Prof John McMillan

**Consumer Safeguards Review – Part A – Redress and Complaints Handling**

I welcome the opportunity to make a submission in response to the Consultation Paper on ‘Redress and Complaint Handling’. The views expressed in this submission are drawn from my experience in complaint handling and oversight, as the Commonwealth Ombudsman (2003-10), Acting NSW Ombudsman (2015-17), member of the federal Administrative Review Council (2003-15), and Executive Member of the Australian New Zealand Ombudsman Association

I shall address the central proposal in the Consultation Paper to replace the Telecommunications Industry Ombudsman (TIO) with a new External Dispute Resolution body (EDR). I do not support this proposal.

I believe that the TIO is a highly effective Ombudsman service that is well-known to consumers who rely upon it to provide trusted and independent oversight of telecommunications services. The TIO has decades of experience in dealing with the entire range of consumer complaints. It has accumulated deep understanding of service problems in the telecommunications industry that it actively shares with government, providers and the community. The TIO has the flexibility to deal with peaks and troughs in consumer complaints, and sudden shifts or trends in telecommunications service problems. The fact that 158,016 people approached the TIO for assistance in 2016-17 is, in my view, a striking indication of its value and success.

I am a little puzzled by some of the direct and indirect criticisms of the TIO in the Consultation Paper. A comparison is drawn between the higher complaint numbers in Australia than in Canada and New Zealand, with the observation that ‘these complaint levels do not compare favourably’ (p 6). I find a statistical comparison of that kind to be rather meaningless, without deeper analysis of a variety of factors such as populations, industry structures, complaint procedures and complaint culture. It is well-known too in the complaint industry that a rise or decrease in complaint numbers can, at the superficial level, be read either as mark of success (eg, effective oversight, or consumer confidence) or as a mark of failure (eg, consumer nonchalance).

Another criticism is that the TIO is ‘industry owned and funded’ (p 5) and there is need for a new external oversight mechanism that is ‘independent of industry’ (p 11), yet still funded by industry (!). This is a familiar but shallow point that is rolled out whenever there is a wish to question the independence of an existing body. The reality is that every organisation that prides itself on independence – Ombudsman, tribunals, adjudicators, courts, auditors-general, inspectors, commissioners – is funded by somebody else. The real issue is whether the body has developed a culture of independence that is self-sustaining. There is no analysis of that issue in the Consultation Paper.

There are also some debatable assumptions in the Paper. For example, it states that a person who has approached the TIO has ‘already spent some time trying to resolve the matter directly with their provider’ (p 6), and that their problem is compounded if the TIO directs them back to the provider. No evidence is provided to support this assumption. Indeed, a common experience is that the first thought of many dissatisfied consumers is “I’ll ring an Ombudsman”, and they welcome the opportunity to talk the matter through and then approach the provider directly. Indeed, Ombudsman offices in Australia now actively promote their role as an advisory service on complaint resolution.

The Paper builds on this misconception by stating that ‘there is not a process in place to confirm’   
(p 7) that the 90% of people who do not return to the TIO were satisfied with the response of the provider. Why is there a need to confirm this? Ninety per cent is a high figure and rather suggests that a very high proportion of consumers benefitted from the referral mechanism. And, can’t it equally be assumed that a person who the confidence in the first instance to ring the Ombudsman office would not be as confident to return to it?

The Paper does not spell out how the proposed EDR will be better in providing ‘adequate outcomes for consumers seeking redress’ (p 7). What benefits does it bring – other than a new name? I think there is cause for concern that the proposed new arrangement would in fact provide a less satisfactory service, because it will not have the same experience, flexibility and informality of the TIO.

The Paper emphasises that the EDR will be an ‘adjudicator on disputes’ (p 10), dealing with complex disputes and with formal powers to compel providers to take remedial or redress actions to resolve complaints and to award financial compensation and impose fines. A new model along those lines suggests that the body will quickly develop a more formal character than the TIO, and that providers will devote more effort to contesting or resisting a proposed adverse order. An allied proposal that will introduce formality is that the EDR should only take a matter on after being satisfied that a consumer and provider have ‘exhaust[ed] all practical steps’ (p 11).

It is easy to think of many former dispute resolution arrangements modelled along similar lines that have been closed because they developed a formal and rigid style that was anathema to responsive consumer complaint handling. The Paper recognises that the single biggest complain driver is dissatisfied customer service, and yet does not explain how the proposed EDR will improve complaint outcomes.

A similar deficiency in the Paper is that it assumes that the EDR will be ‘proactively engaged in driving industry improvements, identifying systemic complaints and analysing root causes or recurring issues’ (p 11). Yet there is no exploration of how a body that is focussed on being a final adjudicator of complex matters that have exhausted other channels is well-placed to develop that systemic insight.

The Paper identifies a number of other matters that in my view should be explored before a rash decision is made to close down an existing effective Ombudsman service in place of a new, untested and questionable complaint model. Among the matters identified in the Paper that warrant more immediate attention are the complexity of industry structures, handballing of complaints between industry participants, funding arrangements with industry participants, adoption of better complaint policies and practices by telecommunications providers, and the adoption of new arrangements for data collection, analysis and sharing.

Thank you for the opportunity to contribute these ideas to the Consumer Safeguards Review.

John McMillan