



INTERNET ASSOCIATION OF AUSTRALIA
ABN 71 817 988 968
ACN 168 405 098
PO Box 8700
Perth Business Centre WA 6849
Phone: 1300 653 132

22 October 2021

To: Telecommunications Industry Ombudsman (TIO)
By Email: PublicConsultation@tio.com.au

Thank you for the opportunity to express the Internet Association of Australia (IAA) perspective on the Draft Guidance for Systemic Issues and Non-Financial Loss. IAA represents small to medium telecommunication providers, including internet service providers who are also retail service providers (RSPs) and infrastructure providers.

IAA does not have any comments on the process outlined for how the TIO deals with systemic issues. However, we would like to highlight that systemic issues underpinning consumer problems often arise from complications at the upstream supplier infrastructure level, rather than the RSP product offerings themselves. As such, we would advocate for infrastructure providers to be incorporated as part of the escalation channel to deal with systemic issues underpinning those which consumers raise. We are also of the view that complaints arising from systemic issues should not automatically be billed to RSPs where they occur because of infrastructure provider faults. The current practice of automatically billing RSPs for customer complaints places an undue financial burden on RSPs who are often not responsible for the problem at-hand, yet are still required to pay, and may be suffering economic loss themselves as a result of the problem.

Within the Compensation for Non-Financial Loss Draft Guidance, IAA appreciates the process the TIO has outlined when considering non-financial loss compensation is a potentially useful remedy. However, IAA is concerned about the power this will embed within the TIO. In one example raised by a member, a customer had complained about not being refunded for an unused portion of their monthly fee even though they had not provided the contractual 30 day notice for their service termination. Although the TIO indicated our member was correct in this situation, it was cheaper for them to refund the customer their monthly fee instead of bearing the cost of the TIO complaint process. IAA is worried that such situations may increase for RSPs if the compensation for non-financial loss process is not clear enough, and so further entrench the possibility of bad behaviour.

Non-financial claims are time-consuming for both consumers and telecommunications providers to substantiate. Therefore, we ask for more clarification on top of what is provided within the Guidance in the form of examples or case studies. This can help provide clarity to both industry and consumers on what sorts of non-financial complaints can receive compensation. Furthermore, IAA disagrees that the TIO should have the power to award maximum compensation of \$100,000 for complaints about privacy rights as we believe decisions pertaining to such large settlements should be a matter of the courts, or the various Privacy Commissioners. Having yet another player in this space means there is a potential for multiple claims with multiple agencies. IAA is also concerned that this capability within the TIO will require an excessive burden of proof, which smaller telecommunications providers may not be able to readily compile due to resource constraints.

We also disagree with the principle that the TIO should be able to recommend, or determine, that a provider must pay compensation in situations where the consumer has not requested compensation. We consider this may again place an undue financial burden on smaller telecommunication players, and further encourage spurious claims.

Once again, I would like to thank you for providing us with the opportunity to contribute to the Draft Guidance for Systemic Issue and Non-Financial Loss. IAA respects the instrumental role of the TIO in providing independent and accessible dispute resolution services for consumers and small businesses.

About the Internet Association of Australia

The Internet Association of Australia is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running and lowest cost Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark
Chief Executive Officer
Internet Association of Australia