25 July 2018

Consumer Safeguards Review

Department of Communications and the Arts

GPO Box 2154

CANBERRA ACT 2601

By email: consumersafeguardsreview@ communications.gov.au

Dear Sir/Madam

**Re: Consumer Safeguards Review – Part A: Redress and Complaints Handling**

The Financial and Consumer Right Council (FCRC) welcomes the opportunity to make a submission on the review of consumer safeguards in the telecommunications industry. This submission is in response to the consultation paper produced in Part A of the Review process, seeking to ensure consumers:

*Can access an effective complaints handling and redress scheme that provides transparency and accountability of telecommunications providers for their performance*

1. **Context of the Review**

The review comes in the wake of the FCRC report *Rank the Telco[[1]](#footnote-1)*, which demonstrated extremely poor consumer practices in relation to hardship were endemic in the telecommunications industry.

An industry sector can be judged by the way that sector responds to the most vulnerable in our society. An industry sector that is, in effect, a utility sector – where access to services is fundamental to an individual or family’s ability to function in our society - must be required to meet community standards in that regard.

In our research, the telecommunications sector was rated as worse than the banks, and worse than the energy retail sector were rated when we initiated rating those industries (that is, when they were at their worst). It is no surprise to us that the level of complaints to the TIO are so high. These are clear signs that the telecommunications sector is out of step with community standards in its treatment of consumers.

There is significant work required of government to better protect consumers in the telecommunications sector. For too long the industry itself has attempted to have its cake and eat it too. It argues its importance and centrality to society and the economy for the purposes of government support and consumer marketing, but it resists acknowledging it provides utility services for fear of the obligations that could ensue.

*Recommendation 1:*

That the Consumer Safeguard Review identify policy implications of the telecommunications sector providing utility services, and make recommendations that will meet community standards regarding consumer rights in a utility sector, with a strong regulatory regime:

* establishing and maintaining universal access to basic services
* establishing required performance standards, including compensation for service failures
* establishing strong, accessible and independent redress and complaints handling processes external to industry interests, along with meaningful enforcement mechanisms; and,
* establishing obligations to provide a wider range of meaningful assistance to customers in hardship.
1. **Response to the Consultation Paper Issues**

The Consultation paper makes a number of proposals for reform building on an intertwined set of propositions:

* Industry should take more responsibility for dealing with its own complaints, with accountability driven by ‘direct regulation’
* TIO has been subject to industry capture and direct regulation would work better to improve industry complaint handling, while the TIO should be replaced by a narrower external dispute resolution (EDR) scheme focused on ‘complex complaints’
* Industry complaint data should be centrally collected and analysed

*Direct Regulation*

The consultation paper leans heavily on the new ACMA Complaints Handling Standard as a direct regulation mechanism that should effectively remove the need for the TIO as a widely accessible EDR scheme. This is despite this new Standard having only just been introduced, and its capacity to actually influence industry complaint handling behaviour being so far untested.

The Telecommunications Consumer Protections (TCP) Code has been the vehicle for attempts to set and require complaint handling standards from industry over many years, with little appreciable impact. It is unclear what the ACMA, with relatively little experience or expertise in taking enforcement actions, will do to improve on this.

Also, just because industry is required to follow a process, there is no guarantee that the substantive outcomes from that process for consumers will actually be fair or reasonable. Substantive outcomes in consumer complaints are not amenable to being directly regulated, and the paper provides no evidence to support the use of regulation to replace EDR as a mechanism to deal with the undefined category of ‘non-complex complaints’.

*External Dispute Resolution*

1. There is no evidence provided in the paper that supports the abolition of the TIO and its replacement with a ‘complex complaints’ EDR scheme. Even if there is some truth to the paper’s argument that the TIO is too close to industry, the argument is based on structural arrangements common to all industry ombudsman schemes.

If the new Complaint Handling Standard works as intended, it would naturally follow that complaints to the TIO would then decline, and we would have clear evidence of its impact; if it doesn’t we will need the TIO in its current form to be there to assist consumers. Either way, to abolish the TIO at this point would significantly disadvantage consumers while obscuring any capacity to assess how the new direct regulation arrangements are working, based on good comparative data.

*Recommendation 2*

That the ACMA consult with consumer organisations on the implementation and enforcement of its new complaint handling standard, and assess its impacts in conjunction with the TIO after 18 months and 3 years.

1. Wholesale abolition of the TIO and replacing it with a different scheme is a high risk and high cost solution, with consumers bearing most of the risk and cost. Funding and governance reform are more appropriate mechanisms to address industry influence over industry ombudsman schemes.

The consultation paper’s proposed new EDR scheme would be (is designed to be) less accessible to consumers, and establishing it would divert significant resources away from resolving consumer complaints and into a new body that would take years to develop. The paper is silent about how its governance and jurisdiction would operate, and there is no indication it would be anything more than a poor duplication of elements of the TIO, less accessible to consumers and involving significant transaction costs to set up.

The recent external review of the TIO provides a significant and considered analysis of the TIO’s performance. Consequently, the TIO has been engaged in some significant reforms to its complaint handling procedures, systemic work, and to its fee structures. The consultation paper makes little mention of the review and subsequent changes, instead providing an unconvincing generalised account of the TIO’s alleged weaknesses which looks more off the cuff than considered. Rather than abolishing the TIO, the most appropriate course of action would be to allow the TIO’s reforms to get fully implemented and then to assess their impacts.

*Recommendation 3*

Support the TIO’s current reforms to funding, complaint handling and systemics, and undertake an assessment of their impacts after 2 years.

*Complaints Data*

The new proposed EDR scheme would be smaller and narrower in its consideration of consumer complaints and this would, of necessity, reduce the information we have about consumer complaints and increase reliance on industry to record complaints data.

It can be anticipated that industry will work hard to minimise complaints data (without necessarily improving consumer experience or outcomes), probably through an array of mechanisms already in use (and resulting in high TIO complaint numbers), such as making its complaint processes inaccessible; redefining complaints as some other form of contact, and redefining unresolved complaints as ‘resolved’.

*Recommendation 4*

That the ACMA and TIO, in consultation with consumer organisations, develop consistent and thorough processes of complaint data collection, analysis and reporting.

1. **Other comments**

**The TIO complaints J Curve**

The Consultation paper notes that complaints received by the TIO have increased significantly in the last year, and are heading back to levels last seen in 2012-2013. This reflects how deep-seated the problems in the sector are when it comes to consumer safeguards. Our observation is that every time there is a small (and temporary) decline in some complaint figures, it is heralded by industry as showing that ongoing efforts to improve performance are starting to work. Worsening figures are generally attributed to one off issues. However, the longer-term trend is clear – providing reasonable customer service and well functioning services involve costs that are too tempting for telco managers meeting KPIs to periodically cut, given there is a lag between the cuts and the damage to service, and very weak, industry controlled compliance requirements.

We have yet another example, along with the energy sector, of market failure in a utility sector. It is clear that robust regulatory processes that set a floor of community standards under the market, with an accessible and effective EDR scheme as part of enforcement, is the only real solution to these problems

**TCP Code review process**

The one-sided, industry controlled process of reviewing the Telecommunications Consumer Protection (TCP) Code is completely out of step with other utility industry code processes, and inappropriate in a utility sector context.

The attitude of the industry to consumer advocates demonstrates how out of touch it is with community standards, and how deep an inherent antagonism to consumers runs in the industry. The inadequacies of the process flow through into a Code that does not create a clear and enforceable set of consumer protections, and makes it difficult for the TIO to resolve consumer complaints with fair outcomes.

*Recommendation 5*

The TCP Code review process as currently operating should be ended and a new review process should sit with the TIO to manage, be funded separately, and include funding and support for extensive consumer advocate involvement. Industry should be consulted on the Code review, but not control or dominate the process.

*Recommendation 6*

The ACMA should review the TCP Code with a view to incorporating key elements into direct regulation.

**Conclusion**

This review provides an important opportunity to bring an industry essential to all Australians into the 21st Century when it comes to meeting community standards on service and respect for consumers and their rights.

The industry needs to be supported by clear and transparent regulation and independent external complaints processes, building off what is already in place but with a shift towards publicly mandated obligations creating a level playing field better able to meet consumer needs.

Yours sincerely



Dr Sandy Ross

Executive Officer

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***About FCRC***

FCRC is the peak body for financial counsellors in Victoria. It is a non-profit organisation whose purpose is to:

* Advocate for vulnerable Victorians who are experiencing financial difficulty
* Support the financial counselling sector through casework, advocacy and law reform
* Adopt and maintain industry best practice

Financial counsellors provide free and independent advice and advocacy for people on low incomes, in debt, or otherwise in financial vulnerability. Loss of employment, marriage breakdown, family violence, natural disasters and the easy availability of credit are some of the common reasons people seek assistance.

Financial counsellors operate under an ASIC credit licence exemption to provide information, support and advocacy to enable their clients to gain control of their financial situation. The focus for financial counsellors is always on the needs of their and clients and services are free, confidential and impartial. Most are employed by not-for-profit agencies, primarily funded by state and federal governments.

FCRC supports financial counsellors by providing training and professional development and advocacy on the systemic issues around debt and hardship identified by financial counsellors in their case and outreach work.

1. FCRC 2017. **Rank the Telco**. April 2017. Financial and Consumer Rights Council, Melbourne. [↑](#footnote-ref-1)