

Redfern Legal Centre



Manager, Public Inquiry Section
Australian Communications and Media Authority (ACMA)
PO Box 13112, Law Courts,
Melbourne Vic 8010

22 July 2011

By email: reconnectingthecustomer@acma.gov.au

Dear Sir/Madam

Please find attached our policy submission:

Reconnecting the Customer: Redfern Legal Response

In response to ACMA Draft Report (**Draft Report**): Reconnecting the Customer

We would welcome the opportunity to further discuss our submission.

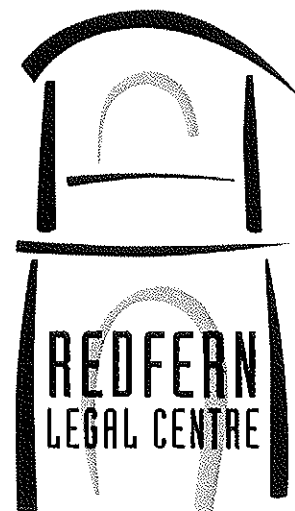
Yours faithfully,

Redfern Legal Centre

Joanna Shulman
Chief Executive Officer

Elizabeth Morley
Principal Solicitor

Redfern Legal Centre



SUBMISSION:

Reconnecting the Customer: Redfern Legal Response

AUTHOR: Michelle Schonstein

DATE: 22 July 2011

Redfern Legal Centre wishes to acknowledge with gratitude Blake Dawson's assistance in drafting this submission, in particular Ms Riona Moodley.

Table of Contents

Introduction: Redfern Legal Centre	4
RLC's work in consumer issues and credit & debt	4
RLC's view in summary	4
Response to Proposals contained in the Draft Report	6
Proposal 1	7
Proposal 2	10
Proposal 3	12
Proposal 4	13
Proposal 5	14
Proposal 6	17
Additional comments on proposed reforms	22
Summary of submission	24

1. Introduction: Redfern Legal Centre

- 1.1 Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.
- 1.2 RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in consumer issues and credit & debt

- 2.1 RLC identifies economic rights as important in the attainment of a just society. RLC has long recognised that, without the ability to exercise their economic rights, people are unable to effectively maintain any of their other rights to participation in society, including keeping families together, safe housing, jobs, and freedom. For this reason, RLC has continued to emphasise casework delivery to people in relation to banking, credit and debt problems. RLC provides a specialist credit and debt face-to-face and telephone advice services.

3. RLC's view in summary

- 3.1 RLC welcomes the ACMA's decision to undertake its examination of customer services and the complaints-handling experiences of consumers within the telecommunications industry, and supports the ACMA's broader aim to improve customer outcomes by identifying best practice models for implementation.

- 3.2 As evidenced by the findings contained in the Draft Report and the high level of complaints received by the Telecommunication Industry Obudsman (TIO), there is overwhelming consumer dissatisfaction with customer services provided by telecommunication service providers (**Services Providers**), as well as dissatisfaction in the overall manner in which the telecommunication industry currently functions, particularly its complaint handling processes.
- 3.3 From a consumer perspective, the current self-regulatory approach adopted by the telecommunications industry has been unsuccessful. In this regard, it is our view that, despite having had ample opportunity to do so, Service Providers have failed to implement mechanisms to provide adequate customer service and very few have taken steps to comply with and implement the Telecommunications Customer Code (TCP).
- 3.4 In the circumstances, RLC supports comprehensive reforms of the industry, and advocates, amongst other things, increased powers being given to ACMA to set enforceable obligations on Service Providers (as set out in further detail at below).
- 3.5 In the context of the broader reform of the telecommunication industry and its complaints handling processes, RLC welcomes the review of the TIO Scheme being undertaken by the Department of Broadband, Communications and Digital Economy (DBCD), and supports reforms which will facilitate ACMA assuming greater regulatory and enforcement powers over the TIO Scheme.
- 3.6 A summary of RLC's views in respect of the TIO reforms proposed by ACMA are provided in this submission in relation to Proposal 6 below. These views are expanded in further detail in our Submission to the DBCD in Response to the TIO Discussion Paper, a copy of which is **enclosed** for your convenience.

3.7 RLC is a member of ACCAN. As such, we have reviewed the submissions made by ACCAN in response to the Draft Report and support their comments and recommendations generally. RLC supports ACCAN's recommendations as set out in its response.

3.8 The purpose of this submission is to provide insight from our direct experiences of:

- (i) assisting clients handle telecommunications disputes generally;
- (ii) dealing with the TIO;
- (iii) assisting clients make complaints with the TIO; and
- (iv) our clients' knowledge and awareness of the complaints handling processes available (or lack thereof).

3.9 Accordingly, this submission should also be read in conjunction with the ACCAN Response to the Reconnecting the Customer Draft Report dated July 2011 and our submission to the DBCD dated 7 April 2011.

4. Response to Proposals contained in the Draft Report

4.1 Overall, RLC supports the majority of recommendations and proposals (collectively referred to as Proposals) put forward by the ACMA in the Draft Report.

4.2 Our support of the Proposals are, however, subject to:

- (a) our specific comments in respect of each of the Proposals outlined in the Draft Report outlined below; and
- (b) the incorporation of the Proposals into the proposed new TCP Code (TCP Code), together with adequate monitoring, compliance and enforcement mechanisms being put in place.

4.3 We agree with ACCAN that there is a need to promote and ensure compliance with the revised TCP Code, and in particular we agree with ACCAN's comments and recommendations at paragraph 1.2 of the ACCAN response to the Draft Report. We also support ACCAN's comments in relation to accessibility issues at paragraph 1.3.

5. Responses to specific Issues

Proposal 1: Improved advertising and greater accountability

4.5 RLC supports generally the proposals made in paragraph 7.2.2 of the Draft Report and ACMA's proposal for the introduction of mandatory and enforceable industry codes that require all advertising and marketing to be clear, accurate and honest.

4.6 RLC also welcomes the proposed implementation and use of investigative and compliance tools, such as Substantiation Notices (as defined in Chapter 3.10. of the Draft Report) to hold Service Providers accountable for the claims made in advertisements. We support ACCAN's recommendation that the ACMA take a more pro-active role in testing claims made in advertisements, and require Service Providers to compensate customers where the product or service falls short of the claims made in advertising.

Confusing terms

4.7 Whilst RLC supports the prohibition of the use of the terms 'free', 'cap', 'unlimited', 'exclusions' and 'any similar terms' in the TCP Code, we agree that a code which prohibits the use of particular terms and words is unlikely to lead to widespread

behavioural change within the industry, unless there are mechanisms in place to enforce the prohibition.

- 4.8 RLC considers that there should be a general ban on the use of “confusing terms”, with the definition of “confusing terms”, containing a non-exhaustive list of examples, for guidance purposes. However, this should be supplemented by giving the ACMA regulatory powers to issue Substantiation Notices (as defined in Chapter 3 of the Draft Report) in order to monitor compliance with advertising standards adopted by the new TCP Code.
- 4.9 RLC proposes that a consequence of failing to respond satisfactorily to such a notice, or take remedial steps to rectify a breach of the new TCP Code, would result in the relevant term to be declared a “confusing term” (and therefore banned from use by the Service Provider).

Consumer Protection

- 4.10 RLC consider that unsubstantiated and misleading representations about "maximum speeds" and network coverage are unacceptable forms of advertising.
- 4.11 Where a consumer has relied on a claim made in an advertisement in their decision to purchase the product or service, and the consumer later finds his or her actual experience varies greatly from the representation or claim made in the advertisement, then that consumer ought to be:
- (i) released immediately from all contractual obligations; and
 - (ii) refunded all money spent under the contract.
- 4.12 In such circumstances, no termination fees or charges should be applicable. Further, there should not be any penalties imposed on consumers for the failure to

return the product or failure to return it along with its original packaging (which is often a requirement imposed by Service Providers).

- 4.13 It is our view that such comprehensive protections afforded to customers would deter Service Providers from making unsubstantiated or misleading claims in their advertisements and promote a better standard of advertising.

Comparison pricing

- 4.14 RLC agrees that it is important to provide clear information to the consumer about the pricing that applies under their plan; both within their “cap” and once their cap limit has been exceeded.

- 4.15 We support ACCAN’s recommendations as to the introduction of unit pricing, however we consider that the inclusion of more information in advertising has at least the potential to lead to greater confusion for customers. Advertising in the industry is already very text-heavy and complex, and we note that when implementing measures such as unit pricing, it is important that the complexity of the information presented in advertising is not increased by such reforms.

Confusion caused by complexity of products and services

- 4.16 Many of the services and products available in the telecommunications market are so complex as to be incapable of clear and simple expression. Complex products/services that cannot be marketed in a clear and simple manner are likely to mislead or at least confuse the average consumer, and for CALD, ATSI, elderly or other vulnerable consumers the situation is even worse.

- 4.17 More concerning is that, in addition to being confusing, some plans in the telecommunications market are structured in such a way that even if the

consumer understood the plan, it is highly unlikely that the consumer using their mobile in a normal way would ever be able to take advantage of the full “value” offered under the plan.¹

- 4.18 In our view, in addition to a ban on “confusing terms”, the ACMA should be given the power to declare certain plan features to be confusing. This would encourage industry to provide simpler products and services (which is what consumers want, as highlighted in the Draft report). RLC supports reforms that will achieve this outcome for customers.

Proposal 2: Improved product disclosure

Critical Information Statement

- 4.19 RLC agrees that in many cases consumers do not fully understand the products and / or services they are purchasing from Services Providers.
- 4.20 As stated above, it is our view that telecommunications products and services (more specifically the terms and nature of the product service provided) are so complex as to be incapable of clear expression in marketing.
- 4.21 Improved product disclosure does not necessarily equate to requiring Service Providers to include more fine print terms and conditions in their advertising of products. Too much information in advertising can be just as confusing and difficult to understand for consumers.

¹ See for example, Warning: Diabolical fine print in Optus’ new “monster caps”, Dan Warne, 6 May 2009, Ninemsn article <http://apcmag.com/the-dodgy-fine-print-in-optus-new-monster-caps.htm>

- 4.22 RLC notes, however, that it may not be possible to market current products and services (as they presently exist) in a clear and easily understandable fashion.
- 4.23 In the circumstances, RLC considers that the ACMA's proposal to require service providers to give customers a critical information statement (which we submit should be specifically entitled 'Critical Information Statement') at the pre-contract stage is a practical measure that will assist consumers make informed decisions and reduce the incidence of post-contract dissatisfaction, including incidents of 'bill shock'.
- 4.24 RLC submits that customers should *not* have the option of opting out of receiving the statement. In this regard, it is our view that the requirement for Service Providers to issue a critical information statement to customers should be mandatory. This is particularly so given that most customers are not provided with a copy of their contract by Service Providers, and most Standard Forms of Agreement (**SFOA**) are often unacceptably long, incomprehensible and difficult to locate on the Service Provider's website.
- 4.25 RLC agrees with the content proposed by the ACMA to be included in the critical information statement, as outlined at paragraph 7.3.2 of the Draft Report.
- 4.26 We only add that such statement should also contain details of how customers can obtain or request a copy of the long form SFOA (we note that including a link to the website with no further detail would be insufficient, unless a link to the SFOA is clearly visible on the homepage).
- 4.27 Given that many customers are unaware of the existence of the TIO or internal dispute resolution procedures available, we consider the mandatory provision of such information an essential feature of any proposed critical information statement.

Proposal 3: Performance reporting and customer service charters

- 4.28 RLC welcomes the implementation of reforms to improve the overall transparency of the customer service performance of Service Providers.
- 4.29 RLC agrees with the ACMA's view that increased visibility of Service Provider performance would itself act as an incentive for Services Providers to improve their customer service standards, as well as assist customers to determine with which service provider they would prefer to contract.
- 4.30 As such, RLC sees transparency in reporting and the implementation of enforceable reporting standards as an essential reform to the TCP Code.
- 4.31 It is our view that the argument put forward by the telecommunication industry, namely that customer service is a part of brand personality and should therefore not be regulated, is not convincing. This is particularly so given the current lack of competition in customer service in the market, which we consider indicative that Service Providers are not using customer service as a means of differentiating themselves from their competitors.
- 4.32 To address this issue, RLC supports the TCP Code being reformed so as to: -
- (a) require raw figures about complaints (in addition to complaints as a proportion of customers) to be maintained by Service Providers;
 - (b) require Service Providers to provide performance metrics to the ACMA on a quarterly basis, with statistics being required within 30 days of the end of each quarter; and

(c) require that the above information / data be made publicly available.

4.33 While we support the rationale behind the creation of customer service charters, we share ACCAN's concerns that on their own, charters may be ineffectual in addressing consumer concerns, as a breach of its terms by Service Providers has no resulting consequence. Vulnerable consumers will still be forced to spend considerable time involved in a complaints process, itself still unsatisfactory, to establish an outcome.

4.34 In the circumstances, we would only advocate the creation of a charter that is accompanied by an enforcement mechanism to ensure compliance.

Proposal 4: Expenditure management tools

4.35 RLC supports the ACMA's proposal that Service Providers offer consumers mandatory tools and mechanisms to monitor their expenditure and at no charge to the consumer, as outlined generally in paragraph 7.5.3 of the Draft Report.

4.36 In this regard, RLC supports the proposal that every Service Provider should be required to provide consumer nominated expenditure / usage limits for all services, at no charge to the consumer, that cannot be exceeded without a consumer's express consent.

4.37 This should include, at a minimum, real time notification by Service Providers to consumers (via SMS for phone and email for internet) when their service usage reaches 80% and 100%.

4.38 The implementation of such a regime would assist reduce the 'bill shock' commonly experienced by customers.

- 4.39 RLC agrees that, whilst many Service Providers offer consumers the option of monitoring their usage through online tools to check usage, such tools are insufficient to protect customers from bill shock – particularly disadvantaged consumers who may have limited access to the internet and are likely to suffer serious detriment as a result of unexpectedly high bills.
- 4.40 To ensure that Service Providers implement appropriate expenditure management tools (as proposed above and in the Draft Report), we support the inclusion of enforceable rules in the TCP Code that prevent Service Providers from recovering more than a maximum of 30% above the contracted amount if they fail to provide adequate expenditure management tools.

Proposal 5: Internal complaints handling and reporting

- 4.41 Internal consumer complaints handling procedures in the telecommunications industry are, for the reasons already canvassed by ACMA in the Draft Report, unsatisfactory and in need of immediate reform. We support the proposal to grant the ACMA broader powers to make service provider recommendations.

Reporting and Statistics

- 4.42 As noted above, there is presently little incentive for Service Providers to differentiate themselves from their competitors by the quality of service they provide.
- 4.43 In so far as reporting is concerned, we reiterate our comments above regarding the introduction of enforceable rules requiring Service Providers to publish statistics at regular intervals on the handling of consumer complaints in order to address this issue.

- 4.44 We wish to add however, that such reporting should also include information on the average waiting periods before a call is answered; the average length of the call; average time to resolve internal complaints; average number of transfers; and the average number of customer contacts for the same issue.
- 4.45 RLC supports the ACMA's proposal to require statistics on complaints handling to be published. However, we agree with ACCAN's submission that it is important to capture and publish such information even where the complaint is resolved within 2 days.

Internal Dispute Resolution (IDR)

- 4.46 There is some evidence to suggest that Service Providers may be using the TIO as a de facto Internal Dispute Resolution (**IDR**) scheme.²
- 4.47 In our experience, many consumer complaints made to the TIO are resolved quickly and satisfactorily at Level 1. This is so even where repeated attempts by the consumer to resolve the dispute directly with the Service Provider had failed previously.
- 4.48 It appears that Service Providers allocate greater resources to resolving complaints made to the TIO rather than implementing measures to resolve complaints internally at the first instance. If this view is accepted, it suggests two things:
- (a) that telecommunications service providers are failing to address complaints by consumers at the first opportunity; and

² See RLC's Submission to the DBCD in response to the TIO Discussion Paper, page 7

- (b) that it is possible to resolve the majority of consumer complaints in a timely manner.

4.49 RLC submits that IDR in the telecommunications industry is in desperate need of reform, and supports the implementation of enforceable benchmark standards for IDR under a service provider determination, as particularised at paragraph 8.2.1 of the Draft Report. We support ACCAN's call for Customer Service Guarantees to extend to allow for compensation to consumers where a Service Provider has breached essential service obligations.

4.50 RLC does not believe that introducing mandatory standards under the TCP Code would be sufficient to address consumer concerns unless effective enforcement mechanisms for breach of the Code are put in place to hold Service Providers to account for their actions.

4.51 Further, RLC considers there to be a real need for a consistent and uniform definition of 'complaint' to be adopted across, amongst others, the telecommunications industry in order to bring greater certainty as to what constitutes a complaint. In this regard, we support the ACMA's proposal to require the industry to adopt the Australian Standard definition of 'complaint'.

Proposal 6: Telecommunications Ombudsman Scheme (TIO)

Independence and Governance of the TIO

- 4.52 RLC supports the general recommendations made by the ACMA in the Draft Report calling for the implementation of a more independent and unitary governance structure for the TIO.
- 4.53 Given that the role of the TIO is to resolve disputes between telecommunication providers and consumers, it is essential that the TIO's governance structure, including the Board, include consumer representation. Representation should be equal to the number of industry representatives altogether and not merely a number of representatives equal to those of a section of industry. The Chair should be independent.
- 4.54 It is our view that reforms that ensure the equal representation of consumer and industry groups on the Board, as well as the Council, would improve public perception of the TIO as an independent and non-biased dispute resolution service. If such reforms were to be effected, then RLC would suggest that the governance structure of the TIO be reduced to one body rather than a separate Board and Council.
- 4.55 RLC considers it appropriate that the TIO's costs and overheads be recovered from all its members to encourage telecommunication providers to resolve complaints as early as possible.
- 4.56 RLC appreciates that there may be a perceived conflict of interest by the TIO securing funding from its members, who also control the governance and decision-making processes of the TIO. However, it is our view that the inclusion of

equal consumer representatives in the governance structure would mitigate against any such perceived conflict.

- 4.57 Further, it is our view that increasing consumer representation in the governance structure would improve consumer confidence provided, however, that such reforms include greater transparency.
- 4.58 Lastly, we note that in the past the TIO has drawn many of its employees from the telecommunications industry on the basis that they have expertise in the industry. RLC would point out that this does not necessarily provide the forensic skills necessary to investigate a complaint nor the independence to look behind the contract to the practice. There should be a balance in employment to gain a range of expertise in critical handling of complaints.

Transparency

- 4.59 The current structure of the TIO allows industry representatives to block consumer attempts at reform, in a manner that is not subject to any public scrutiny or independent regulatory scrutiny. It is therefore difficult for us to comment on a process that is confidential, but at the very least, the manner in which disputes between the council and the board are resolved should be formalised, and made public. The high level of confidentiality involved in the TIO's internal processes seems unnecessary and at odds with its role.
- 4.60 In the circumstances, RLC supports the reforms proposed by the ACMA in the Draft Report for legislative amendment to the TIO Scheme so as to allow greater transparency and regulatory oversight in respect of its operations.
- 4.61 In addition, RLC supports legislative amendments that prohibit Service Providers that are not members of the TIO scheme from operating within the

telecommunications market, and give the TIO greater powers to deal directly with non-compliant members.

Systemic Issues

- 4.62 The identification and investigation of systemic issues is one of the most important functions of the TIO.
- 4.63 However, the TIO's lack of action in identifying systemic issues affecting the industry is concerning, given the invaluable role it has to play in reforming the practices of the telecommunications industry as a whole.
- 4.64 RLC agrees with the ACMA that improving systemic issue reporting by the TIO would be best achieved through the TIO Scheme by initiating changes to its current practices, as outlined at paragraph 9.5.2 of the Draft Report.
- 4.65 RLC supports the ACMA's proposal for the TIO to report to it statistical information about the number of potential and systemic issues identified for that quarter, and include a detailed report on confirmed systemic issues and suggested proposals for reform to address them.
- 4.66 In addition, RLC supports improved monitoring of the TIO Scheme and enforcement on the part of the ACMA.
- 4.67 In this regard, while RLC notes that the ACMA's focus to date has largely been on education, RLC considers it appropriate that the ACMA assumes greater powers to act as a regulator by identifying and addressing systemic issues through the full suite of tools available to them.

Review of Constitution

- 4.68 Given that the board is responsible for commissioning reviews of its constitution, and industry members control the board, it is concerning (but perhaps not surprising) that there has only been one review of its constitution since 1993. Again, this is an issue that affects consumer confidence in the credibility and impartiality of the TIO.
- 4.69 Whether the existing complaint handling procedures are revised, or a new document setting out the TIO's terms of reference is created, it would be desirable for the Council to consult with consumer representatives in developing the document.
- 4.70 In order to ensure that the credibility of such a document is preserved, RLC supports its implementation being conditional upon the ACMA's approval of its contents.

Awareness & Accessibility

- 4.71 The clients we assist at Redfern Legal Centre are predominantly low-income earners or Centrelink recipients, and are often vulnerable consumers, whether it be because they are elderly, living with a disability or mental illness, from Aboriginal/Torres Strait Islander, culturally and linguistically diverse (**CALD**) or non-English speaking backgrounds.
- 4.72 In our experience, awareness of the TIO scheme amongst our client-base is low, and Service Providers do not always advise their customers of the existence of the TIO scheme. Greater publicity about the TIO would increase public awareness and use of the scheme.

- 4.73 RLC submits that one of the best way to publicise the scheme would be to require Service Providers to include information about the TIO on their bills and other customer communications (including the critical information statement), prior to a complaint being made, during the process of the resolution of the complaint, and after an outcome has been reached through internal dispute resolution.
- 4.74 Government advertisements in the media would assist, including Google sponsored ads for the TIO appearing when search terms for 'telecommunication provider customer service' or 'complaints' are entered.
- 4.75 Increasing public awareness of the TIO scheme will reduce the effects of complaint fatigue, whereby customers do not persist with their complaint to the point of resolution due to the time and energy the process consumes.
- 4.76 In addition, RLC supports reforms to the TIO Scheme which would facilitate improving its access to individuals from marginalised groups, including those from low socio economic backgrounds, non-English speaking backgrounds, Aboriginal or Torres Strait Islander consumers, persons with disabilities, older persons and youth.

Complaint fatigue

- 4.77 In our experience, Service Providers' customer service and complaints handling procedures are extremely poor.
- 4.78 On many occasions, we have assisted clients to write letters to their provider setting out their complaint, and it is often the case that these letters go unanswered.

- 4.79 Similarly, we have written to providers on behalf of our clients, and have not received a response to our letters. Attempting to make contact with telecommunication providers by telephone has proven to be equally difficult.
- 4.80 In the circumstances, RLC supports reforms that provide customers with the opportunity to contact the TIO to lodge a complaint if they have attempted to contact their telecommunication provider on at least one occasion and have not been able to resolve the problem. It is our view that Customers should not be expected to make multiple phone calls or re-send letters numerous times in order to progress their complaint.

5. Additional comments on proposed reforms

Protections for Low Income Earners / Unemployed

- 5.1 RLC would like to see the impact that contractual disputes with Service Providers can have on the poor addressed in the revised TCP Code.
- 5.2 When an individual from a low socio-economic background is in dispute with their Service Provider, extreme hardship can result. This is particularly so when the dispute arises from the customer's experience of 'bill shock' at the receipt of a bill much larger than that which they had anticipated or budgeted for.
- 5.3 Disputes that result in the imposition of a large cancellation fee under the contract worsen the problem. These expenses are rarely ones that a consumer considers when entering into a post-paid contract.
- 5.4 To protect low income earners (or those on Centrelink benefits) from undue hardship, RLC supports the introduction of reforms that allow for greater flexibility in the negotiation of alternate payment options, and an acknowledgement from

Service Providers that, under certain circumstances, a waiver or partial waiver of a cancellation fee, or other debt arising from a contract, is the most appropriate outcome.

- 5.5 It is our view that such measures would go a long way to address the difficulties encountered by our client base.

Determination Powers

- 5.6 RLC supports the Government's intention to amend telecommunication regulations to give the ACMA more general Service Provider determination powers (as referred to at page 3.10.2 of the Draft Report).
- 5.7 RLC also agrees with the list of subjects intended to fall within the scope of ACMA's power to make Service Provider determinations.

6. Summary of submission

- 6.1 The reforms proposed by ACMA in its Draft Report are long overdue. RLC supports the overhaul of the current TCP Code and the revisions proposed by ACMA, subject to the comments noted in this submission and ACCAN's submission.
- 6.2 RLC considers that the success of the proposed reforms will be dependant upon comprehensive enforcement procedures being implemented to ensure compliance. RLC considers it necessary for the ACMA to assume a greater supervisory role over the industry and the TIO Scheme to monitor and enforce compliance of the implemented reforms.

Yours sincerely



Michelle Schonstein, Credit & Debt Solicitor

REDFERN LEGAL CENTRE

Redfern Legal Centre



7 April 2011

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Submission in response to Telecommunications Industry Ombudsman (TIO) Scheme
discussion paper

About Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent non-profit community-based organisation with a prominent profile in the Redfern area of over 30 years' standing. We provide free legal advice and assistance, community education and advocacy on law and policy reform issues.

RLC identifies economic rights as important in the attainment of a just society. RLC has long recognised that, without the ability to exercise their economic rights, people are unable to effectively maintain any of their other rights to participation in society, including keeping families together, safe housing, jobs, and freedom. For this reason RLC has continued to emphasise casework delivery to people in relation to banking, credit and debt problems. RLC provides a specialist credit and debt face-to-face and telephone advice services.

Our view in summary

RLC considers that the review into the role and functions of the TIO is overdue. Given the consistently high level of TIO complaints, it is clear that consumers of telecommunications services are not satisfied with the manner in which the industry currently functions. In our view, there are a number of ways in which the TIO's efficacy and efficiency could be improved. Reforming the TIO will assist to improve consumer confidence in the TIO's services, and in the telecommunications industry generally.

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General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm

Interviews by appointment: Monday to Thursday 6.30pm – 8pm

RLC is a member of ACCAN. We have reviewed their submission in response to the Discussion Paper, and we support the recommendations made in that submission, and the submission generally. The purpose of this submission is to provide insight from our direct experiences of:

- dealing with the TIO,
- assisting clients to make complaints with the TIO, and
- our clients' knowledge and awareness of the TIO.

Accordingly, our submission supplements the ACCAN submission with our own experience, and should be read in conjunction with the ACCAN submission.

3. Independence

3.1 Governance Structure

The Discussion Paper seeks comments on the TIO's governance structure. We are not in a position to comment on whether the TIO's current structure negatively impacts on its ability to adopt effective client-focused policies, as we have no direct experience of this.

However, RLC would support a more independent governance structure for the TIO. Given that its role is to assist in resolving and determining disputes between telecommunication providers and consumers, it is essential that the TIO's governance structure, including the Board, include consumer representation. Making provision for equal representation of consumer and industry groups on the Board as well as the Council would improve the public's perception of the TIO as an independent and non-biased dispute resolution service. If this was done then the governance structure could be reduced to one body rather than a separate Board and Council.

We consider it appropriate that the TIO's costs and overheads be recovered from members. The fee structure is an important incentive to telecommunication providers to resolve complaints as early as possible.

We acknowledge that there may be a perceived conflict of interest in the TIO's securing funding from its members, who also control the governance and decision-making processes of the TIO. Including consumer representatives in the governance structure would increase consumer confidence in the TIO, as this would reduce the potential for conflicts of interest, whether real or perceived.

We support Recommendations 1 and 2 in the ACCAN submission.

3.2 Transparency in the governance structure

The lack of transparency in the TIO's governance structure is problematic for consumer confidence in the TIO's internal processes. Increasing consumer representation in the governance structure would improve consumer confidence, but greater transparency would still be desirable.

The "informal arrangements" referred to in the Discussion Paper for resolving disagreements between the board and council are not a satisfactory mechanism. The current structure allows industry representatives to block consumer attempts at reform, in a manner that is not subject to public scrutiny.

It is difficult for us to comment on a process that is confidential, but at the very least, the manner in which disputes between the council and the board are resolved should be

formalised, and made public. The high level of confidentiality involved in the TIO's internal processes seems unnecessary and at odds with its role.

3.3 Government involvement in TIO governance

Given that the board is responsible for commissioning reviews of the constitution, and industry members control the board, it is concerning (but perhaps not surprising) that there has only been one review since 1993. Again, this is an issue that affects consumer confidence in the TIO.

Whether the existing complaint handling procedures are revised, or a new document setting out the TIO's terms of reference is created, it would be desirable for the council to consult with consumer representatives in developing the document. Requiring ACMA's approval of the document would also assist in ensuring the document is seen as a legitimate and independent reference for the TIO's operations.

4. Accessibility

4.1 Awareness

The clients we assist at Redfern Legal Centre are predominantly low-income earners, or on Centrelink payments, and frequently from Aboriginal/Torres Strait Islander, culturally and linguistically diverse (CALD) or non-English speaking backgrounds. In our experience, awareness of the TIO scheme amongst our client-base is low.

Case Study

A 70 year old woman from a CALD background, unable to read complex contracts in English, was being pursued by two telecommunications providers. Her son took her to a telecommunications retailer and signed her up on a 24 month contract for a mobile phone for his use. He is abusive and she has an Apprehended Violence Order against him. She was subsequently contacted by telephone by another provider, who told her about a special deal they were offering on mobile phone plans, and without knowing the implications she agreed to the deal they offered. She tried to cancel this transfer within the cooling off period but was unable to. She was then charged a \$1222.60 early termination fee from the first provider.

She approached us because she did not know what to do. She had not heard of the TIO. We assisted her to contact the TIO, and her complaint was resolved.

Of the clients who come to see us for assistance in resolving disputes with their telecommunication provider, the overwhelming majority have attempted to contact their provider to resolve the dispute, but have been unsuccessful and do not know what to do next. Often, they have experienced extreme frustration in their efforts to resolve their dispute directly with their telecommunication provider. Based on our clients' experience, the telecommunication providers do not always advise their customers of the existence of the TIO scheme, although this is possibly because many of our clients are unable to even get to the stage where an "outcome" is reached. They simply give up attempting to contact their provider.

Case Study

Bob is an Aboriginal man with mental health issues. His son died in a tragic accident, and during the days following his son's death, Bob misplaced his phone. He was too overcome with grief to think about contacting his provider, and so did

nothing, until he received a large bill including a cancellation fee. Bob's only income was Centrelink payments. He tried to contact his provider a couple of times to let them know what had happened, but was unable to reach a resolution.

Bob came to see us because he was tired of being harassed by debt collectors, but couldn't afford to make repayments towards the debt. He did not know what to do.

We contacted the provider on his behalf, but received no response. We persisted with attempts at contact on numerous occasions, before lodging a complaint with the TIO. It was only once we had made this complaint that a manager contacted us, who was able to consider his matter on compassionate grounds.

It was difficult for us to resolve this complaint. It would have been near-impossible for Bob to do so on his own.

Greater publicity about the TIO would increase public awareness and use of the scheme. The best way to publicise the scheme would be to require telecommunication providers to include information about the TIO on their bills and other customer communications, prior to a complaint being made, during the process of the resolution of the complaint, and after an outcome has been reached.

Government advertisements in the media would assist, as would Google sponsored ads for the TIO that appear when a search for telecommunication provider customer service or complaints is carried out. At the moment, the TIO's website appears in Google search results for the search term "telco complaint", but not "Optus complaint" or "Telstra complaint".

Increasing public awareness of the scheme will reduce the effects of complaint fatigue, whereby customers do not persist with their complaint to the point of resolution due to the time and energy the process consumes.

We are surprised to learn that the TIO does not collect statistics on the demographics of who contacts the TIO. Collecting such information would be useful to the TIO in identifying where more work needs to be done in terms of raising awareness of the TIO's existence. We agree with ACCAN's submission that collection of demographical information should be standard practice.

We support recommendations 19 – 23 in the ACCAN submission.

4.2 Ease of use

If the customer is able to access the internet or a telephone, the TIO is relatively easy to use for the purposes of making a complaint. We note that there are currently fact sheets available in languages other than English on the TIO website, which is important in engaging CALD customers.

Once initial contact with the TIO is made, our CALD clients often require ongoing assistance as their complaint progresses, which we provide, often in conjunction with the Telephone Interpreter Service.

We support the comments made in ACCAN's submission in relation to improving access to the TIO for people on low incomes, from CALD backgrounds, Aboriginal or Torres Strait Islander consumers, persons with disabilities, older persons and youth.

We support Recommendations 4 – 18 in the ACCAN submission.

Cost

We agree with ACCAN's comments that the costs associated with lodging and progressing a complaint using the TIO should be kept to a minimum for the consumer, particularly vulnerable consumers. In our experience, consumers often incur further significant expense attempting to contact the TIO, in addition to the expenses incurred in contacting their provider at first instance (and often being kept on hold for lengthy periods of time).

We support Recommendations 29 – 30 in the ACCAN submission.

5. Fairness

In our experience, most complaints are resolved at the first stage. Accordingly, we have no comment to make in relation to this section of the Discussion Paper.

7. Efficiency

7.1 Tracking and reporting of complaints

Again, as we have no direct experience of complaints that progress beyond Level 1, we make no comment on this topic other than to say that ensuring that the TIO complies with reasonable timelines for the resolution of complaints is obviously important. We would welcome public reporting against internal benchmarks for complaint resolution, as this would create greater transparency.

8. Effectiveness

8.1 Jurisdiction

The TIO's jurisdiction should be broadened to encompass Pay TV services. The TIO's jurisdiction should be wide enough to be able to readily respond to new technological developments in the products and services offered by the telecommunications industry.

We support Recommendation 3 in the ACCAN report.

8.2 Enforcement and compliance

We have no direct experience of this issue. However, we consider it crucial to the effectiveness of the TIO that members comply with TIO determinations, and that there is an enforcement mechanism in cases of non-compliance.

8.3 Remedies

We would support the introduction of the measures proposed in section 8.3 of the Discussion Paper. In particular, the introduction of an industry code or standard for complaints handling and IDR within telecommunication providers would be beneficial.

Office of second resort and complaint fatigue

In our experience, telecommunication providers' customer service and complaints handling procedures are extremely poor. On many occasions, we have assisted clients to write letters to their provider setting out their complaint, and it is often the case that these letters go unanswered. Similarly, we have written to providers on behalf of our clients, and have not received a response to our letters. Attempting to make contact with telecommunication providers by telephone has proven to be equally difficult.

Customers should be able to contact the TIO to lodge a complaint if they have attempted to contact their telecommunication provider on one occasion and have not been able to resolve the problem. Customers should not be expected to make multiple phone calls or re-send letters numerous times in order to progress their complaint.

Another issue we have identified based on our clients' experience is the phenomenon of "up-selling" at the point of complaint. This occurs when a customer calls to complain about their bill or usage, and the customer service representative advises them to move to a higher plan to enable them to control their monthly spend, or to bundle with another service. The customer is told that this is the only way to resolve the problem, as they cannot cancel their contract without incurring contract cancellation fees. We do not consider this to be an appropriate method of resolving complaints relating to billing.

We agree with ACCAN's comments relating to the problem of consumer complaint fatigue and the need to allow consumers to lodge a complaint after they have made an attempt to contact the TIO to resolve the dispute.

We support Recommendations 24 – 28 in the ACCAN submission.

Case Study

Stacy is an Aboriginal woman attending TAFE, raising children, active in her community and dependent upon Centrelink support. Her education, work and family status make having telecommunications services a necessity. Stacy came to Redfern Legal Centre for assistance with a service provider debt that exceeded \$2,000.

At the suggestion of her service provider, Stacy signed up to a "limited time" offer for a bundled plan that included internet access, a home DSL and a laptop modem. After discussing this decision with her neighborhood financial advisory centre, she realised that the great deal was short term, her expenses would go up after the introductory period ended and over the full course of the contract it was more than she could afford.

Stacy refused to accept delivery of the lap-top modem and went to her service provider store at a local shopping centre to return the equipment. Stacy was under the belief that she had 30 days to cancel her new contract without any penalties. She returned the equipment to the store and signed a contract cancellation form.

After this event, her bill increased dramatically and her cost per call was more than ever before. Stacy is unsure what plan she was put onto after cancelling the bundle and does not know why she was charged a Contract Cancellation fee of over \$250.

The documents Stacy provided to the centre have written notes of multiple phone calls she has made attempting to resolve this issue with her service provider and letters of response from them indicating that since they can not reach her by phone (her phone service has been cut off due to the debt and so she can not return messages without purchasing a phone card), she will have to call them back. Every letter is signed by a different person and her calls to the provider never result in her reaching the person who signed the last letter.

Stacy also had a reference and receipt number from a complaint made by telephone to the TIO. The TIO referred the matter to the "Complaints Resolution" department of her service provider. She has a resulting letter from the Complaints Department indicating that since they could not reach her via the contact information in their file, she had 7 days from the date of the letter to call them back or the matter would be considered resolved and the case file closed. She has not received any written response from TIO as to their findings or actions. Stacy is unhappy that she has been referred back to her provider.

Stacy does not have, nor has she ever to her recollection received, actual copies of the contracts that she entered into with her service provider. Stacy has authorised Redfern Legal Centre to obtain records from both TIO and her service provider and negotiate with them on her behalf in an attempt to reduce this debt to a manageable amount and reconnect her communications. She is extremely frustrated with her experiences with her provider and the TIO thus far.

Systemic issues

The identification and investigation of systemic issues is potentially one of the most important functions of the TIO. The lack of action in identifying issues as systemic is concerning, as we believe the TIO has an extremely valuable role to play in reforming the practices of the telecommunications industry as a whole. Similarly, the TIO has an important role to play in gathering data as to what issues reoccur, and to work collaboratively with bodies such as the ACCC. The TIO presumably has access to valuable information and statistics on the sorts of problems that occur frequently in the telecommunications industry.

Any TIO investigation into issues identified as systemic should be made public.

We support Recommendations 31 – 36 in the ACCAN submission.

Internal Dispute Resolution (IDR)

Based on our experience, many providers appear to be using Level 1 complaints as a substitute for their own IDR processes. We hold this view based on the fact that in many cases in which we have assisted clients to resolve disputes with their providers, direct contact with the provider has proven fruitless. It is only once a complaint is lodged with the TIO that contact with the provider is successful.

In our experience, providers do not always refer dissatisfied customers to the TIO. This may be because the customers do not state definitively that they are dissatisfied with the outcome, or because the customer gives up before an "outcome" is reached.

The fee for Level 1 complaints is relatively low. It is possible that it is cheaper for the providers to implement sub-standard IDR procedures, and in the event that the customer lodges a complaint with the TIO, the provider calls the customer and responds in the manner in which they should have responded at first instance. As we have discussed above, due to the fact that awareness of the TIO is not as high as it should be, there is a good chance that the complaint will not reach the TIO at all.

Higher fees for Level 1 complaints would be beneficial. Another option might be the imposition of a penalty fee when the Level 1 complaint is simply that the provider did not respond to the customer's first attempt to contact the provider to make a complaint.

We consider that implementing mandatory standards for IDR and subjecting the IDR schemes of TIO members' to review by the TIO would be beneficial.

We support Recommendation 31 in the ACCAN submission.

Additional issues

We support ACCAN's comments in relation to the additional issues they identify. We support their Recommendations 37 – 47.

Summary of submission

The current high level of complaints to the TIO is unacceptable. Behind each complaint is undoubtedly an extremely frustrated and angry consumer. The process of resolving disputes with providers is time-consuming and often costly to our clients. Reform of the complaints procedure, both with the provider at first instance and then with the TIO, is necessary.

In our experience, the TIO provides a useful service that can assist our clients to obtain a positive outcome for their disputes with providers. However, there is certainly room for improvement. Reforming the TIO to provide greater independence, transparency and to achieve a higher standard of complaints handling will improve consumer confidence in the TIO and in the telecommunications industry more generally.

Yours sincerely

REDFERN LEGAL CENTRE



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