



Consumer Safeguards Review  
Department of Communications & the Arts  
GPO Box 2154  
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Australia

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Reference Consumer Safeguard Review Part A; Redress and  
Complaints Handling

By Email: consumersafeguardsreview@  
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Internet Australia appreciates the opportunity to comment on the Department's Consultation Paper "Redress and Complaints Handling" paper released in July 2018. Effective redress and complaints handling processes are an important part of protections for all users of communications services, as is access to an effective and impartial investigative and mediation resource.

We make this submission from our perspective as knowledgeable end-users of Internet, broadband and telephone services, as well as our members who are network architects, ISP operators, and understand how services and customer complaints are handled in practice. Our members see both sides of customer/provider complaints-handling processes. Internet Australia has been advocating for better experiences for our members and users over more than two decades, and has been assisting educate users, service providers and government in understanding and navigating the complexities of Internet services and service supply chains.

### *About Internet Australia*

Internet Australia is the not-for-profit organisation representing all users of the Internet. Our mission – "Helping Shape Our Internet Future" – is to promote Internet developments for the benefit of the whole community, including business, educational, government and private Internet users. Our leaders and members are experts who hold significant roles in Internet-related organisations and enable us to provide education and high level policy and technical information to Internet user groups, governments and regulatory authorities. We are the Australian chapter of the global Internet Society, where we contribute to the development of international Internet policy, governance, regulation and technical development for the global benefit.

We would be happy to have our members and experts meet with the Consumer Safeguards Review panel to further discuss our comments and observations raised in this paper.

Yours Sincerely

Dr Paul Brooks  
Chair – Internet Australia





# Submission by Internet Australia

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*Department of Communications and the Arts - Consumer Safeguards Review (Part A) – Complaints Handling and Redress Schemes*

## Introduction

Internet Australia shares the Paper's concerns with the increasingly high number of consumer and small business complaints, as reported in the Telecommunications Industry Ombudsman's 2016/17 Annual Report. We are on record as supporting improved quality of services by both retail and wholesale providers<sup>1</sup> and supporting the changes to the TIO's Terms Of Reference to explicitly include wholesale suppliers and service intermediaries into its information and investigation processes.

Our members are consumers and small-business customers of retail telecommunications services. Some of our members are also small ISPs, who help us understand the provider side of the complaints-handling processes as well as the difficulties in being relatively powerless 'consumers' of the wholesale services and customer handling processes of service aggregators, resellers and other wholesale service providers, including of NBNCo and its network infrastructure.

In general, our members are concerned with Internet access services, and so our comments on the questions posed by the consultation paper will deal specifically with fixed-line Internet access services, and not necessarily be applicable to mobile network services or telephony services.

## Comments on the Consultation Paper

### Effect of Wholesale Lack Of Choice

The Discussion Paper opines "However, in an environment where consumers are faced with multiple choices of networks, services and devices, together with industry supply chains that are becoming increasingly complex, it has proven problematic for self-regulation to deliver adequate outcomes for consumers seeking redress or alternative complaints handling arrangements."<sup>2</sup>, pointing out there were 158,016 complaints in 2016-17, an increase of 41% over the previous year.

An alternative view is to consider the current environment is actually considerably less complex than the earlier fixed-line network model pre-NBN. Pre-NBN, there were multiple competing physical networks (HFC, copper twisted-pair, some optical fibre), and multiple competing commercial supply chains (vertically integrated retail+network provided by a single service provider, retail ISP over other wholesale network services, and retail ISP over retail ISP equipment over

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<sup>1</sup> <https://internet.org.au/news/200-news-release-18-october-2017-retail-and-wholesale-internet-providers-must-improve-quality>

<sup>2</sup> Part A Redress and Complaints Handling — Consultation paper, page 3



wholesale network elements). The previously vibrant non-Telstra ADSL2+ provider community is an example of the latter, where more than 40 'infrastructure based' ISPs installed their DSLAM equipment in Telstra exchanges, and used wholesale access to Telstra's raw copper wires, in conjunction with the ISP's own equipment, to provide retail Internet services.

In this environment, the 2010-11 TIO Annual report recorded 197,682 complaints, 17.8% above the previous year which was attributed "this sharp increase almost exclusively ...to a rise in complaints about mobile phone services". It continues "we recorded continuing downward trends in complaints about dedicated Internet (such as cable, wired ADSL and wireless broadband) and landline services"<sup>3</sup> and "new complaints about Internet services (wired such as home adsl or wireless internet such as dongles) are down 13.1 per cent to 37,092".

The number of complaints about Internet services in the past year (63,892 complaints, 40.4% of all complaints) is roughly double the number in that more complex fixed-line environment of 2010-11 (37,092 complaints, roughly constant for the previous 4 years), while the number of complaints for mobile services (an area where service and network complexity has arguably not changed, comprising the same three competing infrastructure-based networks, some resellers and MVNOs) has almost halved from 112,300 in 2010-11 to 73,518 in 2013-14 to 52,300 in 2016-17.

We consider that, taken over a longer timebase, the proposition that TIO complaint statistics are due to a more complex mix of networks and services should be re-examined. In fact, the opposite has occurred – complaints about mobile networks have risen and fallen despite little change in service mix or complexity (the peak in 2010-11 being largely explained by systemic network problems with one mobile network) while complaints about Internet services have risen despite the network complexity falling. In fact, the one development in the Internet industry that correlates with the increase in Internet complaints is the continuing deployment of the NBN, a project which should have simplified the service environment by putting all providers on an even playing field, with every provider including Telstra becoming a simple wholesale customer of a single wholesale-only network platform, all selling the same homogenous mix of services.

We submit that one of the causes of higher complaints that can't be resolved directly at the retail level may be due to systemic service problems at the wholesale provider interface that retail service providers are simply unable to rectify, no matter how diligently they work, poke and prod on behalf of the end-user. We congratulate the Consumer Safeguards Review in including the explicit consideration of "how disputes with wholesalers are settled" in the PwC reviews accompanying the consultation paper.

In the earlier, more complex Internet network environment, physical network infrastructure competed against each other, such that there was a direct incentive to provide good reliable service and trouble-free connection processes, as otherwise consumers *and retail ISPs* would choose an alternative network infrastructure and wholesale provider that provided a better level of service. That incentive no longer exists at the physical network infrastructure layer for fixed-line services with the ubiquitous monopoly coverage of the NBN, except in isolated pockets.

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<sup>3</sup> TIO Annual Report 2010-11, "The Year At a Glance", pp8, online at [https://www.tio.com.au/\\_data/assets/pdf\\_file/0003/28470/TIO\\_2010-11\\_AR.pdf](https://www.tio.com.au/_data/assets/pdf_file/0003/28470/TIO_2010-11_AR.pdf)



### *Recommendation #1*

*That the Review Panel examine the extent by which consumer complaints are caused through inadequate wholesale provider interactions, such that retail providers may be genuinely unable to resolve consumer complaints due to occurrences and delays within wholesale providers that are outside the retail provider's ability to influence, as retail providers are unable to encourage good wholesale behaviour by switching to a different wholesale network provider.*

### **Adequate Measures May Already be in Place**

Internet Australia shares the Paper's concerns with the increasingly high number of consumer complaints, as reported in the Telecommunications Industry Ombudsman's 2016/17 Annual Report. However, we do not believe that the Paper's Proposals are necessary to address this issue. The ACMA has just recently issued that *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (the *Standard*) and it will have been in force barely a month when comments on this Paper are due. The Paper also ignores or misstates the existing structures and how they can or do address the proposals made in this Paper.

The *Standard* covers a range of requirements on carriers and carriage service providers on complaints handling including:

- A range of accessibility and availability requirements
- Customer awareness requirements
- Requirements for assistance to customers in making complaints
- Significant requirements in addressing and resolving complaints in set time frames, including minimum industry processes
- Restrictions on service cancellation
- Escalation of complaints within the carrier or carriage service provider and advice on external dispute resolution options
- Requirements for the collection, recording and analysis of complaint data to identify systemic issues

### **Proposal 1 – Industry complaints handling**

The Paper's Proposal One would require telecommunications providers to 'have and maintain' complaint handling processes. The Proposal acknowledges that the *Standard* does establish such processes and procedures, and also acknowledges that the ACMA already has enforcement powers. The Proposal then suggests that such processes and procedures be available for ACMA auditing and assessment and for industry providers to make their policies 'transparent and publicly available'. Proposal One then lists 'Issues for Comment', raising further questions about providers' complaints handling.

In fact, both of the Proposal's requirements are already covered by the *Standard* which is, as acknowledged by the Paper, enforceable by the ACMA. The further questions asked all relate to industry's implementation of requirements already imposed by the *Standard*.



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

Until the first sets of reports are submitted to the ACMA as part of the ACMA's new Record Keeping Rule requirements regarding complaint volume handling, neither we nor the Department or TIO will know whether or not a considerable proportion of consumer complaints are already being dealt with and resolved within each provider, without recourse to external escalation.

Our RSP members indicate that a large number of complaints are indeed resolved internally without needing any external escalation.

We recommend this question be re-visited after 12 – 18 months after the first sets of internal provider complaints data are submitted and collated by ACMA via the new *Standard*.

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

Some customer complaints are unable to be resolved at first contact, either because the customer's request is unreasonable, or because the requested resolution is not possible to be provided due to limitations in wholesale suppliers' capabilities, and the complaint is genuinely unable to be addressed. Sadly, the customer is not always right or entitled to redress in all circumstances.

The TIO, or any other form of ADR, needs to be cognizant that some of the complaints that are escalated to that body may be disgruntled customers that approach the TIO or another ADR to seek a resolution that is genuinely unreasonable for the provider to acquiesce to. Others may be escalated because the customer, once unhappy with some aspect of a service provider's service, may not accept any explanation from that service provider on principle, and may need to hear an explanation from a trusted independent third party adjudicator (which may be the same explanation the service provider offered) before accepting the explanation or resolution.

Simply, there will always be a level of complaints that needs to be escalated to an external independent adjudicator before the customer will accept any resolution – and those escalations may not be due to a fault on the part of the service provider.

Also, many providers are small operations, and do not have many levels of internal escalation. At the extreme case, there are still many service providers particularly in regional areas with less than 10 staff, where the initial first point of contact may be the owner and final point of escalation – and there is nothing inherently wrong or undesirable in this situation.

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

In many cases, the retail provider has genuinely little or no power to influence a wholesale supplier in the supply chain, and force it to provide a resolution to a retail customer's problem, particularly a small provider without access to an alternative (possibly wireless) network to bypass the wholesale network. In the case of fixed line services through the NBN, the retail provider cannot take its business to a different wholesale network.



Currently, a retail customer with a problem needs to approach the retail provider they have the contract of service with to resolve an issue, and that is the correct course of action. The problem may be caused by a deficiency elsewhere in the supply chain, and the retail provider will usually need to escalate to the wholesale provider. However, if the retail provider acting genuinely and diligently is unable to force the wholesale provider to rectify the problem for the end-user customer, then there needs to be an escalation body that can step in and adjudicate between the retail provider and the wholesale supplier, and make a finding that forces the wholesale providers along the supply chain to escalate the issue high enough to effect a resolution for the end-user quickly.

Currently such a body does not exist. The TIO, while it now has powers to bring in a wholesale provider to assist in rectifying a dispute, does not have or is not using any powers to direct the wholesale provider to escalate and rectify the issue, or otherwise hold the wholesale provider to account, and not permitted to hear a complaint raised by a retail service provider against another participant in the industry.

#### *Recommendation #2*

*That the TIO or another body have the powers to hear and adjudicate a complaint between a retail service provider and a wholesale supply-chain participant that is causing a problem that generates an end-user customer complaint, with powers to require the wholesale supply-chain participant to escalate a resolution for the end-user.*

#### ***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??***

We observe that a provider has no control over when a customer might escalate a complaint to the external body, so may not be provided the opportunity to make 'every effort' to resolve a complaint before escalation. There is also an inherent difficulty in determining an objective measure of the term 'every effort' and what that might mean, and that a provider might 'game the system' by drawing out the timeframe by trying meaningless 'efforts' until the customer gives up.

As pointed out above, some complaints may genuinely be without merit, and genuinely unable to be resolved to the satisfaction of the customer. Providers should not be forced to provide a resolution or compensation for a consumer complaint that is unreasonable or without merit.

In general the enforceable TCP Code already has strong requirements for customer complaint resolution, and the *Standard* contains requirements to document the complaint handling, such that the external dispute resolution body will have a log of activities that should enable it to determine for itself whether sufficient effort was made to resolve the dispute, and possibly suggest other efforts the provider has not yet considered.

We see no likely benefit from the proposed additional rules benefiting the consumer resolution process. On the contrary, it is likely to extend the time before a consumer can access the external body to gain satisfaction or an adjudication, to the detriment of the consumer.



5. *What do consumers need to know about their provider's complaint handling policies and procedures?*
6. *When and how should consumers be made aware of a provider's complaint handling policies and procedures?*

In general, the consumer shouldn't be required to know a great detail about the provider's complaint handling policies and procedures, beyond that they exist and where they can be found if needed. Complaint handling process and procedures tend to be dry documents that a consumer may find confusing and concerning, and should not have to be concerned about until a complaint is made.

In general the consumer should know before making a complaint:

- the contact details for how to make a complaint
- the response times in which they should expect an acknowledgement, and an initial investigation.
- How to escalate (including to an external party) if they don't achieve a response within the promised timeframe, or a satisfactory outcome.

Ideally, in the acknowledgement of the problem report would be pointers to any longer form detailed processes, procedures and commitments they can then refer to.

Information should be provided in the initial sign-up information, and in a prominent 'Support' or similar section on the provider's website, with pointers and reminders on regular communications such as invoices, notwithstanding that most services are settled by automatic direct-debit such that consumers rarely read each individual recurring bill in practice.

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?*

In reality, every provider will be different, and put different emphasis on putting financial and time resources into staff training balanced out by putting the same resources into financial systems, automated escalation and analytic systems, and network quality systems to attempt to reduce or eliminate the need for complaints in the first place. Some providers may offer lower-priced services by making a deliberate decision to not incur great costs on complaint handling systems, marketing their services to customers who are more sophisticated and do not require significant customer support.

Low-cost services are essential in ensuring some services are available to the less fortunate in the community, where accessing a cheap service with poor support may be preferable to not accessing a service at all because all services are too expensive. The Review should be careful to avoid making mandatory requirements that have the effect of forcing up all provider's costs until all services are unaffordable luxuries to less affluent segments of the community.



## Proposal 2 – External Dispute Resolution

This proposal is for the establishment of an External Resolution body, independent of industry, and able to deal with ‘complex complaints’ that are unable to be resolved between customers and their providers.

This is a curious proposal that is not well supported by the Consultation Paper.

The TIO is an independent external dispute resolution body. It is established in legislation and not by industry, and has a Board with an independent Chair and balanced membership of consumer and industry experience. Further, all carriers and ‘eligible’ carriage service providers’ (providers of fixed and mobile telephony and internet access to residential and small business customers) are required by law to join and comply with the scheme. In short, although industry provides the underlying funding for the TIO, the TIO Scheme is established by Parliament, with a balanced governance structure, and is not able to be influenced by its industry participants. The funding mechanism does not and cannot influence its behaviour, and cannot be withdrawn.

One of the issues raised in this proposal is the suggested need for an EDR body to deal with complaints across the end-to-end supply chain. In fact, the TIO’s Terms of Reference were recently amended to address that issue: Any TIO member, in addition the provider in question, must assist the TIO in resolving a complaint. The TIO also, under those amendments, can require the additional party/ies to take or not take actions to help resolve the complaint.

Another issue suggested by the Proposal is that the EDR would only hear 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 processes.” – which is the same process and requirements that the TIO has.

The Proposal also raises the funding issue. Under the current TIO system, industry members pay a flat fee, based on size in addition to a fee reflecting the number and level of complaints made against them. Interestingly, the Proposal also suggests and the suggested EDR scheme also be funded at a level based on the number of complaints received about that provider.

In short, there is little different with the proposed EDR that isn’t already handled by the TIO in much the same way, including being independent from industry influence, so it is difficult to see how the proposed EDR would differ from the TIO in practice.

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

Internet Australia does not support the establishment of yet another External Dispute Resolution body, in addition to the TIO. Such duplication would be wasteful and confusing. We consider the existing EDR scheme – the TIO – already has most of the necessary powers and functions to adequately address, monitor and report against consumer complaints against industry participants, and that the TIO is already sufficiently independent from industry to be impartial.

The Government also is required to review the TIO scheme every five years, and can address any remaining issues in a subsequent review.



The exception is the points raised in the recommendation regarding complex issues and the wholesale supply chain:

>> The EDR body's remit should enable it to deal with complaints across the end-to-end supply chain – e.g. wholesale and retail providers, as appropriate, to resolve the matter.

>> It should also resolve disputes in a way that ensures the relevant retail or wholesale provider is held accountable, including when third parties in the supply chain are involved.

As indicated in a recommendation above, Internet Australia would like to see the TIO's remit extended to include these points, such that the TIO can hold wholesale providers accountable and direct them to escalate and rectify issues that are causing a consumer customer of a retail service provider difficulties, without a finding of fault or requirement for a financial cost to the retail provider.

**We would like to see the TIO have the ability to direct whatever charges and costs would apply to hear and achieve a resolution to whichever party along the wholesale supply chain was determined to be responsible for the complaint having to be made, such that retail providers are not bearing the cost burden for issues caused by wholesale suppliers.**

In addition, we would like to see the TIO focus more on root cause analysis and determining the actual cause of the issue. We understand that many times a 'successful resolution' for the TIO involves the end-user accepting some form of financial compensation for their inconvenience from the RSP, which may not actually gain the consumer the service they were seeking, nor be the RSPs fault but more a small price to pay to avoid further and more costly escalation for something they are unable to rectify.

#### Consumer Case Study:

A consumer reported she had experienced great difficulty getting a fixed line NBN Internet connection to her property, eventually being connected after a 5 month delay despite the property being in an NBN 'Ready For Service' area. Throughout this time, she highlighted that the service and efforts and updates provided by her chosen RSP was to be commended, however NBNCo repeatedly failed to deliver, failed to keep appointments, and on the times they did turn up were unable to get the connection working.

The consumer deliberately did not escalate this to the TIO, as she knew that a report to the TIO would cause extra costs to the RSP. She felt this was not fair to the RSP as the service provider was genuinely doing all they reasonably could and were just as disappointed at the delays, but were being let down by the NBN and its field contractors.

### Proposal 3 – Data collection , analysis and reporting

Under this proposal, the ACMA would collect complaint handling data from the industry providers and the proposed external dispute resolution scheme. Such data could form 'an important evidence base for the ACMA when considering actions to improve industry performance and customer experience'. The issues listed for comment in this Proposal are about the frequency of data collection, and whether there are other additional measures that should be considered.



As noted above, the *Standard* already includes a requirement for the collection, recording and analysis of complaints data. Further, the ACMA already has the ability to obtain any complaints information it requires, both through its enforcement powers of the Standard and its more general information-Gathering Powers under Part 27 of the Telecommunications Act 1997.

**It is not clear how this Proposal 3 differs materially or improves upon the processes and data collection now being carried out by the ACMA with the new *Standard*.**

We recommend that Implementation of the existing *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, in particular its data gathering and reporting requirements, be monitored for at least 12 to 18 months before any further changes are made to complaints handling requirements on carriers and carriage service providers.

Ends