COMMUNICATIONS ALLIANCE LTD

Consumer Safeguards Review

Part A: Redress and Complaints Handling

COMMUNICATIONS ALLIANCE SUBMISSION

August 2018

Contents

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see http://www.commsalliance.com.au.

INTRODUCTION

Communications Alliance appreciates the opportunity to provide input to the Consumer Safeguards Review Consultation Paper on Part A: Redress and Complaints Handling. This submission is also endorsed by the Australian Mobile Telecommunications Association (AMTA).

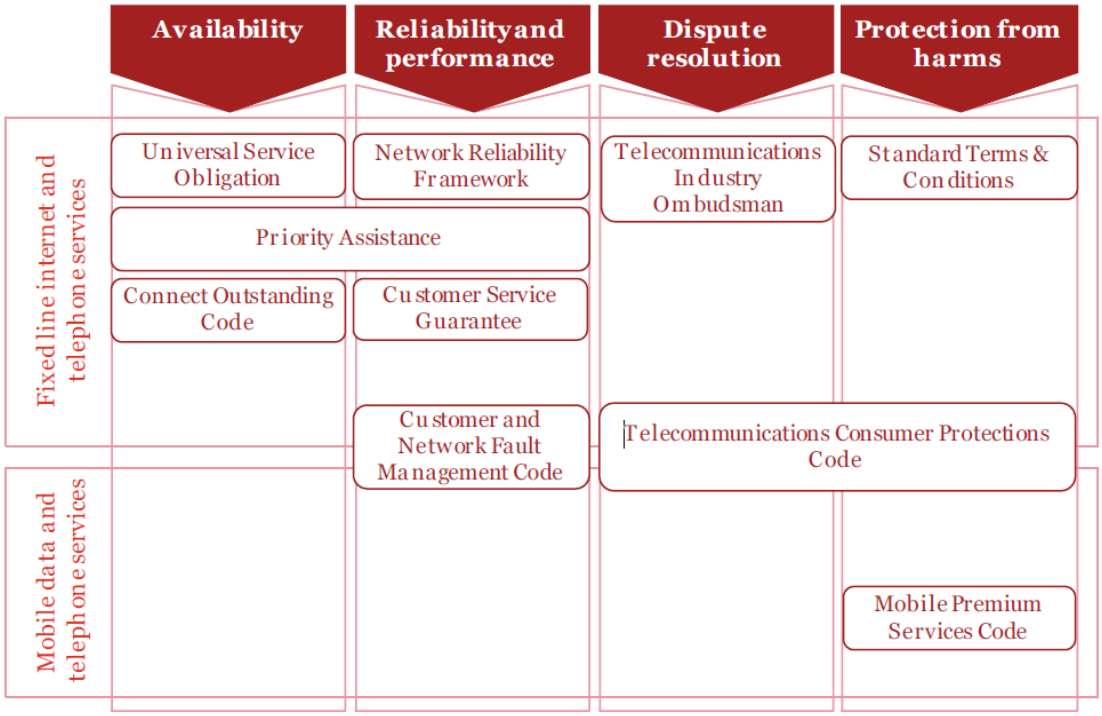
Industry is somewhat perplexed by the direction taken by the Department at the outset of the Consumer Safeguards Review. Our hopes and expectations were that this long-awaited review would examine the appropriateness of Australia's current legislative and regulatory framework and its capability, or lack thereof, to deal with the challenges of the post-2020 world.

We believe that undertaking such an analysis is vital, because the rapid evolution of technology and associated business models have not yet been fully paralleled by regulatory reform.

The Department contracted PwC to analyse the current regulatory environment, and the resulting report highlights its challenges. It explains that "Telecommunications regulation is complex, with multiple layers of regulation and multiple regulators. This has resulted in obligations being duplicated in some areas while leaving gaps in others."[1]

The problem can also be seen in PwC's graphic summary of the current safeguards.

Figure 2: Summary of legislative, regulatory and industry co-regulatory safeguards



Source: PwC Paper, Current telecommunications safeguards and regulatory environment, Page 8.

As shown, the legislative instruments do not necessarily map well to a more technology-neutral world.

[1] Telecommunications Consumer Safeguards, Current telecommunications safeguards and regulatory environment, 3 July 2018. Department of Communications and the Arts and PwC. Pg 6

Communications Alliance and its members strongly recommend that, if it is not already doing so, the Department should use the advice in the PwC report to assist consideration as to how the broader structure of consumer safeguards can be appropriately formed to prevent gaps and duplication. The Department should also include in the review an examination of whether current consumer safeguards, and the principles underlying them, are fit for purpose in the post-2020 world, and if that structure will be adaptable in coming decades.

Communications Alliance and its Members stand ready to assist in this task. To facilitate this approach, the first part of this submission proposes how we consider an appropriate Consumer Safeguards Review would proceed, along with some first principles.

In addition to being concerned about the lack of an overarching approach to the first stage of the Consumer Safeguards Review, Industry also feels that the timing and focus of Part A of the review is curious, given that Redress and Complaints Handling are both areas seeing significant change. The TIO underwent a formal review in 2017, and is still implementing the resulting recommendations. This was a significant and resource-intensive process. Repeating a similar process almost in parallel may be inefficient.

The TIO is widely acknowledged to be a fiercely independent body, contrary to implications in the Consultation Paper. Nonetheless, there is always room for improvement in the efficiency and effectiveness of the TIO's processes, some of which – as outlined in this submission – tend to contribute to the volume of complaints it receives. Our thoughts on Redress and Complaints Handling are addressed in the second part of the submission.

Importantly, while we see problems with several aspects of the consultation paper, we would also like to acknowledge that the Departmental team/Consultant undertaking the review has been highly consultative. Industry has had multiple opportunities to discuss a range of issues, ideas and options with the team. This has given us optimism that we will be able to work collaboratively within the review process in pursuit of sensible outcomes.

CONSUMER SAFEGUARDS REVIEW: PROPOSAL

The aforementioned PwC paper identifies problems with the current layers of regulation. However, it does not perform a gap analysis, identify duplication, or look at lessons learned from the evolution of the safeguards environment.

To ensure the Consumer Safeguards Review results in an appropriately durable and agile system for the post-2020 environment, it should begin with an understanding of the lessons learned from current regulation, the challenges of the current system, and a scoping exercise of the post-2020 environment.

We recommend that following the post-2020 scoping exercise, first principles for the new safeguards system be established. Overarching principles would allow the regulatory framework to be developed in a cohesive manner, with clear priorities, instead of via a potentially problematic piecemeal process.

We have provided initial thoughts on each of these stages in the review below, as starting points for further discussion.

Lessons Learned

This review is a timely opportunity, as the Department has the opportunity to examine the use of – and results flowing from – two different models. Following the end of the monopoly era in the Australian telecommunications sector, the development and roll out of fixed line telephony and the internet was undertaken in a highly regulated environment.

On the other hand, the mobile telephony and broadband market was allowed to develop with light touch co-regulation, resulting in one of the strongest mobile markets globally. This is evidenced through a variety of factors, including speed (8th globally for mobiles, vs 54th for fixed line as at June 2018[2]), leading globally on 5G development,[3] and Australia being identified by Deloitte as "one of the leading global adopters of the smartphone."[4]

Lessons from these experiences include:

- regulatory intervention should be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
- regulation should be clear and clearly articulated. Intervention should only occur when and if there is market failure, be clearly confined to the areas of failure and be removed when the failure has been remedied; and
- regulation should ensure that wholesale and retail market participants have appropriate incentives to deliver outcomes for their customers.

Challenges of the current system

The piecemeal evolution of the current system has created a number of challenges, which will grow as the market becomes more complex. Providers must engage with multiple regulators with duplicative and confusing rules, which create unnecessarily high compliance costs and can be nearly impossible for smaller providers to navigate.

[2] Speedtest Global Index, June 2018, http://www.speedtest.net/global-index

[3] *Telstra turns of free 5G-enabled Wi-Fi and Australia's first 5G Connected Car,* Telstra Media Release, 27 March 2018, https://www.telstra.com.au/aboutus/media/media-releases/Telstra-offers-Australias-first-taste-of-5G and *Telstra claims world first with 5G call on a commercial network,* CRN, 16 July 2018, https://www.crn.com.au/news/telstra-claims-world-first-with-5g-call-on-a-commercial-network-498347

[4] Deloitte Mobile Consumer Survey 2017, The Australian cut, https://www2.deloitte.com/au/mobile-consumer-survey

The PwC paper identifies "key dynamics" in today's market that the consumer safeguards system was not designed for, including "changing market structures… increased choice… increased competition… [and] innovative technologies."[5]

These challenges demonstrate that the current system is already unsuitable for today's environment, and will become even more so as the market continues to evolve.

Post-2020 Environment

An initial trend-impact analysis to consider the post-2020 telecommunications environment can give us, at a minimum, the following information:

- There will be more small operators in the market. Small operators typically do not have legal or regulatory expertise or capacity, and need clear rules and structures to operate well.
- The delivery chain for telecommunications services will likely remain multi-stage. A multi-link delivery chain presents challenges to regulation, as is already being experienced by the regulator in the development of the new NBN migration rules, particularly the Service Continuity Standard and related Determination.
- The relationship with consumers may become more technology-neutral, with interest focused on the service itself (access to the internet) rather than on how it is delivered. For example, there may be homeowners or occupiers who choose to use 5G instead of fixed line broadband (a trend already developing in the 4G world), and satellites will likely become more prevalent as the cost of deploying small cell satellites decreases and Low Earth Orbit (LEO) broadband delivery becomes more pervasive.
- Telecommunications providers will continue increasing the personalisation and bundling of services, including over-the-top services such as streaming and messaging tools, leading to increased choice for consumers.

These are the results of a very simple desktop trend-impact analysis, which already shows major changes in the market and consumer experience.

When discussing the legislative and regulatory structure that should be developed to support an innovative and accessible telecommunications environment – which will almost certainly be a key productivity enabler of the Australian economy – it would be more appropriate to perform a complete foresight exercise, through scenario planning, horizon scanning, or other methods.

Skipping any consideration of how to plan a consumer safeguards environment for a quickly changing future risks significant impairment of the usefulness of the consumer safeguards review. It also runs the risk of holding consumers and the market back, by imposing an inflexible and largely obsolete system.

First Principles

By having pre-agreed first principles for consumer safeguards, the associated regulatory and co-regulatory framework can be appropriately designed, and the most efficient balance of market forces and regulation identified, based on prioritised outcomes.

Industry suggests the first principles outlined below as a starting point for discussion, after the above steps have been taken to appropriately analyse the future environment. Please note that these are not formally agreed upon by industry, but we consider them as an example of the direction this review could take.

[5] PwC Current Safeguards, pg 3

Access

- All Australians should be able to access telecommunications to enable participation in a digital society;
- A 'basic essential service' should be available to all Australians; and
- Communications infrastructure should be functional and reliable.

Choice

- Communications markets should be open and competitive so as to encourage investment, innovation and diversity of choice.

Rights

- Consumers should have access to information to allow them to make informed choices, based on their preferences;
- Consumers should have appropriate avenues for redress; and
- Consumers should be confident that their personal information is protected appropriately.

Regulatory Framework

We recommend considering the regulatory framework from the perspective of a 'blank slate', using the principles above and the lessons learned from previous experience.

Based on the proposed first principles and identified lessons, a revised regulatory framework would need at a minimum the following goals:

Straightforward regulatory structure

As previously discussed, the current consumer safeguards structure is unnecessarily complex. Simplifying this system would have positive benefits, including:

- Lower operating costs for all providers – and ultimately for consumers - which would support greater and more affordable access.
- Lower barriers to entry and ongoing operations for small providers (that do not typically have the capacity for the legal and regulatory support often needed to understand the overlapping regulations in today's environment), increasing diversity of market offerings and innovation towards the goal of choice.
- Empowerment of consumers to better understand their rights.

Technology-neutral rules and protections

The development of the current structure over time has resulted in it not being technology-neutral. With the increasing use of varied technologies to deliver the same services, this presents difficulties for consumers and providers in understanding which rules apply to which situations. It also prevents regulation from adapting quickly to changes in technology and the market, creating additional confusion and gaps.

Clear delineation of responsibilities

While the multi-regulator context (ACCC and ACMA), in addition to the Department, does not appear likely to change, having clearer roles identified for each party will help consumers and providers to understand their rights and responsibilities.

RESPONSE TO REDRESS AND COMPLAINTS HANDLING PAPER

As explained in the Introduction, Communications Alliance does not see the approach taken in the Consumer Safeguards Review thus far as optimal. Not only is the process beginning with a detailed examination of procedures and bodies which are presently changing, but it is counterintuitive to begin the review with issues that rather lie towards the end of consumer-provider engagement process (redress and complaint handling).

The goal of an appropriate consumer safeguards system, and of all providers, is that consumers do not arrive at the point where they are in need of complaints handling or redress. The priority of the review should be to prevent this circumstance, directing time and efforts to improving the overall consumer experience.

Having stated our concerns with the approach to the review, this submission will now address Consultation Paper A directly.

Industry is disconcerted by the factual inaccuracies and misunderstandings throughout the paper. The consultation paper misrepresents the regulatory and dispute resolution systems in place, and does not offer any support or reasoning behind the proposed changes or principles. Our submission will first address the misconceptions in the consultation paper, then respond to the proposals for reform.

Context

The paper takes a very small snapshot in time, coincident with significant changes in the industry market structure, to review a redress and complaints handling system that has worked well for quite some time. While Communications Alliance recognises that the 18-month period up until early 2018 saw a disappointing rises in complaints (due to a variety of challenges being faced across industry), this one moment in time does not provide an appropriate basis nor stable data for a review. If Part A of the review is only going to look at the current situation and recent challenges, then the evaluation needs to be done following the implementation of solutions to those challenges.

Complaint Volumes: The paper states that TIO Complaint Volumes are "now again approaching the 2012-13 levels."[6] While this was true for FY 2016/2017, the monthly TIO complaint numbers shared with Communications Alliance in recent months have fallen significantly, to well below the levels seen during the corresponding period last year. Additionally, the most recent Complaints in Context report shows a decline in complaints as a ratio of Services in Operation below any numbers seen in 2017. This decrease occurred prior to the enactment of the new Complaints Handling Standard and other new ACMA instruments, demonstrating that the disappointing last year was likely a temporary challenge to which providers have responded.

Complaints Handling: The ACMA's new Complaints Handling Standard has only been in force for one month, not enough time for this review to take into account any impacts of the changes. Additionally, ACMA reports have stated that the current customer experience is being impacted by the NBN migration, and thus the ACMA has introduced additional instruments to directly manage those experiences, including the Service Continuity Standard and the Service Migration Determination. The ACMA anticipates that these instruments will have an impact on customer experience and complaints, and yet the timing of the Complaints Handling section of the review is such that the impact of these instruments cannot be considered. In fact, the consultation paper barely addresses these new rules.

[6] PwC Current Safeguards. pg 3

Co-Regulatory System

The evaluation of the current regulatory system is not accurate. Firstly, it ought to be noted that the current regime is largely co-regulatory rather than self-regulatory (as incorrectly stated in the consultation paper) – the difference being the development of codes and standards through industry (following strict rules around consultation processes), registration of those instruments by a regulator with subsequent enforcement by the regulator – accompanied by 'hard' regulation imposed by the regulator where a (actual or perceived) market failure has been identified.

The existing co-regulatory system is designed to enable development of rules by technical experts, support regulatory adaptability to quickly changing technology and community expectations and ensure the enforcement of those rules by a regulator. It balances input from industry, consumers, and other stakeholders with regulatory enforcement powers, while encouraging industry self-accountability. Stating (as the paper incorrectly does) that existing arrangements are: "almost totally reliant on industry accountability and self-regulation"[7] is patently false.

If the current system and its challenges are not well understood, it will be harder to learn from and improve that system.

If there is concern that the various rules providers must abide by need to be changed, then there is a well-established path to revise the relevant co-regulatory and regulatory instruments. If, however, the concern is that the rules are not being followed or enforced, the lever which needs to be applied is the enforcement regime already in place through the ACMA.

However, by misunderstanding the co-regulatory system, the paper works against the accurate evaluation of current issues and the policy mechanisms which can be applied to resolve them.

TIO and External Dispute Resolution

Finally, and alarmingly, the Department has misrepresented the Telecommunications Industry Ombudsman (TIO), including factual inaccuracies about its operation and powers.

The choice to begin the review by focusing on the TIO has surprised many observers. Although by no means perfect, the TIO is a widely respected body, supported by consumers and Industry as an independent arbiter.

The work undertaken by PwC that compares Alternative Dispute Resolution bodies (ADRs) globally is not necessarily helpful, given the very specific differences within and surrounding the regimes used as examples.

The consultation paper states that an "inherent problem" is that the TIO is industry-owned and industry-funded. While it is funded by industry fees, this is a format shared with the proposed alternative 'independent' ADR scheme from the paper, and most ADRs cited in the PwC review of international complaint handling models.

The TIO is manifestly independent. The Board consists of an Independent Chair, two Independent Directors, three Directors with consumer experience and three Directors with industry experience, making it more independent than other ombudsmen schemes, such as EWON (NSW) which has an independent Chair, five Industry Directors, and five Community Directors. Additionally, the PwC paper on redress and complaints handling models describes

[7] PwC Current Safeguards. pg 3

the TIO as "an independent statutory corporation" and an "independent yet legislatively established dispute resolution body." [8]

The TIO has also addressed this concern in their public response to the consultation paper, found here: https://www.tio.com.au/about-us/consumer-safeguards-review.

We wish to highlight their explanation as to why the TIO is not "owned by industry":

- The Telecommunications Industry Ombudsman is a not for profit company limited by guarantee and members of the scheme are not shareholders
- Members do not receive payments or profits (for example by way of dividends)
- Membership is compulsory and is required by legislation
- Failure to comply with the requirements of the scheme can result in regulatory enforcement action (by ACMA)

Source: https://www.tio.com.au/about-us/consumer-safeguards-review

Not only is the overall nature of the TIO miscategorised in the consultation paper, but there are also specific inaccuracies.

The paper claims "As the TIO is an industry-owned entity, there are also protocol and legal issues hindering its ability to share information with policy makers and regulators."[9] Industry is not aware of any issues related to the structure of the TIO which would impact the TIO's ability to share information, and considers that this is a choice of the TIO.

Additionally, the paper states that the TIO cannot direct wholesalers and others on the supply chain to act to resolve a complaint, which is untrue and further addressed on page 12 of this submission.

While we consider that some of the process suggestions being considered by the Review team could be helpful changes, the misunderstandings throughout the paper – including the two highlighted above - have led to the proposal of an entirely new External Dispute Resolution Body, rather than revisions to the TIO's current processes. Comparing the current structure and powers of the TIO against the proposed EDR shows that they are quite similar. Effectively, the new proposal would create almost the same body, at significant cost and disruption.

If the proposal for a revised complaint management process is considered to have merit, it could simply be adopted by the TIO Board and reflected in the TIO's operations,

[8] Telecommunications Consumer Safeguards, International and sectoral comparisons of redress and complaints handling models for consumers and small business, 3 July 2018. Department of Communications and the Arts and PwC. pgs 4 & 11
[9] Consultation Paper, pg 5

Proposals for reform

Proposal 1: Industry Complaints Handling

The proposals in this section are not different than the current structure, as providers are already required to have complaint handling policies and make them publicly available, which the ACMA may audit at any time.

According to the TCP Code, and now the Complaints Handling Standard, these policies must be set out in writing, publicly available, and be made available to consumers on request.[10]

As the proposal does not differ from today's requirements and procedures, we have no comment on the proposal as written, and consider that any further review of Complaints Handling should only be undertaken after the new Standard and other procedures have been in place for a sufficient amount of time to consider their impact.

Principles

- **Principle 1: Industry should have responsibility for taking care of its customers.**

  Industry firmly supports the principle that a provider should have responsibility for the relationship with their customers, and this does not differ from the key principles presently followed. We also note that the comments provided on this principle reflect current industry practices.

- **Principle 2: Consumer safeguards are best delivered through direct regulation.**

  In the absence of any discussion, evidence or reasoning presented to arrive at this conclusion, we do not support this principle's inclusion in the review. This is a significant transformation to current practices, and any major changes should be the result of extensive consultation, consideration, and an evidence base.

  The comments provided state that overseas and domestic experience support the suggestion, but this is not demonstrated in either of the associated PwC papers provided with the consultation paper.

  Additionally, the co-regulatory system has delivered positive outcomes for customers over a long period of time. The decline in complaints experienced following the revision of the first *Telecommunications Consumer Protections (TCP) Code* and its subsequent registration in 2012, and the excellent results seen by the industry compliance body Communications Compliance, exemplified by the high compliance with Critical Information Summary requirements, are just two examples of successful co-regulatory exercises.

  We note that in the past year, Industry has been facing new challenges. However, prior to the implementation of the new ACMA rules, the TIO complaints ratio for the largest providers significantly dropped in the most recent quarter, and customer satisfaction surveys showed positive results.[11] While transformative change was always going to present challenges, and there were disappointing results for customers for a time, Industry has adapted and improved. In the cases where the ACMA felt the situation required direct regulation, they had the ability to implement new rules, which Industry worked closely with the ACMA to develop. We additionally note that the ACMA can bring to bear additional enforcement activities to ensure providers are abiding by the co-regulatory rules.

  While there are circumstances where the regulator may choose to practice direct regulation, on the whole, consumer safeguards are closely bound with a well-

[10] Part 2, Section 8 (1) (a), (b), (c) of the Telecommunications (Consumer Complaints Handling) Industry Standard 2018

[11] CA Media Release, 25 July 2018 http://www.commsalliance.com.au/Documents/releases/2018-media-release-21

functioning industry, providing low cost, high quality products, and choice to consumers. When examining past lessons from the development of mobile, as previously discussed in this paper, the best results for consumers are often seen with light touch regulation which encourages innovation.

Issues for comment

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

Providers have clear commercial incentives to serve their customers, and the competitive nature of the telecommunications market strengthens this focus. The TCP Code previously, and now the Complaints Handling Standard, mandate that providers attempt to resolve complaints at first contact, minimising the need for escalation, and that internal escalation procedures be clear and easily available to the customer.

In addition to the basic business goal of assisting customers, the need to recourse to external escalation is already discouraged through TIO fees. These ensure providers do their utmost to avoid external escalation where possible. However, it is important to note that external escalation will never be entirely avoidable, as there are times when it is helpful for a neutral third party to intervene in a complex situation.

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

There are a range of reasons a provider may not be able to address a consumer complaint immediately, or even through an internal escalated process. The nature of telecommunications services is complex, and at times, a solution may take more time than a consumer considers reasonable. For example, for broadband access, a cable may need to be re-laid, which is a timely process including multiple parties. If the consumer is looking for an immediate resolution, they may not be willing to accept the providers proposed solution.

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

Industry agrees that the RSP, who has a direct relationship with the customer, has the ultimate responsibility for working with the customer on their complaint. However, in the complex supply chain, there will be many times when assistance from another party is necessary. This is managed through a range of methods, including the contractual relationships between wholesalers and RSPs. Additionally, the "reasonable assistance" provision of the new Complaints Handling Standard provides additional rules on this area resolving complaints.

4. **Should there be additional rules in the ACMA's Complaints-Handling Standard compelling providers to make every effort to resolve customer complaints before the consumer escalates the matter to an external dispute resolution body?**

This rule is already in place in the Complaints Handling Standard: "A carriage service provider must use its best efforts to resolve a complaint on first contact."

Best efforts (vs 'every' effort) is the appropriate terminology, as it is not reasonable to expect a provider to make 'every' effort. If there is disagreement between the provider and the customer on the appropriate solution, regulations should not mandate that they provide commercial or other solutions simply to avoid the complaint being escalated. These are situations in which the TIO is an appropriate and helpful recourse.

5. **What do consumers need to know about their provider's complaint handling policies and procedures?**

Consumers should have access to their provider's complaint handling policies, which should be clearly written. These provide consumers with all needed information regarding complaints handling procedures, including escalation.

This is already required, previously by the TCP Code and now by the Complaints Handling Standard.

6. **When and how should consumers be made aware of a provider's complaint handling policies and procedures?**

Per Part 2 Section 8 of the Complaints Handling Standard, these procedures must be made available publicly and "to a consumer on request, as soon as practicable after a consumer informs the carriage service provider they wish to make a complaint."[12] These are reasonable rules for provision of complaints handling policies.

7. **How will providers ensure their own staff are trained in the complaint handling policies and procedures and will be supported by appropriate complaint handling systems?**

Providers have a plethora of training requirements for staff under a range of codes, regulations, and legislation. This includes customer service and complaints handling, as required under the TCP Code and Complaints Handling Standard. Each provider determines the most appropriate training and systems for their business, operations, and staff numbers – all specifically designed to provide the best service to their customer base, which can differ significantly between providers.

Proposal 2: External Dispute Resolution

As discussed above, the evaluation of the TIO in the consultation paper is inaccurate, and thus the proposal which follows on from it is problematic and not significantly different from the TIO as it operates today.

The specific proposals made reflect the current operation of the TIO:

Clear line of sight over provider resolution/processes: The TIO requests information, including these specific details, for complaints and through this does have a 'clear line of sight' on all relevant information.

Supply chain: The TIO has the power "to deal with complaints across the end-to-end supply chain," and in fact recently revised its Terms of Reference to clarify this point. This includes directing parties along the supply chain to take actions in the pursuit of the resolution of a complaint, along with requesting information. It is disappointing that the Department was not aware that this was the case, and surprising that they did not verify their understanding of the TIO's operations directly with them before publishing the consultation paper.

Remedial or redress actions: The TIO can make binding decisions up to a value of $50,000, or a recommendation up to $100,000, allowing them to "compel providers to take remedial or redress actions…which could include financial compensation" as suggested by the consultation paper.

Providing advice to the regulator: The TIO currently refers matters to the ACMA, per its Memorandum of Understanding with the ACMA and its Complaints Handling procedure, and does work closely with the regulator.

[12] Part 2, Section 8 (1) (a), (b), (c) of the Telecommunications (Consumer Complaints Handling) Industry Standard 2018

Funding: The funding structure proposed reflects precisely the current funding structure of the TIO.

The EDR proposal is almost an exact mirror of the current TIO, and lacks any explanation of the need for a new body, as opposed to making changes to TIO procedures.

Additionally, the TIO has recently undergone an independent review, examining many of these questions (such as if the TIO should analyse root causes), and it is unreasonable to repeat a similar review process while the TIO is still implementing changes out of the previous one.

The two main changes we can identify between the consultation paper's proposal and the current operation of the TIO are:

- The proposed process that a Complaint must be escalated to a Provider's internal dispute resolution team prior to referring to the EDR, and once the EDR has accepted a complaint, they do not refer it back to the Provider. Such escalation can and does happen today in many circumstances, although it is not mandatory, as each provider manages complaints in the way best suited for their business and customers.

  Industry supports ensuring that a Provider has had all appropriate opportunities to resolve a complaint before it is referred externally, and considers that this should be further discussed with the TIO and relevant parties.

- The suggestion that the EDR should be able to issue fines to providers. As outlined above, the TIO can order compensation, but not fines.

  The issuing of fines is a function that rests more appropriately with the ACMA (with which the TIO works closely) and/or the court system.

Industry does not disagree that improvements could be made to the TIO's procedures, and will engage in ongoing discussions with the TIO and the regulator on these points (just as we participated in the TIO's recent review). However, these should be improvements made to the current TIO, and not via a replacement, which would be an unnecessary, duplicative, and costly exercise.

Principles

- **Principle 3: Consumers have an independent avenue for resolution and/or redress**
- **Principle 4: Governance and public accountability**
- **Principle 5: Appropriate institutional arrangements**

These three principles are reflected in current systems and processes. The TIO's independence and empowerment has been previously discussed. Additionally, it reports annually on its procedures, and has appropriate institutional arrangements with the ACMA. If changes need to be made to specific arrangements to fulfil these principles, then there should be discussion directly with the TIO about how best to implement those.

Issues for comment

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

Industry does not support the suggestion that the TIO be transformed into a different body.

Increasing the TIO's focus on complex complaints by encouraging internal provider escalation is a reasonable proposal which should be considered, and we welcome

additional conversations on improvements which can be made to TIO processes, but closing the TIO and building a new body would be costly, complex, and unnecessary.

2. **In addition to resolving complex complaints, should the independent EDR body be proactively engaged in driving industry improvements, identifying systemic complaints, and analysing root causes or recurring issues?**

The TIO's historic methods of identifying systemic issues and discussing with providers has always been helpful, and as a result of the 2017 review the TIO allocated additional resources to systemic issues.

As stated in our submission to the 2017 review, we consider that the return of account managers at the TIO could be helpful in facilitating these conversations with providers. Additionally, further training and technical knowledge of TIO staff would help with identifying patterns and root causes, and Industry is prepared to engage and offer information, including possible training, to assist with this goal.

However, these steps should be limited to information provision – identifying systemic complaints and analysis of root causes, in consultation with Industry who can often offer additional helpful information for those practices. Any resulting recommendations for improved practices should come from Industry, who can make those considerations with full knowledge of operational and business needs.

3. **Should the charging structure for complaints lodged with the EDR body be structured to encourage providers to exhaust all practical steps to directly resolve the complaint with the consumer before referring to the EDR body? How can this be achieved?**

The TIO's funding structure has just undergone a significant review, but is generally structured in this manner, as the fees increase with the level of involvement the TIO has in the complaint.

4. **What process should be followed before a consumer lodges a complaint with the EDR body?**

As discussed above, Industry supports ensuring that a Provider has had all appropriate opportunities to resolve a complaint before it is referred externally (for some providers this could include internal escalation), and considers that this proposal could be further discussed with the TIO.

This could include a requirement that the consumer have a complaint reference number or other reasonable proof that they have made a complaint to their RSP, and has given them appropriate opportunity to address the complaint.

5. **What process should the EDR body follow in the event it receives a complaint from a consumer where the consumer has not followed the provider's complaint handling procedures?**

The TIO should inform the consumer that they need to continue working with their RSP on the issue, following the appropriate procedures, before they can approach the TIO. Industry considers that further conversations on this may be worthwhile.

6. **What process should the EDR body follow in the event it receives a complaint from a consumer where the provider has not followed its own complaint handling procedures?**

As is done today, the TIO should work with the provider to resolve the complaint. This process in itself informs the provider that at some point their process has not been followed.

If it appears that there is a pattern with a specific provider, this is a key opportunity for an account manager or similar role at the TIO to engage with their contact at the provider to further discuss the issue.

Proposal 3: Data collection, analysis and reporting

Industry strongly disagrees that the TIO's responsibility for publishing its own data should be transferred to the ACMA. The ACMA collects data through information gathering exercises, Record Keeping Rules, research, and other regulatory powers, and often chooses to publish those data. These powers are extensive and have been further strengthened via the recent ACMA industry standards, without any detail at this stage as to how that data will be used.

However, the TIO – as has been emphasised throughout the consultation paper – should remain an independent body, and this independence should include the management of their data.

The ACMA already has access to all TIO data needed for enforcement activities, through monthly complaints data reporting, the TIO sending relevant complaints to the ACMA for enforcement action, and their MOU.

Additionally, the proposal that "complaints data should be collected and reported in a way that helps industry participants to appropriately focus their business improvement and consumer experience strategies" is antithetical to an appropriately functioning marketplace. While the ACMA's research and systemic complaints information from the TIO are helpful points of information for each provider, it would be inappropriate for the regulator to suggest business strategies.

Industry does see that the TIO's reporting of their own data could be improved, through more frequent and timely reporting of complaints. This could be monthly or quarterly published complaints data to allow for a broader discussion of complaints trends, and to allow for regulatory and legislative decisions to be made with the most recent data. However, once again, we emphasise that these changes should be made in discussion with the current TIO, and not by dissolving the TIO and creating a new EDR, or by giving the ACMA power over the publication of the TIO's data.

Principles

- **Principle 6: Complaints data collection, analysis and reporting should drive improved outcomes**

  Industry agrees that complaints data can provide helpful information to providers. Providers often collect extensive data and analytics on their business and operations, and complaints information adds additional data points. However, it is important to note that complaints data as provided by the TIO should not be the sole driver of improvements, and that each provider must be able to analyse that data within the context of their business to determine what improvements can and should be made.

  Complaints data is also extremely helpful in assisting Communications Compliance and the ACMA to identify areas they may need to further investigate, as is current practice today.

  Contextual, robust, and consistent reporting of data is supported by Industry, as in the quarterly Complaints in Context report, which is proposed to be mandated and extended in the revised TCP Code.

  We would like to re-emphasise that this principle is not best achieved via the ACMA reporting the TIO's data, as addressed above.

Issues for comment

1. **How often should the EDR body provide complaints data to the ACMA for analysis and reporting (e.g. monthly, quarterly)?**

The TIO should continue reporting on a monthly basis to the ACMA for analysis and enforcement purposes. This data should not be used for reporting purposes.

2. **Are there any unforeseen issues or unintended consequences of the proposal for a centralised repository and reporting of industry complaint information?**

Centralised reporting of industry complaint information is problematic as comparability is nearly impossible. Please see page 19 of Communications Alliance's submission to the ACMA's RKR consultation on specific issues with comparability of complaints data. Comparability is nearly impossible (as it should be in a diverse and vibrant market).

Additionally, having the ACMA centralise and report on TIO data would diminish TIO independence, ultimately having the opposite effect from the consultation's apparent goals.

Conclusion

Communications Alliance appreciates the opportunity to participate in the Consumer Safeguards Review through this submission and related consultations.

Unfortunately, thus far, the review appears at risk of becoming a missed opportunity, which is disappointing. With the significant recent and ongoing changes to technology and the market, a full review of the legislative and regulatory structure is overdue, and Industry anticipated that the Review would be an opportunity to avoid future needs for piecemeal regulation and adaptation, which can create expensive regulatory overlaps and gaps in consumer protections.

Additionally, while we will continue to engage with the review team and test ideas and options around areas including complaint handling processes and how the TIO might continue to evolve to the benefit of consumers and industry; Industry does not believe that a case has been made for dismantling nor replacing the TIO.

We look forward to contributing constructively throughout the remaining phases of the review.

Issues for comment

3. **Do the proposals in this paper address the major issues of concern with the current arrangements regarding complaints and complaints handling? If not, what additional measures could be included?**

Unfortunately, the paper is mis-timed to address the current complaints handling arrangements, considering the recent implementation of the Complaints Handling Standard.

It would be more appropriate to consider what the complaints handling system should look like in the post-2020 world, which is not discussed in the paper.

4. **What considerations should be taken into account in implementing the proposals outlined in this paper, including practical timeframes for implementation?**

Proposal 1 (Complaints Handling): As previously noted, we don't see any proposals in this section which differ from the current complaints handling system.

Proposal 2 (EDR): Replacing the TIO is not a proposal which should be implemented. Possible changes to the TIO's structure and procedures would require additional targeted consultation and should be discussed with the TIO Board.

Proposal 3 (Reporting): We do not see that TIO reporting should be directed through the ACMA, and thus this part of the recommendation should be not be implemented. However, more timely and transparent TIO reporting of their own data should be implemented as soon as possible, as the current environment is changing quickly and it is important for industry and regulators to have up to date information.

5. **Are there are any other issues that should be brought to the Government's attention?**

We have raised all issues relevant to the paper, and initial Consumer Safeguards Review discussions, throughout our submission.

Published by:
COMMUNICATIONS
ALLIANCE LTD

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507