



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

DATE: 13 May 2022

To: Queen Margaret University
By email: TIOreview@qmu.ac.uk

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia (IAA) perspective for the Independent Review of the Telecommunications Industry Ombudsman (TIO).

Many of IAA's members are small to medium sized internet service providers (ISPs) who are also NBN retail service providers (RSPs). Our response will be primarily from the perspective of these members, from whom we have gathered feedback and input to inform our submission, as well as that in the public good for the internet and the internet industry generally.

IAA and our members acknowledge and appreciate the objectives and efforts of the TIO. We recognise the necessity and value of having an industry ombudsman and believe it to be vital to the functioning of a healthy sector. However, we note various industry concerns regarding the operation of the TIO, particularly in relation to the handling of consumer complaints, especially at the 'referral' level. This has been raised by a significant number of our members, and it seems to be an issue inherent to the TIO's model of resolving complaints.

INDUSTRY BENCHMARKS

ACCESSIBILITY

IAA recognises the need for the TIO to be responsive to consumers to serve many of its functions. However, we believe that its approach to accessibility has meant that the TIO is less effective and arguably misguided.

Although the TIO's Terms of Reference outline that a provider must be given an opportunity to respond directly to the customer before the TIO can handle the complaint, according to our members, this practice is frequently not observed. In addition, the Terms do not specify what constitutes giving a provider "a reasonable opportunity to consider the complaint." Furthermore, there is an inherent inconsistency in clause 2.20 which states:

"We will only consider a complaint after the member has had a reasonable opportunity to consider the issues."

As well as:

"If a consumer raises a matter with us before it has been raised with a member, we may assist the consumer or occupier to raise the matter with the member."

In practice, the TIO has directly handled complaints even where providers have not been given a reasonable opportunity to respond, as opposed to assisting customers to raise it with the provider.

It is also worth noting that resources promoting the TIO note that customers must first directly contact the provider, but there is no mention that they must also give them an opportunity to respond. This rule of giving providers a chance to respond is similarly only found within the TIO's Terms of Reference, and not on the TIO's general public facing "Complaints" related web pages, nor is this included as a part of the TIO's online complaint submission form.

It seems that due to this inconsistency and lack of clarity, the threshold for customers in attempting to resolve complaints directly with the provider is too low, often resulting in what can be considered vexatious complaints. We believe that the TIO needs to establish a clear threshold for what constitutes giving providers "a chance to consider the complaint", and then better promote and inform customers more clearly about the purpose of the TIO, as well as the rules and thresholds that must be observed. For example, the Australian Financial Complaints Authority clearly sets out on their webpage recommending that customers complain directly to their financial firm, including filing a formal complaint internally, prior to engaging the AFCA. A similar approach should be adopted by the TIO, clearly informing customers of the steps that should be taken prior to lodging a complaint with the TIO.

INDEPENDENCE

Members reported to us that the TIO has not handled complaints consistently with fairness or effectively. This has resulted in a lack of trust from industry and greatly reduced industry's perception of the TIO's objectivity and impartiality. Industry representatives have voiced concerns that the TIO's handling of complaints suggest a procedural bias, and that they do not seem to be impartial. We believe it is important that it is made clear that the TIO does not function as an advocate for consumers, but that they function as, and are perceived to be, an independent dispute resolution body.

FAIRNESS

IAA notes of three recurring issues which seem to greatly impede the fairness of the TIO.

Firstly, as above, the failure to practice the rule of not handling complaints where a provider has not been given a chance to reply has arguably resulted in a great deal of unfairness for many providers. This results in more resource intensive work and higher costs for providers in engaging with the TIO in providing a solution that could have been resolved with the customer directly and more efficiently, in addition to paying the complaint charge to the TIO.

Secondly, the inherent cost structure and model of complaints escalation has resulted in gravely unfair 'resolutions' for providers. Multiple members have noted that it is cheaper to provide customers with credits, or compensation than to escalate the complaint, even where the customer's claim is incorrect. In fact, members have noted occasions where the TIO's advice to the provider was to provide customers with "what they want" as this would be the cheaper avenue for the provider, regardless of who was at fault. This has left some providers with the view that it has resulted in a number of customers aware of this inherent shortcoming, then weaponizing the TIO to their benefit.

Thirdly, IAA has received feedback from various members regarding cases where the issue lies with the underlying wholesale provider, but the complaint is raised against the RSP. In fact, one of our members is currently waiting for a response from the TIO on an escalated complaint where the underlying issue lies with the wholesale provider. The customer has been apparently provided with multiple credits, and requested to terminate the agreement as the issue is not something that can be resolved with the RSP directly. However, the customer has rejected this resolution offer, and due to the complaint now being dealt with by the TIO, the RSP is unable to terminate the agreement, meaning they will now bear further costs of the escalated complaint fee, when the underlying cause is no fault of the RSP.

These are complaints that have been repeatedly raised by multiple industry representatives, thus highlighting an inherent flaw in the policies and procedures of the TIO, and have serious unfair consequences for providers.

In addition, there are additional fairness concerns which particularly affect some of the smaller providers IAA represents. While we acknowledge that the 10 business days limitation for providers to respond to the TIO at the referral stage exists, this time frame is not routinely adhered to. Smaller providers may also require additional time to investigate and may be at the behest of wholesale providers in obtaining information relating to a problem.

ACCOUNTABILITY

IAA requests greater transparency in TIO's reporting, particularly in relation to its systemic investigations. We note that their 2020-21 Annual Report lacks clarity in regard to how many of the newly identified and investigated systemic issues were resolved, and to what effect.

We also note that the issues raised throughout this response highlight the need for greater public accountability of the TIO for its performance, particularly in relation to its complaint handling.

In addition, we note that the Report does not include information regarding costs of the TIO's expenses and how revenue made from members is being allocated. Given the decrease in overall numbers of complaints in 2020-21, we believe this should be reflected in costs for the TIO. However, the 2021 Financial Report indicates that both revenue and expenses rose in 2021. IAA calls for greater transparency regarding the fee structure, as well as the allocation of expenses and for these to be publicly available information.

EFFICIENCY

The issues raised above clearly indicate that it seems complaints are not being handled in an efficient manner.

From the outset, the failure to properly screen complaints to ensure that customers have first contacted their provider, and have given providers reasonable opportunity to respond, has meant that a vast number of complaints are considered by the TIO which could – and should – be handled directly by the provider, without the assistance of the TIO.

We note that the TIO highlights that 90% of complaints are handled at the first level, the 'referral' stage, and this is often cited as an indication of the TIO's efficiency. However, we question as to how many of those referral cases should have been dealt with by the TIO at all, had the proper process been adhered to.

Our members have also raised the lack of knowledgeable triage of the TIO where in addition to failing to meet the requirement of first raising the issue with the provider, a large number of complaints are raised against the incorrect provider, or are completely out of scope.

EFFECTIVENESS

As it pertains to complaints handling, IAA believes there must be serious improvements to ensure the effectiveness of the TIO.

Primarily, it seems that there is an inherent fault in the TIO's complaints and escalation structure, and therefore the associated costs for members. As noted above, multiple providers have reported to IAA cases where the TIO have advised the provider to provide some compensation to customers, even when the provider's case was correct, as the provider would incur greater costs in escalating the issue. This 'resolution' can be in no way seen as effective.

Moreover, failure to observe the basic requirement of ensuring that customers have contacted their provider directly, and have given them a chance to respond, suggests the TIO has not been able to fulfil its purpose of being "an office of last resort" as per its policies. We note that in other sectors, or with other ombudsman bodies, the customer or complainer is required to show evidence that they have engaged in an official complaints process directly with the company or organisation, prior to being able to lodge a complaint with the ombudsman. We believe this should be adopted by the TIO.

In addition, IAA have been alerted of the TIO's lack of technical knowledge and understanding which impedes the TIO's ability to correctly assign and handle complaints. For example, a number of industry representatives have raised occurrences where the TIO has brought the complaint against the RSP even when the customer has advised that this is not an issue pertaining to the RSP.

We believe that a more effective and efficient complaints handling procedure and policies must be implemented. Primarily, it seems that a basic threshold and proper screening of complaints to ensure that basic requirements are being met, and that the complaint is being assigned correctly would achieve a lot in terms of the TIO effectively fulfilling its function.

Moreover, IAA believes that the TIO has a great opportunity to play an effective and helpful role in assisting both customers and RSPs resolve non-straight forward cases which involves underlying wholesale providers by engaging the party who is actually responsible for the issue.

ADDITIONAL ISSUES

REVISED TERMS OF REFERENCE

As above, IAA recommends that the thresholds for when the TIO can consider and handle a complaint be clearly established in the Terms of Reference.

GOVERNANCE AND AUTHORISING ENVIRONMENT

We note that there is a lack of representation of smaller telecommunication providers on the TIO Board. We believe that greater diversity would be beneficial in informing the Terms of Reference, and the decision making of the TIO.

MEMBER AND STAKEHOLDER ENGAGEMENT AND OUTREACH ACTIVITIES

IAA and our members acknowledge the efforts of the TIO in its member engagement and outreach activities. We have been advised of regular training material that the TIO provides to its members, such as complaints-handling advice and modules.

While we greatly appreciate the work being done on this front, we believe that the TIO faces a great opportunity to engage with members in a more meaningful way.

Given the issues raised throughout this consultation paper, IAA believes that the TIO should do more to engage with members to better inform their work in handling complaints. We believe this will be mutually beneficial for both the TIO and the providers. Increased discussion and engagement between the TIO and providers could assist the TIO in gaining greater technical knowledge, as well as bring to light many of the issues that have been raised throughout our submission as to inherent shortcomings with the TIO.

This could present the TIO with an opportunity to conduct more systematic investigations, and assist in lowering their complaint caseload, as well as inform the TIO's contribution to public policy.

LAND ACCESS

IAA recognises the assistance that the TIO has provided to providers in relation to land access disputes.

However, we note that due to the complexity of Land Access and Activity Notices, these disputes are resolved at a stage 3 level, which comes at a high cost for providers. This has again resulted in providers finding it cheaper to give in rather than proceed with the issue for a proper finding. Again, IAA raises the grave issue this presents in terms of many of the industry benchmarks which the TIO purports to meet. It seems that again, the inherent cost structure and escalation model requires revising.

CONCLUSION

Once again, IAA greatly appreciates the opportunity to contribute to the Independent Review of the Telecommunications Industry Ombudsman. Again, we emphasise our general support of the TIO and for the TIO's stated goals and purpose. We strongly believe that an effectively functioning industry ombudsman is vital to ensuring a thriving industry. However, to that end, we believe that there are some key areas which require some serious improvement in order for the TIO to fulfil its role and objectives.

IAA and our members look forward to continued cooperation with the Ombudsman, customers, and other industry stakeholders to ensure the protection of a healthy telecommunications sector.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) 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 carrier neutral 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