

23 February 2016

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Access to Justice Review
Department of Justice and Regulation
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Dear Ms Leonard

Victorian Access to Justice Review

Thank you for giving the Telecommunications Industry Ombudsman (TIO) the opportunity to provide input into the Department of Justice and Regulation's *Access to Justice Review*.

Previous TIO submissions about Access to Justice

The TIO has previously made a submission to the Productivity Commission's *Access to Justice Arrangements Issues Paper*. [Our submission](#) briefly outlined our ongoing strategic work to improve the quality and efficiency of our dispute resolution services.

The TIO has also previously provided input into the Australian and New Zealand Ombudsman Association (ANZOA) submission tendered to the Productivity Commission's *Access to Justice Arrangements Issues Paper*. [The ANZOA submission](#), which the TIO fully supports, outlines the evolution of Ombudsman offices in Australia and includes information about the valuable contribution made by Ombudsman offices in the efficient and effective resolution of a substantial volume of civil disputes.

TIO submission to Access to Justice Review

The TIO's submission to the Department of Justice and Regulation's *Access to Justice Review* provides an update to our previous Access to Justice submissions. It highlights our contribution to access to justice across Australia, and more specifically, within Victoria, by outlining:

1. an overview of the TIO as an independent alternative dispute resolution scheme
2. how we contribute to improving access to justice by resolving disputes between telecommunications consumers and service providers
3. how we contribute to improving access to justice through:
 - our expert and independent voice in the information we provide to industry, the community and regulators
 - our active engagement with industry, regulators and other stakeholders to improve industry standards and practices, and
4. our recommendation as to how access to justice – using informal pathways such as industry-based Ombudsman schemes – can be strengthened.

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We provide this information to showcase how an independent alternative dispute resolution mechanism, such as the TIO, serves to offer access to justice to a wide number of Victorians. Increased awareness of, referrals to, and utilisation of independent alternative dispute resolution schemes such as the TIO, can serve to enhance improved access to justice for Victorians.

We trust the TIO submission will assist the Department of Justice and Regulation in its review into access to justice arrangements in Victoria.

TIO contact details

If you require further information, please contact myself or Ms Shobini Mahendra, the TIO's Manager of Policy, Research & Systemic Issues, on 03 8600 8700.

Yours sincerely



David Brockman
Executive Director – Industry, Community and Government

Victorian Access to Justice Review

**Submission to the Department of Justice and
Regulation**

February 2016

Contents

Introduction	1
About the TIO	2
Background	2
Functions and powers	2
Commitment to the Benchmarks	3
Resolving telecommunications disputes	9
Resolving disputes is our primary role.....	9
Demographic information	9
Volume of disputes received	10
Dispute resolution methods used.....	12
Types of disputes resolved	13
Efficiency and timeframes for resolution.....	14
Stakeholder satisfaction	14
Improving access to justice in other ways	15
An independent voice in the telecommunications industry	15
Industry improvement initiatives	16
Recommendation and conclusion	20
Recommendation	20
Conclusion.....	21

Introduction

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to contribute to the Victorian Access to Justice Review by the Department of Justice and Regulation.

Industry-based Ombudsman schemes such as the TIO play a key role in making Victoria's civil justice system accessible. The TIO fulfils this role in the context of the telecommunications industry. We are the busiest industry-based Ombudsman's office in Australia, receiving more than **100,000** new complaints each year – **one quarter** of which are from Victorians.

We set out in this submission the following information in support of our contribution to the Department of Justice and Regulation's review into improving access to justice for Victorians:

1. an overview of the TIO as an independent alternative dispute resolution scheme
2. how we contribute to improving access to justice by resolving disputes between telecommunications consumers and service providers
3. how we contribute to improving access to justice through:
 - our expert and independent voice in the information we provide to industry, the community and regulators
 - our active engagement with industry, regulators and other stakeholders to improve industry standards and practices, and
4. our recommendation as to how access to justice – using informal pathways such as industry-based Ombudsman schemes – can be strengthened.

We trust this information helps inform the review, with particular reference to how access to justice in Victoria can be expanded through increased awareness of, referrals to and utilisation of independent alternative dispute resolution schemes such as the TIO.

About the TIO

Background

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)* (the TCPSS Act) to provide a free and independent dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

The TIO's primary role is to provide a dispute resolution service that is guided by and is committed to the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness as set out in the [Benchmarks for Industry based Customer Dispute Resolution Schemes](#) (the Benchmarks). We have regard to the law and good industry practice, and also what is fair and reasonable in all the circumstances. Before the TIO is involved in a complaint, we ensure the consumer has given the telecommunications provider an opportunity to consider the complaint.

Our dispute resolution service benefits telecommunications providers and their customers by providing an alternative to resolving disputes through court proceedings:

- We provide a superior dispute resolution experience for telecommunications providers and their customers – disputes are resolved faster and involve specialist complaint handling.
- Our dispute resolution is less costly – specifically when taking into account time costs, legal fees, and (for telecommunications providers) potential reputational damage.

We underpin consumer confidence because consumers know they can rely on our dispute resolution service if a problem arises.

Established in 1993, the TIO is an essential component of the consumer protection regime in the telecommunications industry. We help over 100,000 consumers each year resolve complaints with their telecommunications providers at no cost to the consumer. We also assist many telecommunications providers who are members of the TIO Scheme to improve their complaint handling practices, processes and procedures to deliver better outcomes for their customers.

Functions and powers

The specific powers and functions of the TIO are drawn from a number of different sources, including:

- the TCPSS Act, which provides the legislative basis for the TIO's existence and gives us the power to investigate, make determinations and give directions on complaints about telecommunications services by the end users of those services. The TCPSS Act also requires each carrier and all eligible carriage service providers to be members of, and comply with, the TIO Scheme.
- the *Telecommunications Act 1997 (Cth)*, which enables functions and powers to be conferred upon the Ombudsman by Industry Codes that are registered with the Australian Communications and Media Authority (the ACMA). Where we have accepted conferral of power under a particular registered Industry Code, we have the power to receive, investigate, facilitate the resolution of, make determinations about,

and report on complaints by consumers about matters arising under that Industry Code.

- the *Telecommunications (Low Impact Facilities) Determination 1997* and the *Telecommunications Code of Practice 1997*, which give us the power to handle objections from owners/occupiers about land entry, installation of low impact facilities and maintenance activities by carriers.
- the [TIO Company Constitution](#), which establishes TIO Limited as a public company limited by guarantee that is funded by its Members (telecommunications providers). It also enables the creation and amendment of the TIO Terms of Reference and binds the TIO and its Members to the clauses of the TIO Terms of Reference.
- the [TIO Terms of Reference](#), which sets out the jurisdiction, powers and functions of the Ombudsman. It also sets out the criteria for the investigation of systemic issues, describes the responsibilities of the Ombudsman and the TIO Board, and specifies which of the Ombudsman's powers can be delegated to TIO staff.

We are able to handle complaints about telephone and internet services, including requiring telecommunications providers to make available documents or information relevant to the complaint. We have the authority to decide the resolution of a complaint that the telecommunications company is legally obliged to implement up to \$50,000, and make recommendations up to \$100,000.

We may stop handling a complaint at any time if it is fair and reasonable to do so, for example if the consumer has refused to pay undisputed charges that the TIO considers to be reasonable or if the provider has made a fair offer to resolve the complaint and the consumer has not accepted this offer.

Commitment to the Benchmarks

The Benchmarks have an integral role at the TIO and guide a range of our operational activities. We briefly outline below the way the TIO employs the Benchmarks in our daily operations, complaint handling and resolution.

Accessibility

We continue to improve the awareness of and accessibility to our office.

Website

We have a user-friendly website that has seen an increasing number of consumers report their complaints to the TIO online. Our website is designed according to Web Content Accessibility Guidelines (WCAG) 2.0 to make the information accessible to the widest range of people. Our website also has information factsheets in 32 languages other than English.

On average, our website attracts more than 1,300 visitors daily.

Communication channels for complaints

To ensure the highest level of accessibility to consumers with different needs, our dispute resolution service is free, regardless of how complaints are received. This includes by telephone, online form, email, mail, teletypewriter machine, and through an interpreter service.

For the cost of a local call, consumers who prefer to speak a language other than English can use the Translating and Interpreting Service (TIS) to raise their telecommunications dispute with the TIO. Additionally, if a consumer's complaint is urgent, but a TIS translator is unavailable, then an available TIO officer who can communicate in the consumer's preferred language may be able to assist in handling the complaint. Consumers who are deaf or have a hearing or speech impediment may contact the TIO through the National Relay Service and/or teletypewriter.

Plain English Terms of Reference

The Terms of Reference is one of the TIO's governing documents that explains our objectives and rules. A review of the document was undertaken in 2013 with the aim of making it clear, accessible and in plain English.

The new plain English [TIO Terms of Reference](#), launched in December 2014, uses simple and succinct statements about the types of complaints we handle and how we handle them.

Outreach and awareness

Enhanced awareness of the TIO within the community is one of our key focuses. This includes initiatives to increase outreach activities targeting young people and Indigenous communities by improving our online presence and accessibility.

Our [Outreach program](#) is robust, and reaches out to as many different communities as possible – in 2014-15 we attended or participated in **64** different outreach events.¹ Our Outreach program helps raise awareness about how the TIO can help resolve complaints between consumers or small businesses and their telecommunications providers.

Some examples of how we have improved awareness of and access to the TIO include:

- strengthening networks with Indigenous consumers including remote communities and agencies working with Indigenous consumers. For example, in May 2015, we launched a toolkit with resources to help community workers in remote Indigenous communities explain the role of the TIO in resolving telecommunications complaints.² We also visited Indigenous communities in Walgett, Gingie, Namoi and Amata to consult about our toolkit and to raise awareness of our services.
- working with financial counsellors to raise awareness about using internal and external dispute resolution mechanisms to help their clients resolve disputes. For example, in October 2015, the TIO, together with several other industry-based Ombudsman schemes participated in the annual conference of the Financial Counsellors Association of NSW in Dubbo.³ We also regularly collaborate with other industry-based Ombudsman schemes to train financial counsellors on using industry codes and accessing Ombudsman schemes to resolve their client's disputes.
- working with agencies representing people with disabilities to develop and provide advice on the TIO's disability action plan. For example, the TIO established its Critical Friends Group under our Disability Action Plan 2013-16, to provide advice about increasing accessibility to and raising awareness of, the TIO's dispute resolution service. In October 2015, this Group discussed and highlighted a range of

¹ See [TIO Annual Report 2014-15](#).

² See <http://www.tio.com.au/publications/news/tio-launches-toolkit-to-assist-indigenous-consumers>.

³ See <http://www.tio.com.au/publications/news/outreach-update>.

telecommunications issues that are impacting people with disabilities, with this discussion helping inform the TIO's responses to these issues.⁴

- training our dispute resolution staff on diversity awareness, the scope of which covers:
 - the diversity of Australian communities
 - the importance of intermediaries in dispute resolution for some communities
 - the difficulties faced by remote communities, and
 - how staff can use various services such as the Aboriginal Interpreter Service, to overcome communication barriers.

The results of our September 2012 consumer awareness survey indicated that consumer awareness of the TIO was at **33 per cent** for unaided awareness and at **57 per cent** for aided awareness in 2012.⁵ This is substantially higher than the consumer awareness results in 2008, when our survey indicated consumer awareness of the TIO at **15 per cent** for unaided awareness and **36 per cent** for aided awareness.

Independence

Independence is critical for an Ombudsman's office and is a fundamental benchmark for the TIO.

Reviews of the TIO Scheme

Safeguards for our independence include the regular review of the TIO Scheme. Clause 22 of the [TIO Constitution](#) requires the TIO Board to commission the regular review of the TIO Scheme as required by legislation or when the Board otherwise considers necessary or desirable. The TCPSS Act requires a review of the TIO Scheme to be completed every five years by an independent person or body, where this review must make provision for consultation with the public and the ACMA.⁶

The TIO has been the subject of or has independently undertaken, a number reviews in recent years. These reviews have either been part of a wider telecommunications focus on specific areas, or a targeted assessment of the TIO and its operations. They include:

- [KPMG Review of the Telecommunications Industry Ombudsman Scheme - Summary \(June 2011\)](#)
- [ACMA's Reconnecting the Customer Report – September 2011](#) (see Chapter 9)
- [Reform of the Telecommunications Industry Ombudsman Scheme - Report](#) (May 2012) (see also the TIO responses to this report in our [September 2012](#) and [May 2013](#) submissions).

The TIO is accountable to all stakeholders within the telecommunications industry and as such, we take our responsibilities in relation to best practice and continuous improvement seriously. We have implemented the recommendations that have been made as part of these reviews, including:

- moving to a unitary governance structure, with a TIO Board comprising a balance of industry and consumer representatives, and independent directors

⁴ See <http://www.tio.com.au/publications/news/critical-friends-group-advises-tio-on-disability-issues>.

⁵ See the results of the TIO Consumer Awareness Survey 2012 published in the [February 2013 TIO Talks](#) and on the [TIO website](#).

⁶ Section 133A of the TCPSS Act.

- expanding the financial limits, time limits and other aspects of our jurisdiction
- improving our systemic investigation procedures
- improving reporting of TIO complaint statistics, and
- changing our complaint handling procedures when dealing with non-compliant behaviour by telecommunications providers.⁷

Funding review 2016

The TIO fully recovers the cost of providing its services by charging fees to telecommunications providers when their customers make complaints to us. Each complaint is charged to telecommunications providers in two separate but related fee components:

- Volume fees which recover TIO costs directly related to dispute resolution, and
- Operational fees which recover TIO costs not directly related to dispute resolution (such as systemic issue investigations, reporting, strategic information provision, responding to consumer enquiries, community outreach, and member assistance), and also include accommodation, utilities, administrative and project costs.

The TIO is currently undertaking a review of its funding model to ensure our funding arrangements meet the needs of the scheme and its stakeholders. Outcomes from this review will inform future changes to the current model.

Fairness

Transparent and fair decision-making is central to our role.

Complaint handling procedures

We achieve fairness in handling and resolving disputes through publishing clear and transparent [Complaint Handling Procedures](#) (CHPs). These outline how we deal with complaints and set expectations around timeframes involved. The CHPs provide a summary and framework of the methods the TIO uses when receiving, classifying, handling, investigating, and resolving complaints.

Where a consumer or telecommunications provider believes we have not followed the CHPs during the course of a complaint, they may request a review of the complaint. This is a critical aspect of applying the principles of procedural fairness.

Position statements

We publish [Position Statements](#) outlining our view on resolving particular types of complaints. TIO dispute resolution staff frequently use and refer to Position Statements to give consumers and telecommunications providers insight into the types of information we consider relevant in a particular complaint and the likely outcome we would consider fair and reasonable. Position Statements cover all main complaint types including billing and payments, credit management, contracts, connection and faults, and privacy.

We recently comprehensively reviewed our Position Statements in 2014-15. As well as introducing a new format to make the position statements more accessible, the review streamlined and reduced the number of statements from 109 to **24**. Each new position statement incorporated feedback from a range of industry and consumer stakeholders.

⁷ See TIO responses to the Department of Communications' [Reform of the Telecommunications Industry Ombudsman report May 2012](#) in our [September 2012](#) and [May 2013](#) submissions.

Our new position statements give straightforward guidance about the legal rules and good industry practice applicable to common types of complaints. They reflect a clear TIO view about the way we think complaints should be resolved, and ensure consistency in how we handle complaints about particular issues.

Graduate Certificate

In 2014, the TIO launched a first-of-its-kind industry-based postgraduate qualification that focuses on developing the dispute resolution, case management, communication and legal skills of our dispute resolution staff. This has led to an improvement in the quality of the TIO's dispute resolution service. Seventeen modules have been developed over 2014-2016, with the final module to be delivered in June 2016. These modules include, for example:

- Communicating effectively with diverse parties
- Alternative dispute resolution methodologies
- Dealing with challenging conduct
- Telecommunications industry, and
- Telecommunications technology.

The qualification is accredited and nationally recognised. A pilot group is due to graduate in 2016 with a Post Graduate Certificate in Dispute Resolution (Industry).

Accountability

We report on the substantial number of consumer complaints that we receive each year, in a clear and informative way.

In our [online annual report](#) we inform stakeholders not only of the volume of complaints received, but also the extent to which the TIO is required to conciliate or investigate those complaints in order to reach a resolution. We also provide case studies about matters we have handled that give telecommunications providers, regulators and other community stakeholders visibility of the types of complaints handled.

As well as our annual report, we provide the community with visibility of complaints data in our regular digital publication [TIO Talks](#).

We also provide a comprehensive suite of monthly reports to assist telecommunications providers identify key drivers and complaint trends that may require their attention. In addition, we give our key stakeholders – the ACMA, the Australian Competition and Consumer Commission (ACCC), Communications Alliance (CA), Communications Compliance and the Australian Communications Consumer Action Network (ACCAN) – anonymised data about our complaints each month to keep them informed about key complaint trends in the telecommunications industry.

Efficiency

We aim to ensure our service is delivered as efficiently as possible, for both consumers and telecommunications providers.

We recognise the importance of resolving complaints quickly and effectively. We have established timeframes for participating organisations to respond to, and resolve, individual complaints. Each year, we report on our performance in meeting these timeframes.⁸

The bulk of consumer complaints to our office are resolved at the first or 'referral' stage of the complaints handling process, within ten business days. For matters that cannot be resolved through this referral process, we have a conciliation process to deal with matters more informally and speedily.

Efficiency can also be achieved in other areas such as identifying systemic issues and not just focusing on discrete consumer complaints. We regard the early identification of and intervention in, systemic issues as delivering real benefits for consumers and telecommunications providers. Where the TIO can identify systems or process issues at an early stage and engage with the provider to discuss a resolution, our experience is that it leads to improved outcomes for consumers and fewer complaints.⁹

Effectiveness

We regularly review and make changes to our functions and powers to ensure we can appropriately address the vast number of complaints that we receive.

In the past five years, we have instituted substantial changes to our monetary limits. We increased the Ombudsman's power to make binding decisions in individual complaints from \$10,000 to \$30,000 (May 2011) and then to \$50,000 (July 2012); and increased the power to make recommendations from \$50,000 to \$85,000 (May 2011) and then to \$100,000 (July 2012).¹⁰ The monetary limits to our powers to make binding decisions or recommendations do not however, limit our ability to resolve – through our referral, conciliation and investigation processes – complaints that involve amounts in excess of these monetary limits.

On 1 July 2013, we implemented another change to our jurisdiction by increasing the time limits for when consumers and small businesses can bring complaints to us.¹¹ Consumers can, after this date, make complaints about issues that they became aware of up to two years before contacting the TIO, up from one year. The Ombudsman can also decide whether or not to handle complaints that consumers became aware of up to six years before contacting the TIO, up from two years.

The changes mean that the TIO has substantially increased its scope to deal with complaints from consumers who have been trying unsuccessfully to resolve matters privately and with their telecommunications providers, for long periods of time.

Both the changes in respect of monetary limits and time limits were prompted by the changing nature of complaints that we receive each year.

⁸ See our performance measures reported in the TIO's [Annual Report 2014-15](#).

⁹ See our systemic issues report in the TIO's [Annual Report 2014-15](#).

¹⁰ See [TIO Media Release](#) dated 28 June 2012.

¹¹ See [TIO Media Release](#) dated 1 July 2013.

Resolving telecommunications disputes

Resolving disputes is our primary role

As an industry-based Ombudsman scheme, we contribute to improving access to justice by offering consumers an independent, free and informal dispute resolution pathway. We are the busiest industry-based Ombudsman's office in Australia – we receive thousands of calls and emails each week and record more than **100,000** new complaints each year.

Our primary role is to resolve telecommunications disputes in an accessible, independent, fair, efficient, responsive and effective way. We do this by offering a high quality dispute resolution service that keeps pace with the evolving and fast changing nature of the telecommunications industry.

The details of our dispute resolution service are outlined below.

Demographic information

We receive and resolve a wide range of disputes between residential and small business consumers and their telecommunications providers.

Our approach to limiting our services to small business and residential consumer complaints rests on the premise that small business consumers, like residential consumers, are less likely to have the resources necessary to pursue a grievance through the formal legal system. As such, small businesses with telecommunications complaints require access to the TIO in its role as an independent and free external dispute resolution scheme.¹²

As indicated in Table 1, residential consumers form the majority of the consumers who make a complaint with the TIO (**87.9 per cent** in 2014-15). Small business consumers made up **11.8 per cent** of consumers who complained to the TIO in 2014-15, compared to **11.6 per cent** in 2012-13. As shown in Table 1, the distribution of complaints from Victorian small business and residential consumers over the past three years is similar to the national distribution of TIO complaints.

Table 1: Distribution of new complaints by consumer type	2012-13		2013-14		2014-15	
	Australia	Victoria	Australia	Victoria	Australia	Victoria
Residential consumers	88.1%	88.4%	88.4%	88.9%	87.9%	88.8%
Small businesses	11.6%	11.3%	11.3%	10.7%	11.8%	10.8%
Others (charities, not-for-profits)	0.3%	0.3%	0.4%	0.4%	0.3%	0.4%

Although most consumers who use our services are from major Australian cities and urban areas, we also hear from consumers living in regional and remote areas. As shown in Table 2, **65.3 per cent** of new complaints received by the TIO in 2014-15 were from consumers in

¹² We take a flexible approach to the criteria used to define a small business. These criteria include the number of employees of the business (generally 20 employees or less, or goods manufacturing businesses with fewer than 100 employees); annual turnover (less than \$3 million per year); the nature of the business, and if it is typically small or not-for-profit; the way the business is structured or managed; and the issue in dispute: see [TIO website](#).

major cities and urban areas, with **21.1 per cent** from consumers in regional and remote areas.

As shown in Table 3, a majority of Victorian consumers who complained to the TIO in 2014-15 are from major cities and urban areas, with **19.9 per cent** of these consumers from regional and remote areas.

Table 2: Distribution of consumers by region - Australia	2012-13	2013-14	2014-15
Major cities or urban areas	71.9%	69.7%	65.3%
Regional areas (inner and outer regional)	18.8%	20.0%	20.2%
Remote and very remote areas	0.9%	0.9%	0.9%
Not disclosed	8.4%	9.4%	13.6%

Table 3: Distribution of consumers by region - Victoria	2012-13	2013-14	2014-15
Major cities or urban areas	82.6%	81.3%	80.1%
Regional areas (inner and outer regional)	17.3%	18.6%	19.8%
Remote and very remote areas	0.1%	0.1%	0.1%

Note: Tables 2 and 3 are not directly comparable as consumers who did not disclose their addresses must be excluded from Victorian data.

As at June 2015, there were **1,539** telecommunications providers that are members of the TIO. During the year, **188** new providers joined the TIO and **33** providers departed the TIO. As indicated in Table 4, most TIO members offer both telephone and internet services. The majority of new complaints to the TIO are about telephone or internet services offered by the ten largest telecommunications providers.

Table 4: Profile of TIO members	2012-13	2013-14	2014-15
Telephone and internet providers	52.1%	54.05%	74.2%
Internet providers only	28.8%	26.73%	12.4%
Telephone providers only	14.1%	13.58%	10.5%
Others	5.0%	5.64%	2.9%

Volume of disputes received

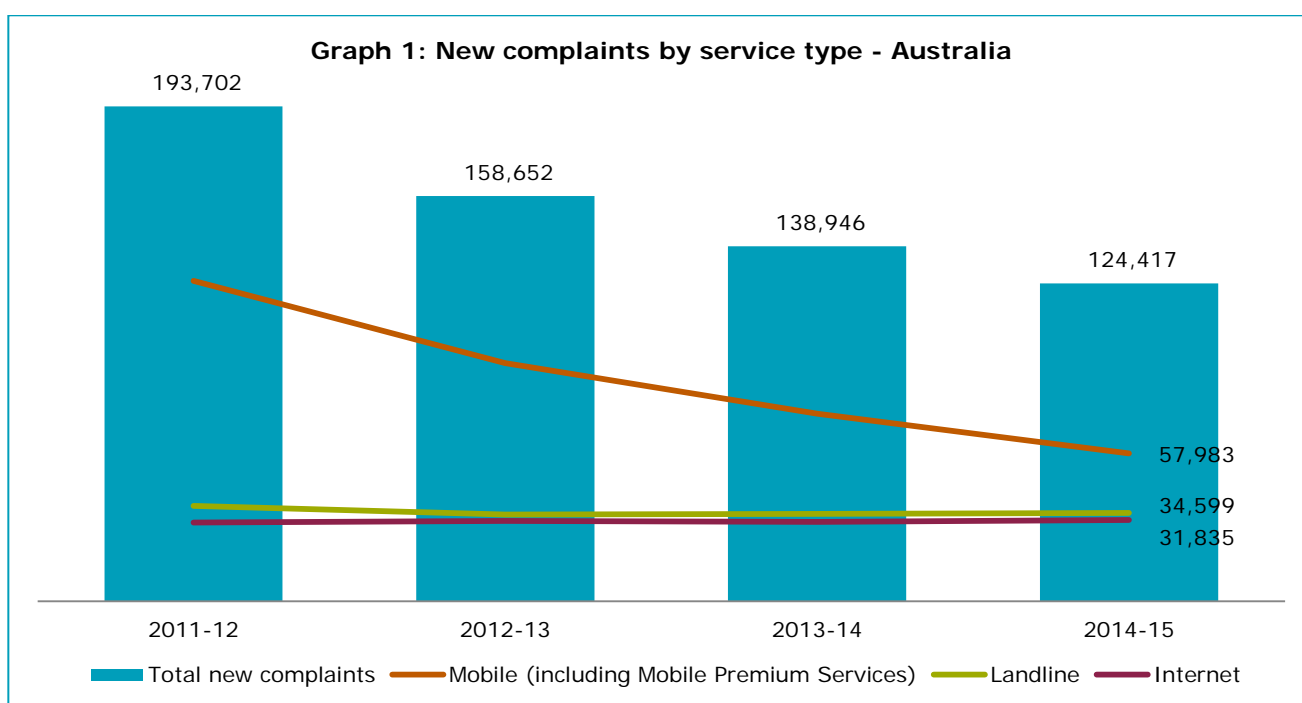
Our ability to resolve a high volume of disputes each year is an important indication of how the TIO exemplifies access to justice.

As at 2014-15, we are the busiest industry-based Ombudsman’s office in Australia – we receive thousands of calls and emails each week and record more than **100,000** new complaints each year.

When a consumer – residential or small business – contacts us with an expression of grievance or dissatisfaction about a matter within the TIO’s jurisdiction that the telecommunications provider has had an opportunity to consider, we record this as a ‘new complaint’.

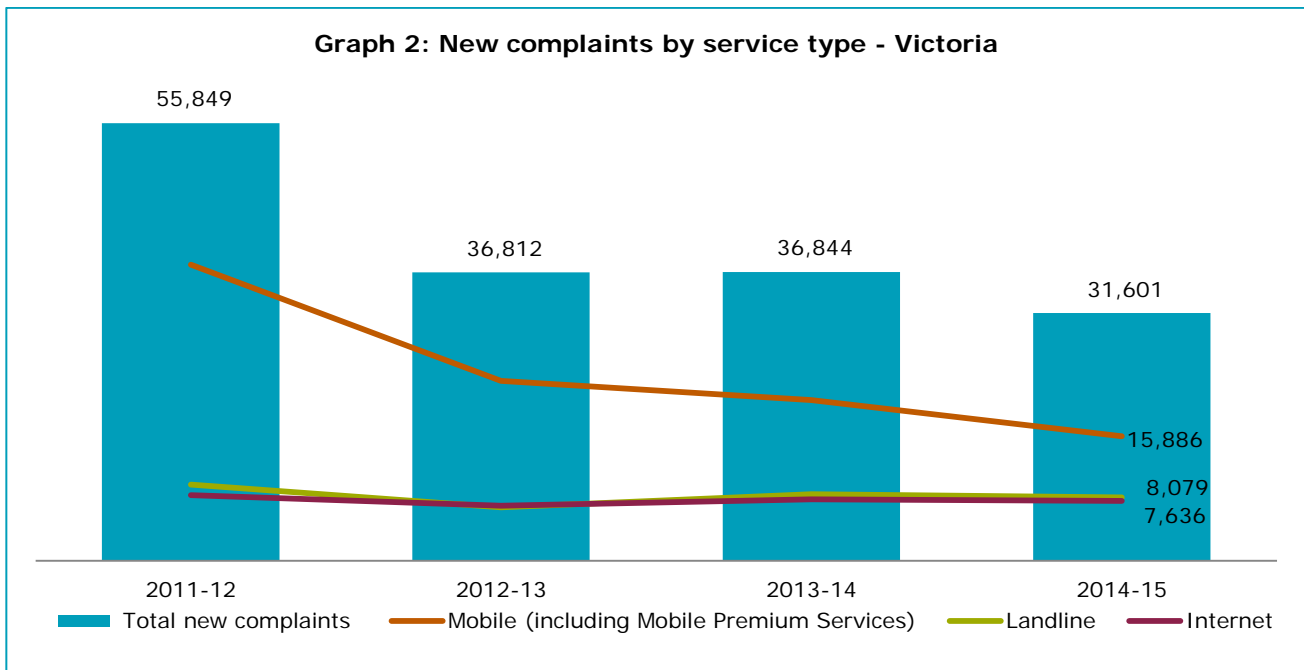
The TIO recorded **124,417** new complaints from small business and residential consumers in 2014-15. This compares with **193,702** new complaints recorded in 2011-12.

Graph 1 highlights the number of new complaints received by the TIO (Australia-wide) over the past four years by service type – internet, landline and mobile (including mobile premium services).



We recorded **31,601** new complaints from Victorian small business and residential consumers in 2014-15. This compares to **55,849** Victorian new complaints in 2011-12. Victorian new complaints formed around **one quarter** of TIO new complaints in 2014-15.

Graph 2 highlights the number of new complaints received by the TIO from Victorian consumers, over the past four years by service type – internet, landline and mobile (including mobile premium services).



More information about TIO complaints statistics is available in our [Annual Report 2014-15](#).

Dispute resolution methods used

We use a range of dispute resolution methods that are accessible, flexible, easy to use and appropriate for the complexity of the telecommunications disputes that we handle.

We establish the issues in dispute and the resolution sought. We then refer the consumer or small business to a designated point of contact at the relevant telecommunications provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. More than **90 per cent** of complaints received in 2014-15 were finalised at this stage of the process.

Where the consumer and telecommunications provider do not reach an agreement at this stage, the TIO becomes more directly involved by conciliating an agreed outcome between the parties. As indicated in Table 5, around **8.7 per cent** of complaints were finalised using this conciliation process in 2014-15.

A small number of complaints that cannot be resolved by conciliation are investigated by the TIO. TIO investigations are comprehensive, requiring evidence from both the consumer and the telecommunications provider. The TIO assesses the evidence with regard to the law, good industry practice and what is fair and reasonable in the circumstances. A high proportion of investigated complaints are resolved by the parties coming to an agreed resolution.

If the complaint remains unresolved after investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding decisions up to the value of \$50,000 and non-binding recommendations up to the value of \$100,000 in respect of each complaint.

Table 5: How disputes are resolved and finalised	2012-13	2013-14	2014-15
Disputes finalised at referral	89.7%	88.8%	91.2%
Disputes finalised at conciliation	10.0%	10.8%	8.7%
Disputes finalised at investigation	0.3%	0.4%	0.2%
Disputes finalised at determination	0.001%	0.004%	0.0%

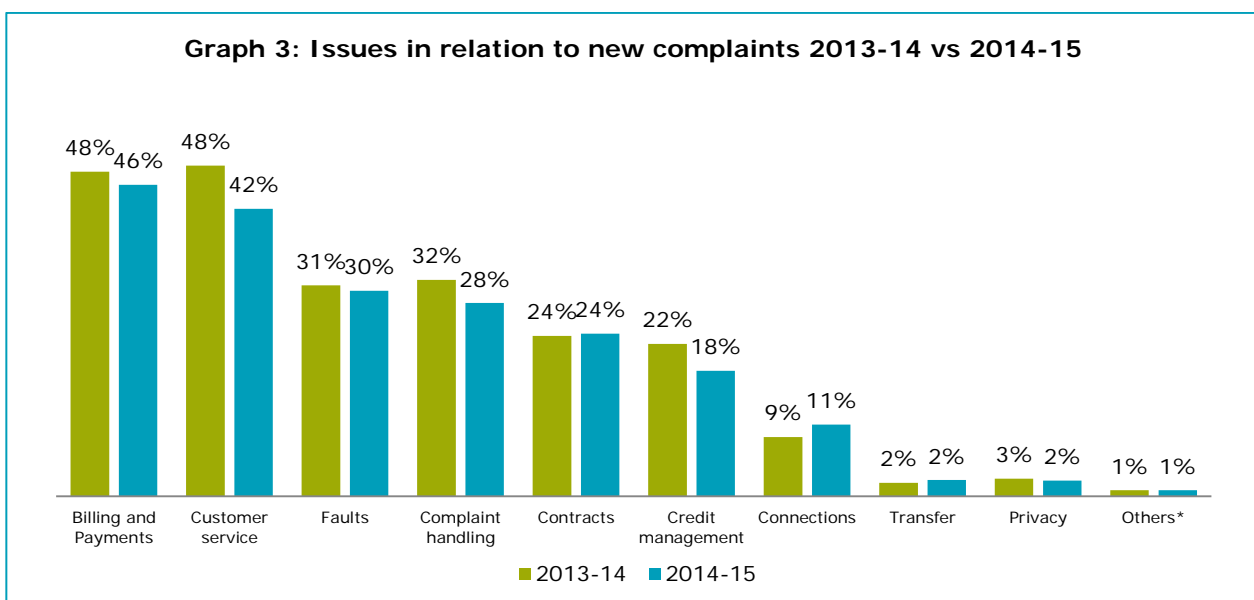
Types of disputes resolved

We receive and resolve a wide range of disputes between residential and small business consumers and their telecommunications providers.

These disputes include connection and fault repair delays, credit management disputes, privacy issues, contractual or transfer disputes, customer service/complaint handling issues and billing disputes that relate to a telecommunications service. We also deal with a number of disputes that relate to a carrier's exercise of statutory powers to access land and to install low impact telecommunications infrastructure on land.

We record new complaints with the types of issues they present. For every new complaint or matter the TIO registers, we may record one or more keywords to identify the types of issues that are presented in the matter.

Graph 3 below represents issues recorded as a proportion of new complaints over the last two financial years. In 2014-15, billing and payments issues featured in **46 per cent** of all new complaints, followed by customer services issues in **42 per cent** of all new complaints. Other prominent complaint issues included faults and complaint handling (both around **30 per cent**), and contractual and credit management issues.¹³



¹³ Further data and analysis on complaint issues can be found in the [TIO Annual Report 2014-15](#).

Efficiency and timeframes for resolution

Access to justice requires the timely and efficient resolution of complaints.

We have continuously streamlined our dispute resolution processes to improve the timeliness and efficiency of the TIO's dispute resolution service.

In recent years, we introduced two major changes to our dispute resolution processes. The first involved immediate electronic notification to providers once a complaint is registered by the TIO, so that providers can directly contact their customers and resolve their complaints. This sped up the TIO referral process for new complaints and reduced the run around for consumers, thereby increasing their access to justice.

The second process change was a more streamlined and less formal conciliation process introduced to help resolve disputes not resolved via referral. This process succeeded in achieving faster resolution of disputes with fewer cases requiring detailed time consuming investigations.

We have also responded to the fast changing telecommunications landscape to help telecommunications providers improve the timeliness and quality of resolutions. As an example, when handling complaints about services that are delivered over the National Broadband Network (NBN), the TIO now includes additional information to help retail service providers resolve NBN-related complaints more quickly. Where appropriate:

- a courtesy notification is sent to the consumer's telecommunications retail provider when complaints are registered to nbn co (the wholesaler for NBN services), and
- in NBN-related complaints, the referral notification to telecommunications retail providers includes further information that highlights the appropriate channels at nbn co to assist with resolving a complaint.

Table 6 outlines the proportion of complaints finalised in less than 30 days, between 30 to 180 days and more than 180 days by the TIO over the past three years.

Table 6: Timeframes for resolution or finalisation	2012-13	2013-14	2014-15
Complaints resolved within 1 month (less than 30 days)	95.0%	96.8%	96.6%
Complaints resolved between 1 to 6 months (less than 180 days)	4.4%	3.1%	3.4%
Complaints resolved after 6 months (more than 180 days)	0.6%	0.1%	0.1%

Stakeholder satisfaction

The effectiveness of the TIO scheme is demonstrated by the high degree of consumer and service provider satisfaction with our services and the outcome of complaints.¹⁴

A survey of consumers in June 2014 and June 2015 indicated high levels of satisfaction with the TIO's handling of the complaint under the referral process – at **90 per cent** and **91 per**

¹⁴ See [TIO Annual Report 2014-15](#).

cent respectively (see Table 7 below). For the year 2014-15, an average of **76.5 per cent** of consumers was satisfied with the outcome of complaints.

Table 7: Consumer satisfaction with referral	Jun-14	Jun-15	2014-15 Average	Target
Handling of complaint	90%	91%	90.5%	80%
Outcome of complaint	76%	77%	76.5%	80%

A survey of consumers in June 2014 and June 2015 indicated high levels of satisfaction with the TIO's handling of the complaint under our conciliation process – at **90 per cent** and **80 per cent** respectively (see Table 8 below). An average of **73.5 per cent** was satisfied with the agreement reached through conciliation.

Table 8: Consumer satisfaction with conciliation	Jun-14	Jun-15	2014-15 Average	Target
Handling of complaint	90%	80%	85%	80%
Outcome of complaint	72%	75%	73.5%	80%

The TIO achieved high levels of satisfaction with our conciliation process amongst telecommunications providers as indicated by Table 9. Our May 2013 survey for all finalised conciliation cases shows all results exceeded the annual 80 per cent target, with **93 per cent** of providers satisfied with our handling of complaints, **94 per cent** were happy with complaint outcomes and **87 per cent** were satisfied with TIO independence.

Table 9: Telecommunications provider satisfaction with conciliation	May-13	Target
Handling of complaint	93%	80%
Outcome of complaint	94%	80%
TIO independence	87%	80%

Improving access to justice in other ways

An independent voice in the telecommunications industry

In addition to the TIO's dispute resolution service, we are also an independent and expert voice on matters affecting the telecommunications industry.

We enhance access to Australia's civil justice system through our capacity to contribute to important changes to the regulatory framework with the aim of improving industry practices and reducing consumer detriment in the telecommunications industry. To this end, we provide regulators and other stakeholders with critical data and analysis of key issues and

trends about telecommunications disputes. This information also informs the many submissions and reports that we provide to our stakeholders.¹⁵

Industry improvement initiatives

We help improve industry practices by actively engaging with stakeholders across a range of initiatives and contributing to industry developments. These initiatives are primarily aimed at reducing consumer detriment and preventing disputes from occurring in the first place.

Our involvement in industry improvement initiatives has contributed to tangible outcomes such as a more robust Telecommunications Protections Code in 2012 and subsequently in 2015, which is one reason for reduced complaints to the TIO over the past three years.

Some of our significant initiatives and contributions are outlined below.

Improving industry customer service and complaint handling

Resilient Consumers survey (2010-11)

In 2010, we surveyed over 500 consumers who had made a complaint to the TIO, about their customer service and complaint handling experiences prior to seeking the TIO's assistance.

Our [Resilient Consumers report](#) (2011) detailed the survey findings and made a number of observations including:

- more than 50 per cent of consumers surveyed said that they had contacted their telecommunications providers **five or more** times to address their matters prior to coming to the TIO
- almost 50 per cent of consumers had interacted with more than **three** different contact points or departments at their telecommunications provider before lodging a TIO complaint
- nearly 27 per cent of consumers surveyed said they had spent between **three and six hours** trying to resolve their complaint with their provider, and another 20.3 per cent said they had spent **more than nine hours** before giving up and turning to the TIO.

The Resilient Consumers report received considerable media coverage and helped inform our responses to the ACMA *Reconnecting the Customer* inquiry.

ACMA Reconnecting the Customer inquiry (2011)

The ACMA announced its *Reconnecting the Customer* inquiry into customer service and complaint handling practices of telecommunications providers, in April 2010. It held a number of public hearings and called for submissions and feedback from a wide range of stakeholders. The ACMA also undertook its own research into customer service and complaint handling best practices.

We made significant contributions to the ACMA *Reconnecting the Customer* inquiry in September 2010, February 2011 and July 2011, with a central focus that customer service and complaint handling are usually symptoms of a more substantive problem.

¹⁵ We made 14 submissions 2014-15 to various inquiries, code reviews and legislative revisions: see [TIO submissions](#) on the TIO website.

We recommended that addressing the primary drivers of complaints – such as unexpectedly high bills, confusing point of sale advice, fault repair and connection delays and unfair credit management – would be the best means of reducing consumer complaints, instead of simply focusing on tackling customer service and complaint handling.

When the ACMA's [Reconnecting the Customer final report](#) was released in September 2011, it proposed a five-pronged solution to reducing consumer complaints that predominantly focussed on complaint drivers and was very much in line with TIO sentiments. The ACMA report went on to heavily influence the review and re-drafting of the Telecommunications Consumer Protections Code, which in turn has brought significant change to industry practices and the experience of consumers.

Telecommunications Consumer Protections (TCP) Code (2012, 2015)

The TCP Code is the primary consumer protection code for the telecommunications industry, with obligations that span the full continuum of interactions between telecommunications providers and their customers. The TIO uses the TCP Code on a daily basis to assist in resolving disputes.

The implementation of stronger principles and rules in the TCP Code 2012 has contributed to a reduction in the number of complaints to the TIO. The revised [TCP Code 2015](#) forms an essential consumer protection tool and an integral part of the telecommunications co-regulatory framework.

We made submissions to both the review, and revised drafts, of the TCP Code. Across these submissions, we commented on the structural gaps within the existing TCP Code, the industry's awareness of/commitment to the TCP Code, the cohesiveness of the TCP Code, the accessibility of the TCP Code and how success of the TCP Code might be measured. We also provided detailed comment on individual sections/clauses of the TCP Code, highlighting the need to ensure vulnerable consumers were adequately protected and how the code could be strengthened further.

Financial hardship principles and practices (2014)

In 2013-14, the TIO facilitated a series of roundtables, forums and workshops between representatives of the telecommunications industry and consumers to inform a flexible and achievable set of principles and practices around financial hardship.

As a result of this collaborative process, a guide for telecommunications providers, [Responding to customers in financial hardship: Principles and practices for telecommunications providers](#), was released in March 2014. The objective of the guide is for providers to help customers in financial hardship stay connected to essential telecommunications services while helping them pay their bills.

Member Online Education program (2015)

In February 2015, we launched our Member Online Education program, a series of free online resources for TIO members about TIO processes, as well as information about best practice complaint handling. Our first module, Introduction to the TIO, contains general information about the TIO for new providers and staff at existing providers. Based on initial feedback, providers have told us that they find the resources helpful in understanding the role of the TIO Scheme and our dispute resolution service.

We launched our second and third modules in December 2015, about TIO Complaint Handling Procedures and Best Practice Complaint Handling. These modules assist providers

and their staff to resolve complaints referred to them by the TIO, and offer strategies on how best to deal with customer complaints before these arrive at the TIO.

The Member Online Education program seeks to build a detailed understanding of TIO processes and to encourage best practice complaint handling, with the longer-term aim of resolving complaints prior to the TIO's involvement.

Improving industry practices and standards

International mobile roaming

Our contribution to the development of Australia's International Mobile Roaming (IMR) Standard is another example of our role in improving industry practices.

In 2012-13, we provided detailed information and data to assist the ACMA develop an industry standard that would apply to all telecommunications providers that supply international mobile roaming services to their customers.

In our three submissions, we highlighted the need for regulatory intervention given the growth in international mobile roaming complaints, the high dollar amounts of these disputes and the limited protections under existing industry codes. Our data showed that new complaints about international mobile roaming charges increased by 50 per cent in 2010-11 and nearly 70 per cent in 2011-12. In addition, our data showed that the amounts involved were substantial and rising.

In light of these trends, we recommended that:

- telecommunications providers should obtain specific and informed consent from the consumer before activating international roaming
- on a consumer's arrival overseas and during their stay, the provider should give information about costs of using the mobile service, including unit price based information (for example, the cost of making or receiving a two-minute phone call or downloading an MB of data), and wherever possible provide spend alerts
- telecommunications providers should be able to restrict a consumer's access to roaming where charges are quickly accruing to reduce the risk of an unexpectedly high charge.

Many of these recommendations were adopted in the IMR Standard which took effect in September 2013. In addition, the TIO also accepted conferral of power of receiving, investigating, facilitating the resolution of, making determinations in relation to, giving directions in relation to, and reporting on complaints about matters referred to in the IMR Standard.

The IMR Standard is designed to encourage best practice as telecommunications providers are now required to notify and inform consumers about roaming activation, charges, spend management tools and opt-out options.

International mobile roaming complaints to the TIO have since significantly reduced.

Mobile premium services

The significant improvement in practices within the mobile premium service industry is another area where our initiatives have had substantial impact in recent years.

Our involvement with mobile premium services began in 2006 with the introduction of the Mobile Premium Services Industry Scheme to regulate mobile premium services. We saw

increasing numbers of complaints about these services. In 2008-09, when mobile premium services complaints to our office were most prevalent, the TIO recorded over 13,500 new complaints about mobile premium services. This accounted for around 7.7 per cent of all TIO new complaints.

Most of these complaints involved claims from consumers that they:

- did not ask for the mobile premium services
- received high bills for mobile premium services
- could not cancel a mobile premium service and kept getting billed for it
- could not contact or communicate with a mobile premium services supplier
- found out that their child had subscribed to unsuitable mobile premium services, or
- were not told barring of mobile premium services was available.

The TIO reported extensively and in detail on mobile premium service complaints. Our data prompted a significant response by both industry and regulators, leading to the creation of a robust Mobile Premium Services Code and two ACMA Determinations that mandate the availability of barring of mobile premium services and that can forcibly halt the operations of mobile premium service providers who do not act within the rules.

In 2014-15, new complaints about mobile premium services now account for only 1.6 per cent of new complaints, with around 2,000 consumers needing the TIO's assistance with these services.

Addressing systemic issues

The TIO's industry improvement and engagement functions also enhance consumers' access to justice. Our response to systemic issues in the industry is an increasingly important tool to help manage complaint demand, reduce consumer detriment and increase service provider accountability to their customers.

We closely monitor emerging complaint trends to identify whether these are due to a common cause, for example, a failure in systems or processes of a telecommunications provider. Where we identify a possible systemic issue, we will consider whether it is more effective to amalgamate a group of complaints and commence a potential systemic investigation, rather than handling each complaint individually through standard complaint handling processes.

The TIO Terms of Reference confers powers to investigate 'systemic issues' arising from consumer complaints to the TIO. Systemic issues may be weaknesses or failures in the systems, processes or practices of a telecommunications provider that cause detriment (that is not trivial) to a significant number or a class of customers.¹⁶ Where a formal investigation does not appear to be practical, for example where an issue needs to be resolved very quickly to avoid significant consumer detriment, the TIO may adopt a more informal approach and engage with the relevant telecommunications provider to explore resolutions.

Further information about our [Complaint Handling Procedures – Systemic Issues](#) is available on the TIO website.

During 2014-15, the TIO looked into 50 systemic issues, and conducted a total of 20 informal and formal investigations.

¹⁶ See clause 5.1 of the [TIO Terms of Reference](#).

Most systemic cases were resolved by the telecommunications providers after we brought the issue to their attention. Examples include:

- disclosure of personal information to third parties
- inaccuracy of product advertisements
- potentially unfair administration fees
- direct debits without authorisation or sufficient notice
- potentially unfair variation of contract terms, and
- unauthorised transfers resulting from misleading sales practices.

We formally referred four systemic issues to the ACMA and the ACCC. We also raised concerns with these regulators about a further ten issues, including:

- privacy and protection of customers' personal information
- telemarketing practices
- misleading sales information
- incorrect billing
- unfair contract terms, and
- compliance with consumer guarantees under Australian Consumer Law.

Recommendation and conclusion

Recommendation

Industry-based Ombudsman schemes are well-placed to understand and resolve disputes between service providers and their customers. Assisting consumers and service providers to resolve disputes in an accessible, independent, fair, accountable, efficient and effective manner is their core business.

One way in which the civil justice system can leverage on the expertise and effectiveness of industry-based Ombudsman schemes is to more actively promote – for appropriate disputes – referral to industry Ombudsman schemes where Courts consider that alternative dispute resolution processes would assist the parties to resolve the dispute. Such a referral could occur, for example, when one of the parties to the dispute is a member of the industry-based Ombudsman scheme and the subject matter of the dispute falls within the existing jurisdiction or remit of that Ombudsman scheme.

Such an approach could facilitate greater use of alternative dispute resolution and improve access to civil justice.

Existing legal frameworks already conceive of referral to alternative dispute resolution processes.

In the Federal jurisdiction, both family law¹⁷ and general civil procedure¹⁸ provide for a culture of active dispute resolution. This includes referrals to alternative dispute resolution processes both before and during legal proceedings.

¹⁷ Section 13C *Family Law Act 1975 (Cth)* provides the option for the Court, on its own initiative, to refer the parties to family dispute resolution and section 60I requires the parties to make a genuine effort to resolve the dispute using family dispute resolution before applying for Court orders.

In Victoria, under the *Civil Procedure Act 2010 (Vic)*, a court may make an order referring a civil proceeding to appropriate dispute resolution¹⁹ at any stage in the proceeding.²⁰ Appropriate dispute resolution for the purposes of the *Civil Procedure Act 2010* includes processes that would also be considered alternative dispute resolution processes. The definition expressly includes conciliation and expert determination.²¹ The order may be made with or without consent of the parties, unless the type of appropriate dispute resolution²² would result in a binding outcome, in which case consent is required.²³

The *Magistrates' Court Act 1989 (Vic)* provides that the Rules of Court may include rules referring, directing or ordering the parties to appropriate dispute resolution.²⁴ The Rules of Court state that the Court must actively manage cases, including encouraging the parties to use alternative dispute resolution if the Court considers that appropriate, and facilitating the use of such procedure.²⁵

Promoting referral of appropriate matters to industry Ombudsman schemes may have the additional benefit of encouraging service providers and consumers to engage with alternative dispute resolution processes earlier if they know that referral from the Court to the industry Ombudsman is likely. This may assist with earlier resolution of disputes, preventing issues from evolving into bigger problems and absorbing valuable court resources. It could also save individuals and organisations the financial, time and emotional costs of protracted disputes.

Conclusion

Alternative dispute resolution services are a critical component of a well-functioning civil justice system, given the high proportion of disputes that are able to be resolved less formally than through tribunals or formal legal proceedings.

The TIO is one example of how industry-based Ombudsman schemes can improve access to justice by providing a fast, free and fair dispute resolution service to telecommunications consumers and service providers. The TIO also demonstrates how Ombudsman schemes help improve industry practices through their expert and independent knowledge of the industry and through their stakeholder engagement activities. This work helps strengthen the civil justice system by helping prevent disputes from arising, and consequently reducing complaint volumes.

Increased awareness of, referral to and utilisation of existing Ombudsman schemes such as the TIO, can serve to enhance improved access to justice for Victorians.

¹⁸ The *Civil Dispute Resolution Act 2011 (Cth)* requires the parties to take genuine steps to resolve the dispute and to provide confirmation of this, in the case of the applicant prior to lodging proceedings per section 6 and before the hearing per section 7 in the case of the respondent. In addition, section 11 of the *Civil Dispute Resolution Act 2011 (Cth)* empowers the Court to take into account whether a party has taken genuine steps to resolve a dispute in line with the requirements of the Act. The *Federal Circuit Court of Australia Act 1999 (Cth)* expressly provides, in Part 4, for dispute resolution for proceedings other than under the *Family Law Act 1975 (Cth)*; and under section 22, the Federal Circuit Court of Australia must consider whether to advise parties about available alternative dispute resolution processes to resolve any matter in dispute.

¹⁹ Section 66(1) *Civil Procedure Act 2010 (Vic)*.

²⁰ Section 66(3) *Civil Procedure Act 2010 (Vic)*.

²¹ Section 3 *Civil Procedure Act 2010 (Vic)*.

²² See also section 3 *Magistrates' Court Act 1989 (Vic)* which has the same meaning as in the *Civil Procedure Act 2010 (Vic)*.

²³ Section 66(2) *Civil Procedure Act 2010 (Vic)*.

²⁴ Section 16(1)(fd) *Magistrates' Court Act 1989 (Vic)*.

²⁵ Rule 1.24(e) *Magistrates' Court General Civil Procedure Rules 2010 (Vic)*.