisions about process and operational changes need to be more clear and transparent.

The TIO also needs to be able to adapt quickly to changing circumstances within the industry. For example, had the TIO been better positioned to adjust its processes to meet the change in the service supply chain brought about by the NBN rollout, it may have been able to provide a more responsive service to consumers. Stakeholder feedback also reported protracted delays in achieving change to process and procedure, such as amendments to the TIO's funding model noted above.

There would be merit in the TIO considering adoption of a governance structure whereby the Directors of the Company are also its Members. This model, which is in place for a number of other EDR schemes that are companies limited by guarantee—for example, the Canadian Commission for Complaints for Telecom-television Services (CCTS) and the Canadian Ombudsman for Banking Services and Investments (OBSI) whose directors also comprise the voting membership of the organization—would strengthen Directors' personal responsibility for actions resulting from Board decisions.

² www ASIC.gov.au/about-ASIC/contact-us/how-to-complain/companies-limited-by-guarantee-disputes-about-members-rights

³ Due to the need to amend the TIO Constitution in order to give effect to the decision.

Authorisation

Assessment of other EDR schemes also identified different approaches to ensuring the accountability of the EDR schemes to their purpose and objectives. For example in New Zealand, the Telecommunications Dispute Resolution Body was established through a tender process run by the NZ industry body, Telecommunications Forum. The relevant Minister authorises the scheme and can withdraw approval if it is not meeting its purpose or principles. Similarly the newly created Australian Financial Complaints Authority, was required to be authorised by the Minister for Revenue and Financial Services, providing a level of Ministerial oversight not currently present in the TIO model.

The TCPSS Act currently specifies the scheme operated by TIO Limited as being the authorised EDR scheme for escalated telecommunications complaints in Australia. While this approach provides certainty for the scheme's operator, it may arguably also encourage complacency with respect to performance and continuous improvement. Authorisation of the scheme has been identified as a potential mechanism to ensure that the EDR scheme operator has ongoing incentives to maintain and improve its performance.

Recommendations – Representation and authorisation

- 1.4 *Representation*—The TIO Board should be an independent, skills based Board comprising Directors with a mix of relevant domain experience from all stakeholder sectors and the requisite collective professional skills to govern the company. The Board should include equal numbers of Directors with consumer skills and industry skills for balance, as well as independent Directors and an Independent Chair. The current requirement for two of the three Directors with industry experience to be nominated by the two largest industry participants should be removed. To remove conflicts of interest (perceived or otherwise), no Director should be in the current employ of or be engaged by any telecommunications provider.
- 1.5 *Nomination and selection processes*—Vacant Director positions should be externally advertised and preferred candidates selected by a selection committee chaired by the Independent Chair and comprising a representative of the ACMA, a person with industry skills and a person with consumer skills nominated by the Board. With the exception of the independent Chair, all members of the selection committee should be independent of the TIO Board. The Board should remain responsible for appointing a person to act as Director from preferred candidates nominated by the selection committee.
- 1.6 *ACMA observer*—The ACMA should have observer status at TIO Board meetings, to ensure transparency of operations and give the Board access to regulatory expertise if needed.
- 1.7 *Transparency of decision making*—There should be clarity and public transparency about which decisions are made by the Board and which decisions are made by the membership.
- 1.8 *Ownership considerations*—Subject to the above Board arrangements being in place, the TIO Board should consider transferring the ownership of TIO Limited to the Directors of the Board. Under these arrangements, the TIO Directors would become the 'Members' of TIO Ltd. Ownership of the scheme would then reflect the diversity of the Board and the scheme's stakeholders, and strengthen Directors' personal responsibility for actions resulting from Board decisions.
- 1.9 *Compliance with TIO Scheme*—If recommendation 1.8 is implemented, to ensure industry participants continue to be bound by the rules of the TIO Scheme, participants should be required to enter into a new Participant Agreement with the TIO, replacing the existing "Member" arrangement.

1.10 *Authorisation to operate*—The Government should consider instituting an Authorisation process for the operation of the TIO scheme. The Authorisation would be granted by the relevant Minister for a period of time (e.g. up to five years) and administered by the ACMA. The Authorisation may be renewed or withdrawn at the reasonable discretion of the ACMA, taking into account the performance of the scheme and after consulting with the Commonwealth Ministers responsible for Communications and Consumer Affairs policy, and subject to relevant regulatory obligations.

Stakeholder engagement

The TIO is an important element in the broader consumer protection framework. It will work most effectively when it is fully engaged and connected with the other key elements of the framework. It is important that the TIO recognises that it is part of the broader telecommunications regulatory framework and needs to work cooperatively with all participants. The Review found that the TIO has been attempting to solve many of the industry wide issues itself rather than in concert with other stakeholders. A number of stakeholders were concerned that the TIO was not as connected with broader industry processes as it should be.

To address this issue, the TIO should enhance its current program of stakeholder engagement and be more open and consultative with stakeholders. This is of particular importance when the TIO reviews or changes its structures, systems or procedures. Stakeholder feedback expressed a strong desire for the TIO to improve its engagement with members about operational issues.

The focus on engagement should include all stakeholders—industry, consumers, regulatory agencies and Government. This could be achieved by establishing a consumer advisory group and an industry advisory group, and holding associated forums regularly, and the continuation and expansion of a structured program of meetings with each of the Department of Communications and the Arts, the ACMA and the ACCC. It is important for the engagement to occur at the senior levels of each organisation as well as at the working level. Some of these matters were also raised in the TIO Independent Review’s recommendations and the TIO has noted in response that it would include these considerations in its forward work plan.

The relationship with the ACMA is particularly critical to ensure the two bodies are able to work collaboratively and effectively to identify emerging issues, address systemic issues and to ensure the consumer protection rules are meeting the needs of consumers. The TIO has recently referred a systemic issue to the ACMA for investigation. This is a welcome development and should be occurring whenever systemic issues are identified.

Recommendations – Stakeholder engagement

1.11 *Broad sector engagement*—The TIO should enhance its stakeholder engagement and be more proactive, open and consultative with stakeholders. Its engagement should be focused on the joint sharing and resolving of issues identified in the sector rather than routine liaison.

1.12 *Relationship with regulator*—TIO should proactively identify systemic issues impacting consumers and refer these to the ACMA, within two weeks of identification. The sharing of information and referral of matters relating to non-compliance, particularly suspected regulatory breaches, systemic issues and emerging issues, is of critical importance to the overall robustness of the consumer protection framework. The TIO is an integral component of these processes and needs to continue to work in close partnership with other agencies to proactively address issues as they arise.

- 1.13 Advisory forums**—Consumer and Industry advisory forums should be established and held regularly to assist the TIO in its decision making and consultation with stakeholders. The forums should be used to consult, communicate and discuss any prospective changes to TIO or industry process.
- 1.14 Leadership in dispute resolution**—The TIO should identify and champion best practice dispute resolution by industry and facilitate actions and activities that will help industry participants to continually improve their processes and customer service.

2. Clear enforceable rules

Amendments to the ACMA Complaints-Handling Standard

The *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (CHS) establishes binding rules for providers' internal complaint handling and came into force from 1 July 2018.

The Standard specifies that providers must have a complaints-handling process and sets out minimum requirements for how it is accessed, timeliness, and transparency. The Standard also details how the providers' processes should be managed, including an approach to resolution, prioritisation and escalation, including to external dispute resolution (if needed). Providers are required to make their complaint handling policies transparent and publicly available so that consumers have a clear understanding of how their provider will manage their complaint and are better able to navigate the complaints handling and escalation process.

Stakeholder feedback generally supported the CHS, but noted that it is still relatively new and needs to be given the opportunity to work. The ACMA, ACCC and industry considered no additional obligations were required on providers beyond what is already in the Standard. However, consumer groups and analysis of the Standard against other complaints handling models identified some additional matters which could strengthen the Standard's operation over time.

The Review found inconsistency in how providers document, make available, and implement their complaint handling procedures, and that these approaches could be improved. Further, the Review found⁴ it was often difficult to make contact with the right area within a provider's operation over the phone—typically due to complex and confusing telephone menus.

Recommendations – Amendments to the ACMA Complaints-Handling standard

- 2.1 'Front end' contact provisions**—The ACMA Complaints-Handling Standard should be expanded to include rules to ensure consumers can easily connect to, and communicate with, their provider in order to lodge a complaint and/or to follow up on a complaint⁵.
- 2.2 Additional minimum requirements**—Minimum requirements in the Complaints-Handling Standard should be further fine-tuned to include rules relating to:
- A requirement for industry participants to produce and publish a compliant Complaints Handling Process (CHP) prominently on their website, and include a 'one-click' link from their website landing page to the CHP.
 - A requirement for industry complaint contact details and telephone opening hours to be clearly

⁴ It should be noted that the review team did not exhaustively consider all providers processes or extensively test in detail the implementation and operation of specific providers' IDR processes or their CHPs.

⁵ For example, requirements for providers to provide easily navigable telephone menus that quickly allow a consumer to connect with their provider's customer service representative, and specification of expected and maximum wait times for being connected to a representative.

stated, and for telephone numbers to contact the industry participant to be toll free or a local call cost.

- o Inclusion in a provider's CHP of clear options on how to raise or progress a complaint via all available channels including telephone, visiting a store, mail, email or other electronic means.
- o Specific provisions to accommodate the special needs of urgent complaints (e.g. from medically vulnerable consumers), complaints made by consumers experiencing financial hardship, and complaints made by small businesses where delays in resolution are detrimental to the customer's business.
- o A requirement for providers to include a link to their relevant policies (e.g. financial hardship policy) from their CHP and to also prominently display this on their website.

Improved industry processes

Providers need to be clear about how a consumer may escalate their complaint within the company if they are not satisfied with the proposed resolution or the level of service they are receiving.

Anecdotal evidence provided during interviews found that some providers are using the TIO as a pathway to filter complaints so that only those complainants that are referred back to them from the TIO can access the providers' specialised escalated complaint handling teams. This practice is at odds with operating an effective IDR. Consumers raising complaints with a provider should be able to escalate the matter within a provider's system before seeking external recourse from the TIO.

Further, anecdotal evidence from stakeholder interviews also suggested that providers who located their escalated complaints handling team "on-shore" had greater success at resolving complaints in a timely fashion, often avoiding the need for complaints to be escalated further to the TIO.

With few exceptions, the Review found that providers did not provide alternative channels for small business customers to contact their provider to obtain service or make a complaint⁶. Small business customers are typically placed in the same queue and IDR process as residential consumers. This lack of delineation potentially increases the difficulty for small businesses to have their complaint or issues addressed in a timely manner, increasing the risk of material impacts to the customer's business.

Overall, the Review found that there was an inconsistent approach to the documentation, accessibility, implementation and operation of complaint handling procedures by industry providers. Opportunities to improve exist in each of these areas. For complaints to be handled well and in a timely manner, it is imperative that industry providers have effective, well executed complaint handling procedures in place that conform to the CHS.

Recommendations – Improved industry processes

2.3 *Template for a complaints handling procedure*—The industry body, Communications Alliance, should develop an ACMA-approved 'model' or template complaints handling procedure that conforms to the Complaints-Handling Standard, and make this available to all industry participants to adapt and adopt as they wish.

2.4 *Provision of documented information to consumer and/or EDR body upon request*—Information documented by a provider in relation to proposed resolutions to a complaint should be made available to both the consumer and/or the EDR body, if so requested.

⁶ It should be noted that the review team did not exhaustively consider all providers processes or extensively test in detail the implementation and operation of specific providers' IDR processes or their CHPs.

2.5 On-shore customer service and complaint handling centres—Providers should be encouraged to establish and utilise staff in on-shore call centres, particularly when dealing with complex complaints, complaints requiring liaison of other areas within a company, and/or interrogation of complex billing and legacy support systems.

2.6 Dedicated IDR access points for small business customers—Given the potential impacts that delays to resolution may have on the livelihood of small business customers, providers should be encouraged to have separate arrangements—such as dedicated IDR access and service points—to progress complaints from this customer segment.

3. Empowered and active regulator

The ACMA has key responsibilities for communications-specific regulatory safeguards, education and advice to consumers, and compliance and enforcement. The changes proposed in this Review envisage the ACMA explicitly articulating its role in consumer protection through its disposition, operation and new areas of responsibility. Some of these changes have already been initiated through the work undertaken by the ACMA in regard to the NBN consumer experience measures, the making of standards, and issuing of record keeping rules, and the recent designation of a lead consumer safeguards Member on the ACMA Authority. Stakeholder feedback from consumer groups and some providers also supported an ongoing, strong regulatory posture by the ACMA. As noted previously, the ACMA has recently made public statements about its enforcement and compliance approach⁷ to the new rules, including the CHS.

Currently, there is no mandatory engagement between the ACMA and the TIO except on matters relating to industry membership of the TIO scheme and compliance with any Ministerial determinations made under s128 of the TCPSS Act (noting no Ministerial determinations currently exist). While there is an existing TIO-ACMA Memorandum of Understanding (MoU) on information sharing, the flow of information between the TIO Scheme and the regulator should also be formalised under mandatory rules ensuring that the regulator can rely on timely access to data about industry performance and potential non-compliance on which it can act.

More direct involvement by the regulator in setting and oversighting parameters of the TIO scheme, such as the approach used in the Australian Financial Complaints Authority (AFCA) model⁸, would formally strengthen the linkages between the ACMA and TIO and ensure that any mandatory requirements for the EDR Scheme are complied with. The scheme would remain independent, but operate under the oversight of the regulator—this enables flexibility for the EDR body to implement operational improvements where needed, while also having the benefit of a safety net for consumers whereby the regulator could take action if the Scheme is failing to comply with mandatory performance requirements, including EDR benchmarks.

Recommendations – Regulatory oversight of the EDR Scheme

3.1 Expansion of ACMA remit—The ACMA’s remit should be expanded to include regulatory oversight of the TIO Scheme. The ACMA’s powers in relation to the TIO Scheme could include powers to:

- o enforce compliance with any standards determined by the Minister under s.128 of the TCPSS Act;

⁷ www.acma.gov.au/theACMA/nbn-rules-compliance-approach

⁸ AFCA is subject to regulatory oversight by the Australian Securities and Investments Commission (ASIC). Under these arrangements, ASIC has the power to: issue regulatory requirements that AFCA (being the operator of the AFCA Scheme) must comply with; approve material changes to the AFCA scheme by giving written notice to AFCA; and powers to direct AFCA to comply with legislative or regulatory requirements that apply in relation to the AFCA scheme.

- o issue regulatory requirements regarding performance of the TIO Scheme’s functions;
- o issue and monitor a relevant authorisation to the TIO Scheme (see recommendation 1.10);
- o determine certain matters which the TIO scheme must refer to the ACMA and/or to the ACCC for consideration; and/or
- o be advised of and approve proposed material changes to the TIO scheme.

Recommendations—Advice on Ministerial standards

3.2 Matters on which the Minister may wish to determine standards—The ACMA should provide advice to the Minister on appropriate standards and performance benchmarks that are to be met by the TIO Scheme. These may include:

- o matters related to ownership and organisational governance—such as Board membership;
- o requirements for ongoing reporting on effectiveness of the TIO Scheme (including internal performance metrics on operational performance—such as error rates in referrals and complaint handling); and
- o requirements for reporting on complaint statistics, systemic issues and complaint root causes.

4. Data collection, analysis and reporting

The Review observed that there is currently limited transparency around the number of providers’ complaints and the effectiveness of their internal dispute resolution processes and the effectiveness of TIO processes. The only publicly available data set is the complaints reported to the TIO. The TIO complaint data is a subset of a much larger picture. Record Keeping Rules recently established by the ACMA will provide access to, and reporting of providers’ IDR data for the first time. This dataset should be complemented with the TIO’s EDR data to provide a complete picture, and be published by the ACMA.

Transparent reporting of a single dataset will help consumers make purchasing decisions. It will also encourage industry participants to focus on improving delivery of services to customers through shining a light on areas for improvement. The data collected will also form an important evidence base for the ACMA when considering actions to improve industry performance and the customer experience.

Feedback from consumer groups generally supported greater data sharing between the TIO and ACMA and noted scope for improvement in the TIO’s public reporting, including publication of more granular data on a quarterly or even monthly basis. Consumer groups suggested published data should include: a) how each complaint was resolved, including referrals to industry; b) the number of enquiries received each month; and c) other information that would help consumers to make informed purchasing decisions.

The ACCC suggested that greater transparency around the performance of individual industry participants will drive change and elevate customer service. A number of providers also suggested that, in addition to the actual complaint data, information be also published about the efficacy of a provider’s process, including proportion of complaints resolved and the average timeframe for resolution of the complaint.

With the exception of Macquarie Telecom, Vodafone and NBN Co, industry participants either did not comment on data collection and reporting, or did not support proposed changes. NBN Co supported the ACMA being responsible for analysis and reporting on complaints handling across industry. Vodafone indicated it was supportive of the principle in general terms, but did not agree with the arrangements in the ACMA Record Keeping Rules. Macquarie Telecom suggested continuous

reporting of consumer complaints through a “live” rolling daily number of complaints, in addition to deeper monthly and quarterly reporting of complaints data which should analyse trends and types and sources of complaints.

Macquarie Telecom also suggested that, in addition to highlighting areas of concerns—such as clusters of complaints around technologies, locations or service types—both well- and poorly-performing industry participants should be identified. Calling out consistently top performers would facilitate more informed consumer decision making and encourage providers to place greater commercial value on their customer service and complaint handling reputations.

Provisions in the *Australian Communications and Media Authority Act 2005* (ACMA Act) which prohibit disclosure of information (including summaries or derived statistics) relating to the affairs of a party without their consent may hinder the ACMA’s ability to publish data about individual providers’ complaint numbers and performance, and in turn affect consumers’ ability to compare the quality of providers’ performance. There would be merit in modifying these provisions where there is a clear consumer benefit from ACMA undertaking public reporting of performance across industry.

Recommendations - Collection of IDR and EDR data

- 4.1 *Data to be provided by industry*—Industry participants across the supply chain and the EDR Scheme should have appropriate internal links and leadership to support the effective capture of IDR complaint data and root cause analysis of complaint issues. Analysis of this data should form a feedback loop to help drive better industry performance, through pinpointing and eliminating the causes of otherwise avoidable complaints.
- 4.2 *Parameters for data provision*—The ACMA should provide a clear set of definitions of the data that it will collect and associated requirements, and maintain the data dictionary⁹ for this purpose. Data should include both information about the complaint and its root cause, as well as information about how the complaint was handled and resolved.
- 4.3 *Timing for data provision*—Data should be provided monthly to the ACMA, or at such other interval reasonably requested by the ACMA, in a format and medium specified by the ACMA.
- 4.4 *Data integrity and consistency*—The ACMA may audit providers’ data collection and data vetting processes to ensure integrity and consistency of the data.

Recommendations—Analysis and Reporting of IDR and EDR data

- 4.5 *Systemic issues*—Systemic and other issues arising from the analysis of the complaint data should be communicated to the relevant industry participant(s), industry body and/or regulator, to facilitate the appropriate resolution to address the issues identified.
- 4.6 *Publication*—The ACMA will analyse and publicly report the complaint information received on a regular basis, ideally monthly and no less than quarterly. The reporting should clearly identify industry participants who have lower complaint levels, as well as those which are effective in handling complaints.
- 4.7 *ACMA’s ability to publish data*—The Government should implement measures to ensure the ACMA is not hindered in its ability to publish data on individual providers’ performance in complaints handling.

⁹ A set of information describing the contents, format, and structure of a database and the relationship between its elements, used to control access to and manipulation of the database.

5. Implementation

Given the benefits for telecommunications consumers that will flow from these reforms—particularly in the areas of improved customer service and performance by providers, swifter resolution of complaints, and delivery of stronger protections for consumers—implementation should commence immediately.

The Review recommends that the TIO, to the extent possible within its existing scope of powers, voluntarily implement the recommendations within its remit—particularly those relating to a strengthened TIO Scheme—within 12 months of the release of this report. Should the TIO not implement these measures within the designated timeframe and the Minister considers that change is necessary, the Review recommends the Minister consider issuing a determination under section 128 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act).

If required, this determination should set out standards on matters such as Board representation and responsiveness, transparency of decision making, minimum requirements to enhance the TIO's engagement with the sector and its relationship with the regulator, and benchmarks for its role as a leader in dispute resolution. Consistent with provisions of the TCPSS Act, in making any such determinations, the Minister would need to consult with the TIO and the ACMA, and have regard to matters of accessibility, independence, fairness, accountability, efficiency, effectiveness, and any such other matters as the Minister considers relevant. The existing TIO scheme would continue to be funded by industry.

A number of proposals would require minor legislative change. These include the proposed: expansion of the ACMA's remit to include regulatory oversight of the TIO Scheme; measures to ensure the ACMA is not hindered in its ability to publish data on individual providers' performance; and administration by the ACMA of arrangements authorising an operator of the TIO Scheme. The Department of Communications and the Arts should, in consultation with the ACMA, commence a program of work to give effect to these measures.

Several recommendations on data collection, analysis and reporting are the remit of the ACMA but would be assisted by cooperation from industry and the TIO. The Review encourages all parties to work collaboratively and effectively to ensure the consumer protection rules are meeting the needs of consumers.

Recommendations—Implementation

5.1 Implementation—The TIO should examine and put in place arrangements to implement the recommendations that are within its remit, to the extent possible within its existing scope of powers, within 12 months of the release of this report.

5.2 Consideration of Ministerial Standards to which the TIO Scheme must comply—Should further action be required and the Minister considers changes are necessary, the Minister should consider issuing a determination under section 128 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act).

5.3 Remaining recommendations—Work to effect the remaining recommendations should be undertaken as a priority by the Department of Communications and the Arts and the ACMA.

Appendix A—Submitters

Name	Submission Type (written, verbal interview or both)
Amaysim	Verbal interview
Australia and New Zealand Ombudsman Association (ANZOA)	Written
Australian Communications and Media Authority (ACMA)	Both
Australian Communications Consumers Action Network (ACCAN)	Both
Australian Competition and Consumer Commission (ACCC)	Both
Bebbington, Bruce	Written
Commpete	Verbal interview
Communications Alliance (CommsAlliance) and the Australian Mobile Telecommunications Association (AMTA)	Both
Community Legal Centres Queensland	Written
Consumer Action Law Centre	Verbal interview
Consumer Action Law Centre and WEstjustice	Written
Consumers’ Federation of Australia	Written
Council of Small Business Australia	Verbal interview
Erickson, Eric	Written
EscapeNet	Written
Federation of Ethnic Communities Councils of Australia	Written
Financial and Consumer Rights Council	Written
Financial Counselling Australia	Written
Internet Australia	Written
Legal Services Commission South Australia	Written
Macquarie Telecom	Both
McMillan, John	Written
NBN Co	Both
National Farmers Federation	Written
Optus	Both
Small Business and Family Enterprise Ombudsman	Both
Small Business Development Corporation	Written
South Australian Financial Counsellors Association	Written
Southern Phone	Both
Stuhmcke, Dr Anita	Written
Telecommunications Industry Ombudsman (TIO)	Both
Telstra	Both
TPG Telecom	Verbal interview
Vodafone	Both

Appendix B—Suggested reforms to TIO complaint handling processes

External Referral

1. Consumer contacts the TIO with a potential complaint.
2. The TIO checks that the matter is within jurisdiction.
3. The TIO asks if the consumer has raised the matter with their retail service provider (RSP).
4. If the consumer has not raised the complaint with the RSP, or has not provided the RSP with sufficient opportunity to resolve the complaint—the TIO directs the consumer contact (or re-contact) the RSP—this is recorded as an **External Referral**.
5. If the Consumer has unsuccessfully attempted to resolve their complaint with their RSP—the TIO then proceeds to step 10.

Internal Referral

6. If a consumer has made attempts to contact their RSP and has been unsuccessful—they can contact the TIO and request that the TIO ask the RSP to contact the consumer.
7. The TIO will record and track this as an **Internal Referral**.
8. The TIO will request confirmation from the RSP about when contact has been made with the consumer.
9. Systemic occurrences of a RSP being difficult to contact or unresponsive will be reported to the ACMA for possible enforcement and compliance action.

Potential Complaint

10. If the TIO is contacted by a consumer who has been unable to resolve a complaint with their RSP, the TIO may accept the matter as a **Potential Complaint**.
11. The TIO should review (merits review) and assess the complaint and how it has been initially handled by the RSP including any proposed resolutions offered to the consumer.
12. The TIO will assess the best course of action to deal with the complaint that will be most effective for the consumer.
13. If the TIO considers that the RSP has made a fair and reasonable offer to the consumer, the TIO will advise the consumer that it will be unlikely to achieve a better outcome through the full TIO process and recommend the consumer accept the proposed resolution.
14. If, in the view of the TIO, the matter has merit and requires involvement of the TIO to facilitate a resolution, the TIO may progress the matter as an **Accepted Complaint**. The complaint may be referred back to the RSP, following acceptance of the complaint by the TIO, for reconsideration by the RSP—or progressed directly to step 15.

Negotiation, Conciliation, Determination & Review

15. The TIO may attempt to resolve the complaint by negotiation or conciliation between the parties to the complaint. If the matter is not resolved by negotiation or conciliation, the TIO may recommend a proposed resolution to both parties and close the matter.
16. If either party to the complaint is dissatisfied with the recommended resolution, they may request the TIO to make a binding determination. The TIO may then decide to investigate the matter further and make a final, binding determination.
17. The determination is binding on the RSP. The consumer may reject the determination and seek another jurisdiction to pursue the matter.
18. Urgent complaints (medical and financial hardship issues) received by the TIO are to be immediately expedited for handling by the TIO.

Process flowchart of suggested model for reformed TIO processes

