



Modernising the TIO

Submission by the Australian Communications Consumer Action Network
to the Department of Broadband, Communications and the Digital Economy



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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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Introduction

ACCAN welcomes the review of the TIO scheme concurrent to the ACMA's *Reconnecting the Customer Inquiry* and during the Telecommunications Consumer Protection Code (TCP Code) revision. The alignment of these activities recognises that regulation, enforcement and dispute resolution cannot be viewed in isolation.

Australia's human rights record was reviewed for the first time before the United Nations Human Rights Council under the Universal Periodic Review in Geneva in January 2011. Several of the recommendations made called for the development and/or strengthening of a comprehensive poverty reduction and social inclusion strategy.¹ Ensuring Australians have accessible, affordable and available communications services that meet their needs is an important part of such a strategy.

ACCAN believes this review presents a unique opportunity to put the consumer protection on a new and better course, and ensure industry and consumers are ready for an NBN-enabled communications environment.

The TIO to date has played an important role in contributing to this strategy. However, ACCAN believes the TIO is constrained by its current governance structure and limited resources to truly reach its potential. The TIO needs to modernise and come into line with other industries, most notably to meet the benchmark set by the Financial Ombudsman Service.

ACCAN has consulted widely with the consumer community to produce this submission, which identifies 41 discrete recommendations to modernise the TIO scheme. While we are strongly of the view that our recommendations 3 – 41 should be adopted, this can only be successful if the TIO governance structure is reformed. Specifically, we recommend;

Recommendation 1 - That the governance structure be amended to include equal representation of industry and consumer representatives.

Recommendation 2 - That the governance structure be amended to a unitary structure, with an independent Chair.

If adopted, the extensive improvements that we identify in this submission will transform the way that customers' disputes are heard. The improvements will ensure that our most vulnerable citizens' access to justice is enhanced. And, over time, it will lead to a new positive view of the protection of customers' rights in the telecommunications industry.

ACCAN recognises that there are some big challenges in modernising the TIO scheme.

¹ United Nations Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review Australia A/HRC/WG.6/10/L. 8*, 3 February 2011, Recommendations 86.32, 86.33, 86.63 accessed on 30 March 2011 at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf



We want the industry to be a part of the modernisation process by accepting that they have a role to play in enhancing awareness of the TIO.

Recommendation 17 - Information about the TIO, including contact details should be included in communications from Suppliers to their customers, including, but not limited to: all contracts and billing documents, late notices, disconnection notices and other credit and debt collection activities.

We know that there are issues that the industry has been too stubborn or conflicted to address, particularly when it comes to the costs of complaints, and that this has facilitated the dramatic growth in complaint levels.

Recommendation 27 - A full and proper review of the costing of level 1 complaints be undertaken with consideration on how to provide better financial incentives to improve IDR.

There are also significant structural changes that will be needed along the way and we believe it is time to properly license this industry.

Recommendation 38 – That a licensing process be introduced for all carriage service providers

And we need the TIO to have the might necessary to enforce its own decisions and get consumers the redress they are entitled to, including financial compensation for a breach of consumer protections.

Recommendation 41 – A supplier should be named in a determination.

Recommendation 47 – The TIO should be able to award consumers a financial sum payable by the supplier where the supplier has acted in breach of its consumer protection obligations

We have highlighted just a few recommendations here. However, we note that the full potential of the TIO scheme will be realised only by implementing the extensive recommendations outlined in this submission.

We thank you for the opportunity to provide a submission.



Response to Discussion Paper – Telecommunications Industry Ombudsman scheme

1. Governance

The TIO was established in 1993. The original governance structure which remains today created two bodies, a Board and a Council. As noted in the joint submission by former Telecommunication Industry Ombudspersons, John Pinnock, Deirdre O'Donnell and Simon Cleary “this structure was modeled on the first industry ombudsman scheme in Australia² ... and was subsequently adopted in insurance, financial complaints and energy ombudsman schemes in Victoria and NSW.”³

The dual structure established in 1993 remains today and limits consumer representation to the Council. The Board is appointed solely by its members (namely industry). There are no consumer representatives on the Board. Consumers are only represented on the TIO Council. The Board has the power to appoint or veto the appointment of key people, including the independent Chair(s) of the Board and Council and the Ombudsman and Deputy Ombudsman. While the Council can make recommendations as to whom should be appointed,⁴ the Board makes the ultimate decision.

The governance structure of the TIO may have worked when it was first established.⁵ However, ACCAN believes the TIO now needs a structure that is truly independent, establishes the scheme as a joint initiative of suppliers and customers and allows the scheme to respond quickly to the changing communications environment.

1.1 Reforming the governance structure

Independence

Industry argues that despite the antiquated dual governance structure the TIO is sufficiently independent. It is a fact that this structure does not meet accepted industry benchmarks for independence in EDR schemes. The extent of the erosion of the independence of the TIO is unclear as the TIO Board and Council meetings are confidential and thus Minutes from these

² What was then the Banking Industry Ombudsman (1992).

³ John Pinnock, Deirdre O'Donnell, Simon Cleary, *Submission to ACMA Reconnecting the Customer Public Inquiry*, 6 October 2010 at 3 accessed on 27 March 2011 at: http://www.acma.gov.au/webwr/assets/main/lib311946/126_clearly_odonnell_pinnock-reconnecting_the_customer.pdf

⁴ *TIO Constitution*, Articles 9.2(a), 9.2 (b); *TIO Articles of Association*, Article 12.7

⁵ Benefits included removing the corporate governance, OH & S and funding responsibilities from Council members so they could focus on policy matters. See: John Wood, *Fair Go: Complaint Resolution for Digital Australia ('Fair Go')*, ACCAN, March 2011 at 31 accessed on 27 March 2011 at: http://www.accan.org.au/research_full.php?id=32&PHPSESSID=5af9b8821586f9e5807236b436c9ff4f

meeting are not publicly available. There are, however, significant indications that the lack of consumer representation on the Board is having an adverse affect on the independence of the scheme. For example, many ACCAN members have raised concerns about the way the independent Chair of the TIO Council was appointed in 2007.

It had been anticipated by consumer representatives in 2007 that pursuant to Article 12.4 of the *TIO Articles of Association* the then serving independent Chair of the TIO Council, the Honourable Tony Staley, AO, would be reappointed to the position of independent Chair of the TIO Council for a second term. Instead, the TIO Board chose not to reappoint Tony Staley, but rather appointed a new Independent Chair, Virginia Hickey.

While Article 12.7 of the *TIO Articles of Association* provides for consultation with the Council members and particular Federal Ministers regarding the appointment or reappointment of the Chair of the Council, ultimately the Board has the final say.

Article 1.3 of the TIO's *Constitution* clearly states the TIO Council's role in "maintaining the independence of the TIO". Furthermore, the TIO asserts its "underlying principles and philosophies" are based on a commitment to the Benchmarks for Industry based Customer Dispute Resolution Schemes developed by the then Department of Industry Science and Technology (DIST) which include independence.⁶ While the structure of the TIO was originally designed to ensure independence, the decision by the Board not to reappoint Tony Staley as independent Chair of the TIO Council highlights one important way in which the governance structure undermined the scheme's commitment to independence. At the time it was agreed that a better process would be put in place before the end of the tenure of the Chair of the Council. We note that a new chair of the Council was appointed in 2010. We ask that the DBCDE, as part of its scheme review, investigate these new appointment processes.

ACCAN members have also raised the infrequent increases to financial limits on the determinative and recommendatory powers of the TIO as another indicator of potential challenges with independence. While Article 9.2 (i) of the TIO Constitution currently provides the Council with the powers to review such limits every 12 months, this has only occurred once since the TIO was established, with the TIO increasing the limits on determinations from \$10,000 to \$30,000 and recommendations from \$50,000 to \$85,000 in May 2010.⁷ This raises the question why have there not been other increases? The lack of transparency in providing reasons to the public for refraining to exercise this power is concerning and gives credence to the belief that the governance is lacking in independence.

Former Ombudspersons, John Pinnock, Deirdre O'Donnell and Simon Cleary in their submission to the ACMA *Reconnecting the Customer* inquiry note several challenges with the existing governance structure of the TIO. They comment that the "boundaries between the responsibilities of the [TIO] Board and the Council are not always clear."⁸ Additionally, they refer to "routine decisions – such as approval to proceed with various projects – require[ing] the involvement of both Board and Council."⁹ It should also be noted that the Ombudsman and his/her executive provide secretariat support to both the TIO Board and Council.¹⁰ Arguably, the current governance structure undermines efficiency as well as

⁶ See: <http://www.tio.com.au/policies/organisation%20culture%20and%20objectives.htm>

⁷ *TIO Talks*, Number 1, 2010 accessed on 25 March 2011
http://www.tio.com.au/publications/TIO_talk_issues/46/46.1.html

⁸ Note 3 at 3.

⁹ *Ibid.*

¹⁰ *Ibid.*

independence and diverts resources away from the “central complaint-handling work of the office.”¹¹

The lack of independence in the governance structure has also resulted in consumer advocates’ hesitation in seeking improvements to the TIO’s complaint handling policies and procedures. ACCAN members and other consumer advocates feel that with limited time and resources it is more effective to invest their time and resources where they believe change can happen. Other ACCAN members have been asking what, if any, recommendations made by the Council to the Board have been rejected by the Board; has the Council refrained from making any recommendations it wanted to make because of a belief the Board would not pass such recommendations; and how does this impact on the work of the TIO?

ACCAN calls for meeting reports outlining outcomes from the TIO Board and Council to be in the public domain.

In *Fair Go: Complaint Resolution for Digital Australia*, Wood points to some of the other conflicts that can arise from a dual governance structure. In particular he notes that where a telecommunications company is represented on both governance bodies there is a risk that the Council’s constitutional structures “are compromised by industry representatives ‘second guessing’ the wishes of their more senior counterparts on the Board”¹².

Wood concludes that;

*A single board or council governing the scheme is considered preferable to a dual-layer, in that it vests all matters of governance of the scheme (apart from those that are the responsibility of the ombudsman) squarely in the hands of a body made up of an equal number of industry and consumer representatives with an independent chair.*¹³

Evolving governance structures

It is also important to note that as with any Ombudsman scheme, there are stages of development. What is appropriate and effective governance will change over time. A responsive and effective Ombudsman scheme is one that evolves into the structure that it needs to be. The Financial Ombudsman Service, for example, which began as a number of smaller schemes, some with a dual governance structure, now operates within a unitary governance structure with equal industry and consumer representation and an independent Chair forming a nine person board and is widely accepted as best practice. Significantly, the only industry-based schemes to maintain the dual governance model preferred in the early 1990s are the TIO and the Energy and Water Ombudsman of NSW.¹⁴

It is now considered best practice for industries to comply with *ASIC Regulatory Guide 139: Approval and oversight of external dispute resolution scheme (‘ASIC RG 139’)*. RG 139.84(c) outlines some of the requirements for independence which include “an appropriate balance of representation on the overseeing body.”

ACCAN submits that modernising the governance structure of the TIO is a necessary prerequisite to improve the entire chain of dispute resolution issues identified throughout the Discussion Paper and in this submission.

¹¹ Ibid.

¹² *Fair Go*, Note 5 at 32.

¹³ *Fair Go*, Note 5 at 10.

¹⁴ Pinnock, O’Donnell, Cleary, Note 3 at 2.

Efficiency

We further note that it is highly likely that the condensation of the governance structure into a unitary structure would deliver significant cost savings and the most efficient oversight of the TIO operations.

Recommendation:

- 1. That the governance structure be amended to include equal representation of industry and consumer representatives.**
- 2. The governance structure be amended to a unitary structure, with an independent Chair.**

1.2 Jurisdiction

The telecommunications industry is a rapidly changing industry. There is an ever expanding number of carriage services providers with an ever increasing number of new products. The TIO needs to be NBN ready. It needs a structure that will allow it to respond quickly to the changing environment.

A number of consumer groups have called for the expansion of the TIO's jurisdiction to include pay TV. In its *2008 Review of Australia's Consumer Policy Framework* the Productivity Commission specifically recommended that the TIO's functions be expanded to include Pay TV and to formally act as a single consumer entry point for all communications services complaints.¹⁵ ACCAN queries why there has been no response from the TIO to this proposal and questions once again its ability to address jurisdiction issues going forward. PAY TV would seem straight forward compared to future challenges. ACCAN notes that this may require a change in legislation. ACCAN submits that in an ever changing technological environment there is a need for flexibility and we urge the DBCDE to fully explore how the TIO can be given the powers it will need to act a clearing house for all communications complaints.

Recommendations:

- 3. The TIO expand its jurisdiction to include pay TV.**

2. Access to justice

2.1 Awareness and accessibility

An effective way of measuring the accessibility of any service is to analyse statistical data on demographics to see who is actually accessing the service, the level on which they engage and the reason for their exit of the TIO scheme.

¹⁵ Productivity Commission 2008, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra, 2008 at xv.

We note, however, that it is not currently the TIO's standard practice to collect statistics on demographics. There may be sound privacy reasons why such data is not currently being collected by the TIO. These concerns, however, should be easily addressed.

It is therefore difficult to draw conclusions about who is accessing the TIO and where the gaps lie. Significantly, many ACCAN members who work with vulnerable clients believe it is vulnerable clients in particular who are unlikely to carry their complaint through to the TIO.¹⁶ This is discussed in further detail below.

Aboriginal and Torres Strait Islander Consumers

The TIO has recently introduced an Indigenous Liaison Group which “seeks to improve connections with Indigenous people, especially those who for cultural, financial or geographical reasons, do not know about or cannot access the TIO’s services.”¹⁷

ACCAN welcomes the efforts made by the TIO to promote awareness of their services within Aboriginal and Torres Strait Islander communities. While some ACCAN members are aware of the Indigenous Liaison Group within the TIO (See Box 2), other ACCAN members report being unaware of the Indigenous Liaison Group and the services it provides.¹⁸ It is also difficult to find information about the Indigenous Liaison Group on the TIO website. Typing the key words “Indigenous Liaison Group” into the search function produces a “no records found” message. The key words “Aboriginal and Torres Strait Islander people” and “Aboriginal and Torres Strait Islander persons” produce a “no records found” message. The word “Indigenous” brings up a TIO Talks dated July 2005. ACCAN members suggest the contact details of this group should be included in the “Contact Us” section.

The Central Land Council reports a low level of awareness about the TIO within Aboriginal and Torres Strait Islander communities as outlined in Box 1. While acknowledging that efforts have been made by the TIO to increase awareness about the TIO within Aboriginal and Torres Strait Islander communities, more needs to be done. Several ACCAN members have suggested raising awareness about the TIO through Regional Indigenous Media Organisations. This could occur through their umbrella organisation, Indigenous Remote Communications Association.

Box 1: Aboriginal and Torres Strait Islander communities

There is a low level of level of awareness about the TIO within Aboriginal and Torres Strait Islander communities, particularly in remote areas. We acknowledge the TIO has tried to increase awareness, for example through poster/booklet campaigns, but little attention has been paid to how these successfully inform or engage Aboriginal people.

The TIO could increase awareness in remote communities through a range of mediums – particularly including the use of local media outside such as the Nygaanjatjarra media, PAW/Walpiri media and PY media. Advertisements could be included in local and Aboriginal

¹⁶ For example, see Consumer Action Law Centre, *Submission to Reconnecting the Customer ACMA public inquiry consultation paper*, 16 September 2010 at 2 accessed on 27 March 2011 at: http://www.acma.gov.au/webwr/assets/main/lib311946/public_inquiry_submission_114-calc-16-09-10.pdf

¹⁷ TIO Annual Report 2010 at 25 accessed on 27 March 2011 at:

http://www.tio.com.au/publications/annual_reports/ar2010/annual_2010download.html

¹⁸ For example, interview with Alyson Wright, the Central Land Council, 25 March 2011; Centre for Appropriate Technology.

newspapers. It would particularly be beneficial to link increased advertising of TIO when there is a prominent issue of telecommunication provision, such as the incident on Goulburn Island when residents were sold mobile phones plans that resulted in excessive billing issues. (Razak 2009).

There are over 15 Aboriginal and Torres Strait Islander languages spoken in central Australia. For many Aboriginal and Torres Strait Islander peoples living in central Australia English is a third or fourth language. Numeracy and literacy is very low. These are significant and unresolved barriers to accessing the TIO. Although it would be a challenge to develop a range of communication material in appropriate languages, the TIO could develop materials for some of the main language groups in central Australia such as Arrernte, Walpini and Pitjatjantjarra languages. Local Indigenous Media Organisations can help to assist the development of relevant information.

In some cases, Aboriginal people rely on local agencies/organisations to assist them in dealing with outside service providers. This is particularly the case in remote communities, where local Aboriginal agencies act in an intermediary role between the resident and the service providers. The TIO could also raise awareness of their role amongst these local community agencies, including women's centres, media organisation, Art Centres and other community organisations.

Comments provided by Central Land Council

Box 2: Aboriginal and Torres Strait Islander Awareness and Accessibility of the TIO

In our experience we believe the TIO do a great job. When I've contacted them on behalf of clients their response has been quick.

About two years ago we were advised they have an Indigenous section at the TIO. We work with Indigenous communities so this is good to know.

In my work in financial counselling I haven't come across any Indigenous staff from the TIO. This can make it more difficult for Indigenous people to contact the TIO as sometimes Indigenous people can feel uncomfortable if they're not speaking with another Indigenous person familiar with their language and culture.

The TIO usually attend the annual Australian Financial Counselling and Credit Reform Association (AFCCRA) Conference. It's good for them to be there. We also really appreciated it when one of the managers from the TIO came to meet with us at our office. This personal contact is very important.

In our experience we believe the TIO do not advertise themselves enough, especially in remote areas. More people would know about them if they put ads on our local television, Imparja TV. They should also send brochures about their services to local councils.

There is also a language barrier. While there are many Indigenous languages, it would be helpful if brochures about the TIO could be written in an appropriate language for the numerous communities.

Comments provided by Indigenous Consumer Assistance Network

In the recent report, *Taking Advantage of Disadvantage*, Footscray Community Legal Centre outlines 16 case studies describing the experiences of a diverse group of refugee and migrant consumers with phone and broadband products over a period of six months.¹⁹ The report found that the majority of consumers mentioned in the case studies had little or no knowledge about the TIO before presenting to the Community Legal Centre.²⁰ Additionally, the report found that refugee and migrant consumers can find it “difficult to navigate through a complaint once it has been initiated.”²¹

ACCAN members working with people from culturally and linguistically diverse (CALD) communities comment that the TIO’s work in trying to engage with CALD communities is commendable. However, they suggest significantly more work needs to be done to encourage people from CALD backgrounds to contact the TIO through the Translating Interpreter Service. They also suggest ongoing awareness-raising through ethnic media including television, radio, newspapers and other medium, and through websites such as MyLanguage: <http://www.mylanguage.gov.au/>

ACCAN members working with CALD communities also suggest that the government has a very important role to play in promoting awareness about the TIO as part of the settlement process for refugees and citizenship test preparation for migrants.

Low income complainants

The TIO’s *Annual Report 2010* notes an increase of 86.29% in the number of issues recorded by the TIO about financial over-commitment due to mobile services.²² Based on recent reports²³ and consumer advocates’ submissions to other telecommunication inquiries²⁴ it is very likely that many people who experience financial over-commitment in the area of telecommunication products, whether or not they present to the TIO, are vulnerable and on a Centrelink benefit.

ACCAN submits the government therefore has a role to play in promoting awareness about the TIO through Centrelink publications and should include information about the TIO and the TIO’s contact details in Centrelink correspondence to those who receive Centrelink benefits.

Box 3: Awareness and Barriers to contacting the TIO

We’re concerned by the very low awareness levels about the TIO. In our experience, many of the clients we work with, particularly young people, have never heard of the TIO.

To rectify awareness levels, we believe there needs to be a mainstream marketing campaign about the TIO, similar to the Advertising Standards Board campaign on the television in 2010. People were told during that campaign who they could call and the phone number

¹⁹ Footscray Community Legal Centre Inc, *Taking Advantage of Disadvantage Case studies of refugee and new migrant experiences in the communications market*, ACCAN, Sydney, March 2011 accessed on 25 March 2011 at: http://accan.org.au/research_full.php?id=33

²⁰ *Taking Advantage of Disadvantage*, Note 19 at 6.

²¹ *Taking Advantage of Disadvantage*, Note 19 at 6.

²² *TIO Annual Report 2010*, Note 17 at 17.

²³ *Taking Advantage of Disadvantage*, Note 19.

²⁴ For example: Brotherhood of St Laurence, *Submission to ACMA’s Reconnecting the Customer Consultation*, September 2010 accessed on 27 March 2011 at: http://www.bsl.org.au/pdfs/BSL_subm_ACMA_Reconnecting_customer_consultation_2010.pdf

was advertised if they had concerns about advertisements.

In addition to a general public advertising campaign there also needs to be better targeted outreach, for example, for people from Non-English Speaking Backgrounds, Indigenous consumers and young people. Engagement with community agencies needs to be improved. The TIO needs to get out and visit as many agencies working with marginalised communities as it can. We're aware that the Energy and Water Ombudsman, Vic does this. We're not sure if the TIO does much of this.

In trying to engage with young people it's important to be engaging through the medium they prefer and access – social media and social networking. Consideration should also be given to getting a storyline about someone having a problem with their telco and sorting it out through the TIO into shows young people watch, like Neighbours.

There are also barriers even for those who know about the TIO to actually take their complaint to the TIO. We feel that people don't like to complain unless it's serious. They try with their telco and then after they've been on hold for 30 minutes they start to suffer complaint fatigue. They may try again, but the more they try the more they feel complaint fatigue and give up.

Many clients who have contacted the TIO feel the TIO is not taking them seriously when they are referred back to their telco and nothing progresses. In our experience this is common. Clients often give up at this level and don't go back to the TIO. We'd like to see surveys undertaken with those who do not return to the TIO after their first contact with the TIO to get a better idea of how many people give up and how people have their issues resolved.

Another barrier is the cost of calling a 1800 or 1300 complaints line from a mobile. In our experience, people often don't call because of the cost. Otherwise, they call and are shocked at their phone bill.

At Brotherhood of St Laurence, we recognise the cost of 1300 and 1800 calls from mobiles. We have recently established a 1300 SMS option for participants in our Saver Plus program as a cheaper way of contacting us. The participants contact us by text and we call them back. This is something the TIO could explore.

The TIO also needs to be promoted as the place of second resort if you can't get anywhere with your telco. People have reported they wished they had gone to the TIO earlier to resolve their complaint.

Comments provided by the Brotherhood of St Laurence

The Financial Counsellors Association of Queensland has informed us of the following recommendation they are making to the TIO review in response to a concern about the way in which the TIO handles debt-related complaints.

Box 4: Recommendation of Financial Counsellors Association of Queensland to the TIO Review

To help complainants on Centrelink Payments, we ask that the TIO broadens its position statements regarding Disadvantaged and vulnerable consumers and Hardship and payment difficulties, to recognise that people who are long term Centrelink recipients do not have capacity to pay large amounts of debt. Therefore the TIO should have a process in place with its members for debt to be written off immediately where the person is deemed to have "Special Needs" such as:

- Mental Illness
- Drug or alcohol addiction
- Homelessness
- Serious illness
- Domestic Violence
- Carers for relatives who maybe seriously ill

We ask that where the TIO or a Telco are made aware of someone with “Special Needs” that the debt is waived as it is an appropriate outcome. Customers in this situation include those who:

- Are wholly reliant on Centrelink Benefits
- Have no home or significant assets
- Have minimal prospects of financial independence

ACCAN also supports this recommendation.

Persons with Disabilities

The 2006 CTN submission recommended making information about the TIO available in a range of formats, including Braille and large print.²⁵ It is pleasing to see audio files included on the TIO’s website.²⁶ It is also pleasing to see the fact sheet “Consumers with disabilities and the TIO” which provides information about the kinds of issues persons with disability can bring to the TIO.²⁷ It would appear, however, that this fact sheet is available in English, but not in other languages. It also does not appear to be available in alternate formats including Braille, HTML/RTF, Large print, Audio and Auslan.

Additionally, while a link to request TIO information leaflets in Braille is on the TIO’s website, it is not easy to find. First you click on “brochures in audio format” under the heading “TIO information” on the home page. Then you click “request this brochure in Braille.”

It appears that only minimal information is available in audio format and Braille. The position statements appear to be only available in English. “TIO Complaint Handling Procedures” also appear to only be in English.²⁸ ACCAN recommends that all the brochures and public information publications are available in all Alternate Formats- Braille, HTML/RTF, Large print, easy English, Audio and Auslan.

Older persons

ACCAN members and others working in the community sector have raised general access to justice issues for older people. For example, those who work with older people identified a number of barriers that prevent their clients accessing complaint handling services, such as

²⁵ Consumers’ Telecommunications Network, *Telecommunications Industry Ombudsman Scheme Review 200* (‘2006 CTN Submission’). Sydney 2006, Recommendation 26 at 27 accessed on 27 March 2011 at: <http://www.tio.com.au/TIOReview/Submissions/Consumer%20Submission.pdf>

²⁶ See: <http://www.tio.com.au/publications/otherpublications.htm>

²⁷ See: <http://www.tio.com.au/publications/FactSheets.htm>

²⁸ See: <http://www.tio.com.au/policies/indexb.htm>



a lack of awareness about the TIO, diminished capacity and a reluctance to confront authority.

ACCAN members have suggested the TIO be more targeted in their awareness-raising activities depending upon their audience. For example, in targeting seniors, seek to include a story about the TIO in *The Senior* and promote TIO services on the radio stations older people listen to.

Regional, Rural, Remote Consumers

It was noted in the *2006 CTN submission* that awareness about the TIO was particularly low in Western Australia, the Northern Territory, Queensland and Tasmania.²⁹

The lack of awareness may also be linked to issues of accessibility. Consideration should be given to extending the TIO's hours of operation so that people in Western Australia and the Northern Territory have more hours during the day to contact the TIO. This would also assist other potential TIO users who are unable to call during the day due, for example, to work commitments, caring responsibilities and other reasons.

ACCAN acknowledges that further input is required from regional, rural and remote telecommunication consumers.

Women

The survey commissioned by ACCAN and conducted by Galaxy Research on the weekend of 5-7 November 2010 provides some information about women's experience of problems with their phone and internet services and their use of the TIO.³⁰

The survey found that males and females identified they had had a problem with their telecommunications provider in the past 12 months at nearly identical rates (55%). Of these respondents, females were much more likely to complain to their service provider. Interestingly, 42% of males and 32% of women were not satisfied with the outcome with their service provider. Of those who were dissatisfied, 5% of males and 4% of females took their complaint to the TIO. For those who were dissatisfied and did not contact the TIO, 26% of men and 33% of women said it was because they had not heard of the TIO. 60% of both males and females said there was no point taking a complaint to the TIO.

It's encouraging that the statistics show that women are more likely to take a problem to their service provider. However, the fact that complaint fatigue sets in at equally high levels for men and women, reconfirms the need for internal dispute resolution processes to be as effective as possible.

The research commissioned by ACCAN has helped to shine a light on the experience of consumers in the telecommunications market. However, it remains a fairly high level snapshot of experiences and doesn't delve into the experience of some of the more disadvantaged sectors of our community. ACCAN has identified vulnerable women as an area that needs further research and consideration.

²⁹ *CTN 2006 Submission*, Note 25 at 8,16.

³⁰ Galaxy Research, Undertaken for ACCAN, 5-7 November 2010, at: http://www.accan.org.au/campaign_full.php?id=24

Youth

As noted in the *Fair Go* report, little research has been published about the ways young people seek to resolve complaints about consumer products and service.³¹ As the TIO does not collect demographic statistics, it is not clear how many young people are accessing the TIO. ACCAN members suggest the numbers would be unlikely to be high.

While young people under the age of 18 years are unable to enter mobile phone contracts in their own name, they use mobile phones and other telecommunication devices and can incur debts on behalf of the person who signed the contract for them. They are also highly likely to be lifetime users of telecommunications. It is therefore vitally important that young people, like all consumers, develop skills to become smart consumers. ACCAN submits that the TIO and government have an important educative role to play with consumers, including youth to seek to prevent complaints arising in the first place.

ACCAN refers to the *2006 CTN submission* in which CTN recognised the TIO and Banking and Financial Services Ombudsman for their joint *Sort It* publication targeting youth. While stakeholders at the time identified getting consumer rights information into the school system as a priority there is little information either on the TIO website or in their publications about their engagement with youth.

ACCAN members who work with young people strongly encourage the TIO to engage more actively with young people. ACCAN refers the TIO to *General Comment 12: The Right to be heard* by the Committee on the Rights of the Child, which provides best practice guidelines for youth participation and decision making³² and to the NSW Ombudsman's *Guidelines for dealing with Youth Complaints* (2008).³³

Those working with youth are interested in knowing more about the mediums through which the TIO tries to engage with young people. For example, the TIO could use social network tools, such as Facebook and twitter, to engage young people and other consumers about the role of the TIO. The Facebook page could include an online complaint form, clear explanations with examples of the issues consumers can complain to the TIO about and tailored advertising about the TIO. ACCAN notes it is not enough just to create a Facebook page. ACCAN members working with young people highly recommend consulting with young people about content and format so as to create an effective and user-friendly Facebook page.

ACCAN also identifies the area of youth as one that needs further research and consideration.

TIO publications

The *2006 CTN submission* recommended that “the TIO-published case studies be expanded, and an index of case studies, linked to position statements, be created and be

³¹ *Fair Go*, Note 5 at 35.

³² United Nations Committee on the Rights of the Child, *General Comment No 12 (2009): The right to be heard*, CRC/C/GC/12, 20 July 2009 accessed on 29 March 2011 at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

³³ NSW Ombudsman's *Guidelines for dealing with Youth Complaints*, 2008 accessed on 27 March 2011 at: <http://www.ombo.nsw.gov.au/aboutus/policies/Guidelines%20for%20Dealing%20with%20Youth%20Complaints.pdf>

available in print and on-line.”³⁴ While case studies are published in TIO talks and the annual report, they do not appear to be available by index on the TIO website. ACCAN submits that to have case studies available in an index would increase consumer’s awareness about when they can and should take their complaints to the TIO. As stated in the *2006 CTN submission* “it would also fulfil an important function of providing transparency and credibility for the TIO processes.”³⁵

Recommendations:

4. That it be a standard practice for the TIO to collect demographical information about TIO users, including sex, age, ethnicity, disability, level of income.
5. That a base-line survey regarding TIO awareness and accessibility be conducted, with a follow up survey 3 years later.
6. The TIO increases awareness of their services by targeting the different media that different groups access, including local, regional, disability, ethnic, Aboriginal and community radio, television, newspapers, social media and websites.
7. The TIO raise awareness of their services amongst local community agencies, including women's centres, migrant resource centres, media organisations, Art Centres and other community organisations.
8. The TIO develops materials for some of the main Aboriginal and Torres Strait Islander language groups in Australia.
9. The TIO increases the amount of information available on its website and in hardcopy in different languages and alternative formats, including: Braille, HTML/RTF, Large print, easy English, Audio and Auslan.
10. That TIO materials, including on the website, must indicate that people can make complaints in person at TIO offices, via an interpreter. Contact details are provided to make an appointment.
11. The TIO promotes more widely the availability of the Telephone Interpreting Services to facilitate CALD consumers contacting the TIO.
12. The TIO expands its hours of operation until 8pm Monday- Friday, including accommodating time differences across Australia.
13. The TIO and Government include the active participation of young people pursuant to the United Nations Committee on the Rights of the Child, *General Comment 12: The Right to be Heard*.
14. The TIO and government undertake education with all consumers, including youth, about consumer rights to seek to prevent complaints arising in the first place.
15. The TIO’s website be redesigned to ensure information is easy to find and accessible to all.
16. TIO-published case studies be expanded, and an index of case studies, linked to position statements, be created and be available in print and on-line.

³⁴ 2006 CTN submission, Note 25, Recommendation 27 at 27.

³⁵ 2006 CTN submission, Note 25 at 27.

17. **Where a significant systemic issue is identified as affecting a particular demographic, the TIO increase advertising about their services through the media that affected group(s) accesses.**
18. **The government promotes awareness about the TIO through its different departments including: as part of the settlement process for refugees, the citizenship test preparation for migrants and through Centrelink publications and Centrelink correspondence to those who receive Centrelink benefits.**

2.2 Role of industry in promoting awareness about the TIO

The Telecommunication Consumer Protection Code currently requires telecommunication providers to inform consumers about external dispute resolution ('EDR') only after they have expressed dissatisfaction with the outcome of their complaint.³⁶ Submissions to recent inquiries question the extent to which telecommunications providers are fulfilling this duty.³⁷ It is ACCAN's position that this requirement is insufficient.

Knowledge of the TIO, its role and processes, can significantly enhance a consumer's ability to navigate through the IDR process, as the case study below demonstrates;

Box 5: Awareness of TIO and the IDR process

Telstra's payment system wasn't able to process my payment for my pre-paid service. I was told there was nothing they could do about it. They couldn't tell me for how long the payments system was not going to work. When I threatened to go to the Ombudsman, they suddenly gave me 30 days free calls and texts.

They had done nothing to reconnect the phone by this evening so I called them again. The call centre initially told me there was no record of what I had previously been told, and they could do nothing to help as they "would have to help everyone in Australia". So I would have to go and buy a recharge voucher from a Telstra shop.

When I said I would go to the Ombudsman they suddenly found there was a record of the previous call and the free credits - 80 minutes talk and 100 SMS - were activated. But when I asked why she had previously told me there was nothing she could do she hung up on me.

Consumer contact to ACCAN, 21 February 2011

General awareness

ACCAN submits that customers should be made aware of the TIO by their provider. Brochures outlining complaint options must be available in all suppliers' stores, on their websites and on request.³⁸

³⁶ TCP Code, CI 9.4.1(b) accessed on 27 March 2011 at:

http://www.acma.gov.au/webwr/telcomm/industry_codes/codes/c628_2007.pdf

³⁷ ACCC, *Reconnecting the Customer submission*, 19 October 2010 at 18 accessed on 27 March 2011 at:

http://www.acma.gov.au/webwr/assets/main/lib311946/accc_reconnecting_the_customer.pdf

³⁸ See: *Code of Banking Practice* cls 8 & 9, accessed on 27 March 2011 at:

http://www.boq.com.au/uploadedFiles/Code_Of_Banking_Practice.pdf



Suppliers must prominently publicise the availability and accessibility of external process for resolving disputes in Supplier stores, on Supplier websites and on telephone-based customer information services.

Specific notification

Information about the TIO, including contact details should be included in communications from Suppliers to their customers, including, but not limited to: all contracts and billing documents, late notices, disconnection notices and other credit and debt collection activities.

Incorporation into complaints process

The customer should be made aware of the TIO's role in the complaint handling process from the earliest possible stage (not only after the customer expresses dissatisfaction).

Suppliers must provide customers with information about the TIO at the time the customer is told about the Supplier's internal complaints process and at the time the customer is told about the final outcome of the internal process if the customer is not wholly satisfied.

ACCAN submits that Industry promotion of the TIO to consumers will build consumers' confidence in suppliers' that their services are of such a high standard that if you are not happy, you can seek recourse through the appropriate channels.

Recommendations

- 19. That brochures outlining complaint options must be available in all suppliers' stores, on their websites and on request.**
- 20. Suppliers must prominently publicise the availability and accessibility of external process for resolving disputes in Supplier stores, on Supplier websites and on telephone-based customer information services.**
- 21. Information about the TIO, including contact details should be included in communications from Suppliers to their customers, including, but not limited to: all contracts and billing documents, late notices, disconnection notices and other credit and debt collection activities.**
- 22. The customer should be made aware of the TIO's role in the complaint handling process from the earliest possible stage (not only after the customer expresses dissatisfaction).**
- 23. Suppliers must provide customers with information about the TIO at the time the customer is told about the Supplier's internal complaints process and at the time the customer is told about the final outcome of the internal process if the customer is not wholly satisfied.**

2.3 Office of second resort and complaint fatigue

Consumer groups have been concerned for some time that the TIO complaint figures represents just the tip of the iceberg of unresolved problems with suppliers.

The Galaxy Research commissioned by ACCAN sheds some light on the real levels of complaints in the telecommunications industry. The survey found that half (55%) of Australian aged 16 years and above experienced a problem with their phone or internet provider in the last 12 months. Customers reported experiencing the following problems;



- Technical problems – 39%
- Customer service problems – 26%
- Billing, payment or contract problems – 23%
- Complaint handling problems – 21%

Nearly 7 out of 10 people (68%) who had experienced a problem had made a complaint to their provider on the most recent occasion they had a problem. And among those who complained to their provider, one in three customers were dissatisfied with the outcome of their complaint. Despite this, just 7% took their complaint to the TIO. The most commonly cited reasons why people did not take their complaint to the TIO were that they didn't think there was any point (60%) or that it was too difficult or too much effort (47%). 29% of respondents said they had not heard of the TIO.

ACCAN often hears from consumers who are exhausted from the suppliers Internal Dispute Resolution ('IDR') process that has consistently failed to deliver what they need. This is consistent with issues identified in the TIO's *resolve connect* campaign and comments made to the ACMA *Reconnecting the Customer inquiry*.³⁹

ACCAN members and other consumer advocates have informed us that customers are unlikely to complain unless it is serious. (See Box 3 above). This has also been acknowledged by the Telecommunications Industry Ombudsman, Simon Cohen, who recently acknowledged the TIO's own research showed most consumers contacted the TIO after trying three or more times to solve their problem with their service provider and that they spent a number of hours over a number of months trying to solve the issue.⁴⁰

ACCAN feels this is further exacerbated by the TIO describing itself as an office of "last resort."⁴¹ ACCAN submits this is confusing for consumers, as Susan's case study (Box 4) below highlights, and is a misnomer. Consumer representatives have also informed ACCAN that several clients who have accessed the TIO wished they had done so sooner.

ACCAN believes that more information should be available to consumers about the TIO and its role so that people recognise that they don't have to wait till they are exhausted to contact the TIO, rather they can access the scheme as soon as their supplier isn't giving their complaint a fair hearing.

ACCAN further recommends that the TIO should not be described as "an office of last resort". Rather, it should be described as the office of "second resort."

Box 6: The TIO - Office of second resort

Susan* is a woman who is blind. She reports having an account opened by her telco without her knowledge. She contacted her telco on at least 10 occasions over a 12

³⁹ For example: Consumer Credit Law Centre NSW, *ACMA: Reconnecting the Customer submission*, 10 September 2010 at 1 accessed on 30 March 2011 at: http://www.acma.gov.au/webwr/assets/main/lib311946/87_cclc-reconnecting_the_customer.doc ; Top End Women's Legal Service, *ACMA: Reconnecting the Customer submission*, 10 September 2010 at 2 accessed on 30 March 2011 at: http://www.acma.gov.au/webwr/assets/main/lib311946/84_top_end_womens_legal_svce-reconnecting_the_customer.pdf

⁴⁰ Miro Sandev, "TIO: consumer complaints trending up as good work of 2010 is "eroded",
Communication Day, Issue 3954, 30 March 2011 at 5.

⁴¹ For example see;

http://www.tio.com.au/publications/other_publications/documents/ADR%20Brochure.pdf

month period to try and close the account. Susan's telco agreed to provide her with credit. Rather than receiving the credit, Susan continued to receive exorbitant bills.

Susan reports the matter was eventually resolved. She did not go to the TIO because she thought they would tell her they are an office of last resort and she would be referred back to her telco.

Making complaints takes time. Susan works and said she just didn't have time to go to the TIO.

Susan recently changed telco providers. She selected the provider based on being able to access her bills through their website. Her provider recently changed their website such that she is no longer able to access her bills via the provider's website.

When Susan called her provider, she was transferred to someone in technical support who spoke with her for an hour and told Susan the problem was with Susan's computer. Susan also tried to access her bill through another computer that also had the screen reading software and was unable to do so. The provider still insisted it was a problem with Susan's computer.

Susan says after taking 12 months to resolve her complaint with her previous provider she does not think she can go through it all over again with her new provider.

*Not her real name.

Source: Confidential

Is a matter resolved to the satisfaction of the consumer at Level 1?

When a consumer first makes contact with the TIO, this contact is generally logged as a Level 1 complaint and is generally referred back to their carriage service provider to try and resolve the matter. The TIO does not formally investigate the matters at Level 1.

If the matter is not resolved within TIO's 14 day time limit, a consumer can contact the TIO again and their matter can be escalated to Level 2.

We note that over 90% of matters referred to the TIO scheme are said to be resolved at Level 1.⁴² ACCAN questions whether in fact this statistic indicates the issue has been resolved to the satisfaction of the consumer. Could it be that the consumer has given up on the process, perhaps because of the costs in time, emotional stress, the financial costs and/or complaint fatigue and not returned to the TIO?

This issue was raised by CTN in the 2006 review of the TIO scheme.⁴³ At that time CTN recommended "a project to investigate the proportion of cases where complainants do not escalate their issue back to the TIO after the first contact and why, in order to better understand what proportion of all complainants actually have their complaints resolved."⁴⁴ As far as ACCAN is aware, this project has not been undertaken. ACCAN calls again for such a project to be undertaken.

⁴² See: <http://www.tio.com.au/FAQ/Adr.htm#21>

⁴³ See 2006 CTN submission, Note 25 at 19.

⁴⁴ 2006 CTN submission, Note 25, Recommendation 46 at 50

In 2006, CTN noted that sending the customer back to the source of the problem, as occurs at Level 1 of the TIO scheme, “seriously discourages the customer from entering the dispute resolution cycle. This gives the individual customer little faith in the ability of the TIO scheme to assist them.”⁴⁵ Furthermore, as Wood notes in the *Fair Go* report “it is pointless for an EDR scheme to refer complainants back to members if they have no faith in that member’s processes.”⁴⁶ These continue to be issues of concern. (See Box 3 above).

Other schemes do not close any complaint until the customer themselves has indicated that the matter is complete. ACCAN is strongly of the view that the TIO must keep its level 1 complaints open until the customer indicates it is resolved. If the TIO introduces such a registration scheme it will be interesting to see if the over 90% of matters at Level 1 that are considered to be “resolved” continue to be categorised as “resolved”.

One stop shop

ACCAN members have suggested that a “one shop stop” would likely limit the costs to the consumer involved in making a complaint, thus increasing access to justice and likely limit the effects of complaint fatigue.

A “one shop stop” could operate on a similar basis as to how complaints are registered under the Financial Ombudsman service.

If there is a dispute with a financial service provider, the complainant must first try to resolve the dispute with the financial service provider, as occurs in the TIO scheme. If the financial service provider has not had a chance to respond to the complaint, and the complainant contacts the FOS, the FOS can “register” the complaint.

As part of the registration process, the FOS “will contact the financial services provider and ask it to respond to you directly.”⁴⁷

Given the well documented failures of telco suppliers’ IDR processes, we believe that adopting the capacity for the TIO to register complaints would make a valuable contribution to improving the hearing that customer complaints receive.

ACCAN proposes the TIO adopts the FOS registration scheme, including follow up contact with the complainant after 14 days to check to see if the telecommunications provider has responded. If the telecommunications provider has not responded within this timeframe, the matter should be automatically escalated to Level 2. This should provide telecommunication providers with a financial incentive to improve their internal complaint policies and procedures.

Complaint fatigue

It would also be helpful to know what proportion of complaints are resolved at Levels 2 to 4 and what proportion of complainants drop out of the process without resolving their complaint and why they do this. This also was a CTN recommendation made in the 2006 TIO scheme review.⁴⁸

Recommendations

⁴⁵ 2006 CTN submission, Note 25 at 20.

⁴⁶ *Fair Go*, Note 5 at 20.

⁴⁷ See How to lodge a dispute, Step 2, FOS website accessed on 27 March 2011 at:

http://www.fos.org.au/centric/home_page/resolving_disputes/how_to_lodge_a_dispute.jsp

⁴⁸ 2006 CTN submission, Note 25 Recommendation 45, at 39.

24. The TIO scheme be described as the office of second resort and not an office of last resort.
25. At level 1 entry, the TIO contact the telecommunications provider directly in writing to inform them of a complaint and the telecommunications provider contacts the customer with the complaint directly within 48 hours.
26. The TIO should only close a Level 1 complaint when the customer indicates it is resolved.
27. The TIO should be empowered to “register” a complaint, refer it to the relevant member and ensure it is actioned by that member.
28. The TIO undertake research into the incidence of and circumstances whereby complaints are discontinued.

2.4 Costs

Many ACCAN members have commented that vulnerable consumers will not persist in following up on a complaint if the process is difficult, costly and they feel their matter will not be resolved.⁴⁹ This was also reflected in the findings of the Galaxy Research discussed in Section 2.3 above.

Financial costs

ACCAN members have raised concerns about the financial cost, particularly to vulnerable clients, of making a complaint about a telecommunication service.

Firstly, customers often call their telecommunications customer service line from their mobile. While most telcos appear to provide a free call number from mobile phones, some customers have found it confusing when telcos provide one number for landlines and one for mobiles and have inadvertently incurred costs.⁵⁰ Some consumers have cited the cost of contacting customer service as one of the biggest problems with telco customer service.⁵¹

In the case of contacting the TIO, while the TIO offers a 1800 contact line, calls to this line are only free from a landline. Standard mobile phone charges apply if calling from a mobile. While the TIO’s website states “if you are calling from a mobile, you can ask us to call you back” not all callers would be aware they can do this and there is still a cost in making the call in the first place. ACCAN’s research indicates the earliest a caller can speak with someone and ask them to call them back is one minute, 15 seconds.⁵²

Additional low cost means of contacting the TIO need to be introduced, such as contacting the TIO by SMS as recommended by CTN in the 2006 TIO scheme review.⁵³ This has been

⁴⁹ ACCAN Members Survey, *Talking Back: ACCAN Members Speak Out About Telco Customer Service ('Talking Back')*, May 2010 at 9-10 accessed on 27 March 2011 at: http://www.accan.org.au/research_full.php?id=23

⁵⁰ See for example online discussion on whirlpool at: <http://forums.whirlpool.net.au/forum-replies.cfm?t=1666493> We note in this instance when a complaint was made the costs incurred were cancelled. However, it highlights the confusion that can be caused.

⁵¹ *Talking Back*, Note 49 at 8.

⁵² See: ACCAN, AFCCRA, ACOSS, *The Cost of a Free Call: Accessing 1800 and 13/1300 services from mobile phones: Super-complaint to ACMA*, 10 September 2010 at 7 accessed on 27 March 2011 at: http://www.accan.org.au/campaign_full.php?id=23

⁵³ 2006 CTN submission, Note 25, Recommendation 9 at 17. Also see: Brother of St Laurence, *Submission to ACMA’s Reconnecting the Customer consultation*, Note 24 at 10.

successfully trialed by the Brotherhood of St Laurence in their Saver Plus program as outlined above in Box 3.

Additional costs

In *Taking Advantage of Disadvantage*, Footscray Community Legal Centre Inc also notes the additional costs for consumers in terms of time, stress and financial costs of having to negotiate with the telco before lodging a complaint with the TIO.⁵⁴

Susan's case study above (see Box 6) also indicates that work and other commitments mean that consumers do not have time to try and negotiate their complaint through their telco, when they are often put on hold, the issue repeatedly goes unresolved and they often have to follow up on undertakings made by their telco provider.⁵⁵

Community-wide costs

Several ACCAN members have commented that vulnerable clients are often unable to resolve their telecommunication provider disputes themselves. They are therefore reliant on a variety of services to intervene on their behalf, for example financial counsellors, community legal centres, or other community advocates.⁵⁶

Often these workers intervene in matters in which the client has no means to pay the debt. Consumer advocates report of the significant toll that going through this process takes on the individual concerned and how time consuming it is for both the advocate and service provider. This is particularly frustrating in circumstances where all parties are aware the consumer has no means to pay the debt and, with an advocate's intervention, the debt is generally waived. Please see Box 4 above for further information on this issue.

As has been recommended in previous *Access to Justice* inquiries, these services must receive adequate funding to be able to provide these services.⁵⁷ But ultimately, community sector organisations will be in a better position to do their job well if the TIO has good processes to assist low income and disadvantaged consumers in the first place.

Recommendations

- 29. Introduce an SMS call back scheme to assist low-income consumers to contact the TIO.**
- 30. Services assisting clients to access the TIO, including community legal centres, financial counseling services and other community groups, must be adequately funded for this work.**

3. Role and purpose of the TIO

ACCAN submits the TIO has three main functions. The first is to resolve individual complaints; the second is an educative role with all stakeholders; and the third is to identify systemic problems and refer these matters to the appropriate regulator.

⁵⁴ *Taking Advantage of Disadvantage*, Note 19 at 6.

⁵⁵ *Talking Back*, Note 49 at 8.

⁵⁶ See for example Box 1 (Central Land); *Taking Advantage of Disadvantage*, Note 19 at 6;

⁵⁷ See for example, Senate Legal and Constitutional Affairs, *Access to Justice Inquiry report*, 8 December 2009, Recommendation 23, accessed on 30 March 2011 at:

http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/report/index.htm

3.1 Resolve individual complaints

ACCAN has earlier proposed recommendations in this submission about how the TIO can improve its policies and practices to achieve “fair and reasonable” outcomes for individual complainants in all the circumstances.

The Telecommunications Industry Ombudsman, Simon Cohen, recently said “beginning next month, [the TIO] will refocus our investigation process to prioritise the use of conciliation first.”⁵⁸ While welcoming efforts made to try and resolve customers’ complaints more quickly, ACCAN expresses concern about the unequal power imbalance in conciliations, potentially making it very difficult for a consumer to achieve a “fair and reasonable” outcome in all the circumstances. ACCAN strongly recommends that the conciliation model be reviewed in 6 months with a particular focus on the issue of accessibility and barriers to achieving a “fair and reasonable” outcome in all the circumstances.

It is also important that the TIO continues to examine systemic issues and that these continue to be identified even if a significant number of matters are resolved through conciliation.

3.2 Educative role of TIO

Improve internal complaint handling

The huge volume of TIO complaints about supplier complaint processes is evidence that IDR is failing to do its job properly. As Wood notes in the *Fair Go* report, “EDR schemes only need to exist because organisations’ internal complaint handling has failed.”⁵⁹ When IDR fails it is the TIO (along with the customer) who is left to pick up the pieces.

The TIO therefore has an important role to play in assisting its members to improve their internal complaints handling practices and procedures.

The TIO should be acknowledged and congratulated for launching the *connect resolve* campaign in January 2009. While complaints figures to the TIO are still unacceptably too high this campaign has served as an excellent educative tool to encourage the telecommunications industry to refocus on customers and their experiences.

Another way to improve telecommunication providers’ IDR processes is to increase the current Level 1 fee. At \$31⁶⁰ ACCAN members believe this is too low and does not provide suppliers with a sufficient incentive to improve their IDR policies and procedures. This is also supported by the Australian Competition Consumer Commission.⁶¹

There appear to be some concerns that raising Level 1 fees may unfairly disadvantage smaller providers. Consideration should be given to how Level 1 fees can be increased in a just and equitable way. For example, perhaps an increase in Level 1 fees is accompanied by an increase in the number of Level 1 complaints dealt with on a no cost basis for smaller providers.

⁵⁸ James Hutchinson, “Telco Ombudsman aims to rectify industry opposition” *Computerworld*, 30 March 2011 accessed on 30 March 2011 at: http://www.computerworld.com.au/article/381453/telco_ombudsman_aims_rectify_industry_opposition/

⁵⁹ *Fair go*, Note 5 at 39.

⁶⁰ See: <http://www.tio.com.au/members/fees.htm>

⁶¹ See *ACCC Reconnecting the Customer submission*, Note 37 at 22.



ACCAN recommends a full and proper review of the costing of Level 1 complaints which could shed light on how to provide better financial incentives to improve IDR.

In its submission to the ACMA *Reconnecting the Customer Inquiry*, ACCAN called for new mandatory standards to deal with the critical areas of IDR and EDR. By way of example we point to the Australian Securities and Investments Commission (ASIC) regulatory guides 165 and 139 which establish the mandatory obligations on the financial services industries to have effective IDR and EDR.

We strongly believe that better targeted, mandatory consumer protection obligations will see the TIO complaint numbers decrease over time.

Targeted education campaigns for industry

The TIO should also engage in education campaigns with their members to help them improve their IDR schemes. For example, if there is a spike in hardship complaints across the different providers it would be useful for the TIO to facilitate a discussion across the telecommunications sector where members identify the strengths and weaknesses of different providers' hardship policies and consider best practice policies. Such a dialogue has been facilitated in other Ombudsman schemes. The TIO would need to be adequately resourced to undertake such work.

3.3 Identify systemic issues

Systemic issues are defined in Clause 5A.1 of the TIO *Constitution* as a "problem with or the failure of a system, process or practice of a member that causes detriment (that is not trivial) to a significant number or a class of end-users of a carriage service and which arises from a complaint that is within the jurisdiction of the TIO by virtue of another provision of the TIO Constitution."

The benefit in undertaking systemic investigations is to try to get to the root cause of what may be a problem and/or potential problem for many consumers. Given the number of complaints made to the TIO has started to increase again, as evident in the current *TIO Talks*, it is vitally important to adequately address systemic issues at this point in time.⁶² With the introduction of NBN there are likely to be increasingly complex complaints requiring additional resources.

Transparency

The TIO recorded 54,157 code breaches in 2006/07, comprising 53,809 possible breaches and 348 confirmed breaches.⁶³ It is unclear how many members were referred by the TIO to ACMA for demonstrating systemic failure to comply with a code. ACMA is empowered to direct referred members to comply with the codes. Failure to comply with an ACMA direction may result in legal action being taken against those members. In 2006/07, the TIO referred one member to ACMA for non-compliance with industry codes.

In 2007/08 the TIO recorded 66,501 potential code issues, and 414 confirmed code breaches in 2007/08.

⁶² *TIO Talks*, No 1 2011, July - December 2010 at 1 accessed on 27 March 2011 at:

http://www.tio.com.au/publications/tio_talk_issues/2011_1/2011_01_1.htm

⁶³ *TIO Annual Report 2007* at 70.



In the 2007 and 2008 Annual Reports, a handful of case studies of systemic issues were included, naming the offending providers.⁶⁴

The *Annual Report 2009* states that no systemic investigations were undertaken in 2008-2009.⁶⁵ This appears unusual given there was a significant rise in complaints over that same period.

The *Annual Report 2010* provides 3 case studies of systemic issues under the new approach to investigating systemic issues. Service providers are not named in these case studies. This is despite the TIO's website stating the outcome of systemic problem investigations "may be made public."⁶⁶ There is also no reference to how many systemic issues were identified, how many were investigated and how many were resolved.

In the last 6 months the TIO has identified 40 potential systemic issues and investigated 27. They have indicated they will be providing an increased amount of information about systemic issues on their website and in their 2011 Annual Report.

ACCAN submits there is value in consumer groups identifying and raising systemic issues to be considered for investigation by the TIO. Such groups could also assist the TIO with information gathering.

It is essential that the TIO be completely transparent about systemic issues currently under investigation and closed for investigations, including the outcome of the investigation and referrals to ACMA for further investigation.

Publishing additional metrics

ACCAN would welcome the publishing of more information about complaints received by the TIO, including systemic complaints. We understand the TIO is already considering steps it can take to achieve this. Specifically ACCAN would like to see:

- Disclosure of all systemic issues identified
- Disclosure of systemic issues investigated
- A summary of the resolution and the names of the providers in breach
- Whether the provider has complied with the resolution
- Whether a non-complying provider has been referred to ACMA

We also believe that more information about complaints generally need to be made available. ACCAN would like to see the following metrics:

- The number of matters escalated due to supplier non-response
- The percentage of cases successfully resolved disaggregated by TIO member
- The average time it takes a complaint to be resolved disaggregated by TIO member
- The likelihood of a customer having a complaint (complaint per 10,000 customers) disaggregated by TIO member

We note that the last three metrics listed above are currently being reported by the Financial Ombudsman Service with great success.

⁶⁴ *TIO Annual Report 2007*, Note 63 at 64-67; *TIO Annual Report 2008* at 49-52.

⁶⁵ *TIO Annual Report 2009* at 64, accessed on 25 March 2011 at: http://www.tio.com.au/publications/annual_reports/ar2009/PDFs/AR_09_PartFive.pdf

⁶⁶ Systemic Problem Investigation, TIO Website accessed on 27 March 2011 at: http://www.tio.com.au/policies/indexb/systemic_problem_investigation.htm



Providing more information to the public is an important way of showing transparency and helps to build consumer's confidence in the Ombudsman's scheme. The public availability of frequent meaningful statistics is also vital to help identify emerging trends that are to the detriment of consumers. This could lead to more proactive preventative action rather than reacting to an increasing number of complaints. It is also important that year-on-year comparisons are published.

ACCAN also believes there is an important deterrence role in naming providers who have been found to have breached their obligations. In addition to naming providers who receive more than 25 complaints on the TIO website, TIO referrals to the ACMA should be made public. This is also important information that should be available to a consumer so they can make an informed decision about which provider they will choose. The discussion paper also notes that "during the same period, the FOS classified 81 issues it identified as systemic."⁶⁷

Public Information Policy

Over recent months ACCAN has been frustrated that the general public has not consistently had access to TIO data that is being used in the public sphere. Specifically, we note that the Communications Alliance has used data in its media releases that either was not in the public domain at the time of use or never has been. For example, on 23 November 2010 the Communications Alliance issued a press release stating that there was "a 23 per cent reduction in complaints to the Telecommunications Industry Ombudsman in the 12 months to the end of the June Quarter 2010". While on 25 February another media release claimed that "the number of confirmed breaches of the Code fell by 29.1 percent in the last three months of 2010, compared to the previous quarter".

ACCAN encourages the TIO, in the interests of good public policy, to maximise the amount of data available to the public. We also believe that the Ombudsmen, with advice from the TIO Council should publish a public information policy to guide the availability of data to the public.

Recommendations

- 31. A full and proper review of the costing of level 1 complaints be undertaken with consideration on how to provide better financial incentives to improve IDR.**
- 32. TIO should engage in general education campaigns with their members.**
- 33. The TIO invite consumer advocates to identify and provide information to the TIO about systemic issues.**
- 34. Service providers found in breach of their obligations be publicly named.**
- 35. Additional and meaningful information about complaints be made publicly available at more regular intervals. ACCAN would like to see the following metrics:**
 - The number of matters escalated due to supplier non-response**
 - The percentage of cases successfully resolved disaggregated by TIO member**

⁶⁷ DBCDE, *Discussion paper: TIO Scheme*, March 2011 at 23.

- **The average time it takes a complaint to be resolved disaggregated by TIO member**
 - **The likelihood of a customer having a complaint (complaint per 10,000 customers) disaggregated by TIO member**
- 36. The Ombudsmen, with advice from the TIO Council should publish a public information policy to guide the availability of data to the public.**

4. Additional Improvements

In addition to the improvements discussed throughout this submission, ACCAN makes the following recommendations.

Billing

Members are currently billed for each complaint, not each complaint issue. Given a complaint may consist of several complaint issues which likely increases the time expended by the TIO to resolve the issues, consideration should be given to including the number of complaints issues in a fee structure. This may act as an incentive to improve internal complaint handling policies and procedures.

Licensing

Currently, all carriage service providers are expected to be members of the TIO. The TIO relies upon carriage service providers to self present as members. With such a system in place there are likely occasions when the TIO discovers new members only at the time when they receive complaints about that particular carriage service provider. Significantly, the regulator, the ACMA, is only made aware of the identity of members by the TIO.

Wood in the *Fair Go* report advocates for a licensing regime for carriers and carriage service providers.⁶⁸ He recommends the licensing fee “be kept to a minimum.”⁶⁹ ACCAN supports this and further recommends there be a requirement for carriers and carriage service providers to only be able to operate with a license. Furthermore, a breach of a determination and/or any other serious breach should be grounds for ACMA to revoke a license.

Escalation without cause

We would be very concerned if matters are escalated purely on the basis on non-response from the supplier. If this is the reason for escalation, ACCAN would like to see penalties imposed on the provider, particularly if there is a pattern of a provider failing to respond.

Independent review

ACCAN refers to *ASIC RG 139: Approval and oversight of EDR schemes* and recommends the TIO be subject to a public independent review every five years.⁷⁰ This suggested timeframe, however, should not preclude a review occurring sooner if that is appropriate.⁷¹

⁶⁸ *Fair Go*, Note 5 report at 39.

⁶⁹ *Fair Go*, Note 5 report at 39.

⁷⁰ *ASIC RG 139: Approval and oversight of EDR schemes, July 2010, RG 139.147(b)* accessed on 27 March 2011 at: [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-July-2010.pdf/\\$file/rg139-July-2010.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-July-2010.pdf/$file/rg139-July-2010.pdf)

Recommendations

- 37. Members be charged per complaint issue.**
- 38. A licensing process be introduced for all carriage service providers.**
- 39. ACMA be given the powers to revoke a license for a breach of a TIO determination and/or any other serious breach.**
- 40. The TIO be subject to a public independent review every five years.**

5. Enforcement and regulation

The effectiveness of the TIO is intimately linked to the effectiveness of the regulatory environment. Put simply, the more that the consumer protection framework fails to do its job, the greater the pressure on the TIO to handle disputes.

Industry-specific consumer protections

It is ACCAN's view that the multiple failures of the consumer protection framework to establish the right rules, to mandate those rules and to enforce the rules has contributed to the excessive levels of consumer problems and the volume of complaints flowing to the TIO.

By way of example, the consumer protection codes registered in accordance with the *Telecommunications Act* are only mandatory where a Direction to Comply is issued, and that direction can only be issued where there is evidence of non-compliance. Even then, the directions to comply are issued to individual suppliers to comply with specific clauses of the Code. In other words, the consumer protection framework **requires** consumers to suffer detriment before there is any regulatory intervention.

This bizarre form of regulation has many flaws but for the purposes of this submission it is the impact on the TIO which concerns us. With hundreds of rules listed in the TCP Code, applying to approximately 1,100 TIO members, the TIO will continue to handle complaints involving breaches of consumer protection rules before there is any possibility of an obligation on the industry to change their practices.

Replacing voluntary 'co-regulatory' codes (which have provided little in the way of meaningful consumer protection) with mandatory enforceable standards is an essential pre-requisite for the TIO to be able to do its job well.

Introduction of standards

Customers should not be expected to make many calls to their service provider to try and resolve a matter. There needs to be clear and enforceable standards as to how a complaint can be resolved by a supplier and the timeframe in which this happens.

In the *Fair Go* report, Wood recommends that "because of the considerable variations in quality and thoroughness of internal complaint handling, the rules governing the EDR

⁷¹ ASIC RG 139, Note 70, RG 139.148

scheme should establish minimum contemporary standards that members' complaint handling must meet."⁷²

Wood states that the requirements of AS/ISO 10002 would be appropriate and refers to the A.C.T *Consumer Protection Code* for suggested wording:

"...provide for the handling of a complaint in accordance with the relevant Australian Standard on complaints handling."⁷³

Systemic Issues

Any regulator or law enforcement agency will confirm that rules are only as good as the tools available to enforce them. Again, the telecommunications model for enforcing code-based consumer protection is poor. And again, poor enforcement of consumer protection codes puts increased pressure on the TIO because poor supplier behaviour is not punished and systemic issues become embedded as acceptable standard practice instead of being quickly stamped out.

Over the years the TIO has taken on a quasi-enforcement role simply because of a lack of compliance monitoring and enforcement action. Data collected by the TIO about complaints will always be a useful element of compliance monitoring and identification of systemic issues but it should never be the only source of information. Nor should the TIO be solely responsible for investigating and actioning systemic issues.

In *Fair Go: Complaint handling for Digital Australia*, John Wood suggests that the best strategy is to adopt a shared obligation between the TIO and the regulator and points to the arrangements in place at the Financial Ombudsman Service (FOS) as best practice. Wood further states that;

It is not appropriate for the EDR scheme to have overall responsibility for industry wide practices; otherwise a potential conflict is built into the relationship between the TIO and the industry that can affect the cooperative culture that is critical to success for consumers (p36)

Remedies

ACCAN has called on the ACMA to have greater enforcement powers to tackle supplier contraventions. We also believe that the consumer protection framework would benefit from super complaint powers to facilitate fast-tracked systemic issues from key stakeholders such as the TIO and consumer groups. Built into the mix also needs to be effective remedies for the individual, of which both the ACMA and the TIO have a role to play.

Under the Competition and Consumer Act, legal action by the ACCC may result in the court making orders to achieve financial redress for consumers or businesses harmed by the conduct or making findings of fact that show contraventions of the Act so that damages may be recovered by consumers and businesses affected by the conduct. Similar powers should be sought by the ACMA.

ACCAN also believes there is merit in the TIO being able to award consumers a financial sum payable by the supplier where it has acted in breach of its consumer protection obligations.

⁷² *Fair go*, Note 5 at 20. Also see ACCC *Reconnecting the Customer submission*, Note 37 at 21.

⁷³ S6.1 *Consumer Protection Code*, July 2010, Independent Competition and Regulatory Commission (ACT) cited in *Fair Go*, Note 5 at 20-21.

Ultimately the TIO will be better placed to do its job where all stakeholders are committed to reducing the incidence of complaints in the first instance. That requires a good consumer protection toolkit and a willingness on behalf of the TIO and the ACMA to use it promptly to stamp out bad industry practices.

As a complaint escalates, the Ombudsman has the power to make recommendations and determinations. If a recommendation is not followed, the TIO can name the provider in its annual report as being non-compliant with the recommendation.⁷⁴ Significantly, recommendations are rarely made. If a determination is made, while binding on the provider, this does not guarantee that the provider will comply with such a determination. Additionally, the TIO is unable to name the provider in a determination. If the provider does not comply with a determination the TIO may (but is not required) to refer the matter to ACMA.

ACCAN submits a supplier should be named in a determination. It should be mandatory for the TIO to refer non-compliance of a determination to ACMA.

ACMA is the industry regulator and it is essential that it is resourced, willing and capable of holding this industry to account. As Wood notes the enforcement regime is “pretty cumbersome” and “the monetary amounts that may be involved can be quite small.”⁷⁵ ACCAN repeats Wood’s recommendation that “a simpler, more cost effective, and quicker enforcement and penalty system needs to be put in place, and where relevant breaches can be taken to the Federal Magistrates Court for determination.”⁷⁶

Significantly more work needs to be done to address the root causes of excessive numbers of telecommunication consumer complaints. As the *Fair Go* report and ACCAN members’ submissions to other inquiries indicate, self regulation of the telecommunications industry is not working.⁷⁷ It is now time to consider introducing stronger consumer protections, including standards and changes in legislation⁷⁸.

- 41. A supplier should be named in a determination.**
- 42. It should be mandatory for the TIO to refer non-compliance of a determination to ACMA.**
- 43. A simpler, more cost effective, and quicker enforcement and penalty system needs to be put in place, where relevant breaches can be taken to the Federal Magistrates Court for determination.**
- 44. Stronger consumer protections, including standards and changes in legislation should be made.**

⁷⁴ See TIO Standard Resolution Methods and Outcomes, 6.13 accessed on 27 March 2011 at: http://www.tio.com.au/policies/indexb/standard_resolution_methods_and_outcomes.htm

⁷⁵ *Fair Go*, Note 5 at 40.

⁷⁶ *Fair Go*, Note 5 at 40.

⁷⁷ *Fair Go*, Note 5 at 40-42; Consumer Action Law Centre, *Submission to Reconnecting the Customer ACMA public inquiry consultation paper*, Note 16 at 2;

⁷⁸ See *Taking Advantage of Disadvantage*, Note 19 at 7; Compare to financial services where basic consumer protection provisions are contained in legislation. See: Choice & Galexia, *Consumer Protection in the Communications Industry: Moving to best practice*, October 2008 at 14 accessed on 20 March 2011 at: <http://www.choice.com.au/~media/Files/Consumer%20Action/Communications/Telecomms%20industry%20needs%20reform/f133762.ashx>; See Consumer Action Law Centre, *Reconnecting the Customer submission*, Note 16 at 2.



45. A standard regarding complaints handling be introduced.
46. The TIO or regulator be given the power to audit suppliers' internal complaint handling schemes to see if they are compliant with the relevant Australian Standard on complaints handling.
47. The TIO should be able to award consumers a financial sum payable by the supplier where the supplier has acted in breach of its consumer protection obligations.



Summary of Recommendations

1. That the governance structure be amended to include equal representation of industry and consumer representatives.
2. The governance structure be amended to a unitary structure, with an independent Chair.
3. The TIO expand its jurisdiction to include pay TV.
4. That it be a standard practice for the TIO to collect demographical information about TIO users, including sex, age, ethnicity, disability, level of income.
5. That a base-line survey regarding TIO awareness and accessibility be conducted, with a follow up survey 3 years later.
6. The TIO increases awareness of their services by targeting the different media that different groups access, including local, regional, disability, ethnic, Aboriginal and community radio, television, newspapers, social media and websites.
7. The TIO raise awareness of their services amongst local community agencies, including women's centres, migrant resource centres, media organisations, Art Centres and other community organisations.
8. The TIO develops materials for some of the main Aboriginal and Torres Strait Islander language groups in Australia.
9. The TIO increases the amount of information available on its website and in hardcopy in different languages and alternative formats, including: Braille, HTML/RTF, Large print, easy English, Audio and Auslan.
10. That TIO materials, including on the website, must indicate that people can make complaints in person at TIO offices, via an interpreter. Contact details are provided to make an appointment.
11. The TIO promotes more widely the availability of the Telephone Interpreting Services to facilitate CALD consumers contacting the TIO.
12. The TIO expands its hours of operation until 8pm Monday- Friday, including accommodating time differences across Australia.
13. The TIO and Government include the active participation of young people pursuant to the United Nations Committee on the Rights of the Child, General Comment 12: The Right to be Heard.
14. The TIO and government undertake education with all consumers, including youth, about consumer rights to seek to prevent complaints arising in the first place.
15. The TIO's website be redesigned to ensure information is easy to find and accessible to all.
16. TIO-published case studies be expanded, and an index of case studies, linked to position statements, be created and be available in print and on-line.



17. Where a significant systemic issue is identified as affecting a particular demographic, the TIO increase advertising about their services through the media that affected group(s) accesses.
18. The government promotes awareness about the TIO through its different departments including: as part of the settlement process for refugees, the citizenship test preparation for migrants and through Centrelink publications and Centrelink correspondence to those who receive Centrelink benefits.
19. That brochures outlining complaint options must be available in all suppliers' stores, on their websites and on request.
20. Suppliers must prominently publicise the availability and accessibility of external process for resolving disputes in Supplier stores, on Supplier websites and on telephone-based customer information services.
21. Information about the TIO, including contact details should be included in communications from Suppliers to their customers, including, but not limited to: all contracts and billing documents, late notices, disconnection notices and other credit and debt collection activities.
22. The customer should be made aware of the TIO's role in the complaint handling process from the earliest possible stage (not only after the customer expresses dissatisfaction).
23. Suppliers must provide customers with information about the TIO at the time the customer is told about the Supplier's internal complaints process and at the time the customer is told about the final outcome of the internal process if the customer is not wholly satisfied.
24. The TIO scheme be described as the office of second resort and not an office of last resort.
25. At level 1 entry, the TIO contact the telecommunications provider directly in writing to inform them of a complaint and the telecommunications provider contacts the customer with the complaint directly within 48 hours.
26. The TIO should only close a Level 1 complaint when the customer indicates it is resolved.
27. The TIO should be empowered to "register" a complaint, refer it to the relevant member and ensure it is actioned by that member.
28. The TIO undertake research into the incidence of and circumstances whereby complaints are discontinued.
29. Introduce an SMS call back scheme to assist low-income consumers to contact the TIO.
30. Services assisting clients to access the TIO, including community legal centres, financial counseling services and other community groups, must be adequately funded for this work.
31. A full and proper review of the costing of level 1 complaints be undertaken with consideration on how to provide better financial incentives to improve IDR.
32. TIO should engage in general education campaigns with their members.
33. The TIO invite consumer advocates to identify and provide information to the TIO about systemic issues.



34. **Service providers found in breach of their obligations be publicly named.**
35. **Additional and meaningful information about complaints be made publicly available at more regular intervals. ACCAN would like to see the following metrics:**
 - **The number of matters escalated due to supplier non-response**
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38. **A licensing process be introduced for all carriage service providers.**
39. **ACMA be given the powers to revoke a license for a breach of a TIO determination and/or any other serious breach.**
40. **The TIO be subject to a public independent review every five years.**
41. **A supplier should be named in a determination.**
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References

ACCAN, AFCCRA, ACOSS, *The Cost of a Free Call: Accessing 1800 and 13/1300 services from mobile phones: Super-complaint to ACMA*, 10 September 2010 at:

http://www.accan.org.au/campaign_full.php?id=23

ACCAN and Footscray Community Legal Centre Inc, *Taking Advantage of Disadvantage Case studies of refugee and new migrant experiences in the communications market*, March 2011 at: http://accan.org.au/research_full.php?id=33

ACCAN Members Survey, *Talking Back: ACCAN Members Speak Out About Telco Customer Service ('Talking Back')*, May 2010 at:

http://www.accan.org.au/research_full.php?id=23

ACCC, *Reconnecting the Customer submission*, 19 October 2010 at:

http://www.acma.gov.au/webwr/assets/main/lib311946/accc_reconnecting_the_customer.pdf

ASIC RG 139: *Approval and oversight of EDR schemes, July 2010, RG 139.147(b)* at:

[http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/rg139-July-2010.pdf/\\$file/rg139-July-2010.pdf](http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/rg139-July-2010.pdf/$file/rg139-July-2010.pdf)

Australian Securities & Investments Commission. *Regulatory Guide 165 – Licensing: Internal and external dispute resolution schemes*. ASIC. Sydney, July 2010.

Brotherhood of St Laurence, *Submission to ACMA's Reconnecting the Customer Consultation*, September 2010 at:

http://www.bsl.org.au/pdfs/BSL_subm_ACMA_Reconnecting_customer_consultation_2010.pdf

CHOICE/Galexia, *Consumer Protection in the Communications Industry: Moving to best practice*, CHOICE/Galexia, Sydney, October 2008 at:

http://www.choice.com.au/~/_media/Files/Consumer%20Action/Communications/Telecomms%20industry%20needs%20reform/f133762.ashx

Cleary, S., O'Donnell, D., Pinnock, J. *Submission to ACMA Reconnecting the Customer Public Inquiry*, 6 October 2010 at:

http://www.acma.gov.au/webwr/assets/main/lib311946/126_cleary_odonnell_pinnock-reconnecting_the_customer.pdf

Code of Banking Practice accessed on 27 March 2011 at:

http://www.boq.com.au/uploadedFiles/Code_of_Banking_Practice.pdf

Communications Alliance Ltd. *Industry Code C6228:2007; Telecommunications Consumer Protection Code*. Communications Alliance Ltd. North Sydney, September 2007.

Consumers' Telecommunications Network, *Telecommunications Industry Ombudsman Scheme Review 2006*. Sydney 2006 at:

<http://www.tio.com.au/TIORReview/Submissions/Consumer%20Submission.pdf>

Financial Ombudsman Service, *Terms of Reference - 1 January 2010 (as amended 1 July 2010)*. FOS at http://www.fos.org.au/centric/home_page/about_us/terms_of_reference_b.jsp

Financial Ombudsman Service. *Constitution*. FOS at

http://www.fos.org.au/centric/home_page/about_us/constitution.jsp



Galaxy Research, Undertaken for ACCAN, 5-7 November 2010, at:
http://www.accan.org.au/campaign_full.php?id=24

NSW Ombudsman's *Guidelines for dealing with Youth Complaints*, Sydney, 2008 at:
<http://www.ombo.nsw.gov.au/aboutus/policies/Guidelines%20for%20Dealing%20with%20Youth%20Complaints.pdf>

Productivity Commission, *Review of Australia's Consumer Policy Framework*, Final Report, Canberra, 2008.

Senate Legal and Constitutional Affairs, *Access to Justice Inquiry report*, Canberra, 8 December 2009, at:
http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/report/index.htm

Telecommunications Industry Ombudsman. *Connect.resolve – A report on complaints to the TIO about Customer Service and Complaint Handling, for the period 1 January – 30 June 2009*. TIO. Melbourne, August 2009.

Telecommunications Industry Ombudsman. *Connect.resolve –Complaints to the TIO about Customer Service and Complaint Handling, Update report for the period 1 July – 31 December 2009*. TIO. Melbourne, March 2010.

Telecommunications Industry Ombudsman, *2007 Annual Report*. TIO. Melbourne, 2007

Telecommunications Industry Ombudsman, *2008 Annual Report*. TIO. Melbourne, 2009.

Telecommunications Industry Ombudsman, *2009 Annual Report*. TIO. Melbourne, 2009.

Telecommunications Industry Ombudsman, *2010 Annual Report*. TIO. Melbourne, 2010.

The Allen Consulting Group. *Review of the Telecommunications Industry Ombudsman Scheme – Independent Review*. The Allen Consulting Group Pty Ltd. Melbourne, 2006, at: http://www.tio.com.au/TIOReview/TIO_review_web_version.pdf

TIO's Response to the 2006 Review of the Scheme at:
<http://www.tio.com.au/TIOReview/TIO%20Response%20to%20Review.pdf>

TIO Talks, No 1 2011, July - December 2010 at:
http://www.tio.com.au/publications/tio_talk_issues/2011_1/2011_01_1.htm

United Nations Committee on the Rights of the Child, *General Comment No 12 (2009): The right to be heard*, CRC/C/GC/12, 20 July 2009 at:
<http://www2.ohchr.org/english/bodies/crc/comments.htm>

Wood,J. *Fair Go: Complaint Resolution for Digital Australia ('Fair Go')*, ACCAN, March 2011 at:
http://www.accan.org.au/research_full.php?id=32&PHPSESSID=5af9b8821586f9e5807236b436c9ff4f