



**Small Business
Development Corporation**

Our ref: D18/4272

Consumer Safeguards Review
Department of Communications and the Arts
GPO Box 2154
CANBERRA ACT 2601

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Dear Reviewers

TELECOMMUNICATIONS INDUSTRY - CONSUMER SAFEGUARDS REVIEW

The Small Business Development Corporation (SBDC) welcomes the opportunity to make a submission to the Department of Communications and the Arts' Consumer Safeguards Review. The following comments are in response to the "Part A / Redress and Complaints Handling Consultation Paper".

Background

The SBDC is an independent statutory authority of the Government of Western Australia established to support and facilitate the growth and development of small businesses in the State¹. The agency's core role is to provide support and advisory services to start-up and existing businesses in Western Australia, including a focus on building the commercial and operational acumen of business owners.

In early 2012, the SBDC's structure and governing legislation² was enriched with the introduction of the role of Western Australian Small Business Commissioner (as Chief Executive Officer) and establishment of a small business alternative dispute resolution (ADR) service.

Through the ADR service, the SBDC is able to receive and investigate complaints about business-to-business disputes, including in relation to a broad range of commercial arrangements. In such situations, the ADR service is able to offer preliminary assistance, including general information and advice, escalating to intensive case management and access to subsidised mediation provided through a panel of independent mediators if required.

¹ The views presented here are those of the SBDC and not necessarily those of the Western Australian Government.

² See the *Small Business Development Corporation Act 1983 (WA)*.

In relevant cases, the SBDC triages disputes and refers clients to appropriate dispute resolution bodies with subject-matter expertise. This includes referrals to *inter alia* the Australian Competition and Consumer Commission, Australian Small Business and Family Enterprise Ombudsman, Office of the Franchising Mediation Adviser, State Administrative Tribunal and the Telecommunications Industry Ombudsman (TIO).

Access to justice

One of the agency's key strategic objectives is to influence the policy and regulatory environment affecting the small business sector in Western Australia. In line with this, the SBDC regularly contributes to policy and legislative reviews and inquiries undertaken by all tiers of government.

In recent years, the SBDC has strongly advocated for improved access to justice for small businesses. This is based on the contention that many small business owners are impeded in their ability to access justice when issues and disputes arise in commercial arrangements due to characteristics associated with them as:

- individuals (e.g. age, cultural background, level of education); and
- small business owners (e.g. lack of time and money).

In the SBDC's experience, small businesses can be particularly vulnerable to business complaints and legal disputes arising due to the nature of dealing with many and varied businesses – typically larger, more powerful commercial entities – and the realities of managing and running their business, such as being time poor and lacking understanding of their rights and responsibilities.

Having access to rapid, independent and transparent mechanisms to resolve business disputes is critical to small business owners as they often have limited time, resources, information and bargaining power. Dispute resolution bodies like the TIO are therefore critical to ensure that small businesses in dispute (in this case with telecommunications providers) can seek redress swiftly and at low-cost (in the TIO's case, free).

The importance of the TIO

The SBDC has a strong relationship with and respect for the TIO and the critical services it provides to small business operators, particularly given the essential role that efficient internet and telecommunications technology plays in running a modern business.

The latest data³ reveal that small businesses in Western Australia are increasingly using the TIO's services to resolve disputes with their telecommunications providers. The period July-December 2017 saw an 11.7% increase on the same period 12 months before in the number of complaints raised by Western Australian small businesses, totalling 864.

And nationally, small business complaints⁴ numbered almost 10,000 (or 11.7% of the TIO's total complaints) over the same period, an increase of 15.6% compared to July-December 2016.

³ TIO, "July-December 2017 Six Month Update", pg.32

⁴ Ibid, pg.13

As noted in the Ombudsman's opening message⁵, "An increasing range and variety of telecommunications products and services are being offered to consumers, technologies are changing rapidly, expectations for the quality of phone and internet services are high, and the rollout of the National Broadband Network is changing the way we use telecommunications services."

With the NBN being progressively rolled out in Western Australia, the SBDC anticipates that the TIO's expertise and relationships with telecommunications providers will only become even more important and relevant to small businesses in this State over the coming years.

In support of the TIO

The SBDC notes that the Consultation Paper is proposing quite radical changes for the TIO, including disestablishing the Ombudsman and setting up a new external dispute resolution body. The paper also proposes requiring consumers and small businesses to spend more time navigating the providers' processes before being able to complain to the Ombudsman.

The SBDC is concerned that these proposals, if adopted, will reduce consumer safeguards by reducing access to the Ombudsman scheme.

Small businesses go to the TIO precisely because they are unable to resolve their complaint with their provider – even with simple issues – and need its service to break the deadlock and get communication back on track.

As the SBDC's clients' experiences have revealed, a telecommunications issue can put significant additional pressure on a small business and lead to substantial loss of trade, particularly when phone and internet services are faulty or not properly connected. In times of high stress, even the most competent owner needs support and easy access to an independent dispute resolution mechanism.

Placing additional hurdles to the complaint handling process will mean that time-poor small business owners suffer more detriment.

In the SBDC's opinion, the Consultation Paper's premise that high numbers of complaints to the TIO represents a problem with the complaint service is flawed logic; the fact that there has been increased complaints received by the TIO means the service is working as it should. Along with the points referenced above (as quoting the Ombudsman), this increase is also likely to be a result of enhanced promotions of the TIO services to consumers and small businesses across Australia as well as more client referrals, including from the SBDC and other State-based Small Business Commissioners.

The SBDC strongly supports the ongoing role of the TIO and believes, given the significant disruption in the industry through new technologies and the inexorable rollout of the NBN, it is not the time to disrupt the existing and successful complaint resolution mechanism provided by the Ombudsman.

⁵ Ibid, pg.1

If you would like to discuss this submission in more detail, please contact me on [REDACTED]
[REDACTED] or email [REDACTED]

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Eaton', with a stylized flourish at the end.

David Eaton
SMALL BUSINESS COMMISSIONER

3 August 2018