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**Submission**

16 May 2022

## Joint Consumer Submission on the Independent TIO Review

Submission by the Australian Communications Consumer Action  
Network (ACCAN), Consumer Action Law Centre, Financial  
Counselling Australia and WEstjustice



**financial  
counselling  
australia**

**WEstjustice**

## 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 communications services that are trusted, inclusive and available for all. 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 represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

## About Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

## About Financial Counselling Australia

Financial Counselling Australia is the peak body for financial counsellors. Financial counsellors assist people experiencing financial difficulty by providing information, support, advice and advocacy. Working in not-for-profit community organisations, financial counselling services are free, independent and confidential.

## About Westjustice

Westjustice provides free legal services and financial counselling to people who live, work, or studying in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray, as well as youth legal branch in Sunshine, and outreach across the west. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, and law reform and advocacy.

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## Executive Summary

ACCAN, Consumer Action Law Centre, Financial Counselling Australia and WEstjustice thank Queen Margaret University for the opportunity to provide feedback as part of its independent review of the Telecommunications Industry Ombudsman (TIO). This joint submission draws on feedback and case studies received from residential and small business consumers, consumer advocates, financial counsellors, and community organisations that have experience dealing with TIO matters.

Phone and internet complaints can be extremely challenging for consumers to resolve. The technical nature and the potential service-level and financial impact of an issue can create significant inconvenience and distress for consumer complainants. The lack of robust customer service rules placed upon the telecommunications industry means that consumers can spend weeks or months attempting to resolve an issue before it is identified as a complaint by their telecommunications retail service provider (RSP).<sup>1</sup> Phone and internet complaint fatigue is commonplace.<sup>2</sup> This is why access to external dispute resolution (EDR) is vital. Indeed, in the 2020-21 financial year, residential and small business consumers made 119,400 complaints to the TIO.<sup>3</sup>

We support the vital role that the TIO performs when dealing with escalated phone and internet complaints. The TIO's public reporting on complaints and its commentary on phone and internet consumer issues create a level of transparency surrounding the telecommunications industry's performance. In recent years, the TIO has made significant investments into improving its processes and engaging with consumers and with its members, for which it should be commended.

Given the TIO's fundamental role, and the importance of robust EDR arrangements in the telecommunications sector, we have identified areas where we feel the TIO could improve its activities and processes to ensure it consistently exceeds the Australian Government's Benchmarks for Industry-Based Customer Dispute Resolution.<sup>4</sup> Our submission highlights the following:

- Awareness of the TIO needs to be increased through wider and more targeted outreach and advertising to consumers.
- The TIO should continue improving access to the TIO for people experiencing vulnerability and for First Nations peoples, including digging deeper with consumers to help them identify the core complaint and a suitable solution.
- The TIO should be able to reopen and fast-track complaints for recurrent or unresolved issues, so consumers are not required to begin the whole process again for an issue that has already been raised at the TIO level.

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<sup>1</sup> ACCAN 2020, *Consumer Safeguards Review Part C*, <https://accan.org.au/files/Submissions/2020/ACCAN%20Submission%20to%20Consumer%20Safeguards%20Review%20Part%20C%20V.1.1.pdf>, p. 14-15

<sup>2</sup> ACCAN 2020, *Still Waiting ... The cost of customer service*, <https://accan.org.au/media-centre/hot-issues-blog/1825-still-waiting-the-cost-of-customer-service>

<sup>3</sup> TIO 2021, *Annual Report 2020-21*, <https://www.tio.com.au/reports/annual-report-2020-21>

<sup>4</sup> Treasury, *Benchmarks for Industry-based Customer Dispute Resolution*, [https://treasury.gov.au/sites/default/files/2019-03/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf)

- The TIO should continue to improve the fairness of its dispute resolution services, including in its procedures and complaints handling outcomes.
- More granularity and transparency around providers' complaints performance is needed. The TIO should publish information about technology type (e.g. satellite broadband, 5G) for complaints about service-level issues.
- The TIO should follow up on complaints once referred to members and the response period has lapsed (usually 10 business days). The time given to TIO members to respond to simple complaints should be reviewed.
- The TIO should be able to adapt to a changing communications landscape, and changing consumer needs. In the current environment, there are some limitations to the effectiveness of the TIO, for example, its device and equipment jurisdiction and small business definition.
- It is imperative that the TIO's systemic issues work and reporting continues.
- The TIO should continue referring member non-compliance to the relevant regulator.
- The TIO's engagement with the community sector (e.g. through the TIO Consumer Panel) must continue. The TIO has a culture of inclusiveness which is valued by the community sector.

## List of Recommendations

**Recommendation 1:** The TIO should implement strategies to improve consumer awareness of its function and services.

**Recommendation 2:** The TIO should undertake an investigation on the extent to which its members inform consumers about going to the TIO.

**Recommendation 3:** The TIO should ensure its intake processes thoroughly assess the root cause of the complaint, to promote access to the scheme on an equitable basis.

**Recommendation 4:** The TIO should place greater emphasis on consumer vulnerability when dealing with individual consumer complaints and assessing members' actions, and develop a comprehensive Vulnerability Strategy.

**Recommendation 5:** The TIO should allow consumers to reopen, re-raise and fast-track complaints where the issue is recurring or has not been resolved in totality.

**Recommendation 6:** The TIO should ensure that consumers making complaints are always aware of when and how they can request the TIO to review its decision

**Recommendation 7:** The TIO should ensure that its complaints review process is completely equitable.

**Recommendation 8:** The TIO should introduce a specialised process to deal with consumers experiencing vulnerability or complex circumstances, flagged at the point of initial complaint intake.

**Recommendation 9:** The TIO should expand its public reporting to provide greater detail about the technology types, geographical location, and TIO members involved in TIO complaints.

**Recommendation 10:** The TIO should capture and publicly report on the issues and reasons why it could not deal with a matter classified as an Enquiry.

**Recommendation 11:** The TIO should differentiate simple complaints that could reasonably be resolved within 5 business days from referral, and amend the permitted response time accordingly.

**Recommendation 12:** Once a complaint has been referred to a TIO member, the TIO should follow up with the consumer to assess whether the complaint has been resolved, and should continue handling the complaint if it hasn't.

**Recommendation 13:** The TIO should reconsider the suitability of its definition of small business, and ensure that it triages small business complaints effectively.

**Recommendation 14:** The TIO should reconsider how it handles device and equipment complaints to ensure the scheme is addressing complaints effectively.

**Recommendation 15:** The TIO should review its approach to awarding compensation for non-financial loss, ensuring consistency with other major EDR schemes.

**Recommendation 16:** The TIO should continue to refine its processes identifying and reporting on systemic issues facing phone and internet consumers.

**Recommendation 17:** That the TIO continues to engage in communications policy work and is adequately resourced to do so.

**Recommendation 18:** The TIO should refer suspected member non-compliance to the relevant regulator.

**Recommendation 19:** The TIO should continue pursuing meaningful stakeholder engagement to ensure better strategic outcomes for phone and internet consumers.

## Industry Benchmark 1: Accessibility

### Not all consumers know about the TIO

Consumers are not always aware of the TIO or its role in resolving phone and internet complaints. Findings from a recent Ipsos Omnibus survey,<sup>5</sup> commissioned by ACCAN, found that 1 in 4 consumers surveyed (25%) were not aware of the TIO, and a third (34%) did not know what the TIO could do if they had difficulty resolving a complaint with their phone or internet provider. Indeed, a quarter (26%) indicated that if they couldn't resolve a complaint with their phone or internet provider, they did not know where to go next. These findings show that there is a significant gap in awareness about the availability and functions of the TIO. They suggest that there are opportunities to boost the TIO's outreach and advertising so that all phone and internet consumers are aware of the dispute resolution services available to them. Feedback from community organisations indicate that often it is consumers who are digitally excluded or experiencing vulnerability who do not know about the TIO, or do not understand how it can help.

While it is out of scope for this review, it is important to note that in some circumstances TIO members have an obligation under the ACMA Complaints Handling Standard to proactively inform a consumer of their options for EDR, including going to the TIO.<sup>6</sup> We are aware that TIO members do not always do this, which may contribute to consumers' lack of awareness about the TIO. The TIO could address this directly by, for example, undertaking a systemic issue report on telco's compliance with the obligation to inform consumers about their right to complain to the TIO, or by publicly naming telcos who consistently fail to do this.

There are a number of ways that the TIO could boost consumer awareness of its services, including:

- Introducing a bold outreach agenda, particularly in regional and rural areas (for example, market stalls at major agricultural and social events).
- Increasing the use of social media advertising.
- Using communication channels targeted at First Nations people, including local community radio, NITV and ITV.
- Developing online and hard-copy consumer information materials in languages other than English, and distributing these via established networks of community service organisations.

**Recommendation 1:** The TIO should implement strategies to improve consumer awareness of its function and services.

**Recommendation 2:** The TIO should undertake an investigation on the extent to which its members inform consumers about going to the TIO.

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<sup>5</sup> See appendix 1 for detailed results.

<sup>6</sup> ACMA Complaints Handling Standard 2018 (Cth), <https://www.legislation.gov.au/Details/F2021C00265>

## The TIO should work with consumers to identify and resolve complaints, especially consumers experiencing vulnerability

There is a considerable difference between the number of complaints received by telcos (1,089,607 in FY 2020-21), and the number of complaints received by the TIO (116,113 in FY 2020-21). We know the real number of complaints received by telcos is much higher than this figure. It is common for consumers to contact their telco about a persistent issue that should be treated as a formal complaint, but isn't classified as such.<sup>7</sup> Additionally, we are aware that in some instances, telcos artificially suppress their TIO complaint escalation rate by offering one-off financial compensation to consumers, rather than addressing the root cause of the complaint. It is essential that the TIO always works with the consumer and the TIO member to understand, address and resolve the root cause of consumer complaints.

We hear from consumers, particularly those experiencing vulnerability, who are told by the TIO that it cannot handle their complaint, even though it appears to be a legitimate complaint that the TIO should handle. In these instances, it appears that the TIO has not actively identified a phone and internet complaint when an issue is being described by a person who may not have used 'the right' terms in their explanation, or who may not have initially offered all information required by the TIO. It is important that, at the point of intake, the TIO works with consumers to identify and understand the root cause of their complaint. For example, a consumer could complain to the TIO that they cannot afford their bill, and their telco won't provide a payment extension. This initially presents as a financial hardship complaint, but further questioning at the point of intake may reveal that the consumer was inappropriately sold services they couldn't not afford, suggesting unconscionable conduct or failing to conduct an affordability assessment. By delving deeper to understand the issues at the intake level, and to help consumers articulate their complaints, the TIO may be able to identify more appropriate solutions for consumers.

We also receive reports that the TIO does not always consider a person's vulnerability fairly when making decisions.

### Case study: Consumer fleeing family violence

Rita (name changed) had been experiencing family violence over a long period of time, and left her abusive partner in 2019. She had significant trouble cancelling her contract with her telco after leaving the relationship. The telco insisted on receiving her undamaged handset before allowing the cancellation, but the phone had been damaged. The telco wasn't complying with its own family violence policy, so Rita went to see a community lawyer. After months of negotiating, the community lawyer wasn't able to resolve the issue with the telco, so together she and Rita went to the TIO. The TIO referred the issue back to the telco for resolution. The telco offered a small amount of compensation, which Rita wasn't happy with, because the telco didn't acknowledge the hurt and

<sup>7</sup> ACCAN 2020, *Consumer Safeguards Review Part C*, <https://accan.org.au/files/Submissions/2020/ACCAN%20Submission%20to%20Consumer%20Safeguards%20Review%20Part%20C%20V.1.1.pdf>

distressed caused. The community lawyer raised the issue again with the TIO, but without investigating or escalating the complaint, the TIO said that the 'deal' offered by the telco was better than any recommended outcome it would order if it continued to handle the complaint. Rita and her lawyer continued to deal directly with the telco without the TIO's assistance, and eventually negotiated a better outcome.

The TIO's response to consumer vulnerability fundamentally impacts the accessibility of the scheme to consumers experiencing vulnerability. Some consumer advocates report that they actively avoid going to the TIO, because it is too difficult to resolve complex complaints for vulnerable consumers, and telcos' internal dispute resolution (**IDR**) teams have a better and fairer understanding of consumer vulnerability. The TIO should continue to improve staff awareness and understanding of vulnerability, as well as improving quality systems and processes to ensure that vulnerability is identified, and barriers faced by people experiencing vulnerability are removed. It could do this by developing a comprehensive Vulnerability Strategy, which meets or exceeds the recently completed international standard on inclusive service delivery.<sup>8</sup>

Additionally, the TIO should regularly upskill its staff in First Nations cultural competency and disability awareness in order to have a better organisational and individual competence when assisting consumers.

**Recommendation 3:** The TIO should ensure its intake processes thoroughly assess the root cause of the complaint, to promote access to the scheme on an equitable basis.

**Recommendation 4:** The TIO should place greater emphasis on consumer vulnerability when dealing with individual consumer complaints and assessing members' actions and develop a comprehensive Vulnerability Strategy.

## The TIO should reopen and fast-track complaints that aren't fully resolved

Given the complexity, potential recurrence, and network access problems that telecommunications issues often involve, consumers should be able to reopen and fast-track a TIO complaint for an issue that was thought to be resolved, but wasn't.

However, the TIO does not reopen complaints unless the consumer can demonstrate 'exceptional circumstances'.<sup>9</sup> This means that if a consumer's complaint about an issue has been resolved at the TIO level, but the issue persists after the complaint is closed, the consumer generally must open a new complaint and return to the beginning of the TIO complaints handling process. This allows the provider another 10 business days to resolve the complaint once it is referred to them. We hear reports of instances where the TIO has refused to reopen a complaint when the conduct has reoccurred or the resolution has not been acted upon, nor has it allowed the consumer to make a

<sup>8</sup> ISO 22458:2022, *Consumer vulnerability — Requirements and guidelines for the design and delivery of inclusive service*, <https://www.iso.org/standard/73261.html>

<sup>9</sup> TIO, <https://www.tio.com.au/about-us/policies-and-procedures>

new complaint about the evolving situation. This is problematic as it leaves the consumer with no option to have the issue resolved.

This is of particular concern as consumer advocates sometimes reporting that the TIO will propose short-term solutions as an early stage resolution rather than addressing the underlying cause of a complaint – for example, recommending that a provider credit the consumer’s account, rather than thoroughly investigate the issue.

Some consumer advocates indicate that the TIO has refused to reopen a complaint when the conduct has recurred or the ‘resolution’ has not been actioned by the TIO member. Consumer advocates have also reported circumstances where the TIO has refused to allow the consumers to make a new complaint about the evolving situation. This is problematic as it leaves the consumer with no option to have the issue resolved.

We urge the TIO to introduce the ability to reopen and fast-track complaints where a consumer indicates an issue is not truly resolved, where a resolution has not been honoured by the TIO member, and where an issue has recurred within at least 6 months of the complaint closing.

**Recommendation 5:** The TIO should allow consumers to reopen, re-raise and fast-track complaints where the issue is recurring or has not been resolved in totality.

## The TIO should expand its complaint intake methods

Consumers can make a complaint to and communicate with the TIO via two main channels: over the phone and via email.<sup>10</sup> There is an opportunity for the TIO to modernise further and expand how it accepts complaints. For example, the TIO could work to establish a mechanism to accept complaints via SMS, smartphone app or chat function. Consumers making complaints to the TIO have a variety of different communications needs, preferences, and availabilities. For example, chat functions can be safer for family violence victim survivors. Introducing a broad range of communication channels (while maintaining traditional methods) will mean the scheme is more accessible to a greater number of people, particularly those who prefer or require mobile, digital-only communication alternatives.

Other EDR schemes are moving to introduce digital portals, where complainants can access all relevant information and documentation about their complaint in a secure environment as well as see the progress of their complaint without having to speak with anyone. While not all consumers can use such tools, these innovations are important accessibility and efficiency initiatives which should, if implemented effectively, free up staff resources to spend more time supporting complainants who face barriers to accessing or engaging with schemes like the TIO. We recommend the TIO investigate and implement a digital portal, perhaps building on the work of other EDR schemes.

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<sup>10</sup> Noting that email correspondence is preceded by the consumer filling out an online form on the TIO’s website. Consumers may also fax the TIO, or contact it via post.

## Industry Benchmark 2: Independence

### Public commentary on declining complaints

Generally speaking, the TIO is a trusted and independent dispute resolution service. We support its role in handling phone and internet complaints. However, at times, the TIO's public communications suggest that periodic decreases in complaints numbers can be directly attributed to improvements in TIO member activities.<sup>11</sup> We suggest that drops in TIO complaints can be attributed to a number of factors including:

- The introduction of new phone and internet rules by the Australian Communications and Media Authority (ACMA);
- Consumers lacking awareness about the TIO and its functions;
- The near-completed NBN rollout reducing NBN installation complaints; and
- TIO members failing to treat consumer issues as complaints, or failing to inform consumers they are able to go to the TIO about their issue.<sup>12</sup>

Without concrete evidence, dropping complaints numbers should not be solely attributed to broad improvements in industry practices. Moreover, compared to other industries, it appears that telco complaints remain high which is a cause for concern.

## Industry Benchmark 3: Fairness

### Fairness needs to be articulated and measured

We acknowledge the TIO's ongoing work to develop a fairness metric to evaluate the fairness of the TIO's processes. It is important for both consumers and industry that the TIO consults on, develops, and publishes its definition of fairness, as well as how it will measure it.

It is simpler for an EDR scheme to measure its efforts in other areas (e.g., efficiency through timeliness of decision-making), but assessing metrics relating to fairness remains a challenge. We urge the TIO to continue its development of a means to assess and monitor the fairness of outcomes achieved at all stages of the dispute resolution process, and to provide public information about this.

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<sup>11</sup> TIO 2022, *Phone and internet complaints decline for fifth consecutive period*, <https://www.tio.com.au/news/phone-and-internet-complaints-decline-fifth-consecutive-period>

<sup>12</sup> ACCAN 2020, *Consumer Safeguards Review Part C*, <https://accan.org.au/files/Submissions/2020/ACCAN%20Submission%20to%20Consumer%20Safeguards%20Review%20Part%20C%20V.1.1.pdf>

We point to AFCA's recent publication on its fairness jurisdiction.<sup>13</sup> This report articulates:

- A Fairness Jurisdiction Tool which ensures AFCA can discuss important issues for resolution with the parties in plain English.
- Decision templates to clearly explain how AFCA has applied the fairness tests in its complaint handling and why decisions made are fair in all the circumstances.
- An apprehended bias policy to ensure AFCA's people remain impartial when working with the parties to resolve complaints.
- The AFCA Engagement Charter which clearly sets expectations of how parties should engage with each other and AFCA to ensure a fair process.
- A Revised AFCA Approach library providing members and complainants with easy-to-understand information about how they handle specific types of complaints.

## **Fairness goes beyond equal compromise**

Significant power imbalances and information asymmetries underpin the relationship between an individual consumer making a TIO complaint, and a TIO member receiving that complaint. TIO members often have the ability to make decisions that fundamentally prevent or restrict a consumer from accessing essential phone and internet services. It is therefore important that the TIO does not view fairness as an equal-footed compromise between the interests of consumers and TIO members. We receive feedback from some consumers that at times the TIO approaches matters in this way. Instead, the TIO should always consider whether the consumer has been treated fairly in accordance with good industry practice and all applicable rules and guidelines.

## **Consumers need to be informed that they can review a TIO decision**

The TIO seeks to strike a balance between consumer and member interests; given the complexity of consumer complaints, it is inevitable that the TIO does not always get this balance right. In many instances consumers can request the TIO to review a decision it has made.<sup>14</sup> However, reports from consumers indicate this is not always made clear. ACCAN has been contacted by consumers who have disagreed with a TIO case manager's recommended outcome, and are not sure where else to go. Therefore, the TIO should be more transparent about consumers' ability to request a review of TIO decisions to address any information asymmetries between consumers, the TIO, and TIO members.

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<sup>13</sup> AFCA 2022, *AFCA publishes Fairness Jurisdiction Project outcomes report*, <https://www.afca.org.au/news/latest-news/afca-publishes-fairness-jurisdiction-project-outcomes-report>

<sup>14</sup> TIO, *What to expect*, <https://www.tio.com.au/complaints/what-expect>

**Case study: Consumer disagreeing with the TIO's decision**

Georgia (name changed) contacted Consumer Action's legal advice line when she didn't know where else to turn after a decision by a TIO adjudicator. Georgia told us the TIO decision included an order for compensation to her, but the TIO had made deductions from the compensation amount for equipment items Georgia had received from the telco which she felt were unrelated to the issue, and therefore should not have been deducted from her compensation. Furthermore, Georgia said she didn't agree with the TIO's pricing of those items. Georgia said she had tried to raise this with the TIO case officer but felt the response she had received was quite rude.

*Case study provided by Consumer Action Law Centre.*

Moreover, the process by which Preliminary Views may be rejected differs for consumers versus TIO members. If a consumer rejects the Preliminary View, the complaint will simply be closed without binding the member.<sup>15</sup> If the member rejects the Preliminary View, there will be a published Decision made (which can take into account further information or investigation), binding the member.<sup>16</sup> Not only do we consider it unbalanced and unfair to provide an additional level of review to TIO members and not consumers, we are concerned that published TIO determinations will be unbalanced, as only the member-requested Decisions are ever published.

This differs from other Ombudsman Schemes, such as the Energy and Water Ombudsman of Victoria (EWOV), where the energy provider is bound by a decision as soon as it is accepted by a consumer.<sup>17</sup> There is no additional, one-sided opportunity for an energy company to provide further information that the consumer does not get. Comparatively, the Australian Financial Complaints Authority (AFCA) does use the process of 'preliminary assessments', similar to the TIO. However, both the consumer and AFCA member have the opportunity to request that the complaint proceeds to a final 'determination' and to provide reasons for disagreeing with the 'preliminary assessment'.<sup>18</sup>

**Recommendation 6:** The TIO should ensure that consumers making complaints are always aware of when and how they can request the TIO to review its decision

**Recommendation 7:** The TIO should ensure that its complaints review process is completely equitable.

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<sup>15</sup> TIO, "Complaint Handling Procedures" (1 July 2020) cl. 5.3.1.2, available at: <https://www.tio.com.au/about-us/policies-and-procedures#pt5>.

<sup>16</sup> TIO, "Complaint Handling Procedures" (1 July 2020) cl. 5.3.1.3 and 5.3.2.

<sup>17</sup> EWOV Charter, (14 March 2018), clauses 3.11, 3.12, 3.13, 3.16 – 3.18  
[https://www.ewov.com.au/uploads/main/ewov\\_charter.pdf](https://www.ewov.com.au/uploads/main/ewov_charter.pdf)

<sup>18</sup> AFCA Rules and AFCA Operational Guidelines to the Rules (1 April 2022) A.12.2 and A.12.3 (p 62- 64),  
<https://www.afca.org.au/about-afca/rules-and-guidelines/afcas-operational-guidelines>.

## Specialist support for complex issues and vulnerability

Some consumer advocates report that while TIO complaints intake staff generally provide a good level of service, at times they lack the specialist expertise to respond to a consumer's complex circumstances, and may handle a complaint in a way that is culturally or contextually inappropriate for the complainant.

For example, ACCAN is aware of a case where a TIO call centre worker strongly encouraged a consumer living in a rural area to visit their telco's nearest store to resolve an issue, despite the fact that this would have been difficult due to the consumer's availability and significant distance from the store. We are also aware that EDR schemes often favour conciliation as a method of dispute resolution, but this is rarely an appropriate dispute resolution method for consumers experiencing vulnerability due to power and information imbalances between the parties.

We feel it is appropriate for the TIO to employ specialist complaints intake staff that are well-versed in complex or vulnerable consumer circumstances, to which consumers could be referred if they indicate a need for additional or specialised support. An alternative suitable approach would be for the TIO to flag complaints where it is clear a consumer is in a vulnerable or complex personal circumstance, and for those complaints to be immediately referred to a case manager for resolution.

**Recommendation 8:** The TIO should introduce a specialised process to deal with consumers experiencing vulnerability or complex circumstances, flagged at the point of initial complaint intake.

## Industry Benchmark 4: Accountability

### Transparent and granular complaints data is key

The TIO's existing reporting is highly valuable to consumer advocates and must be continued. However, we would welcome more detailed information in the TIO quarterly reports, with a particular focus on the number and types of complaints received by all TIO members, and their resolution rate. This would assist consumer advocates in identifying key industry issues in need of advocacy and reform. Furthermore, enhancing TIO public reporting practices through increased transparency and granularity would support industry behavioural change and assist community organisations advocating on behalf of consumers. Public reporting practices drive change in EDR schemes because individual service providers are faced with the threat of reputational damage and, consequently, a decline in sales to consumers if they do not adequately deal with complaints. Reporting by AFCA sets a useful precedent for EDR complaints reporting. AFCA identifies the number of complaints received by AFCA by each member, the level at which complaints were resolved, rate of resolution, and broad area of complaint.<sup>19</sup> This level of granularity drives greater accountability by firms performing poorly, while at the same time showing which firms promptly resolve complaints at an early stage of the process.

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<sup>19</sup> AFCA, *Complaints by firm*, <https://data.afca.org.au/complaints-by-firm/>

Consumers living in regional, rural and remote areas are more likely to experience connectivity issues, and do not have the luxury of easily visiting their telco in-store for assistance. Where possible, the TIO should capture and report data on the geographical location of the consumer complainant (e.g. postcode or region) and the service technology type where applicable. This would provide more transparency around the unique communications challenges experienced by consumers living in regional, rural, and remote areas. It would also assist the advocacy or community organisations that support these consumers.

**Recommendation 9:** The TIO should expand its public reporting to provide greater detail about the technology types, geographical location, and TIO members involved in TIO complaints.

When a consumer raises a matter with the TIO that it does not have jurisdiction to handle, the matter is logged by the TIO as an Enquiry.<sup>20</sup> Complaints that have not been raised with the TIO member before a consumer contacts the TIO will be treated as Enquiry Referrals, where the TIO sends the complaint to the TIO member, but allows members a longer time for resolution. The TIO tracks and reports on the number of Enquiries received – 32,450 in the 2021-22 financial year.<sup>21</sup> It would benefit consumers and their advocates greatly for the TIO to track and publicly report on the issues present in Enquiries, particularly where a complaint falls outside the TIO’s jurisdiction. It is inevitable that some TIO Enquiries will not be relevant to the TIO’s core function of providing dispute resolution services. However, to properly assess whether the TIO’s jurisdiction and services are meeting the needs of communications consumers, it is important that there is public accountability and transparency over matters where the TIO did not provide dispute resolution services.

**Recommendation 10:** The TIO should capture and publicly report on the issues and reasons why it could not deal with a matter classified as an Enquiry.

## Industry Benchmark 5: Efficiency

### Complaints should be handled as quickly and efficiently as possible

Access to timely external dispute resolution is fundamental to the provision of phone and internet services, which for most people are essential. This is because consumer complaints are often related to fundamental issues with a person’s service;<sup>22</sup> the longer dispute resolution takes, the longer a consumer may be left without a functioning service.

For more straightforward complaints, we consider 10 business days too long as the maximum timeframe for TIO members to resolve complaints at the referral stage. The TIO could separate

<sup>20</sup> TIO, *Complaint Handling Procedure*, <https://www.tio.com.au/about-us/policies-and-procedures>

<sup>21</sup> TIO 2021, *TIO Annual Report 2020-21*, [https://www.tio.com.au/sites/default/files/2021-09/TIO\\_AR\\_Accessible\\_LR.pdf](https://www.tio.com.au/sites/default/files/2021-09/TIO_AR_Accessible_LR.pdf)

<sup>22</sup> TIO 2022, *TIO Quarterly Report*, [https://www.tio.com.au/sites/default/files/2022-02/TIO%202022%20Q2%20Report\\_03.pdf](https://www.tio.com.au/sites/default/files/2022-02/TIO%202022%20Q2%20Report_03.pdf)

‘simple’ complaints (for example, those related to inaccurate billing or account access problems) from other complaints, and require the former to be resolved at referral in 5 business days.

**Recommendation 11:** The TIO should differentiate simple complaints that could reasonably be resolved within 5 business days from referral, and amend the permitted response time accordingly.

## The TIO should follow up on complaint referrals

A key area for process improvement is at the completion of Stage 1, or referral stage, of the TIO’s complaints process. Currently, when a consumer contacts the TIO with a complaint that it is able to handle, in most cases the complaint is referred back to the TIO member for resolution within 10 business days. If the consumer is unsatisfied with the member’s response, the consumer must then contact the TIO again to indicate that the complaint has not yet been resolved.<sup>23</sup>

The TIO should introduce a process by which it proactively follows up with consumers to assess whether the member and consumer have resolved the complaint. It is important to acknowledge that when a consumer raises an issue to the TIO, the issue has often persisted for weeks or even months. Case studies and anecdotal feedback indicate that consumers can ‘slip through the gaps’ and cease to pursue a complaint after it has been referred to a member, and not resolved.

We are concerned that this leads to a gap in the TIO’s data between those who have actually been able to resolve their complaint, and those who simply do not or are not able to follow-up with the TIO again. The TIO states on its website that ‘almost 90% of complaints are resolved within 10 business days’.<sup>24</sup> However, we know from speaking to consumers who are confused about whether their matter is still with the TIO, or who have never heard again from their provider, that this does not account for the percentage of people who make complaints to the TIO but do not proactively re-engage with the TIO. This can be due to confusion, complaint fatigue, or disengagement for many other valid and understandable reasons.

In contrast, AFCA requires its members to provide it with a response to a complaint referred to them by AFCA. This then triggers a generic email from AFCA to the consumer, noting they understand the member has responded, and notifying the consumer they can contact AFCA if the complaint has not been resolved. If the member never contacts AFCA within the resolution timeframe, the matter is automatically progressed to AFCA Case Management.

In many cases, the people who will be most disadvantaged by a lack of follow up by the TIO will also be those experiencing significant vulnerability – people who are struggling with telecommunications or other stress-inducing debt, or people experiencing family violence, or homelessness, for example. The TIO should introduce a mechanism, either by phone call, email or SMS, to confirm with the consumer whether a complaint has been resolved at the completion of the referral period. If the complaint has not been resolved at this stage, the TIO should continue to handle the complaint.

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<sup>23</sup> TIO, *Complaint Handling Procedures*, <https://www.tio.com.au/about-us/policies-and-procedures>

<sup>24</sup> TIO website, <https://www.tio.com.au/>

**Case study: Consumer struggling to secure telco responses**

David (name changed) is in his thirties, and called the National Debt Helpline (NDH) in late 2019 about multiple debts totalling more than \$60,000. David told us he worked in catering and sometimes drove for a ride-share service, but he was struggling with an injured leg, which he thought may reduce his approximate \$1600/fortnight salary. David said he was experiencing mental ill-health, with the overwhelming nature of his debts adding to this.

David told us that in 2018, he purchased an iPad at an electronics retailer, which also signed him up to a telco service. He was already in a contract with a different major telco provider. After he received the new SIM card, the service was inconsistent; he couldn't get incoming calls or make outgoing calls - sometimes he had no signal.

David said he returned to the electronics retailer, and after they changed SIM cards a few times, still it was not working. After two or three weeks, he went to the telco's retail store. David said he was told the telco needed to investigate the SIM card. David said he left them to investigate the SIM card for two to three weeks; after that he continued to have issues. David informed the telco he wanted to cancel his contract. David said he was advised he would then be required to pay cancellation fees.

David said he went to the TIO, who said they would contact the telco, and if he did not get a response, he should call the TIO back again. David said he went back to the telco, but still nothing happened, so he cancelled the contract to return to his old provider. David said he then received an invoice for approximately \$500, and, at the time of his call to NDH, a letter stating legal action would be taken against him.

*Case study provided by Consumer Action Law Centre.*

We note that the TIO supported Recommendation 7 of the 2017 Independent Review of the TIO, which stated that 'the TIO should undertake a limited exercise of periodic telephone surveying of a randomly selected group of consumers whose complaint does not return to the TIO as a conciliated (Level 2) complaint – to check that they were satisfied that their complaint was reasonably and fairly dealt with by the provider and, if not, why they did not pursue their complaint through the TIO.'<sup>25</sup> The TIO undertook this survey, and some high-level findings were included in the TIO's 2019 submission to the *Consumer Safeguards Review Part A: Redress and Complaint Handling*. This submission reports that that survey found 91% of providers made contact with the consumer complainant after referral, and 81% of consumers had their issue resolved through this referral process.<sup>26</sup> The fact that 9% of consumers did not receive contact is a particularly concerning figure, and it is not clear whether their complaint progressed through the TIO. Furthermore, it is unclear

<sup>25</sup> Cameron Ralph Khoury 2017, *Telecommunications Industry Ombudsman Independent Review Report*, [https://www.tio.com.au/sites/default/files/2019-05/2017\\_0929-TIO-Report-Final\\_0.pdf](https://www.tio.com.au/sites/default/files/2019-05/2017_0929-TIO-Report-Final_0.pdf)

<sup>26</sup> TIO 2018, *Submission to Consumer Safeguards Review Part A Redress and Complaint Handling*, [https://www.tio.com.au/sites/default/files/2019-05/Consumer-Safeguards-Review-TIO-submission\\_0.PDF](https://www.tio.com.au/sites/default/files/2019-05/Consumer-Safeguards-Review-TIO-submission_0.PDF)

when the TIO's survey took place, how many consumers participated in the survey, whether the sample was diverse or representative, or why complaints hadn't been resolved at the point of referral.

In addition, the survey found that 70% of consumers whose complaints were referred, but didn't return to the TIO, felt frustrated. In addition, 57% felt angry, 56% felt annoyed, 51% felt stressed, and 47% felt powerless dealing with their telco. This is a significant concern, and further demonstrates that the current TIO complaint referral process is leaving too many consumers behind.

**Recommendation 12:** Once a complaint has been referred to a TIO member, the TIO should follow up with the consumer to assess whether the complaint has been resolved, and should continue handling the complaint if it hasn't.

## Working alongside consumer advocates

There have been significant improvements in how the TIO engages with consumer advocates and community organisations in recent years, for which the TIO should be commended.

However, the TIO's recognition of documents from advocates that establish their authority to deal on behalf of consumers continues to be an issue that negatively impacts peoples' access to justice. Despite multiple COVID-19 lockdowns since 2020, Consumer Action caseworkers have run into multiple hurdles in attempting to have the TIO recognise our community legal centre's authority to act for the client. This included requirements for details to be handwritten, despite state-mandated work from home orders that made this incredibly difficult. These burdens create stress for vulnerable clients and are incredibly inefficient and time consuming for consumer advocates. They essentially reduce the community sector's capacity to assist and provide services to consumers. Recognition of documents that establish a consumer advocates', particularly legal representatives', authority to act has been a problem in the telco sector for years. If the TIO is unable to accept legal representative documents because their industry members refuse to accept them (despite guidance from the ACCC and ASIC),<sup>27</sup> this not only affects the efficiency of the TIO but also undermines its independence, or perception of independence.

## The TIO should be adequately resourced

It is important that the TIO is adequately resourced to handle complaints in a timely and thorough manner. We commend the TIO's significant efforts to improve the efficiency of its processes and triaging, particularly through the COVID-19 pandemic. In an environment where TIO complaints have been steadily decreasing, the financial sustainability of the TIO should be a priority to ensure adequate resourcing and prevent delays to complaints handling. If the current funding model cannot sustain timely and thorough dispute resolution as complaints decline, the funding model should be reconsidered.

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<sup>27</sup> ACCC and ASIC Debt Collection Guidelines, (April 2021) ch 9 p 20.  
<https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>

A key component of effective Ombudsman scheme funding is a mix of both member-based and case-based funding. We recommend the TIO consult with AFCA and EWOV on its funding models and efficacy, noting AFCA is currently reviewing its funding with its industry members.<sup>28</sup>

We broadly support the following principles for the TIO's funding model:

- **The overall resourcing level is sustainable and sufficient to ensure timely, high quality decision-making:** adequate resourcing is critical to ensure predictable, quality, and consistent outcomes.
- **There is a user-pays element, with fees reflecting the frequency and length of complaints:** this reduces costs for telcos that do not cause complaints, and properly incentivises telcos to resolve disputes at the IDR stage.
- **The funding model should not disincentivise or prevent a proper investigation of the consumer's dispute or pressure consumers to close matters early;** and
- **Critically, the TIO must remain free to consumers:** Removing the cost barrier is one significant way in which the TIO provides access to justice for any consumer with a complaint against their telco. While telcos may raise concerns about the 'costs' of the TIO, we see the other side—the needless costs that arise from telcos failing to do the right thing in the first place, failing to respond appropriately in IDR, and even failing to respond to provide basic documents (such as the contract) within the legally prescribed timeframes.

## Industry Benchmark 6: Effectiveness

### Small business complaints

We are pleased that the TIO has recently focused on the unique communications problems that small businesses experience, and has invested in addressing and reporting on those complaints.<sup>29</sup>

The TIO is permitted to deal with complaints from small businesses, and advises 'that generally, a small business or not-for-profit consumer has up to \$3,000,000 annual turnover and no more than 20 full-time employees'.<sup>30</sup> The TIO Board decided not to change its definition of small business when modernising the TIO's Terms of Reference (**ToR**) in 2020.<sup>31</sup> The TIO's current definition of small business has proved restrictive and undermines the effectiveness of the scheme, because it limits access to EDR for many businesses that would legally be considered small under the Australian Consumer Law.<sup>32</sup> ACCAN is regularly contacted for assistance by small businesses with low profit

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<sup>28</sup> "AFCA consults on proposed funding model" (10 March 2022) available at: <https://www.afca.org.au/news/media-releases/afca-consults-on-proposed-funding-model>.

<sup>29</sup> TIO 2020, *Addressing the causes of small business complaints*, [https://www.tio.com.au/sites/default/files/2020-06/TIO%20Addressing%20the%20causes%20of%20small%20business%20complaints%20-%20Systemic%20Investigation%20Report%20June%202020\\_4.pdf](https://www.tio.com.au/sites/default/files/2020-06/TIO%20Addressing%20the%20causes%20of%20small%20business%20complaints%20-%20Systemic%20Investigation%20Report%20June%202020_4.pdf)

<sup>30</sup> TIO, *Who we can help*, <https://www.tio.com.au/complaints/who-we-can-help>

<sup>31</sup> TIO, *2020 Terms of Reference Modernisation*, <https://www.tio.com.au/news/2020-terms-reference-modernisation>

<sup>32</sup> Joint consumer submission 2020, *Consultation – Modernising the TIO Terms of Reference*, <https://financialrights.org.au/wp-content/uploads/2020/09/Submission-to-the-TIO-Terms-of-Reference-Review.pdf>

margins that exceed the TIO's threshold, for whom pursuing dispute resolution through the courts is not financially possible.

**Case study: Small business faces significant delays**

Salim's (name changed) small business operates two pharmacies. His telco sold him a PABX phone system to service both pharmacies, and promised it would be able to do things like transfer calls between sites. However, Salim's phone system hasn't been working as promised for 18 months, and his telco wasn't offering a proper solution. Salim made contact with the TIO who treated his issue as a referral, and sent the complaint back to the telco for resolution.

Over the next 2 months, Salim was in contact with both the TIO and his telco to try and come to an agreed solution. The TIO then sent Salim a form to fill out before proceeding to the next stage of dispute resolution. The form asked for an annual turnover estimation, which was a little over \$5 million for Salim. He didn't hear back from the TIO after he submitted the form. When he called to follow up, the TIO informed him that they couldn't help him anymore, because his annual revenue was over their threshold of \$3 million. Salim's pharmacies run off a small profit margin due to the wholesale cost of medicine. Salim spent another month disputing the issue with his telco on his own before finally coming to an agreed resolution.

It is important that the TIO always checks whether a small business seeking to make a complaint is eligible to do so at the outset. We understand that often the TIO does this, however as this case study demonstrates, we are aware of cases where a business consumer has not understood why the TIO could not handle its complaint, or only found out it was ineligible to make a complaint after the complaint was accepted by the TIO.

**Recommendation 13:** The TIO should reconsider the suitability of its definition of small business, and ensure that it triages small business complaints effectively.

## Device and equipment complaints

We have engaged extensively with the TIO on the matter of its jurisdiction to handle device and equipment complaints. As it stands under the modernised ToR, the TIO can handle complaints involving a problem with telecommunications equipment supplied by a member, or with a member's network infrastructure, that affects the consumer's access to a telecommunications service supplied or offered by a member.<sup>33</sup> Our 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

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<sup>33</sup> TIO Terms of Reference, <https://www.tio.com.au/sites/default/files/2021-08/TIO%202021%20Modernised%20Terms%20of%20Reference%20FINAL.pdf>

creating consumer confusion, further inconvenience, and delays in resolving disputes. Again, we urge the TIO to consider extending its jurisdiction to handle all complaints about device and equipment sold by its members.

**Recommendation 14:** The TIO should reconsider how it handles device and equipment complaints to ensure the scheme is addressing complaints effectively.

## **Lack of jurisdiction to consider a complaint where a legal proceeding has been initiated**

We suggest that, as a matter of effectiveness and appropriate scheme coverage, the TIO should seek to expand its jurisdiction to consider complaints in circumstances where a legal proceeding has been initiated. Such a position would align the TIO with the jurisdiction of AFCA and EWOV in relation to such matters.

It is too often the case that consumers experiencing vulnerability are not able to seek help until a 'crisis point' is reached. Sometimes people experiencing disadvantage or vulnerability only present to a community legal centre or financial counsellor after been served a Magistrates' Court Complaint in relation to an alleged debt, including telco debt.

Proceedings are usually initiated by a debt buyer or by a debt collector acting as the TIO member's agent. Sometimes consumers, when talking to their lawyer or financial counsellor, indicate they weren't aware any alleged debt was owed. They might describe circumstances of the alleged debt that indicate that it is likely the TIO member has not complied with its regulatory obligations, or has not followed good industry practice.

By way of example, in Victoria, once served with a Complaint, a consumer has only 21 days in which they can file a Defence to avoid summary judgment being entered against them. However, even where legal assistance is sought and available within time, and a lawyer assesses the consumer may have defences open to them, actually filing a Defence is a high-risk path, as having the matter proceed to a contested hearing attracts significant costs risks (in the range of thousands of dollars) in the event the consumer is ultimately unsuccessful in defending the claim.

The TIO's ToR currently preclude a consumer in such circumstances from bringing a TIO complaint about liability for the debt (in circumstances where a proceeding has been initiated by a judgment order not yet made), or financial hardship in relation to making payments towards the debt: this is a position we consider unfair.

EDR forums such as TIO are far more accessible to consumers than the court system. Processes are less formal, and the TIO (like other EDR schemes) is able to consider what is fair and reasonable in all the circumstances and good practice. Moreover, EDR schemes avoid the significant cost risks described above, which create an imbalance of power between consumers and large member and debt buyer companies.

The TIO's refusal to handle a complaint where a party has commenced proceedings in a court or tribunal results in consumers being unable to access this scheme in circumstances as described above, even where there is significant material to suggest that a member has not acted fairly or in line with good industry practice.

In our view, this significantly limits access to justice for consumers, and could result in devastating outcomes for consumers who are denied fair and accessible EDR to challenge alleged debts.

We recommend that the TIO adopt the below approach taken by AFCA in relation to initiated proceedings.

**AFCA rule A.7.1:**

While AFCA is considering a complaint, the Financial Firm is subject to the following restrictions:

- a) The Financial Firm must not begin legal proceedings against the Complainant, anyone else joined as a party to the complaint or Other Affected Party about any aspect of the subject matter of the complaint; **and**
- b) The Financial Firm must not seek judgment **or take other action to pursue debt recovery legal proceedings that the Financial Firm began before the Complainant submitted the complaint to AFCA**, other than to the minimum extent necessary to preserve the Financial Firm's legal rights.<sup>34</sup>

We are also concerned that the exclusion of jurisdiction set out in 2.8 and 2.44(c) of the TIO's current ToR may significantly disadvantage consumers who are attempting to settle a family law property matter, or have already settled such a matter. In family contexts, it is not uncommon for one party to have liability for debts for which they received no benefit, including telco debts. This is particularly the case where family violence and economic abuse are involved. Such instances often also raise questions about the appropriateness of initial contracting by the telecommunications provider, and indicate possible liability claims against the TIO member by the alleged debtor.

A family law property order effectively deals with all assets and liabilities to a relationship. As such, any debt alleged prior to the settlement is effectively 'dealt' with by that legal proceeding. At the same time, it would generally be inappropriate to delay family law property settlements until a telecommunications dispute is resolved through the TIO.

We suggest that the TIO clarify that, where a TIO member is not involved in the property proceeding, the TIO is not excluded from considering a dispute with a provider about a telecommunications debt that existed prior to the property proceeding's initiation.

## Additional issues

### Revised Terms of Reference

In addition to our feedback on the TIO's revised ToR provided above, we strongly support the TIO's ability to award compensation for non-financial loss that is not related to privacy issues.<sup>35</sup> While this is a welcome improvement, we consider that the TIO's approach to awarding non-financial loss

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<sup>34</sup> AFCA, *Complaint Resolution Scheme Rules*, <https://www.afca.org.au/media/1111/download#:~:text=complaint-,A.,subject%20matter%20of%20the%20complaint>.

<sup>35</sup> TIO Terms of Reference, <https://www.tio.com.au/sites/default/files/2021-08/TIO%202021%20Modernised%20Terms%20of%20Reference%20FINAL.pdf>

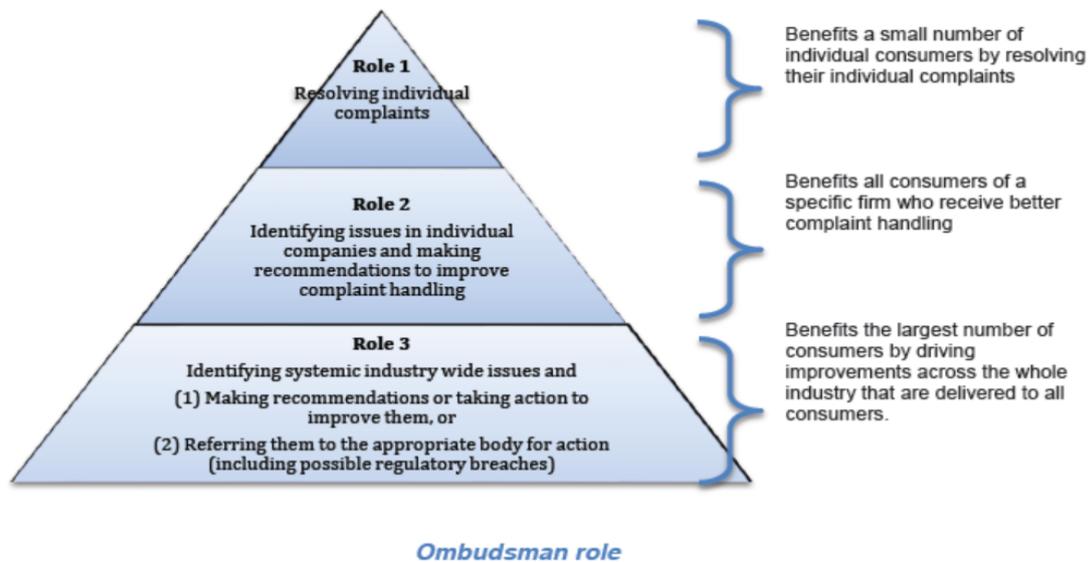
should resemble that of AFCA, at a minimum.<sup>36</sup> This would involve a maximum compensation amount of \$5,400 per claim – which is still significantly lower than the \$100,000 maximum compensation the TIO can award for privacy complaints. Furthermore, non-financial loss complaints should not be specifically capped, as they would already fall within the overall cap on compensation. It is important that the TIO’s compensation amounts both for financial and non-financial loss are periodically reviewed.

**Recommendation 15:** The TIO should review its approach to awarding compensation for non-financial loss, ensuring consistency with other major EDR schemes.

### Systemic investigations

A focus on systemic issues should be at the core of any ombudsman scheme, and is a critical aspect of the TIO meeting Industry Benchmark 4: Accountability.<sup>37</sup> The TIO’s systemic issues function can provide solutions for individual disputes, and can also help solve bigger problems at their source via contributing to improvements in industry practice over time. The TIO’s engagement on policy issues, by making policy submissions and participating in consultations for example, makes an important contribution to the development of communications policy. The TIO should be appropriately resourced to continue this important engagement.

We consider the role of EDR schemes to be threefold, expressed in the diagram below.<sup>38</sup>



<sup>36</sup> AFCA, *The AFCA approach to non-financial loss claims*, <https://www.afca.org.au/media/335/download#:~:text=AFCA%20will%20only%20award%20compensation,enjoyment%20or%20peace%20of%20mind.&text=compensate%20non%2Dfinancial%20loss%20in%20superannuation%20complaints>.

<sup>37</sup> Treasury, *Benchmarks for Industry-based Customer Dispute Resolution*, [https://treasury.gov.au/sites/default/files/2019-03/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf)

<sup>38</sup> Lucerna Partners 2015, *Review of Ombudsman Services: A report for Ofgem*, [https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/review\\_of\\_ombudsman\\_services\\_energy\\_2.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/09/review_of_ombudsman_services_energy_2.pdf)

It is essential that the TIO continues its work investigating and escalating systemic issues facing phone and internet consumers, and importantly, publishing these reports. Similarly to its quarterly complaints reports, the TIO's systemic issues reports inform consumer advocates' work and provide a factual and quantitative evidence base for advocacy. It also supports transparency and TIO member accountability. Some consumer advocates feel that, when raising individual consumer complaints to the TIO, it can be difficult to convince the TIO that an individual consumer complaint is potentially a systemic issue.<sup>39</sup> This was highlighted as a concern by advocates responding to telcos mis-selling to First Nations customers in remote areas. The TIO should continue its focus on identifying and reporting on systemic issues. In order to do this effectively, it should ensure it has mechanisms in place to analyse complaints data for emerging trends, as it already does, and it should always consider feedback from advocates indicating a consumer issue may be systemic. The TIO has established a dedicated phonenumber for consumer advocates to use when dealing with TIO complaints, which is a welcome improvement.

**Recommendation 16:** The TIO should continue to refine its processes identifying and reporting on systemic issues facing phone and internet consumers.

**Recommendation 17:** That the TIO continues to engage in communications policy work and is adequately resourced to do so.

## Government and regulator engagement

Point 6.4 in the *Key Practices for Industry-based Customer Dispute Resolution* guidance stipulates that schemes should have mechanisms for referring systemic industry problems to an appropriate regulator for action if required.<sup>40</sup> As the TIO is at the forefront of consumers' issues with their telcos, the TIO is in a privileged position to be able to identify and refer member non-compliance early. It is essential that the TIO does this whenever a possible rule breach is uncovered, especially where this may have caused any level of consumer harm. If the TIO takes a soft-handed approach to telco non-compliance, for example, by only suggesting improvements to a telco's processes to prevent future breaches rather than also informing the regulator, it denies justice to any consumer already affected by that non-compliance. It is the regulator that must decide whether a consumer rule breach is worth enforcing, not the TIO.

**Recommendation 18:** The TIO should refer suspected member non-compliance to the relevant regulator.

## Governance and authorising environment

It is essential that the TIO continues to evolve in line with changes to the communications landscape, which involves constant assessment of the TIO's functions and jurisdiction. In its fourth interim

<sup>39</sup> Cartwright, C and McAuliffe, C 2020, *Telecommunications Debt in Rural and Remote Indigenous Central Australian Communities*, <https://accan.org.au/MoneyMob%20Telco%20Report.pdf>

<sup>40</sup> Treasury, *Key Practices for Industry-based Customer Dispute Resolution*, [https://treasury.gov.au/sites/default/files/2019-03/key\\_pract\\_ind\\_cust\\_dispute\\_resol.pdf](https://treasury.gov.au/sites/default/files/2019-03/key_pract_ind_cust_dispute_resol.pdf)

Digital Platform Service Inquiry report, the Australian Competition and Consumer Commission (ACCC) has reiterated its support for the establishment of an ombudsman scheme to handle consumer complaints related to digital platforms and online marketplaces.<sup>41 42</sup> We consider the TIO a suitable and well-equipped scheme that could handle digital platforms complaints with the right resourcing and authorisation.

We have concerns about how the convergence of the telecommunications and energy sectors will impact EDR. A number of retailers, including Telstra, AGL and Origin, are expanding into joint communications and energy service provision. Under this model, a consumer can bundle their energy service with a home broadband service under the same account. It is unclear how the telecommunications regulatory framework will apply to converged services, and what this will mean for effective and timely complaints handling. The TIO should consider its role in dealing with converged energy and telco services, and ensure it has strong relationships with and referral mechanisms to state-based energy EDR schemes.

In 2019, ACCAN made a submission on possible amendments to the TIO Constitution which would improve the balance of Directors with consumer and industry experience.<sup>43</sup> Greater balance could be achieved on the TIO board through a 'pure stakeholder' mode of governance. Under this model, there would be four directors with consumer experience, four directors with industry experience, and one independent chair. This would align the board model with other EDR schemes, including AFCA whose governance model has been endorsed by the Federal Government.<sup>44</sup> Currently there are three directors with consumer experience, three with industry experience, two independent directors and an independent Chair.

## Member and stakeholder engagement and outreach activities

We acknowledge that the COVID-19 pandemic has impacted the TIO's ability to do face-to-face outreach, and that the TIO has continued to pursue outreach opportunities in this environment. Feedback from community groups indicates that the TIO should introduce a bold, targeted advertising and interstate outreach agenda, with a focus on consumers in regional and remote areas, First Nations consumers, and consumers experiencing vulnerability. Suggestions for improving consumer awareness of the TIO are listed under our response to Industry Benchmark 1: Accessibility.

In 2019, the TIO established a TIO Consumer Panel to provide it with feedback and advice on a range of issues. Feedback from some members of the Panel indicate that this has been a meaningful

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<sup>41</sup> ACCC 2022, *Digital Platform Services Inquiry Interim Report No. 4 – General online retail marketplaces*, <https://www.accc.gov.au/system/files/DPB%20-%20DPSI%20-%20March%202022%20-%20Full%20interim%20report%20-%2031%20March%202022.pdf>

<sup>42</sup> ACCC 2019, *Digital Platforms Inquiry Final Report*, <https://www.accc.gov.au/system/files/Digital%20Platforms%20Inquiry%20-%20Final%20report%20-%20part%201.pdf>

<sup>43</sup> ACCAN 2019, *Response to TIO Options Paper: Possible Amendments to Constitution*, [https://accan.org.au/files/Submissions/TIO%20Constitution%20Changes\\_Submission.pdf](https://accan.org.au/files/Submissions/TIO%20Constitution%20Changes_Submission.pdf)

<sup>44</sup> Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth), section 1051(3)

method of engaging with the community. One member stated that the TIO Consumer Panel embodied a ‘culture of inclusiveness’, and we encourage this to continue.

In its Good Practice Principles for industry codes and EDR schemes, the Consumers’ Federation of Australia (CFA) indicates that consultation processes should not be rushed, and 6 weeks is generally a reasonable minimum period to respond to a call for submissions.<sup>45</sup> For larger consultations, the TIO typically allows ample time for responses. However, when seeking feedback on targeted issues, occasionally the TIO seeks responses with a very tight turnaround. Community organisations and consumer advocates generally work in resource-stretched environments, and therefore ample notice and feedback windows are always important to ensure engagement is effective and fair.

**Recommendation 19:** The TIO should continue pursuing meaningful stakeholder engagement to ensure better strategic outcomes for phone and internet consumers.

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<sup>45</sup> Consumers’ Federation of Australia 2018, *Good Practice Principles*, <http://consumersfederation.org.au/wp-content/uploads/2018/05/Guidelines-Codes-EDR-Schemes.pdf>

# Appendix

## Findings from Ipsos Omnibus Survey (n=1000) commissioned by ACCAN, April 2022

<b>I am aware of the Telecommunications Industry Ombudsman</b>	n=	%
Strongly disagree	85	9%
Disagree	84	8%
Somewhat disagree	82	8%
Somewhat agree	202	20%
Agree	277	28%
Strongly agree	144	14%
Unsure/don't know	124	12%
Total	998	100%

<b>I am aware of what the Telecommunications Industry Ombudsman can do if I have difficulty resolving a complaint with my phone or internet provider</b>	n=	%
Strongly disagree	90	9%
Disagree	123	12%
Somewhat disagree	127	13%
Somewhat agree	216	22%
Agree	202	20%
Strongly agree	97	10%
Unsure/don't know	142	14%
Total	997	100%

<b>If I can't resolve a complaint with my phone or internet provider, I know where I can go next</b>	n=	%
Strongly disagree	66	5%
Disagree	111	11%
Somewhat disagree	100	10%
Somewhat agree	224	22%
Agree	252	25%
Strongly agree	123	12%
Unsure/don't know	122	12%
Total	998	93%

<b>If I couldn't resolve a complaint with my phone or internet provider, I would take my complaint to the Telecommunications Industry Ombudsman</b>	n=	%
Strongly disagree	51	5%
Disagree	49	5%
Somewhat disagree	50	5%
Somewhat agree	204	20%

Agree	279	28%
Strongly agree	181	18%
Unsure/don't know	183	18%
Total	997	100%

<b>If you had an issue with your phone or internet service that you couldn't resolve with your provider, would you complain to the TIO (Telecommunications Industry Ombudsman)? (Please select all that apply)</b>	n=
Yes, I would, and I have done so before	118
Yes, I would, but I have never done so before	465
No, I wouldn't, as I don't know how	87
No, I wouldn't, as I'm not familiar with them	104
No, I wouldn't, as it's too difficult	49
No, I wouldn't, as I had a bad experience with the TIO in the past	18
No, I wouldn't, as I don't believe it would help	44
No, I wouldn't (other reason)	1
Unsure	149
Total	1035

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.