

25 March 2022

Vicky Finn
Strategy and Regulatory Affairs Lead
Telecommunications Industry Ombudsman
By email: PublicConsultation@tio.com.au



Dear Vicky,

Re: Complaints About Telecommunications Equipment Draft Guidance Note

ACCAN thanks the TIO for the opportunity to provide feedback on its draft *Complaints about telecommunications equipment* guidance note (hereafter the guidance note). ACCAN acknowledges that this piece of work comes at the end of an extensive consultation process as part of the TIO's Terms of Reference modernisation. We appreciate the TIO's ongoing engagement with consumer groups on this issue.

In line with our previous comments,¹ ACCAN's position is that the TIO should consider all complaints regarding devices or equipment sold by a TIO member, regardless of whether the device or equipment is linked to a service, or the nature of the consumer complaint. It is not in consumers' interest that there are only certain device or equipment matters that the TIO can consider, due to the risk of creating consumer confusion, further inconvenience, and delays in resolving disputes.

ACCAN wishes to provide some additional feedback on the guidance note:

- **Consideration of Australian Consumer Law (ACL) guarantees:** The guidance note should clarify how device and equipment complaints related to consumer guarantees² will be considered by the TIO, particularly where the device or equipment sold ends up being inaccessible for a consumer with disability. For example, if the TIO member sells devices or equipment that are not fit for purpose for a consumer, the TIO should be able to consider a complaint about this, because fitness for purpose can impact a consumers' access to their telecommunications service, regardless of which TIO member provides this service. This is a common issue experienced by consumers with disability, who may only find out after the fact that a piece of equipment is not accessible.
- **What the TIO expects from TIO members:** The guidance note outlines the TIO's expectations for consumers in the dispute resolution process. It would be beneficial for the guidance note to also outline the TIO's expectations for its members when responding to device or equipment complaints. This could include, for example, the expectation that a provider should not take an unreasonable amount of time to assess the device or piece of equipment. This would help guide consumers' expectations and allow them to compare their provider's conduct with the TIO's guidance.

¹ ACCAN 2020, *Consultation on Modernising the Telecommunications Industry Ombudsman Terms of Reference July 2020, V 1.1*, available: <https://accan.org.au/our-work/submissions/1797-tio-tor-2020>

² ACCC, *Consumer guarantees*, <https://www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees>

- **Requirement to return equipment:** The guidance note should outline that a consumer should only be required to send equipment back for assessment where this is reasonable and practicable, and the cost of return should not be borne by the consumer as considered under the ACL.³ For example, in the EDR process, a consumer in a very remote area should not be required to return a device that is evidently unusable if they do not have the means to do so.
- **Mis-selling:** In instances where consumers were misled or didn't get what they were promised, the guidance note states that the TIO may consider complaints about devices or equipment, where that device or piece of equipment was sold with a service. Given the risk of consumer harm due to mis-selling, and the fact that mis-selling can often extend to device or equipment add-ons like smart home devices and accessories, the TIO must consider complaints related to a member's mis-selling of devices or equipment regardless of whether these are linked to a service.
- **Complaints relating to remedies under the ACL:** Recognising that the remedies for the breach of consumer guarantees relating to goods are complex,⁴ the guidance note should clearly reference how the TIO will consider these provisions in relation to common complaints. This could include, for example, how the provisions will be considered where there has been a major failure; whether there are remedies for consequent loss; and the implications of rejecting goods and cost of collection. Examples would help to explain how the TIO will handle the application of remedies. The right of recovery under Section 265(3) of the ACL is particularly important for the TIO to explain, given it relates to the termination of contracts for the supply of services that are connected with rejected goods.

Please do not hesitate to get in touch if you wish to discuss our feedback further.

Yours sincerely,

Rebekah Sarkoezy
Policy Advisor

ACCAN's submission is endorsed by:



Consumer Action Law Centre



WEstjustice

³ Australian Consumer Law (Cth) 263(2)(b)

⁴ Australian Consumer Law (Cth) Parts 4 and 5