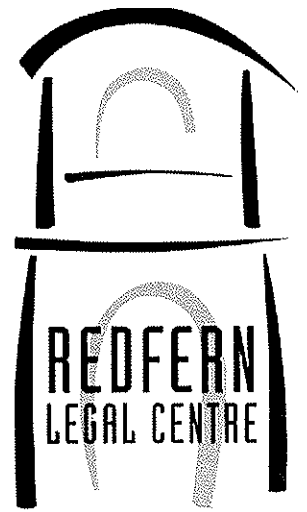


# Redfern Legal Centre



7 April 2011

Director  
Consumer Policy and Privacy  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
Canberra ACT 2601

[tiodiscussionpaper@dbcde.gov.au](mailto:tiodiscussionpaper@dbcde.gov.au)

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.

---

73 Pitt Street Redfern NSW 2016 ACN: 31 001 442 039 ph: (02) 9698 7277 fax: (02) 9310 3586 web: [www.rlc.org.au](http://www.rlc.org.au)

*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**



Michelle Schonstein  
Solicitor



Natalie Ross  
Solicitor/Team Leader