

30 September 2026

To the Telecommunications Industry Ombudsman

By email: publicconsultation@tio.com.au

RE: Targeted review of non-financial loss limits

The Internet Association of Australia Ltd (**IAA**) thanks the Telecommunications Industry Ombudsman (**TIO**) for the opportunity to respond to the TIO's targeted review of non-financial loss (**non-FL**) limits.

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers (**ISPs**) and retail service providers (**RSPs**) who are also members of the TIO, and would therefore be affected by any changes made to the non-FL compensation limits. IAA's members hold a unique position within the telecommunications industry as smaller providers who do not have the same financial buffer as the large telecommunications providers, and are often disproportionately affected by regulatory reform, as well as changes to the TIO scheme that increase compliance and dispute resolution costs as they have limited capacity to absorb or recover such costs. Our response is thus primarily in representation of these members, as well as the overall public benefit of ensuring a thriving telecommunications sector.

From the outset, IAA express our recognition of the importance of ensuring robust consumer protections, and avenues for redress where consumers have not been treated fairly due to a provider's failure to comply with its regulatory obligations. We also recognise the important role that the TIO plays as part of this ecosystem to ensure consumers are able to obtain redress via an accessible external dispute resolution (**EDR**) scheme. To that end, we are committed to ensuring that compensation limits, are set appropriately to reflect the non-FL that may result from failures in telecommunications services or the operations surrounding the provision of such services.

However, simultaneously, it is also important to recognise that non-FL is inherently hard to quantify and therefore, any increases in the compensation cap for non-FL should be judiciously assessed and justified. At this stage, we do not consider the evidence provided supports a need for an increase to the non-FL compensation cap, and indeed, any increase is likely to have adverse implications for the sector, and ultimately for consumers. As such, IAA recommends that the limit for non-FL compensation is not increased, alongside other recommendations for the TIO to ensure greater fairness and consistency with respect to the award of non-FL compensation.

OUR RESPONSE

ADEQUACY OF THE CURRENT LIMIT

This section addresses questions 3, 4, 5, 9 and 10 of the Consultation Paper.

IAA considers the current \$1,500 limit for non-FL compensation as appropriate. Importantly, we do not consider that the evidence presented suggests a need for an increase to the non-FL compensation cap. In the four case studies provided in the Consultation Paper's Appendix, the compensation for non-FL awarded or found reasonable were all well below the \$1,500 cap, and did not suggest that the TIO was constrained by the current limit from restoring fairness for the consumer. Indeed, we note that the TIO has expressed this explicitly, that "...available evidence does not demonstrate that the current cap is routinely constraining outcomes."

We further note that the enforceable-undertaking remediation arrangements whereby consumers have received compensation outcomes substantially higher than the \$1,500 limit and have prompted the review are, as the TIO has expressed, "exceptional" cases. Moreover, this remediation has resulted from regulatory enforcement regimes, which are separate to the TIO's EDR scheme. Those regimes, such as enforceable undertakings accepted by the ACCC, operate differently to the TIO scheme. They are often directed at systemic conduct affecting many consumers and set according to the seriousness of that conduct rather than the circumstances of an individual complaint. That such outcomes have been achieved is, in our view, evidence that consumers already have other avenues for redress where the severity of the conduct justifies a higher compensation amount, not evidence that the TIO's limit is inadequate. The role of these wider protections is discussed further under Consumer Outcomes below.

Moreover, we note that the TIO also has a role in escalating and reporting on serious and widescale matters. Under its Terms of Reference,¹ the TIO can identify and investigate systemic issues, and may refer them to relevant regulators such as the ACMA and the ACCC. It may also refer a member's failure to comply with the scheme to a relevant regulator. These pathways allow conduct seriously affecting consumers to be escalated to a regulator with the powers to secure remediation beyond the individual limits available under the TIO scheme. Thus we reiterate that the results of the recent regulatory remediation programs should not be considered as evidence that an increase in the compensation limit for non-FL is necessary.

Furthermore, prior to any decision being made, we recommend that the TIO publish further data about complaint resolution outcomes to allow stakeholders to properly assess whether there is sufficient evidentiary basis for any change to the compensation limit. We appreciate that the TIO currently publishes the number of complaints in which non-FL was raised as an issue,² but we note it does not provide further detailed information regarding the operation of the non-FL compensation framework. Specifically, stakeholders should be provided with more detailed data about the complaint resolution outcomes involving non-FL compensation, including (but not limited to):

- how often is non-FL compensation awarded, as a percentage of all complaints, and of complaints in which non-FL was sought;
- the types of complaints or the circumstances in which non-FL compensation was awarded;

¹ Telecommunications Industry Ombudsman, [Telecommunications Industry Ombudsman Terms of Reference](#) (1 January 2025).

² Telecommunications Industry Ombudsman, [Telecommunications Industry Ombudsman Annual Report 2024-25](#) (15 October 2025).

- the distribution of non-FL compensation amounts awarded by value bands (for example, the percentage of non-FL compensation awards of \$1-\$250, \$251-500, \$501-750, etc); and
- the circumstances that resulted in non-FL compensation being awarded for each value bands.

IMPACT ON DISPUTE RESOLUTION

This section addresses questions 1, 6, 12, 13, 14 and 19 of the Consultation Paper.

IAA is concerned about the potential adverse implications on dispute resolution processes resulting from an increase to the non-FL compensation limit. We understand that the current funding model of the TIO's EDR scheme comprises membership fees and case management fees. We further understand that membership fees are calculated annually based on the number of complaints received against a provider, in proportion to the number of complaints received by the TIO in total, whereas case fees are calculated monthly based on the work the TIO performs in handling complaints about the member, with such case fees increasing based on complexity of the case management undertaken.

IAA's members often advise that this funding structure has resulted in a structural unfairness issue. Under this fee model, telecommunications providers are incentivised to settle any complaints that a consumer has raised with the TIO, and often involves providing financial compensation in order to avoid the case management fee, rather than continuing through the TIO's case handling process even in instances where the provider is not at fault.

We are concerned that any increase in the non-FL compensation caps is likely to also result in increased settlement demands as customers understand the compensation limits available to them. This can result in cases where a telecommunications provider is forced to unduly compensate complainants, and indeed offer higher settlement amounts benchmarked to the non-FL compensation limit, regardless of whether they were in breach of their obligations, simply because it is commercially preferable to do so rather than incur higher fees, regardless of the merits of the complaint.

IAA is particularly concerned about the potential for an increased cap to raise the incentive for vexatious or opportunistic claims as claims are increasingly assisted or generated using AI tools. We note the rising claim volumes across other EDR and tribunal schemes as a result of generative AI tools, which have also resulted in the inflation of claims, or in some cases completely fictitious accounts.³ Coupled with an increased compensation cap for non-FL, which is inherently difficult to quantify, we are concerned about the implications for telecommunications providers, and in particular, smaller entities who will be disproportionately affected by vexatious or inflated claims that drive up settlement costs. We note the adverse impact this would correspondingly have on industry's confidence in EDR outcomes.

Therefore, in the absence of sufficient evidence pointing to the need for an increased compensation cap as discussed above, the likely adverse impact such an increase would have on dispute resolution should be treated as a significant concern that weighs strongly against any proposal to increase the limit. An increase would risk moving settlement behaviour further from the merits of the EDR scheme, and would undermine confidence in the fairness and proportionality of the scheme's outcomes.

³ See Federal Court of Australia, [Use of Generative Artificial Intelligence Practice Note \(GPN-AI\)](#) (16 April 2026); Fair Work Commission, [Guidance Note: Use of generative artificial intelligence in Commission cases](#) (24 August 2026); Fair Work Ombudsman, [Using AI for help with workplace questions - Fair Work Ombudsman](#); and David Marin-Guzman, [Inside the 'scary' surge in AI-assisted unfair dismissal claims](#), Australian Financial Review (30 June 2026).

Notwithstanding this position, in the event that the non-FL compensation cap is increased, IAA recommends the tracking and publication of more in-depth data about changes in volume of claims regarding non-FL, settlement outcomes, and the award of non-FL compensation.

We also recommend the review of the TIO's funding model so that providers are not financially disadvantaged for defending complaints where no fault is found. Importantly, reviewing how case fees apply to complaints closed without a finding against the provider, or whether such complaints should be included in the calculation of the membership fee. We understand that this may sit outside the scope of the targeted review and would welcome the opportunity to discuss this further.

OPERATIONAL AND SYSTEM IMPLICATIONS

This section addresses questions 6, 15, 18 and 20 of the Consultation Paper.

We also note the interplay between the TIO's complaints handling model, non-FL compensation, and its impact on RSPs. Many TIO complaints concern network-layer issues such as network faults and outages, which often relate to the upstream carrier network whereas the TIO's complaints process is between the customer and the RSP. This means RSPs bear the non-FL compensation liability, despite the root cause of the issue and ability to remediate it sitting with an upstream carrier. Simultaneously, RSPs typically have little to no commercial or contractual mechanism to recover non-FL compensation costs from upstream providers. This disadvantage is then compounded by the tight profit margins of a smaller RSP. Thus the potential for increased non-FL compensation liability disproportionately affects smaller RSPs in the telecommunications market. IAA is seriously concerned about the consequences this would then have on the ongoing viability of, or willingness of RSPs to continue operating in the telecommunications market. Additionally, this is likely to result in:

- increased costs for telecommunications services as providers need to pass on increased compensation liability to consumers; and
- decreased competition in the market as RSPs are unable to grow, and in some cases, even operate in a market that already has a high barrier to entry, and is dominated by a small number of large players.

Overall, IAA is concerned that any increase in the compensation cost is likely to result in consumers being worse-off due to the unintended consequences of such an increase.

Furthermore, when assessing comparable EDR schemes, we note that the TIO should also consider the relative cost of telecommunications services, and the ease with which most consumers can switch to an alternative provider. We further note that residential telecommunications services are generally supplied on a best-efforts basis, without guaranteed service levels. This is reflected in the price point of these services and in contract flexibility, including the absence of lock-in periods for many services, and the ability to readily port to another provider. This trade-off is a relevant consideration in assessing fairness, proportionality and when considering whether to benchmark compensation limits against schemes in other sectors where switching costs or the consequences of an unresolved dispute are materially higher. The inconvenience and disruption experienced in a typical telecommunications dispute is generally of a different order of magnitude, and compensation amounts should reflect this.

Therefore, when considering whether to benchmark the non-FL compensation limit to limits set in other comparable contexts, we recommend the TIO to also take into account:

- **the typical cost of the service;**
- **the ease of switching providers;**
- **the nature and severity of the harm typically arising within the sector;**

- **other remedies available to consumers; and**
- **the size and scope of the providers who bear the cost of compensation.**

CONSUMER OUTCOMES

This section addresses questions 15, 16, 17, 20 and 21 of the Consultation Paper.

IAA also submits that the compensation amount for non-FL should not be considered in isolation, but rather holistically as part of the overall consumer protection and redress opportunities. We note that a significant body of consumer protections regulation have been recently implemented, while others are currently in development. Importantly, this includes but is not limited to strengthened financial hardship protections, the planned replacement of the Telecommunications Consumer Protections Code with a directly enforceable industry standard (**TCP Standard**) and even calls for direct compensation of consumers affected by a network outage.⁴

On balance, consumer protections in the telecommunications sector are being strengthened across multiple fronts simultaneously. Introducing increased non-FL compensation caps on top of the expanding regulatory landscape will compound costs, which again, will disproportionately affect smaller telecommunications providers who do not have the resources to bear this growing burden. Furthermore, in the event that new regulation does indeed introduce direct compensation obligations, this would expose industry to overlapping compensation mechanisms. Indeed, as noted above, the redress mechanisms alluded to in the Consultation Paper that have been recently pursued to compensate telecommunications consumers are evidence that consumers are protected under various consumer safeguards regulation, and can be compensated accordingly.

Notwithstanding our position that the non-FL compensation cap should remain unchanged, IAA recommends that any increase to non-FL compensation is promptly reviewed following the implementation of any regulatory reform that imposes new compensation frameworks.

We further recommend that no change to the limit be considered until at least 12 months after the TCP Standard has commenced, so that the combined effect of these reforms on consumer redress, and on telecommunications providers, can be properly assessed.

FUTURE FRAMEWORK

This section addresses questions 1, 2, 3, 7, 8, 19 and 21 of the Consultation Paper.

As noted above, non-FL is subjective and inherently difficult to quantify. We also reiterate the lack of evidence to justify any increase in the non-FL compensation cap. It is therefore IAA's position that improvements to the non-FL compensation framework are likely to lie in ensuring consistency of when and how much non-FL compensation is awarded. To achieve this, we consider increased transparency and data is required to better understand and assess the operation of the non-FL compensation framework, as recommended above. **IAA further recommends that:**

- **the TIO develop and publish clear guidelines that set out circumstances that warrant non-FL compensation and how the amount for any compensation will be calculated in the circumstances; and**

⁴ Senate Environment and Communications References Committee, Parliament of Australia, [Triple Zero Service Outage](#) (21 September 2026).

- **such guidelines themselves should be the subject of public consultation to ensure the TIO's assessment of when, and how much non-FL compensation should be awarded meets expectations of stakeholders.**

We appreciate that the TIO does indeed have some published material on this matter.⁵ However, we note that the material at present is relatively high-level and does not provide clear or detailed examples that can help ensure compensation for non-FL is being awarded in a consistent manner that achieves fairness and proportionality.

IAA provisionally supports the indexation of the current limit of \$1,500 on a periodic basis (at minimum every 2 years) to ensure the maintenance of the real value of the compensation limit. We further support a periodic review (every 3 years) of the non-FL compensation framework to ensure the amount and the overall operation of the non-FL framework remains appropriate over time.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the TIO's targeted review of non-financial loss. We reiterate our commitment to ensuring the TIO's EDR scheme operates effectively and efficiently to ensure fair outcomes, and for the overall improvement of the telecommunications sector. To that end, we look forward to further working with the TIO, regulators, industry, and consumers to ensure the non-FL compensation framework is fit for purpose.

⁵ Telecommunications Industry Ombudsman, [Compensation for Non-Financial Loss](#) (17 November 2021); Telecommunications Industry Ombudsman, [Factsheet: Compensation for Non-Financial Loss](#) (December 2021).

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia Ltd (**IAA**) is a not-for-profit 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.

IAA regularly engages with government and regulatory bodies on policy matters affecting the Internet industry. In particular, our advocacy efforts represent the small to medium sized internet service providers in Australia who are often disproportionately disadvantaged by law reform affecting the telecommunications sector. Our public policy work is guided by the following principles:

We stand for an internet for the common good

We stand for an open internet platform

We stand for measured, effective and practical regulation

IAA is also a licenced telecommunications carrier and provides the IX-Australia service to Corporate and Affiliate members on a not-for-profit basis. It is the longest running carrier neutral Internet Exchange in Australia. Spanning seven 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.