



ACCC submission to Part A of the Consumer Safeguards Review

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1. Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the Consumer Safeguards Review (the Review) and appreciates the opportunity to provide a submission. The Review is important to ensure that consumer safeguards are fit for purpose, during migration to the national broadband network (NBN) and after the rollout of the NBN is complete, and that they will continue to protect consumers.

The ACCC is the economy-wide competition regulator responsible for enforcing the *Competition and Consumer Act 2010*. We protect Australian consumers by fostering competitive, efficient, fair and informed Australian markets, including telecommunications markets. This includes our work in investigating and enforcing breaches of the Australian Consumer Law (ACL).

Access to effective redress and complaints resolution processes in the communications sector is critical for consumers and small businesses. Telecommunications services form a fundamental part of the daily lives of many Australian consumers, used to meet some of their varied communication, business, education, entertainment, health and/or safety needs. When something goes wrong or a product or service does not meet the expectations of a consumer, there needs to be recourse to a quick and effective means of resolving the matter. In most cases, this should be with the retail carriage service providers (CSPs). However, if a matter cannot be resolved directly with the CSP, there needs to be an effective external dispute resolution body easily accessible to the consumer.

1.1. Issues

The consultation paper observes that “Service outages, delays in connections and repairs, incorrect billing and a lack of responsiveness to these issues by telecommunications providers has resulted in an increasingly high number of consumer complaints reported to the Telecommunications Industry Ombudsman (TIO) in the last 18 months.”¹

The paper notes that the primary complaint issue reported to the TIO is that of customer service and suggests that consumers are frustrated with the lack of effective consumer care and inability to satisfactorily resolve complaints raised directly with their service provider.

The consultation paper proposes to put more responsibility on service providers to force them to resolve complaints, while establishing an external dispute resolution (EDR) body that will only deal with complex complaints. The paper also proposes transferring responsibility for collection of data relating to industry performance and complaints to the ACMA for analysis and publication.

The consultation paper’s proposals must be considered alongside the ACMA’s recent rule-making to improve the NBN consumer experience in response to a direction from the Minister of Communications and the Arts. The ACCC welcomes the ACMA’s rules and considers that the Minister’s direct regulatory intervention will likely lead to improved outcomes for telecommunications consumers by addressing the source of the problem.

However, the ACCC has concerns about the proposed dispute resolution model proposed in the consultation paper. We have two reasons for our concerns. First, the proposal appears to rely on an industry that is currently subject to a high number of consumer complaints, ‘getting its act together’ and quickly resolving all non-complex complaints to the satisfaction of the consumer. Secondly, and more importantly, the ACCC considers that this proposal will remove an effective avenue of independent dispute resolution that currently exists for

¹ Department of Communications and the Arts, Consumer Safeguards Review, Part A Redress and Complaints Handling – Consultation Paper p. 3.

customers of retail telecommunications services. Given the high incidence of consumer complaints we consider this risks causing further consumer frustration. In the longer term, it may also lead to a further loss of confidence in the sector while also not incentivising retail CSPs to resolve issues to avoid escalation.

1.2. ACCC response to high volumes of telecommunications consumer complaints

The ACCC is concerned by the sustained increase in telecommunications complaints. Where we have identified underlying issues within our jurisdiction that are behind the increase in complaints, we have taken action to address those issues, particularly regarding speeds and service performance on the NBN. Our strategy involves:

- investigating conduct that may breach the ACL and taking appropriate enforcement action when we find instances of misleading conduct,
- promoting clear industry guidance on how to provide meaningful and accurate information when advertising broadband speeds for NBN fixed-line broadband services,² and
- the introduction of the Measuring Broadband Australia program³ to provide consumers with comparable information about the performance of NBN fixed broadband services.⁴

In November 2017, we also commenced a public inquiry to determine whether NBN wholesale service standard levels are appropriate, and to consider whether regulation or other changes to NBN Co's terms of access are necessary to improve consumer experiences. Further, we identified priorities relating to telecommunications in our February 2017 Compliance and Enforcement Strategy and have undertaken a series of enforcement actions in the telecommunications sector over the past 12 months.

For example, the ACCC has now accepted court-enforceable undertakings from eight internet service providers that have all admitted they likely misled customers about NBN broadband speeds. As a result of these undertakings, more than 75,000 affected consumers are being, or have been, contacted by their service provider and offered remedies.

Recent enforcement action, including the undertakings on NBN speeds, includes:

- In July 2018, NBN service provider MyRepublic Pty Ltd paid penalties totalling \$25,200 after the ACCC issued two infringement notices for alleged false or misleading representations about its NBN service performance
- In May 2018, the Federal Court ordered Optus to pay penalties of \$1.5 million for making misleading representations to customers about their transition from Optus' HFC network to the NBN
- In April 2018, the Federal Court ordered Telstra to pay penalties of \$10 million for making false or misleading representations to customers in relation to its third-party billing service known as "Premium Direct Billing"
- In March 2018, Dodo Services Pty Ltd, Primus Telecommunications Pty Limited, and M2 Commander Pty Ltd gave undertakings to offer remedies to customers who could not

² ACCC, Broadband Speed Claims Industry Guidance, <https://www.accc.gov.au/publications/broadband-speed-claims-industry-guidance>

³ Previously known as the Broadband Performance Monitoring and Reporting program (BPMR).

⁴ ACCC, Monitoring Broadband performance, <https://www.accc.gov.au/consumers/internet-phone/monitoring-broadband-performance>

receive the internet speeds they bought because their NBN connection was incapable of delivering it.

- In March 2018, iiNet Limited and Internode Pty Ltd provided the ACCC with court-enforceable undertakings to compensate more than 11,000 customers who could not reach the internet speeds they were promised in their NBN contracts.
- In March 2018, Australian Private Networks Pty Ltd, trading as Activ8me, paid a penalty of \$12,600 after the ACCC issued an Infringement Notice for alleged false and misleading representations. It was alleged that Activ8me represented that its internet services were endorsed or approved by the ACCC as being superior to those offered by other providers, when this was not the case.
- In December 2017, Optus and TPG provided court-enforceable undertakings to the ACCC detailing the compensation it proposed to provide to more than 16,000 consumers who were misled about maximum speeds they could achieve on certain NBN plans.
- In November 2017, Telstra provided a court-enforceable undertaking to the ACCC to offer remedies to around 42,000 customers for promoting and offering some of its NBN speed plans as being capable of delivering specified maximum speeds, when those maximum speeds could not be achieved in real-world conditions.
- In June 2017, Sprint Telco Pty Ltd paid a penalty of \$10,800 following the issue of an infringement notice by the ACCC in relation to a false or misleading representation to a consumer.
- In December 2016, the Federal Court found that SoleNet and Sure Telecom had engaged in unconscionable conduct in connection with the supply of telecommunications services. Further in March 2017, the Court ordered that SoleNet, Sure Telecom and sole Director Mr James Harrison pay penalties totalling \$250,000 and be restrained from carrying on a business or supplying services in connection with telecommunications for a period of two years.

This recent history of enforcement action demonstrates that generally the telecommunications industry has quite low standards of customer service and a culture of poor compliance. The ACCC has undertaken enforcement action against a range of retail CSPs, both large and small.

The ACCC considers that a policy response must be directed at the underlying problem facing the industry. That is, the industry must have the right incentives to develop a more robust culture of compliance that focuses on the consumer.

1.3. Current regulatory and policy response

There is currently a significant amount of regulatory and policy activity aimed at improving telecommunications consumer experiences, in particular, the resolution of complex complaints. This includes the current Consumer Safeguards Review, the review of the Telecommunications Consumer Protections (TCP) Code, the TIO's implementation of recommendations made in the 2017 Independent Review of the TIO and the ACMA's implementation of its new industry rules. Additionally, there is significant disruption in the market as the NBN is rolled out and services are migrated to the new network.

On 20 December 2017, the Minister for Communications and the Arts directed the ACMA to make three industry standards relating to: handling of customer complaints, continuity of voice and broadband services, and customer information relating to services on the NBN.

The ACCC considers that the Minister's intervention has resulted in significant improvements to the regulatory framework that create stronger incentives for retail CSPs to improve their

practices. We consider that they must be given time to bed down in order to establish stronger customer-focused practices in the industry.

The *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (the Industry Standard) requires all CSPs providing telecommunications services to consumers and small businesses to comply with rules specifying how complaints must be managed. The Industry Standard came into effect from 1 July 2018. The ACMA also made the *Telecommunications (Consumer Complaints) Record-Keeping Rules* under which CSPs are required to report internal complaints data to the ACMA on a quarterly basis.

Importantly, these rules apply to all CSPs, not just those supplying NBN services.

Further, the ACMA has made new rules related to NBN products and services that require service providers to:

- provide all necessary information to help consumers make informed choices about the NBN service and plan that is correct for them (*Telecommunications (NBN Consumer Information) Industry Standard 2018*),
- test that their customer's new NBN service is working after installation (*Telecommunications Service Provider (NBN Service Migration) Determination 2018*),
- provide an interim service to the consumer or, where specified, reconnect the consumer's old service if there are delays in getting the NBN service to work (*Telecommunications (NBN Continuity of Service) Industry Standard 2018*).

These new rules are directly enforceable by the ACMA and, where breaches are found, allow the ACMA to commence court proceedings seeking remedies such as injunctions and civil penalties of up to \$10 million.

The ACCC considers that, if these provisions are rigorously enforced by the ACMA, they will create significant incentives for industry to remedy its customer service and complaints handling processes.

The TIO has also been working to improve the consumer experience by implementing a number of recommendations made following the 2017 Independent Review. In October 2017, the TIO amended its terms of reference to enable it to deal effectively with complaints relating to complex supply chains such as the NBN. Further, the TIO has been developing its work on identifying and dealing with systemic issues, including the recent publication of its first Systemic Insight Report.⁵

In addition, the TIO has recently changed its funding structure, which should provide more certainty over the longer term.

Within this complex and changing environment, the ACCC does not consider that a compelling case has been presented to replace the TIO.⁶ We believe that further disruption in the current environment will risk a reduction in the protections and safeguards currently afforded to consumers. The TIO provides an independent dispute resolution service for unresolved complaints, regardless of their complexity. If consumers only have access to such a service for complex complaints, there may be a significant number of consumers left with unsatisfactory outcomes, and no avenue for redress.

⁵ TIO, Systemic Insight – Loss of telephone numbers during migration to the nbn, <https://www.tio.com.au/publications/news/systemic-insight-loss-of-telephone-numbers-during-migration-to-the-nbn>.

⁶ Similarly to other sector Ombudsman schemes, the TIO changed its structure in 2014 to move from a Board and Council structure into a single Board of Directors with consumer and industry experience, and an independent chair

2. ACCC response to proposals

In this section, the ACCC comments on each of the three proposals in the consultation paper and responds to the questions posed.

2.1. Proposal 1 – Industry complaints handling

Under the proposal, telecommunications providers must establish and maintain complaint handling policies, which detail their processes and procedures for handling customer complaints in accordance with the governing rules. This principle reflects the recent Industry Standard that has been implemented by the ACMA. In addition to the rules set out in the Industry Standard, it is also proposed that the ACMA may audit CSPs' policies for compliance purposes.

As noted above, the ACCC welcomes the new ACMA rules. The Industry Standard establishes binding rules for CSPs' complaint handling and has the potential to be an effective regulatory intervention if rigorously enforced.

Complaints regarding telecommunications customer service and complaints handling have been consistently high for a significant period of time, with serious spikes in complaints from time to time. Following a significant increase in complaints to the TIO ten years ago, the ACMA undertook a public inquiry resulting in the *'Reconnecting the Customer'* report in 2011. In response to that report, the ACMA worked with industry to make significant improvements to the Telecommunications Consumer Protections (TCP) Code, including measures to improve outcomes for consumers.

The implementation of recommendations in that report made some improvements to reset industry's performance in both areas but they have re-emerged again as being significant concerns for consumers. However, as an industry code, the ACMA had limited enforcement options when a breach was identified. The recent rules made by the ACMA provide much more direct enforcement powers for the ACMA and are likely to create much stronger incentives for industry to focus on their internal complaints-handling practices, if enforcement is prioritised.

Questions

1. How can telecommunications service providers be encouraged to deal with and resolve their customer complaints without the need for recourse to external escalation?

The ACCC supports improved industry complaints handling procedures and information for consumers and small businesses. Service providers, as the direct point of contact for their customers, should have incentives to resolve complaints themselves.

As noted above, the ACCC considers that stronger incentives have recently been put in place as a result of the ACMA's Industry Standard. However, there are few incentives for retail CSPs to compete to implement and maintain good complaints handling processes because, at the time of purchasing a product or service, consumers generally do not expect something to go wrong. Further, consumer barriers to switching mean that there are not sufficient incentives on retail CSPs to improve practices in order to compete for new customers or to retain existing customers. The lack of transparency about performance on complaints handling also means that consumers cannot compare the performance of different providers.

The ACCC considers that more transparency in the form of comparable data on retail CSPs complaint numbers will result in CSPs being incentivised to provide good customer service

and compete on customer satisfaction. As noted below, reporting on the number of complaints per customer for each CSP would provide consumers with a valuable benchmark against which to assess customer service. If CSPs can differentiate their service performance, this will enhance competition and raise the standard across the industry. Competition on service will deliver better outcomes for consumers.

2. What barriers currently exist that prevent providers from addressing consumer complaints at the first point of contact or through an internal escalated process?

The ACCC notes the consultation paper's claim that a possible explanation for why the TIO has received so many complaints is that some service providers find it easier and more cost-effective to allow or 'outsource' issues to go to the TIO.

The ACCC is sceptical of this claim. In particular, there is recent evidence indicating the opposite, that service providers may discourage their customers from taking a complaint to the TIO (see ACCAN's 'Can You Hear Me?').⁷ Importantly, if this assumption is guiding the development of the proposal, then it needs to be tested more rigorously before it is used as an evidence base for resetting the industry incentives.

3. How should responsibility for resolving consumer complaints involving multiple parties in the supply chain be achieved or enacted?

The ACCC's view is that primary responsibility for the relationship with customers should lie with the customer's retail CSP. The retail CSP should be able to obtain information about faults, appointments and other relevant information that would assist them to resolve their customers' complaints in a timely and effective way.

The ACCC supports the obligations contained in Part 6 of the ACMA's Complaints Handling Standard. These require that carriers and CSPs must provide reasonable assistance to the retail CSP and any other CSP who supplies a carriage service that is involved in the supply of the retail carriage service in managing and resolving any complaints received by the retail CSP in relation to the carriage service. We note that the changes have only recently been implemented and it is too early to determine if there are any gaps in the framework and what role aggregators in the supply chain may play.

Nevertheless, we consider that this rule, if rigorously enforced, is likely to reduce the problems that have arisen due to the complex supply chain. Enforcement is a key tool to resolve problems and fix harms. When enforcement action achieves a good outcome, it encourages compliance among other businesses who look at their own processes or behaviour.

The ACCC also notes that, in those circumstances where multiple parties are involved in resolving problems, the TIO can assist. Indeed, the changes made recently to the TIO's terms of reference now enable it to go along the supply chain and identify responsibility.

Finally, the ACCC notes that the example most commonly used to illustrate complex supply chains is services provided over the NBN. However, the ACCC notes that third party providers can often lead to more complex supply chains. Where consumers query authorisation and fees for third-party services billed by their retail CSP, those CSPs should be responsible for resolving these issues.

⁷ See <https://accan.org.au/our-work/research/1523-can-you-hear-me-ranking-the-customer-service-of-australia-s-phone-and-internet-companies>.

4. Should there be additional rules in the ACMA's Complaints-Handling Standard compelling providers to make every effort to resolve customer complaints before the consumer escalates the matter to an external dispute resolution body?

The ACCC does not consider that an additional obligation should be placed on CSPs to make 'every effort' to resolve a complaint if it required additional barriers for a consumer to have their complaint resolved. This risks delaying the resolution of a complaint and further frustrating consumers. We support the ACMA's Industry Standard, which sets clear rules for complaints management and response times.

While the proposed obligation may result in fewer complaints being referred to the TIO, it risks increasing the number of adverse consumer experiences in the telecommunications sector as consumers wait for retail CSPs to resolve complaints. Consumers may just give up on achieving redress if a significant amount of time is passed. The ACCC is not convinced that this will improve the experience of telecommunications consumers.

5. What do consumers need to know about their provider's complaint handling policies and procedures?

The ACCC agrees that retail CSPs should be required to have copies of their complaints-handling process available for consumers. This should include details of how to initiate the process, what to expect (including timeframes) and contact details of the TIO.

As noted elsewhere in this submission, the ACCC does not believe that a retail CSP's complaint handling procedures are normally likely to be factored into consumers' purchasing decisions. However, customer service is much more likely to be a pertinent factor (although we note that for many consumers, good customer service includes having their concerns addressed or problems resolved).

One matter that the ACCC considers could be included is that consumers be made strongly aware of the TIO and its role as an independent dispute resolution provider. This information could be displayed on consumer bills or in other regular communications to the customer. It is especially important that this information is provided when the CSP is responding to a consumer's complaint.

6. When and how should consumers be made aware of a provider's complaint handling policies and procedures?

See above.

7. How will providers ensure their own staff are trained in the complaint handling policies and procedures and will be supported by appropriate complaint handling systems?

CSPs are ultimately responsible for how they comply with the ACMA's Industry Standard. However, the ACCC considers that regulatory guidance on what procedures industry complaints handling procedures must satisfy would assist in ensuring compliance with the standard.

The ACCC notes that Australian financial services licensees must have internal dispute resolution systems that meet the standards or requirements made or approved by the Australian Securities and Investment Commission (ASIC) and membership of one or more ASIC-approved EDR schemes. ASIC has produced regulatory guides (*Regulatory Guide 165 Licensing: Internal and external dispute resolution* and *Regulatory Guide 139 Approval and oversight of external dispute resolution schemes*) that provide guidance to industry on what procedures their IDR scheme must satisfy. This includes using best practice procedures and definitions consistent with Australian Standard *Guidelines for complaint management in organizations* (AS 10002:2014).

2.2. Proposal 2 – New external dispute resolution (EDR) body

The consultation paper proposes that an EDR body, independent of industry, be established to deal with complex complaints that are unable to be resolved directly between customers and their providers. It notes that consideration will need to be given to the appropriate governance arrangements to support the body, with its independence being a guiding principle.⁸

The ACCC supports the need for a strong, robust, independent body that can adjudicate disputes, has the power to compel redress options, deal with all levels of the supply chain, has arrangements to work closely with relevant regulators (including the ACMA and the ACCC) and has transparent funding. However, we consider that this body is the TIO.

The ACCC is not convinced that an effective response to the problem identified by the consultation paper is to remove a source of independent dispute resolution for non-complex complaints and replace the current scheme with a new body. Complex complaints are one part of the problem identified in the consultation paper. Further, the ACCC considers that not allowing consumers effective independent redress for any complaint is inconsistent with Principle 3 espoused in the paper, that: 'Consumers have an independent avenue for resolution and/or redress.'

The ACCC agrees that the supply chain of telecommunications services is complex and consumer experiences can be impacted by various factors within the control of wholesale service providers, retail service providers and/or consumers themselves. This can make it difficult to determine the cause of a consumer issue, attribute fault and resolve issues in a simple and timely manner. While noting that these complex issues are not the sole source of the recent significant increase in complaints seen by the TIO, it is perhaps not unexpected that there has been an increase in consumer complaints, particularly given the mass rollout of the NBN and move away from legacy services.

The ACCC's view is that the entity with the direct contractual relationship with the consumer is responsible for resolving these issues. This is a core principle in other codes, such as the ePayments Code, which makes the consumer's financial institution responsible for resolving all complaints even where third parties are involved. In those circumstances where the CSP is not responsible for problems, the TIO can assist, and indeed, the changes made recently to the TIO's terms of reference enable it to go along the supply chain and identify responsibility.

Consequently, we do not support the proposal to establish a new EDR body. This would be costly, resource intensive, and cause disruption to consumers and industry in an already disrupted environment.

1. Should the current Telecommunications Industry Ombudsman (TIO) arrangements be transformed to an independent External Dispute Resolution (EDR) body for handling complex complaints?

For the reasons outlined above, the ACCC considers that there is no compelling case for replacing the TIO with a new EDR body.

The only distinction between the current operation of the TIO and the new proposed body appears to be that it would have a narrower mandate limited to handling complex complaints.

⁸ Department of Communications and the Arts, Consumer Safeguards Review, Part A Redress and Complaints Handling – Consultation Paper, p. 10.

The ACCC is particularly concerned with this aspect of the proposal. In particular, it appears that the EDR body would only accept a complaint once it is satisfied that the matter was unable to be adequately addressed by the service provider's complaint-handling processes and has gone through the provider's required internal escalation process.

This proposal is predicated on service providers significantly improving their current customer service and complaints handling practices. As noted in the paper, customer service is currently the top complaint issue reported to the TIO and a number of complaints are not being resolved when first raised by the customer. While the ACMA's new rules are likely to improve service provider complaints handling, it is unlikely that industry behaviour would change immediately and see consumers with "non-complex" complaints adequately protected under the new framework.

It is important to acknowledge the reality of increasing complexity in product and service offerings, continued convergence and the speed of technological change. It is likely that dispute volumes may remain around current levels given the level of change and disruption within the market. Some retail CSPs, particularly larger ones with more resources, will be able to develop and implement stronger internal dispute resolution policies that may include clear and efficient internal escalation procedures. However, there is a risk that smaller CSPs will delay the resolution of complaints, creating more frustration for the consumer and more inefficiencies.

The ACCC considers that limiting the TIO (or EDR) to complex complaints would remove an avenue of dispute resolution for many consumers. Effectively, consumers would no longer be able to escalate a matter to the TIO if they are not satisfied with the CSP's actions. If the complaint was complex, but was not related to the NBN (in that it did not fall under one of the ACMA's rules related to migration to NBN), a consumer would have no recourse to independent dispute resolution until the EDR considered that the service provider was unable to adequately address it.

As noted in our submission to the 2017 Independent Review of the TIO, the ACCC considers that the TIO is vital to a well-functioning telecommunications industry and that the TIO has a critical role to play in monitoring and resolving consumer issues. Through its ongoing work, the TIO has demonstrated that it is committed to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness as set out in the Benchmarks for Industry-based Customer Dispute Resolution Schemes.

While current consumer issues experienced in the sector represent a challenge for the TIO, Government, consumer groups and regulators alike, the ACCC considers that the TIO should be retained.

2. In addition to resolving complex complaints, should the independent EDR body be proactively engaged in driving industry improvements, identifying systemic complaints and analysing root causes or recurring issues?

The ACCC notes that under its terms of reference, the TIO currently undertakes these activities. We support these activities being retained.

3. Should the charging structure for complaints lodged with the EDR body be structured to encourage providers to exhaust all practical steps to directly resolve the complaint with the consumer before referring to the EDR body? How can this be achieved?

As noted above, the ACCC considers that adjusting incentives to try and force retail CSPs to avoid escalation of a dispute to the TIO or EDR will not necessarily result in good consumer outcomes. Furthermore, recent evidence indicates that some CSPs may be currently encouraging their customers not to take complaints to the TIO.

We also note recently implemented changes to the TIO's funding arrangements, which includes a new fee structure with an annual membership fee and case based fees levied on members. These changes should also be given the opportunity to influence CSPs behaviour.

4. What process should be followed before a consumer lodges a complaint with the EDR body?

The ACCC does not agree with the premise that the EDR body should only deal with complex complaints. Our view is that an independent dispute resolution body should be authorised to deal with any unresolved consumer complaints. We agree with the general principle that the first recourse should be to the CSP, but if the matter cannot be resolved to the satisfaction of the consumer, or within a reasonable time period, then the consumer should be able to escalate to the TIO (or EDR scheme). We support placing clear time limits on the internal complaints process such as occurs under the ACMA's Industry Standard. The Industry Standard requires that CSPs use their best efforts to resolve complaints on the first contact and otherwise resolve complaints within 15 working days (with urgent complaints to be resolved within two working days).

However, where complaints are complex and involve multiple parties, the affected consumers should be given the option by their RSP to either have the complaint resolved internally by the RSP in accordance with a new timeframe (noting that this may take longer than 15 days) or alternatively, be given the option by their RSP to take their complaint to the TIO for resolution.

5. What process should the EDR body follow in the event it receives a complaint from a consumer where the consumer has not followed the provider's complaint handling procedures?

See above.

6. What process should the EDR body follow in the event it receives a complaint from a consumer where the provider has not followed its own complaint handling procedures?

See above.

2.3. Proposal 3 – Data collection, analysis and reporting

The consultation paper proposes that the ACMA be responsible for the collection of industry performance and complaints data. Further, the ACMA could then publish reports detailing analysis of this data, as well as including complaints data in its annual Communications Report.

The paper also suggests that the EDR body should focus on resolving disputes and data obtained as a by-product of this function would be directly provided to the ACMA for analysis and reporting.

The ACCC supports this proposal in principle as we agree that data currently collected by the TIO could be used more effectively to improve the customer experience. Whether collected by the TIO or the ACMA, data should be provided regularly, be easily accessible, and reported in a disaggregated way to allow for thorough analysis of complaints issues.

There are significant public interest uses for data collected on telecommunications consumer complaints:

- Use by an ombudsman to educate industry, provide information to consumers and provide data to regulators, to be accountable,
- Use for policy purposes to enhance government understanding of systemic issues, assess regulation and effectiveness of the regime, and
- Use by regulators to assist in fulfilling statutory responsibilities, such as providing reports on operations of the telecommunications sector and in enforcing the ACL and the *Competition and Consumer Act 2010*.

Current telecommunications complaints data does have failings. The ACCC considers that it should:

- Be more granular/disaggregated. We note that the TIO now collects more granular NBN complaints data by service type. Data should be collated by service provider or technology to aid identification of systemic issues. Without such detail, the ACCC has difficulties in enforcing the ACL. The lack of information in complaints data may result in poor outcomes for consumers if regulators are unable to take prompt action. It also means that it is difficult, even now, to determine what precise elements of 'customer service' are responsible for the current increase in consumer complaints and therefore, what solutions might be appropriate.
- Report on complaints against retail CSPs – reporting on the number of complaints per customer for each CSP would provide consumers with a valuable benchmark against which to assess customer service. Currently, only the absolute number of complaints are reported against each CSP.

Traditionally, it is an important part of an ombudsman's role to collect, analyse and report on data. The ACCC considers that data collection and analysis by a dispute body is an important part of its role. As noted above, it can be used to educate industry, inform consumers about products or service and to inform regulatory practices.

Data analysis of matters like the significant recent increase in complaints to the TIO would assist Government and regulators in identifying factors behind these changes. Such data analysis would also be invaluable to regulators and policy-makers more generally.

As the enforcer of the ACL, the ACCC considers that improvements to the TIO's complaints data and the way in which the data is analysed will assist in improving the consumer

experience and ensuring that the TIO and relevant regulators (including the ACMA and ACCC) have the ability to address emerging and systemic industry issues.

Given the current review and the proposal that the ACMA assume responsibility for data reporting, we consider it timely for the TIO and relevant regulators (including the ACMA and ACCC) to review data reporting and data sharing arrangements.

1. How often should the EDR body provide complaints data to the ACMA for analysis and reporting (e.g. monthly, quarterly)?

The ACCC considers that there is significant value in the ACMA analysing and reporting on complaints data. In turn, the ACMA could be a source of data for the purposes of enforcing the ACL.

There would be value in the ACMA reporting on telecommunications complaint data more than once a year as part of its Communications Report. The ACCC considers that monthly reporting would be valuable for regulatory purposes. Consideration could be given to the ACMA publishing complaints data it receives in response to its *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018* and from the TIO as a combined data set. Greater transparency around the performance of individual CSPs will drive change and elevate customer service to a factor on which CSPs can differentiate their services.

2. Are there any unforeseen issues or unintended consequences of the proposal for a centralised repository and reporting of industry complaint information?

The key issue with the collection, analysis and publication of data is to ensure that it occurs in a way that is fit-for-purpose. That is, the reason should drive the collection and reporting. We consider that improvements could be made to the current arrangements. However, what should drive those is the importance of ensuring that data can be used for the three purposes outlined above: by the ombudsman, by Government, and by regulators to enforce the law and provide relevant consumer information.

For that reason, if a central repository of data is created, the objectives of data collection must be very clear to guide the way the data is obtained, categorised and analysed. Adequate information-sharing provisions with regulators and Government must be created; and the relevant entity must be enabled to report publicly on matters of public interest.

3. Do the proposals in this paper address the major issues of concern with the current arrangements regarding complaints and complaints handling? If not, what additional measures could be included?

See above.

4. What considerations should be taken into account in implementing the proposals outlined in this paper, including practical timeframes for implementation?

See above.

5. Are there any other issues that should be brought to the Government's attention?

No further comment.