

**Telecommunications Industry
Ombudsman Scheme
Review 2006**

Consumer Submission

August 2006

Prepared by the

Consumers' Telecommunications Network

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Introduction

About CTN

The Consumers' Telecommunications Network (CTN) is a national peak body of organisations and of individuals representing community interests in developing national telecommunications policy. CTN advocates policies for better access, quality of service and affordability of telecommunications for all residential consumers. CTN's members are individual consumers, and national and state organisations representing consumers from non-English speaking backgrounds, Deaf consumers, indigenous people, low income consumers, people with disabilities, young people, pensioners, superannuants, rural and remote consumers, women and consumers generally.

Background about the TIO Review

The Allen Consulting Group (ACG) has been engaged to review whether the Telecommunications Industry Ombudsman (TIO) is meeting its objectives, as represented in Clause 2 of the TIO Constitution, the TIO Mission and the Department of Industry, Science and Tourism Benchmarks.

The TIO was established in 1993 as a free dispute resolution service for residential and small business consumers who are unable to resolve their complaint with their telephone or internet provider. The TIO is able to investigate, make determinations, and give directions relating to complaints about telecommunications carriage services by end-users of those services. The Telecommunications (Consumer Protection and Service Standards) Act 1999 requires that carriers and eligible carriage service providers must enter into the TIO Scheme and that these providers must comply with the requirements of the Scheme.

The Ombudsman is independent in deciding whether to investigate a complaint and in determining the outcome of a complaint. The Ombudsman is appointed by and can only be removed from office on the recommendations of the Council. The mission of the TIO is that of 'providing free, independent, just, informal and speedy resolution of complaints about telecommunications services'. Clause 2A of the TIO Constitution contains a number of principles.

The TIO Scheme 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 (Department of Industry, Science and Tourism, DIST, August 1997). In exercising the TIO's functions and jurisdictions and in developing procedures for the resolution of complaints, the TIO shall have regard to the benchmarks as well as to the law, good industry practice and what is fair and reasonable in all the circumstances.

Requirement for a review

The Memorandum and Articles of the TIO require the Board to commission a review of the Scheme every two years. Furthermore, the DIST Benchmarks recommend a regular review of a scheme by an independent party, that the review should consider the scheme's progress towards meeting the Benchmarks and that the results of the review should be made available to relevant stakeholders. In keeping with this direction, the TIO Board and Council have decided that the purpose of this review is to assess whether the TIO Scheme is meeting its current objectives, as represented in Clause 2 of the TIO Constitution, the TIO Mission and the Department of Industry, Science and Tourism Benchmarks. Furthermore, the Board and Council have recommended that the review is best conducted with reference to the DIST Benchmark principles, in addition to the practices that are contained in the principles.

DIST principles and practices

The ACG TIO review is required to enquire and report on whether the TIO is meeting the DIST principles and the practices that are intrinsic to them. The principles and practices are outlined in Box 1.

Box 1

BENCHMARK PRINCIPLES AND PRACTICES FOR INDUSTRY BASED CUSTOMER DISPUTE RESOLUTION SCHEMES

Accessibility

- the adequacy of the amount and focus of the promotion and awareness raising activities of the TIO, including to those customers with special needs;
- whether the TIO's contact points, processes and systems are user friendly including to disadvantaged consumers or those with special needs

Independence

Whether the TIO's decision makers are independent in the performance of their functions by considering:

- the procedures for appointment of the Ombudsman;
- the procedures for appointment of TIO staff;
- the powers and role of the Ombudsman with particular focus on the determination of complaints;
- the role of the Council in overseeing the independence of the TIO's operations;
- the TIO's funding structure in enabling the TIO to fulfil its objectives.

Fairness

Whether the TIO's decision making procedures are fair by considering:

- the information provided to complainants and members about the procedures for resolving disputes;
- the extent to which the TIO's decision making procedures accord with principles of natural justice and allow for decisions and determinations to be based on what is fair and reasonable, good industry practice and the law.

Accountability

- whether the TIO adequately reports to the public and to stakeholders on the performance of the Scheme;
- whether the content of the TIO's Annual Report is sufficiently detailed and informative and contains adequate data about the performance of the Scheme;
- whether the Annual Report is readily available to the public and to members;
- whether the TIO has processes for reporting systematic issues to the appropriate regulatory body.

Efficiency

Whether the TIO has adequate processes for:

- tracking the progress of complaints;
- assessing the performance of the TIO against performance targets;
- conducting regular internal reviews of its own performance.

Effectiveness

- whether the scope of the Scheme and the powers of the decision makers are clear;
- the adequacy of the processes for reviewing and refining the scope of the TIO's jurisdiction and ensuring the jurisdiction is sufficient to deal with the vast majority of customer complaints;
- the adequacy of the processes for reviewing and refining the TIO's range of remedies.

ACG Review process

As part of this TIO Review, ACG appointed CTN as a consumer representative to co-ordinate a formal submission. In July 2006 ACG released an Issues Paper that outlined the manner in which the review would be conducted and considers some of the issues that need to be addressed in order to satisfy the terms of reference of the review. The Paper included a series of questions, intended to encourage interested parties to consider the significant issues for the review. Ultimately, the Paper was intended to assist interested parties with the preparation of their formal submissions. The public consultation process, and the formal submissions from interested parties and outcomes of the workshop in particular will inform the preparation of the Final Report of the review.

Ensuring consumer views are heard

The views of users of telecommunications services, particularly those who have had direct dealings with the TIO, are a major input into this review. As a result ACG proposed to engage a representative to interact with a range of customer groups and effectively communicate their respective views on the TIO scheme and whether it is meeting its current objectives.

Methodology for Preparation of Submission

CTN was engaged by Allen Consulting Group (ACG) in June 2006 to prepare a formal Consumer Submission for the TIO Review. The Project involved not only preparing a Consumer Submission but also publicising the TIO Review to consumer & community groups; highlighting the ACG Issues Paper, and facilitating consumer consultation in particular through workshops, a hard copy and on-line questionnaire, and telephone interviews.

The methodology CTN employed to gather data to inform this Submission is outlined below.

Firstly CTN's board of management, the CTN Council, appointed a Steering Committee of CTN members to ensure the consultation process was adequate and that the Submission drafting had an internal, built-in process for review. Using the Issues Paper developed by Allen Consulting Group and the terms of reference of the TIO Review, the issues were broken into more specific questions relevant to the target groups. CTN developed a plan to consult widely with all relevant community organisations (particularly focussing on groups that provide financial counselling services) and consumer groups. In doing so CTN made sure that a cross section of the community were represented in the consultation including people with disabilities, people living in rural and regional areas, indigenous consumers, older consumers, Deaf consumers, tenants, people from a culturally and linguistically diverse background, and small business representatives. This aimed to ensure that the Consumer Submission is as representative as possible. It is important to note that CTN had difficulty ensuring representatives of young people had input to this process.

CTN undertook an initial high-level consultation via teleconference of the interested CTN Council members and other important parties identified. Those who are unable to participate via teleconference were contacted directly. This consultation tested some of the initial feedback from the Steering Committee. At this point the staff team refined questions for further consultation as well as established areas overlooked in the discussions so far. This process also enabled CTN to identify key issues that needed to be further explored in the broader consultation.

A questionnaire was developed and used as the agenda for the workshops held in Melbourne on 4 August and Sydney on 1 August. The questionnaire was distributed in appropriate formats to those who could not attend either workshop. It was also used as a script for some telephone

interviews to ensure the views of non-metropolitan consumers and people with disabilities were adequately represented. The questionnaire is attached as an Appendix.

CTN also used its on-line survey tool to gather responses. This was particularly important to ensure access to the process for Deaf consumers. However as not all consumers are on-line, it was not appropriate for this methodology to be the only way to collate information. CTN distributed the questionnaire through all its community networks and to other key consumer organisations as well as in the workshops.

CTN implemented a communication strategy to ensure all key consumer groups and telecommunications consumer consultation groups (including at the Australian Communications Industry Forum's Consumer Council, at the Telstra Consumer Consultative Committee, etc) were informed of the TIO Review and the role CTN was playing in preparing a Consumer Submission. CTN used the following mechanisms to publicise the TIO review: CTN members e-newsletters, the CTN Web News, the June CTN Quarterly Newsletter and CTN website. Using these methods, CTN ensured that the Allen Consulting Group Issues Paper had a high profile and that CTN received many responses relevant to the call for feedback for the TIO Review. Other consumer groups were also encouraged to make submissions.

The feedback collected was used to inform this Consumer Submission. CTN did some additional research of TIO processes, reports, publications and website to ensure that the comments being made were entirely accurate. CTN also undertook a gap analysis of the stakeholders consulted before completing the Submission to ensure as many sectors as possible had expressed their views during the process. CTN sought clarification of views if necessary and ensured that no key players missed their chance to contribute to the project. As mentioned earlier, there was no specific input from a peak consumer group representing the views of young people.

One of the greatest difficulties CTN faced in preparing this Submission was making sure that consumer advocates and representatives had time to contribute. This was a particularly difficult issue for the caseworkers such as those representing community legal and financial counselling services. It was also problematic for indigenous consumers groups to make a contribution for these reasons as well as the need to overcome the problems they face of delivering services in very remote locations.

The final draft Consumer Submission was distributed to consumers who had participated in the consultation and also the CTN Steering Committee for final input and then approval before it was submitted to ACG.

This following Submission aims to represent the views and experiences of a range of different end users of telecommunications services.

Executive Summary

Overview

CTN consulted a broad range of consumer organisations, advocates and individuals in compiling this Submission. There was a high degree of interest in this Review, and this Submission contains a large number of recommendations to improve the functioning of the TIO scheme. Overall CTN found that consumers supported the existence of the TIO and on the whole consider it provides a vital avenue for consumers to resolve their disputes, which may otherwise remain unresolved. In an ever changing, increasingly complex arena, consumers agreed the TIO provides an absolutely essential consumer protection mechanism in the telecommunications industry.

Awareness issues were among the most commented on in the consultation process. There was a consistent view expressed by consumer groups and representatives that the TIO has a low profile and there is very limited public awareness of its existence. There is also a widely held view that the public are not aware that the TIO can deal with internet service provider complaints. Levels of awareness are particularly low amongst older consumers, culturally and linguistically diverse (CALD) people, indigenous consumers, consumers outside metropolitan areas and people with disabilities. Awareness of the TIO was also considered to be particularly lacking in WA, NT, Queensland and Tasmania. Case-workers and advocates (particularly consumer credit lawyers and financial counselors) tell CTN that telecommunications issues are a large proportion of their workload.

Many respondents commended the TIO for providing a broad range of access mechanisms to the scheme. Access to the TIO by telephone, email, TTY and post are all good ways of creating accessibility for complainants. For many different consumer groups, the fact that complaints do not have to be in writing is excellent and needs to be better highlighted to users of the TIO.

In considering how user friendly, fair and effective the TIO is, CTN was able to find some research about complaints and look at parallels between what the TIO offers complainants, versus what consumers want and expect when making a complaint. Relevant extracts from that report, the TMI/SOCAP *Complaint Culture Survey 2005 National Report*, are discussed where relevant. It is important to note the *Complaints Culture Survey* is not telecommunications specific, and is intended to reflect broader complaint trends¹. It is, however, a useful resource when considering the barriers to complaining and how complainants would like to be dealt with.

CTN's consultation found that when combined with low awareness of its existence, "complaint fatigue" is a key barrier to use of the TIO. This is occurring partly because of the requirement that a consumer formally try to resolve their dispute with their service provider before the TIO will mediate the dispute. There is an urgent need for the TIO to analyse why people never return to it to pursue a complaint. There needs to be a much better understanding of what proportion of complaints are being resolved by the referral process, and what proportion of complainants dropout of the process, if the effectiveness of the TIO is to be understood and improved.

Whilst campaigns need to target users who are under-represented in complaint statistics produced by the TIO, there is a continuing need for regular general awareness-raising. The TIO must promote its existence, in a general way and with specific targets identified through its own *Awareness Research* surveys. The role of promoting the TIO was broadly believed to primarily belong with the TIO, however, there was support for promotional campaigns such as the joint Australian Communications Authority and TIO road-show initiative a few years ago. As well, though, it was thought that the TIO should not only restrict undertaking such activities to times when they have collaborative opportunities. It was emphasised that it is imperative that the TIO utilises the service of consumer experts in developing new campaigns. Consumer groups have offered detailed advice on how to best reach and communicate with members of the community in this Submission.

Consumers surveyed also had a very strong view that there was a key role for service providers to promote and advise customers of their external dispute resolution scheme (EDR), the TIO. There is a

widespread view that the TIO is not promoted deliberately by the industry, to avoid complaints being made. The repeatedly suggested way to address this problem was to make it mandatory that contact details for the TIO be listed on every bill, with an equivalent notification for those who use services but do not receive bills (such as SMS for pre-paid mobile and emails for internet users).

Consumers supported many of the current ways of advertising the TIO via brochures, but the current printed brochures need adjustments to make them more user-friendly, in their format and content. The legalistic language used in current TIO publications was cited numerous times as a barrier to accessibility. It was even claimed that the current format and design is actually a disincentive to customer use. Radio remains a very popular medium, which is good for general awareness raising, particularly for consumers who are older, culturally and linguistically diverse (CALD) consumers, and/or indigenous consumers.

Like many agencies, the TIO publishes enormous amounts of information about itself on the internet. However, feedback about the website and the way information is presented on it was on the whole negative. A recurrent theme in the consultation process is that the TIO website is not user friendly, with the design and usability of the current site preventing it from effectively informing consumers.

Aside from awareness issues, other accessibility concerns were raised about the fairness of TIO processes. These included comments relating to the structural independence of the TIO governance bodies; the lack of jurisdiction in some key areas and the need to improve Internal Dispute Resolution (IDR) processes for TIO members. It was also queried whether in fact the DIST principles provide adequate benchmarks by which to measure and review the TIO. It was strongly recommended that the Australian Securities and Investment Commission's *Policy Statement 139* (ASIC PS139) also be used to rate the effectiveness of the TIO against other similar schemes.

There is also some concern from consumers about the transparency of the appointment process for the Ombudsman, which might be largely because consumers on the whole were unsure about how that process actually worked. It is noted, however, that a robust selection and appointment process for the Ombudsman role appears to exist in line with the expectations of consumer groups, but greater transparency of this process would allay some concerns. Concerns about the governance structure overall – particularly the Board's dominance over the Council – continues to fuel concerns about the credibility and viability of the TIO governance structure.

Determinations are a powerful tool available to the Ombudsman, but there appears to be a reticence to use them, not just as a means to sanction but also as a deterrent. This can be frustrating for consumer advocates, when the use of a determination can address recurring systemic issues. The effect of this means there can be a perceived lack of independence in choosing to finalise a complaint that would appear to be appropriately done by a determination.

Most consumers surveyed for this review were unaware of the existence of position statements, including some case-workers who advocated on behalf of a complainant and therefore could be key users of them. Once again, the information that is available on the TIO website is not intuitive to find and not user friendly. For those familiar with them, TIO position statements are an excellent resource that requires better promotion and location online.

An issue raised by consumer stakeholders involved reports of the TIO staff allegedly pressuring the consumer or their advocate to finalise a dispute, without a fair outcome being achieved from the complainant's point of view. It is recommended that the TIO conduct complainant satisfaction surveys to ensure consumers are not inappropriately pressured to accept dispute resolutions that do not meet their needs and that staff receive on-going training to prevent these practices occurring. A number of other concerns pertaining to fairness are highlighted in detail in the Fairness Chapter.

The Issues Paper offered very little detail on the mechanisms by which the TIO is actually accountable to government agencies (i.e. the Australian Communications and Media Authority [ACMA] and the Australian Competition and Consumer Commission [ACCC]). Many consumers were unsure of exactly how the scheme is accountable to government, meaning only limited input can be given on this issue.

There is a general view that even though the TIO is an Industry-run scheme, it should be directly accountable to government for its activities. For consumer groups, it is absolutely critical that there be a formal mechanism for the TIO to report to ACMA and the ACCC on systemic complaints issues, and for enforcement action to be undertaken by the appropriate regulatory agency. A formal liaison committee needs to be established to provide transparency, with ACMA committing to using the information with which it is provided for enforcement purposes.

Complaint handling has long been a source of frustration for consumer advocates, because it appears that telecommunications suppliers do not follow processes outlined in the Australian Communications Industry Forum (ACIF) *Complaint Handling Code* (which is based on the Australian Standard - AS ISO 10002—2006, *Customer satisfaction—Guidelines for complaints handling in organisations*²). As a result, complaints get to the TIO that could, and should, have been dealt with by an IDR process. CTN has formally approached the Minister this year asking her to convene a complaints handling inquiry to investigate the practices of the telecommunications industry with a view to finally resolving these long standing systemic problems.

Consumer advocates overwhelmingly support the concept of publishing the name of members who fail to comply with the TIO. As previously mentioned, consumer representatives expressed enormous dissatisfaction with the unwillingness of ACMA to enforce self-regulatory mechanisms where problem areas have been identified by the TIO. Having the right to redress is a key consumer right, and consumers support the continuation of an external dispute resolution scheme that is free for the individual to access.

The consumer consultation revealed a widespread belief that there is a cultural problem within the telecommunications industry's approach to dealing with complaints. This, combined with a general lack of awareness among consumers of the right to redress and their inability to use IDR, has resulted in growing demands on the TIO. Consumer groups strongly believe that whilst the TIO needs improvement, a far greater issue is the ineffective use of regulatory compliance powers that is fuelling the growth in the number of consumers resorting to the TIO.

Consumers do not wish to see the number of complaints the TIO handles continue to grow. Instead, consumers want to see strong regulatory intervention to prevent the practices of the telecommunications industry that are the basis of customer complaints. A stronger commitment from service providers to meet the rules set out by Industry Codes of practice and other regulations would go a long way to reducing the current complaint load of the TIO.

Main Findings

These key findings are broadly representative of the full list of recommendations found throughout this report. A summary of all recommendations is compiled at the end of the report.

- There is understandably more awareness among professional consumer advocates than the general public, but even consumers who participate in peak community groups are not necessarily getting the message. The TIO Scheme has a low profile generally and awareness of the scope of the TIO is widely misunderstood, especially regarding internet services.
- There is widespread consumer support for mandating the inclusion of information about the TIO and contact details for it on every bill, with reminders as per standard practices in other utility industries. Equivalent measures need to be taken to ensure people who don't get bills (such as pre-paid mobile phone and internet users) have the same level of advice.
- The range of options for contacting the TIO were considered to generally be appropriate however there is still a perceived difficulty in accessing the TIO, regardless of how easy to use it actually is in practice. There was no consensus on whether or not the TIO could be considered "user friendly".
- Consumers support the need for translators for written and verbal complaints, but highlighted that it is imperative these remain free services.
- CTN's consultation exposed a strong belief amongst consumer groups that telecommunications providers are not providing information about the TIO to their customers when they wish to escalate a complaint.
- The TIO complaint process does not empower consumers. Many disadvantaged consumers do not have the confidence to go through the TIO process, and barriers to entry to that process need to be addressed.
- A "one-size-fits-all" approach to providing consumer information is entirely inappropriate for reaching all communities who need to know about the TIO. Information about the TIO needs to be available in a broader range of formats and tailored toward the needs of target groups, particularly those under-represented in TIO complaint demographics and identified as having low awareness in the TIO's own consumer awareness surveys.
- TIO publications and consumer information need to be completely reviewed to ensure the information, format and presentation is accessible and comprehensible by consumers.
- The TIO is still considerably under-utilised by the public because many people don't know they can complain to an external agency and therefore don't. It was reported that many indigenous consumers don't complain in the first place particularly due to cultural barriers.
- There is a particular need for the TIO to be able to handle complaints of participants in the Disability Equipment Program. There are low levels of awareness of the TIO among people with disability, and the level of problems being experienced by people with disability are not accurately reflected in complaints to the TIO.
- Community groups are interested in helping the TIO to better reach different sectors of the community and would like to be actively involved in outreach program efforts to improve publications.
- The TIO governance structure is an on-going problem for many advocates. There needs to be parity in consumer and industry representation in the governance of the scheme.

- Consumer advocates supported an Ombudsman appointment process that is a publicly advertised, transparent, and free from any political interference. Independent funding and a secure tenure for the Ombudsman were also identified as mechanisms to help ensure the independence and on-going integrity of the Ombudsman role.
- Consumers support the continuation of on-line access to position statements and this should be enhanced by linking the statements directly to case studies.
- The overwhelming response to questions about the effectiveness of Industry Codes is that they are of none or little use to individual consumers in helping them frame a complaint to the TIO. It was, however, understood that they are an essential tool for the TIO to use when resolving complaints.
- Consumer stakeholders raised a number of important issues about procedural fairness of complaints handled by the TIO. Of greatest concern were allegations TIO staff unduly pressure consumers or their advocate to finalise a dispute without a fair outcome being achieved from the complainant's point of view.
- Consumers also expressed concern that TIO processes for effective, fair, and timely dispute resolution, may be compromised by limited resources. Serious complaints are often raised (including systemic ones), but consumer advocates have reported that sometimes, in their opinion, investigative staff don't always give a complaint the attention and consideration it deserves. There is a perception among consumers of reluctance that the TIO may be reluctant to escalate complaints to higher levels for investigation, perhaps due to resource restrictions.
- There is a need for the TIO to provide guidance to consumers on what type of evidence they may need to provide to support their complaint and the timeframes within which they will need to do so.
- *TIO Talks* is widely considered a useful publication, but circulation does not seem particularly widespread and needs to be improved. The TIO website needs to be made more accessible.
- The complaint statistics published by the TIO are of critical importance to consumer groups, because they are a way to assess trends and identify new issues on which advocacy work needs to be undertaken. However, some advocates were highly critical of current statistics and their level of detail.
- The TIO needs to undertake a research project to better understand *why* people are not coming back to the TIO. There is a pressing need to understand if people are returning to their provider as directed by the TIO and getting their complaint resolved, or simply dropping out of the process. If this is the case it is important to understand whether consumers could be offered better opportunities for redress.
- The jurisdiction of the TIO needs to be carefully considered to ensure it is covering the issues consumers have – a number of gaps were identified including in regard to some content and Pay Television complaints.
- Finally, there is a need to recognise that improving industry practices and active regulatory enforcement are critical ways to prevent problems arising for consumers who need the TIO in the first place. There needs to be a greater emphasis on addressing and resolving more consumer complaints at the source, through IDRs, rather than through the TIO.

Chapter One – Accessibility

Section 1.1 – Awareness

Levels of Public Awareness of the TIO

The methodology used to obtain information for this report, as outlined earlier, means that this Submission is only able to offer estimates about the levels of public awareness about the TIO. Of those surveyed, none indicated that they had any definite measure of the proportion of their constituents who were aware of the TIO, although some made rough estimates ranging between 5% and 20% of the population. The information provided in this Submission is based on the best estimates of the consumer stakeholders consulted by CTN, and is qualitative only. Any quantifiable measure of public awareness of the TIO needs to be conducted in a separate survey.

It is understood that the TIO undertakes a consumer awareness survey every two years. The most recent survey is the *Telecommunications Industry Ombudsman Awareness Research Final Report*, undertaken by Sweeney Research and published in April 2006. This is an excellent initiative, however the full results should be publicly available on the TIO website, and an extract of some key findings published in TIO Talks (as has happened in previous years). Notably, CTN only became aware of the 2006 survey toward the very end of the stakeholder consultation process, and acquired a copy of the survey directly from TIO staff in the last week of August. At the time of consultation, the existence of the 2006 awareness report was virtually unknown amongst stakeholders, and as a result CTN is unable to comment on any correlations between the views of stakeholders and the results of the 2006 survey.

Information from the 2004 awareness survey was published in *TIO Talks*. However, the full results and explanation of the categories used in the survey (particularly where awareness of the TIO is categorised as being either “aided” or “unaided”) is not readily and publicly available, making it difficult to assess the findings of those surveys in any meaningful way. The very general nature of those survey categories mean CTN cannot offer any comments on whether or not the views expressed in this report correspond with levels of awareness found by the TIO itself.

Recommendation 1: That the TIO make publicly available the findings of the latest Awareness Research survey, including clear explanations of the categories of aided and unaided awareness.

There are two distinct categories of TIO clients; advocates for individual consumers (financial counselors, community legal advisors, etc) and individual consumers. On the whole these two user types have very different expectations of the TIO, approaches to the TIO, and experiences using the TIO. One reason is because they have different levels of expertise in dealing with External Dispute Resolution (EDR) Schemes. This unavoidably affects views on how well the TIO is performing in terms of accessibility, effectiveness, efficiency, independence, accountability, and fairness.

- **Professional Consumer Advocates**

On the whole many consumer advocates were of the view that the TIO is doing an excellent job of promoting the scheme through existing channels. This is evidenced by very high levels of awareness of the TIO amongst professional advocates and caseworkers. These users claim to also have a good idea of the scope and role of the TIO and explain their awareness of the TIO to be because “it is their job” to know about the TIO. On the other hand, many highlighted the fact that their clients had little or no knowledge of the TIO.

CTN’s consultation concurs with TIO statistics about the numbers of complainants to the TIO continuing to rise. Caseworkers and advocates, particularly consumer credit lawyers and financial counselors, report that telecommunications complaints are a large proportion of their workload.

In discussing and answering the questions outlined in the ACG Issues Paper further, however, it was clear that even the professional TIO clients did not always have a full understanding of the scope of the TIO scheme. Several professional advocates were not aware that the TIO had jurisdiction over internet services, which is of concern. One academic working in the area of communications in Australia was also unaware of the existence of the TIO.

- **Individual Consumers**

Whilst among professional consumer advocates there is a high level of awareness, for individual consumers the reverse seems to be true.

CTN's consultation revealed strongly held views about public awareness of the TIO. There was a broadly held, consistent view expressed by consumer groups and representatives that the TIO Scheme has a low profile and there is very limited public awareness of its existence. One workshop participant who has run public awareness workshops on telecommunications issues was of the view that most people have no idea of the existence, function and scope of TIO in a general sense.

Many consumers who were consulted suggested that there was confusion about the scope of the TIO, even amongst professional consumers advocates as noted previously. This suggests a fairly low likelihood that the general public is going to be aware of the range of services the TIO has jurisdiction over. In particular it was a widely held view throughout CTN's consultations that the public are not aware that the TIO can deal with internet service issues.

Some of those consulted indicated that consumers perceive that internet users have less robust consumer protection rights compared with users of telephone services. One reason for this is because of the newer type of relationships customers have with their internet service provider (ISP). This is different from the traditional relationships customers tend to have with telcos, which tend to be regular mail contact with a well-advertised company. With ISP's, the customer relationship can be as little as a regular direct debit payment for an uninterrupted service with no regular contact and no other services attached. There is a disjunct between people's understanding of what an ISP is obliged to provide customers with (not a Standard Telephone Service, which is more broadly understood as being a consumer right), and what people can and cannot complain about. In short, it seems the lack of understanding about the TIO's role in relation to internet service complaints reflects the broader low expectations on internet services, which people don't consider a basic consumer right in the same way they do a telephone service. A related problem is that consumers often experience considerable difficulty getting in touch with their ISP's, adding another disincentive to complain in the first instance.

Most participants in the consultation process felt that consumers have a better understanding of their entitlements and rights when it came to fixed telephone services, and to some extent mobile phone services. However, lack of knowledge about the TIO is among the primary inhibitors to making and pursuing a complaint. The combined effect of lower expectations for internet services and low awareness of the right to redress, combined with a reticence to complain, suggests that the TIO could have a role in raising awareness about the rights of internet users. There are several on-line user-communities that the TIO could utilise that would be an excellent starting point for such a campaign.

Recommendation 2: That the TIO undertake an awareness-raising campaign about the rights of internet users and how to complain about ISPs.

- **Name of the Scheme**

Several stakeholders made the point that the actual name – the Telecommunications Industry Ombudsman – seemed rather narrow or misleading, and may explain the public perception that the TIO is only about telephones.

In acknowledging this problem, it was suggested that a more plain-language name such as the Telephone and Internet Complaints Service (or similar) may be more appropriate, as it better describes the purpose and scope of the scheme.

Recommendation 3: That the TIO consider whether a more plain-language name for the scheme, such as the Telephone and Internet Complaints Service (or similar), may better describe the purpose and scope of the TIO.

- **Advice about TIO on bills**

For most consumers, the existence of the TIO is only relevant when a problem arises. It is therefore necessary to ensure people can access relevant information about the TIO in a timely way when it is most relevant. The most relevant time a consumer can be advised about the TIO scheme is when they receive their bill. There is unanimous consumer support for mandating the inclusion of a brief outline about the TIO's services and contact details on every bill, with particular reminders as per standard practices in other utility industries.

It is important that those with pre-paid services who don't receive regular contacts from their provider by way of a bill receive equivalent treatment and advice about their rights to redress, should they be needed. This needs to be appropriate to the technology - for example a text message for pre-paid mobile phones or an email where bills are paid electronically.

Consumer groups were strongly of the view that the bill message should clearly stipulate that the customer must first attempt to resolve any problem with their provider, so that access to the TIO is not clogged with non-genuine complaints.

There has been widespread industry opposition to this idea for many years. A key point of contention between industry and consumer groups has been whether this would simply encourage non-genuine complaints and a misuse of TIO resources, or whether the current level of complaints to the TIO would be revealed to be the "the tip of the iceberg". Consumer advocates believe putting TIO details on every bill is the only effective way to ensure ALL consumers are aware of their rights to telecommunications services and their right to redress. Until this step is taken, the true extent of telecommunications customer complaints can never be truly known, and the underlying issues behind those complaints will never be correctly identified and subsequently addressed.

Recommendation 4: That the TIO require their members advise about TIO scheme on the bottom of their bill (hard-copy and electronic). Pre-paid or direct debit services should be advised via the appropriate mechanism about the TIO on a regular basis.

- **Methods of advice about rights to access the TIO**

More research could be done to ascertain the best methods of informing consumers about the TIO and when they need the information. A number of strategies for communicating effectively with consumers are made later in this Chapter. Again, the consultation process reinforced the existing consumer view that bill inserts and messages would be the most effective and timely mechanism.

It is important that those in the community who do not have the means to advocate for themselves can gain timely information about the TIO from places that are accessible for them. These places include community legal centres, migrant resource centres, refugee resource centres, and the like. CTN acknowledges that the TIO is already achieving good levels of awareness of the scheme among professional consumer advocates through on-going targeted promotional campaigns.

Recommendation 5: That the TIO continues on-going promotion of its services to professional advocates as a means of ensuring disadvantaged consumers can access the TIO.

Importantly, it is not only people who cannot advocate for themselves that need to be considered. There is a real problem disseminating information to people who do not receive telephone accounts, such as those using pre-paid mobiles and some VOIP users. It should also be noted that many of these people do not ever access the services of community legal centres, refugee resource centres and other community organisations. There is a need for more general dissemination points and networks to

be identified, exploiting options such as doctor's surgeries, club foyers, health centres, and so on. This can also be achieved in part by distributing *TIO Talks* at these types of locations, as *TIO Talks* actively raises the profile of the TIO.

Recommendation 6: That the TIO locate appropriate dissemination points and networks to send relevant publications with the view to reaching consumers who do not receive bills and would not be reached via a bill insert.

Specific Awareness Gaps

CTN's stakeholder consultation indicated that there were low levels of awareness particularly amongst older consumers, culturally and linguistically diverse people, indigenous consumers, consumers outside metropolitan areas and people with disabilities. Awareness of the TIO was considered to be particularly lacking in WA, NT, Queensland and Tasmania. More detailed information on the specifics should be available in the most recent *TIO Awareness Research* survey.

It is crucial that the *TIO Awareness Research* outcomes be used as the basis for campaigns to address low awareness levels – there is no value in finding low awareness amongst sectors time and time again. At present, the *Awareness Research* survey simply assesses knowledge levels (sometimes compared to previous surveys) and gives no indication of what strategies the TIO will use to address gaps or even priority sectors.

The findings of the report need to be acted upon, and the follow-up survey should report on campaigns undertaken to address awareness gaps with an evaluation of their success.

Recommendation 7: That the TIO use the Awareness Research survey as the basis for developing campaigns to address low awareness and an evaluation of their success be reported in the following survey.

For indigenous consumer advocates in remote areas, it can be hard to spread the word about schemes like the TIO. Feedback from this consultation highlighted the fact that indigenous consumers with complaints tend to approach advocates who will take the issue up with a telco directly. This is because there is usually only one service provider and it is possible to build relationships and get issues resolved without the need for the TIO. It is important to highlight that this is effectively an informal alternative dispute resolution (ADR) process. Notably this still occurs only after internal dispute resolution processes have failed and the third party (the consumer advocate) has intervened.

Several consumer groups representing disability groups and older people suggested there is a high degree of difficulty in accessing details about the TIO and how to use the service. This has a flow on effect to generally low levels of awareness. Strategies to address this access to information are suggested by sector later in this Chapter.

Chapter One – Accessibility

Section 1.2 – Contacting the TIO

Methods of contact

The range of options available to consumers wishing to contact the TIO were generally considered to be appropriate. Many respondents commended the TIO for providing a broad range of access means. Access by telephone, TTY, email and post are all meeting the needs of complainants. For many different consumer groups (e.g. CALD consumers, people with a disability, or with low literacy), the fact that complaints do not have to be in writing is excellent. Many other ADRs do not have this facility and consumers are disadvantaged as a result. It was, however, felt that this aspect of the TIO's complaint handling services was not clearly promoted. On initial contact, complainants generally felt compelled to write their complaint as the TIO indicated a strong preference that complaints be in writing. This emphasis can be a disincentive for using the TIO and may turn many consumers away from following through with complaints, particularly those with low English literacy skills. This reticence to document complaints can be difficult to identify over the telephone.

Face-to-face contact points

Several consumer organisations suggested that it would be useful to be able to access a TIO representative in person. For indigenous people particularly this is more culturally appropriate, and would go part of the way to addressing the low levels of awareness of indigenous people and their low use of the TIO (in the limited range of services that TIO can assist). Such a service would also assist those who may need assistance in formulating their complaints effectively. It may also address the perception of the TIO being an eastern-seaboard focussed organisation.

Recommendation 8: That the TIO consider using face-to-face contact points for handling complaints directly with consumers.

Low-income people are heavy users of pre-paid mobile phone services, and notably 18x and 13x numbers are still charged by the minute from mobiles. This disproportionately affects low-income people who use pre-paid services, as it is very expensive, and undermines accessibility. It is also worth reinforcing that people on pre-paid services don't receive bills and therefore don't have the opportunity to check that their services are being charged correctly as readily as people with post-paid services.

A TIO SMS call back scheme and a call back policy in general would be very useful and greatly assist accessibility to the TIO for low-income people.

Recommendation 9: That the TIO introduce an SMS call back scheme to assist low-income consumers to contact the TIO.

Another option that would be useful as a means of assisting people who are too busy or unable to make a complaint is to create a call-back form on the website. This is not the same as the email complaint form. Rather than have the customer initiate the complaint, the customer would nominate times that the TIO could contact them. This would help people who may need help from a family member with translation, or people with a disability who may have limited opportunities to contact the TIO and prefer to make their complaint verbally.

Recommendation 10: That the TIO create an on-line form that allows the customer to enter their details and be called back by TIO staff.

Chapter One – Accessibility

Section 1.3 - Using the TIO

Consumer advocates made the point repeatedly that the complainant has to go through a difficult process with their telco before they actually access the TIO. This can be enormously time consuming and many believe that this is a disincentive to the consumer progressing their complaints. It can be a costly and disempowering experience. Many consumers feel perhaps unduly that complaining is pointless because service providers count on the customer simply giving up, rather than formalising a complaint via the TIO.

In this sense, the TIO complaint process does not empower consumers. Lots of disadvantaged consumers do not have the confidence to go through the TIO process, particularly when they are required to put things in writing. Financial counselors often advocate for them, but there is a common view that average consumers and disadvantaged ones often just give up. Written complaints are the most effective way to get results but people don't always have the skills to do it effectively.

Setting Appropriate User Expectations

The TIO seeks to offer a timely and easily accessible dispute resolution service. Whilst these fundamental principles of access are useful to promote, the TIO needs to realistically set customer expectations about the actual time and effort that will be involved in resolving complaints, especially complex ones. By the time a complaint gets to the TIO it has often already been a complex, time consuming and onerous experience for the complainant. People are already experiencing a high level of frustration that they even have to *use* the TIO. That a customer has been unable to solve the problem directly with their service provider is itself a barrier to accessibility. Though this is not directly attributable to the TIO, it is important to recognise that the customer would rather have had their problem resolved with their provider in the first instance.

Ensuring easy access to information about the TIO, the complaints process at the TIO and efficient case management are all important steps to making complaining worthwhile for the end user. Suggestions on ways to investigate this and address this problem are made throughout this Submission.

Lodging a Complaint

Consumer groups strongly encourage the continuation of the TIO's contact policy which encourages individuals to make complaints over the phone. This is both simple and effective and meets the needs of many consumers. As discussed previously, there is still concern about the need to put complaints in writing when they are escalated. This creates a barrier to accessing the higher level dispute resolution for people with literacy issues and for consumers generally.

Consumers support the need for translators for written and verbal complaints, and think it is imperative that these services remain free. It is notable that the time taken for translations services is of concern and may need better resourcing (although most consumers understand this is due to demand for a limited supply of translators and may well not be within the TIO's control).

Barriers to Use

- **Convenience**

A significant problem with all dispute resolution schemes like the TIO is that they lack convenience. This is not only a barrier to use, but an access to justice issue. The TIO needs to be as easy to use as possible, and this is not always the case. This is particularly true for those who might not fit the profile of

the average, well educated, highly literate person who knows their rights and has the time and inclination to pursue them. Disadvantage compounds vulnerability when trying to rectify a problem with a telco, which many consumers still believe to be a fruitless and difficult exercise. This view is not specific to the telecommunications industry, a fact which is reflected in the TMI/SOCAP *Complaints Culture Survey 2005*. In that survey, people indicated they didn't complain because it was too much trouble, because of lack of time, and a lack of faith in doing so as an effective way to resolve their problem³. Recommendations to enhance the ease of use of the TIO are made throughout this Submission.

- **Putting Complaints in Writing**

Putting complaints in writing is generally not preferred by consumers. The forementioned Complaints Culture Survey found that only 24% of consumers nominated their preferred method of making a complaint to be in writing, by letter and email⁴. Despite this, nearly all advice on how to complain effectively advises complainants to put the complaint in writing.

People often drop out of a complaints process when they need to put their problems in writing. Advocates for older people noted that this nearly always stops a complaint from continuing. It is very important that anyone who needs to bypass writing their complaint for the TIO should be reasonably and easily able to do so. This service should be offered to TIO clients more readily, rather than depending on the consumer to request assistance.

If the TIO is going to meet the needs of disadvantaged consumers, it needs to avoid any possible pressure on consumers to write their complaint because this creates a barrier to access and a disincentive to using TIO services.

Recommendation 11: That the TIO staff undertake training to ensure they can pro-actively identify consumers who need assistance before asking them to document complaints in writing.

Recommendation 12: That the TIO develop resources to assist consumers on how to put problems in writing, when putting a complaint in writing is absolutely necessary.⁵

- **“Complaint fatigue”**

An issue raised numerous times over the span of CTN's consultation was the effect of “complaint fatigue” on people's motivation to seek a fair resolution of their complaint. In the view of many consumer advocates, most people simply give up before their dispute is resolved by the TIO, or don't bother returning to their telco as directed by the TIO as part of the process of formalising their complaint. Another aspect of complaint fatigue is not instigating a complaint with the TIO in the first place, despite having grounds to do so.

Recommendation 13: That TIO processes are designed to encourage consumers to access information about the TIO and the complaints management process at the TIO be geared toward making complaining an effective tool for the end user.

- **Perceptions of User-Friendliness**

Feedback from consumer groups also established that there is still a perceived difficulty in accessing the TIO. There was no consensus on whether or not the TIO can be considered “user friendly” for those who follow through a complaint process. Some consumers were of the view that the TIO was of a relatively good standard, particularly given the levels of consumer demand, while others raised examples of difficulties.

- **Referrals back to the source of the problem need to be promoted as the first step in resolving a complaint, not the last**

Perhaps an even bigger issue for consumer groups is a palpable frustration with the requirement that a customer go back to a telco to try to formally resolve their dispute where they have not already tried in the first instance. In many cases this has already been unsuccessfully attempted, but is not communicated effectively to the TIO by the consumer. Sending the customer back to the source of the problem seriously discourages the customer from entering the dispute resolution cycle. This gives the individual customer little faith in the ability of the TIO scheme to assist them. There is a need for much clearer communication with TIO clients about what they need to do *before* they can formally enter the TIO dispute resolution process, with an emphasis on encouraging the customer to return to the TIO if needed. Advising the complainant to firstly negotiate with their telco needs to be better promoted as the first step in the process of using the TIO, rather than inferring that the problem may be outside of the TIO process.

Recommendation 14: That the TIO emphasises to the complainant that negotiating with their service provider is the first step within the processes of using the TIO, rather than external to it, which often creates an impression with the customer that the TIO cannot or will not help them.

- **Ensuring Everyone Can (and Does) Use the TIO**

Once again it is noted here that the TIO conducts Complainant Satisfaction Surveys, which should be used as a basis for reviewing which consumer sectors are under-represented in the scheme. This of course cannot measure the dissatisfaction of those who have been dissuaded from making a complaint in the first place, but overall will give an indication of how the TIO can better serve those who are using it.

Recommendation 15: That the TIO use Complainant Satisfaction information to identify and target sectors who are under-represented in complaint statistics, and develop strategies to ensure their access and usability needs are being met.

There is a need for TIO staff to be trained to identify people who are having difficulty completing a complaint and intervene, rather than relying on the consumer having an advocate to tip them off or self-identifying themselves. Many people who are seriously disadvantaged have difficulty saying so, and this needs to be reflected in TIO staff dealing with complainants.

Recommendation 16: That the TIO staff undertake training to identify customers who indicate they will not proceed with a complaint and ascertain why this is the case and where appropriate address these concerns by developing strategies to help them continue in the complaints process.

Other comments about the TIO staff include the need to use simpler language, avoid jargon, and explain whatever necessary about the matter and process along the way. These are training issues that should be integrated into general staff training.

Section 1.4 – Strategies to Improve Accessibility

Reasons for Low TIO Awareness

- **No timely advice given by service providers**

CTN's consultation exposed a strong belief amongst consumer groups that telecommunications providers are not providing information about the TIO to their customers when they wish to escalate a complaint.

The solution was repeatedly identified as the need for a requirement on TIO members to provide the TIO's contact details on customer bills and at regular intervals to those who do not receive bills because of the nature of their service. This would ensure that if the customer had a problem, they were not entirely dependent on their service provider for advice on how they can escalate their complaint. This also empowers individuals who can advocate for themselves to do so. This is a best practice approach that has been adopted by other similar EDR agencies. In New South Wales for example consumers of energy and water services have the details of the Energy and Water Ombudsman NSW (EWON) on all reminder and disconnection notices onwards, to advise customers of their right to have any dispute mediated. Telecommunications providers are lagging well behind other utility service providers in their approach to promoting their ADR scheme.

- **Low levels of knowledge about any right to redress**

Whilst the ACG Issues Paper effectively asked for a justification of whatever claims this Submission might make about awareness and utilisation of the TIO, it needs to be recognised this is enormously difficult to qualify. It is impossible to estimate what proportion of complaints are not made because people are unaware of their right to redress by an independent scheme. Combine this with the issue of lack of awareness of the scope of the TIO's jurisdiction, particularly with relation to internet services then the outcome is that many people don't know they can complain and therefore don't.

The SOCAP Complaints Culture Survey indicated generally (that is in all areas, not just in telecommunications) around 13% of people would not know how to complain about a problem they experienced⁶. The general nature of this question makes it difficult to draw specific conclusions for telecommunications consumers. It is notable however that the TIO's own 2006 *Consumer Awareness* survey found that if people had a problem with their telephone company, that at least 36% could not nominate anywhere they could ask for help⁷. Adding up the percentage of people who would approach an agency where they could actually get redress (namely an Ombudsman, the TIO, Consumer Affairs /Fair Trading or a solicitor – but not another phone company, government/MP, family/friend, and other), only 42% had *any* possible chance of achieving redress. There appears to be a broader issue of knowledge about the right to redress amongst consumers. However this seems to be a much higher proportion for telecommunications consumers if these two survey results are taken into account.

- **Impact of level of detriment in pursuing a complaint**

It is suggested that the TIO seek out any research on the level of detriment at which a customer acts to seek a remedy to the detriment. It is critical to understand consumer motivations for complaining and then identify the points at which a customer will actually pursue a complaint.

An example may be a phone call listed on a bill that appears to be incorrectly rated, and instead of being charged \$2.00 for a capped call, a customer was charged \$10.00 for that call due to a billing rating error. Would a customer not bother to seek redress if on their bill it was clearly a one-off error?

Would they seek redress if the over-charge was of a certain dollar amount? Or would they seek redress regardless of what the actual amount over-charged was? Research of this kind will help the TIO better understand the point at which a problem becomes a complaint, its subsequent life-cycle, and points of escalation.

Recommendation 17: That the TIO conduct or source research on understanding why consumers make complaints and what impact the level of detriment has on that choice.

Promoting the TIO

Consumer representatives were unanimously of the view that promotion of the TIO could be much more effective. There is a general lack of awareness of the TIO, and there is support for a general public education campaign. Simultaneously it is also acknowledged that people don't have a desire to know about the TIO until they actually need it. There is tension between the views that the information should be available in a general sense, but also it must be available when it is needed.

There is a need to address both these awareness needs simultaneously. Whilst campaigns need to target users who are under-represented in complaint statistics, there is a continuing need for regular general awareness-raising. The TIO must promote their existence, both in a general way as well as with specific targets identified through its own consumer awareness surveys.

Recommendation 18: That the TIO should promote the scheme through on-going general campaigns as well as using specific target strategies for some groups in the community.

- **Current promotion by the TIO and the Role of other Agencies**

Broadly speaking, the role of promoting the TIO was believed to belong primarily with the TIO. There was support and praise for the effectiveness of promotional campaigns such as the (then) Australian Communications Authority (ACA) promotional campaign with the TIO to regional areas undertaken a few years ago. "Piggy backing" on the ACA road-show was a good way for the TIO to get its message out to areas with low awareness.

The role of government and regulators is generally believed to be supplying information about how the telecommunications as a whole is regulated. The TIO should be responsible for informing people about its role, rather than how the industry and regulation works as a whole, which was seen as specifically the role of the regulator and the government.

- **What role for the telco industry?**

Having made this clear, consumers surveyed had a very strong view that there was a key role for service providers to promote and advise customers of their dispute resolution scheme, the TIO. There is a widespread view that the TIO is not promoted deliberately, to avoid complaints being made. In this Submission, CTN suggests that ACG speak with TIO staff for interpretation of TIO statistical data about service providers advising of the right to redress via the scheme, as there are requirements on providers to advise consumers of their options.

CTN recognises that there may be tension between the industry actively promoting its own scheme whilst simultaneously trying to minimise complaints. Thus the role of the TIO remains crucial in ensuring promotion is effective and widespread. To reiterate once again, advising customers about the TIO on their bill (and equivalent for services where a bill is not provided) is seen by consumer groups as the best way to effectively promote the services of the TIO.

Recommendation 19: That the TIO encourage members to proactively promote their ADR.

Strategies for Effective Promotion

There is broad support for the TIO providing information on consumer rights in conjunction with the regulator (ACMA) on how to complain effectively. The TIO as an independent agent is well placed to create consumer rights information resources as they are a credible information source for consumers investigating their rights.

Recommendation 20: That the TIO create consumer rights information resources jointly with ACMA and consumer groups.

Many stakeholders who participated in CTN's consultation had ideas on how the TIO could better promote its services. Consumer advocates have extensive experience in how to best communicate with the people they represent, and speak with authority about the best ways to approach such activities.

It is important to note that a "one-size-fits-all" approach to consumer information is entirely inappropriate for reaching everyone who needs to know about the TIO. This is because some people have particular communications needs, or face disadvantage in being able to effectively advocate for themselves. Information about the TIO needs to be available in a broader range of formats and tailored toward the needs of target groups. There's also a need to better promote the different types of information that does exist, as CTN's consultation suggests that many people are not aware of the publications available or simply can't find them on the website. Suggestions for more effective promotion are outlined below by sector and are based on feedback from the stakeholder consultation.

Indigenous Communities and Consumers

- **Address underlying barriers to complaining effectively**

It was felt that many indigenous consumers don't complain in the first place particularly due to cultural barriers. An Indigenous Outreach Officer or dedicated TIO Officer could establish relationships and help bridge the gap between indigenous telecommunications users and the TIO. Indigenous consumers need training in how to complain, and an outreach program is a good way to achieve this outcome.

Recommendation 21: That the TIO provide indigenous consumers with resources on how to complain and consider employing an Indigenous Outreach Officer who is responsible for promoting the TIO and facilitating complaints resolution.

A specialised indigenous call centre has been established by one telco and it recently undertook a staff training program to help operators better understand and communicate with their customers. The result was a dramatic improvement in the past 6 months, with callers finding the service has become a lot more user friendly through techniques such as people speaking slower and using plain language. Training in similar techniques may be of assistance to TIO staff.

Information about the TIO for indigenous consumers could be much improved by focusing on culturally appropriate material delivered in culturally appropriate ways. This is also highlighted in *Taking Action, Gaining Trust: A National Indigenous Consumer Strategy Action Plan 2005 – 2010³* which was recently developed by the Standing Committee of Consumer Affairs officials (SCOCA) in Australia.

- **Posters**

TIO posters were distributed broadly through at least one agency consulted with by CTN in the past few years. The information on the posters was generally acceptable. One key problem was the graphics on the posters still required people to be highly literate in English. The pictures need to be illustrative in themselves, rather than complementary to the words.

- **Community media**

Effective programs which promote consumer issues have in the past been developed for television and radio broadcasts in remote indigenous lands using simple animations. This requires translation into local languages, which can be done by local media agencies. This is a highly recommended way of raising awareness for indigenous people and is a strategy that has been employed specifically in relation to telecommunications services by at least one stakeholder CTN consulted for this review.

Use of community radio particularly through talk back is a good way to promote the TIO to indigenous consumers, giving a face (figuratively) and a voice (literally) to the service. Highlighting that the TIO is independent of government is also important for this sector. Again, many remote stations offer assistance in translating the message content into language and an appropriate format.

People with Disabilities

Depending on the type of disabilities, there is a range of appropriate ways to ensure people with disabilities can access and are aware of the TIO.

Targeting peak disability organisations' publications and making sure TIO information is available to those peak bodies is an important way to disseminate information. Making information available in a range of formats, including Braille and large print is also key. Presentations by TIO staff to conferences and events for people with disabilities were also nominated as good ways to promote the TIO.

There is a particular need for the TIO to be able to handle complaints from participants in the Disability Equipment Program (DEP). There are low levels of awareness of the TIO among people with disabilities, and consumers felt that the level of problems being experienced by users of the DEP are not accurately reflected in complaints to the TIO.

The TIO apparently has a reference group of disability representatives, which exists to try and increase awareness of its services. Consumer representatives reported that they have fed in ideas via this mechanism, but were critical that their ideas do not seem to be acted upon. This is an area where the TIO could better utilise the information that they have collected.

The TIO should also consider establishing similar reference groups to target groups who are under-represented in their statistics. The TIO should commit to following through on the suggestions made through these mechanisms.

Older people

Plain language documentation in larger formats are particularly useful for older people. The TIO doesn't appear to have consulted seniors groups on the format of its resources and publications, but some seniors groups have instigated their own campaigns for members about the TIO regardless. There are many networks that the TIO could be utilising better, such as the Council on the Ageing (COTA) and the Australian Seniors Computer Clubs Association (ASCCA).

According to peak women's groups approached for their feedback, there is a great need to better communicated to older women about the TIO's services. A suggested way of reaching this demographic quite effectively is by promotion in *Women's Weekly* type publications especially via the publication of case studies.

Radio was also noted to be a particularly powerful medium in reaching older people, and this would be an effective way to undertake a general awareness raising campaign.

Young people

CTN was unable to identify any on-going work the TIO has undertaken with regard to school-age children, however, the success of the joint TIO and Banking and Financial Services Ombudsman (BFSO) initiative *Sort It!* was recognised. The effectiveness of this publication can only really be assessed by the TIO in consultation with its target audience, therefore CTN is not in a position to suggest whether it was effective or otherwise, other than to note it is excellent to see attempts being made to reach young consumers. Future publications could be developed in consultation with consumer stakeholders representing that demographic. More generally, consumers nominated the BFSO work in high schools as a good example of how TIO needs to work too.

Some stakeholders identified getting consumer rights information into the school system as a priority, and a way to teach young people, who are heavy users of telecommunications, the skills to become smart consumers. The TIO should investigate any opportunities to take this educational role.

Culturally and Linguistically Diverse (CALD) Consumers

- **Translation and interpreter services**

The promotion of translation services needs to be more high profile and needs to cover the actual information, rather than just the contact point for translation services. Voice recognition technology to identify the language interpreter needed might be appropriate. This technique is used for other services especially in Europe and for services such as phone cards. It is a facility that can be easily implemented by call centres and should be considered by the TIO.

There is an on-going need to make information available in languages other than English. Publications and website information in community languages were identified as an excellent means of getting the message about the TIO to CALD consumers.

- **Community media**

Community newspapers are extremely important mediums for people of CALD backgrounds. Many people read their own language newspapers from cover to cover and ads/articles in these papers have proved effective in the past. Advertising, or even providing general information via these mechanisms will reach a broad range of consumers.

Community televisions and radio stations are also excellent mediums, and this also allows people with low literacy especially in English to receive the message verbally. Campaigns via community radio and television stations need to be held on regular intervals, for example every 2 years and appropriately budgeted for it. There needs to be reinforcement of the message. Once-off promotion of the TIO will not work to ensure that in the long term people are educated about their telecommunications consumer rights let alone the existence of the TIO.

- **Resource centres**

Adult Migrations Education Services (AMES) are a good place to distribute community education information. Ethnic community peak groups also expressed a willingness to help circulate appropriate material from the TIO via their own networks.

General

Consumers supported many of the current ways of advertising the TIO via brochures, but they need adjustments to make them much more user friendly, with regard to both their format and content.

- Critically, there needs to be less legal language used in TIO brochures and there needs to be more use of graphics. More detail about the problems with current TIO publications is outlined later in this Submission.
- Listings in the front of the White Pages was considered useful, though this mechanism shouldn't be relied upon as more people use on-line sources or just don't receive directories (such as in remote areas).
- Radio remains a very popular medium which is good for general awareness raising, particularly for consumers who are older, CALD and/or indigenous consumers, and people with low literacy levels.
- The TIO fridge magnets were also a useful initiative as it allowed people to keep the information for future reference, but they need much wider distribution and a better, more readable design. Perhaps there could also be a car sticker developed.
- There is a need for the TIO to develop outreach programs (or if they already exist, improve them significantly). A dedicated Community Liaison/Development position seems appropriate, as well as the one-off promotional exercises done by the Ombudsman and the Deputy Ombudsman. Their new role could involve developing and maintaining links with sectors as well as organising programs for target groups. In the past the TIO has undertaken promotional activities with other bodies however the TIO should be able to instigate its own programs on an on-going basis where no other partners present to assist.
- In March 2004 the TIO issued a media release recognising that city people were 3 times as likely to complain to the TIO as non-city people⁹, which ties in with comments by some review participants about the perception of the TIO as an eastern seaboard, "Southern" organisation. It is of concern that there is no apparent strategy to address specifically identified awareness gaps. CTN recommends the TIO undertake publicity and awareness campaigns based on the data about the location of complainants.
- The road-show concept was widely supported as an effective way to reach rural and remote consumers, as part of a co-ordinated outreach program. There is a need for the TIO to undertake outreach programs according to the need for information, rather than rely on the ability to tie in with other agencies as the TIO has sometimes done in the past.
- A number of community ads for TV have been made by the TIO over the years and are considered to have been extremely effective, at least whilst they were being aired. Perhaps these ads could be extended to being used at cinemas.
- There is also an interesting thread on the Whirlpool website¹⁰, which is a discussion forum for broadband users. This thread discusses whether or not the TIO should have a presence on that site to answer questions from consumers, such as whether or not it can assist in a dispute. Linking in with user-communities is an untapped inexpensive opportunity for promotion of the TIO. It is worth noting that many service providers are members of the site and regularly respond to comments made by consumers.

It is clear that consumer groups are interested in helping the TIO to better reach different sectors of the community. CTN suggests that the TIO facilitate regular workshops to bring together key consumer groups and stakeholders to consider how best to design publications for public distribution. This collaborative approach is of crucial importance if the TIO is to become more user friendly. There would also seem to be an opportunity for TIO Council members to improve their knowledge about how TIO publications can better meet the needs of their constituents.

Recommendation 22: That the TIO develop a Community Development/Liaison position as part of a strategy of addressing gaps in consumer awareness and to build better networks with the community.

Recommendation 23: That the TIO develops and implements a comprehensive communications strategy by taking into account suggestions from this Consumer Submission.

Recommendation 24: That the TIO facilitate regular workshops to bring together key consumer groups and stakeholders to consider how best to design publications for public distribution as well as review them to ensure they are being effective.

TIO Publications

The legalistic language used in current TIO publications was cited numerous times as a disincentive to publications being useful, and even a barrier to accessibility. Their current format and design is actually a disincentive to customer use. There are several “plain language” agencies which can assist in creating appropriate resources¹¹. Publications need more colour and images, to make them easier for people to pick up and flick through.

Recommendation 25: That TIO publications be reviewed specifically to make them less legal and more user friendly.

Visually impaired consumers told CTN that there are no publications available for visually impaired people – this needs to be addressed. Not all consumers have access to on-line information particularly those with disabilities or on a lower income. Many stakeholders commented that whilst it might be an easy way for the TIO to provide information, it was not an easy way to access that information if you don't have on-line access! The inaccessibility of the website also prevented users relying on screen readers from getting the information they need.

Recommendation 26: That TIO publications be created in Braille and large print.

Consumer groups strongly supported the expansion of the number of case studies published by the TIO. In a general sense, consumers and their advocates are interested in seeing how the TIO makes its decisions on matters. Publishing case studies also fulfils an important function of providing transparency and credibility for the TIO processes. A full on-line index of case studies, linked to position statements, would be an excellent resource. A printed version as well as electronic document would be invaluable.

Recommendation 27: That the TIO-published case studies be expanded, and an index of case studies, linked to position statements, be created and be available in print and on-line.

TIO Website

Like many agencies, the TIO publishes enormous amounts of information about itself on the internet. However, feedback about the website and the way information is presented, was on the whole very negative.

A recurrent theme in the consultation process is that the TIO website is not user friendly. The design and usability of the TIO website is a severe disincentive to optimising its value for consumers. The general consensus was that consumers and their advocates can't easily use the TIO site to find information about their rights and issues. For the vision impaired the website is apparently nearly impossible to use, which is a severe barrier to access. It is critical that the TIO ensure their website is compatible for people with vision disabilities and should be constructed in line with the World Consortium (W3C) Web Accessibility Initiatives (WAI)¹² that set minimum international standards. The website needs an urgent update to ensure usability and accessibility.

Another key challenge for the TIO is making the information on their website more relevant to consumers who seek their advice, either generally with regard to their rights or in the instance of those

needing to make a complaint. The FAQ section for residential consumers could be updated to be more useful to consumers trying to find out if the TIO will be able to help in their dispute. The comments made elsewhere about the over-use of legalistic terms applies here too. “Legalese “ is simply not user friendly and puts up barriers to accessibility.

Another possibility could be having an “ask a live question” button, whereby a consumer can instant message a TIO staff member and get an immediate response. This method of communication is popular with young people and may be an attractive initiative to younger consumers who are high users of on-line services.

Finally, there needs to be more attention given to ensuring resources that are created for consumers are filed in an appropriate place on-line, because the present process is not user friendly at all. For example, a media release from July 2005 sought to give consumers advice on what to look for in purchasing a phone card. The only way to access this information is via the media releases archive, where no-one would think to look.

It is important to make good use of the finite resources by re-using and reproducing appropriately. For the phone card information to be a useful consumer resource, it needed to be turned into a fact sheet, which is quite easy to do. Similarly, the search engine doesn’t find the release when “phonecard” is searched for. The TIO needs to ensure the effort it invests in creating resources is not wasted by ensuring people can locate them. Whilst the press releases were in multiple languages, they should also have been made into a fact sheet in a range of languages. This was an invaluable opportunity lost because the cost of translation had already been expended.

Recommendation 28: That the TIO website be re-designed to ensure information is easy to find and complete, and also to ensure usability and accessibility meets international standards.

Chapter Two – Independence

Structure of the Council and the Board

CTN's consultation revealed a number of key concerns about the governance structure of the TIO.

- **Board dominance, both latent and actual, over all Council policy decisions is a continuing problem in the absence of equal consumer representation at that level.**

Every member of the TIO Board is appointed by industry, and the Board has the power to override any Council recommendations and decisions. This means issues of importance to consumer representatives can be negotiated in detail to an agreed conclusion at the Council but can then be summarily rejected by the Board. Consumer interests can therefore be blocked by the industry hegemony at the highest level of the TIO, making it impossible for consumer representatives to create policies or make recommendations from the Council without the full support of the industry. Because of this continuing power imbalance, tensions continue to exist between consumer and industry interests and are unlikely to be resolved unless consumers have real and effective participation in the governance of TIO Ltd.

The prevailing view amongst consumer groups is that the existing governance structure effectively stifles consumer representatives on Council from being able to pursue changes in the best interests of consumers if they conflict with the interests of the industry. Many consumers believe the TIO is not a "best practice" model of External Dispute Resolution (EDR) because of this structure, and consumer advocates generally believe it to be seriously deficient as a result. Some believe there is an inherent contradiction between the TIO being positioned as an "independent" body when in fact the high-level policy direction of the scheme is completely controlled by industry and this dominance is invoked in practice.

Due to the fact that TIO Board and Council meetings are confidential, it is not possible to identify those specific instances where the Board has over-riden a decision of the Council. The fact that these instances cannot be publicly identified here does not mean that they have not occurred or that there is not a potential for them to affect the TIO in the future.

The questions around the TIO's governance structure were also raised by consumer advocates in the 2003 TIO Review process. The unresolved perception of the Board's dominance over the Council continues to cast a long shadow over the independence of the scheme. A meaningful and effective role for consumers in the governance of the TIO is needed, and many consumers feel that this cannot be achieved by the current structure. The structural imbalance between consumer and industry involvement in the governance of the scheme is a continuing issue that may only be remedied by a structural change to the scheme. A single governance body that is comprised of equal consumer and industry representatives would be an acceptable alternative to the current TIO governance structure.

Recommendation 29: That the structural policy imbalance between consumer and industry participation in the governance of the TIO scheme be recognised as an on-going issue that must be remedied by a structural change to the scheme, implementing a single governance body of equal consumer and industry representatives.

- **Unique aspects of the TIO scheme**

CTN also notes that in the 2003 TIO review the final report highlighted that the TIO governance structure is unique. All other EDR schemes have equal representatives from consumer and industry on their Boards with no second tier Council. The TIO governance structure needs to be compared to other industry dispute resolution schemes to see if the TIO can meet its aims and objectives more effectively and equitably by implementing a unified governance structure.

Notably, the decision to review the appropriateness of this structure can only be approved by the TIO Board, yet every member of the Board is currently appointed by industry. Once again, the Board's control of TIO decisions mean it controls the agenda and decisions about what aspects of the scheme are reviewed, making it vulnerable to criticism and allowing it to stifle the views of other stakeholders. These serious questions about the equity of the Board's decision-making capacity will remain until the issue of Board dominance over Council is addressed through structural reform.

Another recurring theme from the previous review is the cost associated with having 2 nominal policy governance structures, where a single body with equal representation would surely be able to undertake the work involved. A single governance body is clearly established best practice and is also reflected in the both the DIST Benchmarks and ASIC PS139.

- **Concerns about the roles of Board members and their “ordinary” work roles**

Re-enforcing the concern consumer groups had about the Board's dominance over the direction of all TIO policy was the question of the significance of the work roles of Board members. Many of the Board members and industry representatives on the Council are actually employed by telecommunications companies to participate in regulatory changes, particularly within the development of self-regulation instruments. In some cases the same people whose usual employment requires them to minimise the regulatory effects on their businesses are also responsible for shaping the direction of the industry scheme that mediates disputes about those regulations and controls precisely what areas can be covered by TIO jurisdiction.

For example there would seem to be a need for the TIO's scope and jurisdiction to shift in order to incorporate consumer complaints about content and pay television services. These issues are clearly and repeatedly identified as key areas of growing complaints in publications by the TIO office. This raises the question about why these issues have not been recognised at the Board level and why they are not being incorporated into the Scheme? Once again, many consumers believe that these are serious issues of legitimacy, transparency and conflict of interest that can only be reconciled when there is equal representation of industry and consumer interests in the whole governance structure.

Currently, there is apparently strong support from Industry maintaining the structure, governance and jurisdiction of TIO Ltd as it is and resist changes at all costs. However, this Review is an opportunity for the TIO Board to address all these concerns with a view to creating a better governance structure that finally addresses the continuing perception of inappropriate industry policy dominance of the scheme.

Ombudsman

Feedback from the consultation was unanimous in praising the individuals who have filled the role of Ombudsman since the inception of the TIO Scheme. The office of the Ombudsman is considered extremely important by consumer advocates, particularly in regards to the TIO power to make final determinations on complaints. It is imperative that the person appointed to the role of Ombudsman has integrity and impartiality, in order that their determinations will be considered fair.

There is some concern from consumers about the transparency of the appointment process for the Ombudsman and the Deputy, although this may well be largely because consumers were on the whole unsure about how these processes actually worked. Consumer advocates supported a publicly advertised, transparent process, free from any political interference. The appointment process for the position of Ombudsman and Deputy Ombudsman must be conducted by a selection committee which has equal industry and consumer representation on it and their decision must be final without further review or approval by the TIO Council and/or Board. One representative suggested that an Ombudsman cannot be truly independent when the Board/Council choose who they do and don't want. These concerns appear to further support the belief that the Board dominates the Council because the current structure allows for undue influence to be exerted over the choice of individual appointed to the office. Independent funding and a secure tenure for the Ombudsman were also identified as mechanisms to help ensure the independence and on-going integrity of the Ombudsman role.

Recommendation 30: That the appointment process for the TIO Board, Council, Ombudsman and Deputy Ombudsman be more publicly available to reassure the public that the process is transparent and accountable.

Complaints Determinations

For consumer advocates, a Determination is a useful mechanism that helps establish a precedent. However, despite a range of issues that consumer representatives believe could be resolved via a determination, it is felt that this does not occur regularly enough. Advocates also expressed concern that if a matter was finalised before a Determination is made, that matter can't be publicised, which in turn affects the ability of advocates to share information and approaches to a complaint. Notably, the most recent Determination appears to have been made in March 2003, as per the TIO website.

Determinations are a powerful tool, and there appears to be a reticence to use this mechanism. This can be frustrating for consumer advocates, when the use of a Determination can serve to address recurring systemic issues. The effect of this means there can be a perceived lack of independence in choosing to finalise a complaint that would appear to be appropriately done by a Determination. This could be partly resolved by the TIO making a statement about the use and need for determinations generally speaking.

Recommendation 31: That the TIO make a clear statement about the policy rationale for making or not making Determinations.

Membership

Several consumer advocates had an objection to the use of language of "membership" to the scheme, rather than participants of the scheme. The effect of calling service providers members gives an impression of exclusion of consumers, making TIO membership like a club. It was felt that this also creates problems of getting new industry members to join the TIO, giving the wrong impression that membership is some kind of choice. This could be a problem in the future in getting VOIP providers, for example, to participate.

Further to this point, the concept of having members versus customers (industry versus consumers) creates an "us" and "them" perception, which is particularly problematic in TIO correspondence and has been raised by advocates directly with the office on other occasions. The customer is dealing with a member scheme, and some respondents suggested that the tag of "independent" is misleading in this sense.

Chapter Three – Fairness

Position Statements

Most stakeholders who participated in this review were unaware of the existence of position statements, including some caseworkers who advocated on behalf of a complainant and would therefore be the key users of them. Once again, the information that is available on the TIO website is not intuitive to find and not user friendly. Feedback from those who use them indicates that the TIO position statements are an excellent resource that requires better promotion and location on-line.

Consumers support the continuation of on-line access to position statements and this should be enhanced by linking the statements directly to case studies. Another recurrent theme in the feedback about TIO publications is the need for the language on the position statements to be clear, plain and require less prior knowledge of how the industry actually works.

Whilst position statements appear to be effective and useful in ensuring consistency and fairness, one concern that emerged is how difficult it might be to challenge the outcome of a decision should a consumer believe it to be incorrect. Whilst not aware of any specific instances of such an event, there is the *potential* for this to occur. Having said that, at least one respondent praised the TIO for its willingness to review its position on an issue when advocates have sought to challenge that policy. It is also understood that one of the difficulties in preparing position statements is the number of audiences targeted namely the media, consumers, professional consumer advocates, industry representatives trying to comply and regulators.

For those who had used position statements only one respondent indicated there were instances of different outcomes in a complaint compared to what is suggested in the relevant position statements.

Recommendation 32: That the TIO create a strategy for raising the profile and usage of position statements especially for professional consumer advocates.

Industry Codes

The overwhelming response to questions about the effectiveness of Industry Codes is that they are of none or little use to individual consumers in helping them frame a complaint to the TIO. The technical focus and overly legalistic language makes them inappropriate for use by individual consumers and there was a belief they should not be promoted in such a way.

Encouraging complainants to use Industry Codes would not be particularly useful, because there is a need to avoid pre-judging the outcome of a complaint. This is important because the complaint will be judged on the individual merits of the case, which has regard not only to Industry Codes but also the law and what is fair and reasonable. It is the role of the TIO to ensure everything is considered in a complaint, and consumers should not have to be responsible for highlighting potential code breaches to assist TIO investigations.

Fairness of TIO processes

Consumer stakeholders raised a number of concerns about the procedural fairness of complaints handled by the TIO.

- **Pressure to accept whatever the telco offers rather than what is fair**

An issue raised several times involved reports of the TIO staff allegedly pressuring the consumer or their advocate to finalise a dispute, without a fair outcome being achieved from the complainant's point

of view. A fair outcome should not be compromised due to time constraints, or any other reason. Whilst there is obviously a need to finalise cases and manage workloads of TIO staff, in some cases reported to CTN there appears to be inappropriate pressure being brought to bear on consumers to accept inappropriate outcomes offered by the telco in question. This reinforces views of some consumers that the TIO is siding with their industry member, which in turn dilutes the perception of the TIO as an independent complaint resolution scheme. It can seem that the quality of an outcome in these instances, regardless of whether or not it satisfies the consumer, is being compromised for the sake of achieving *any* outcome. It is not possible to know whether the TIO's processes are being compromised by limited resources, inappropriate staff intervention, or even a combination of both. Nor is it well understood through CTN's consultation how widely spread the instances reported actually are.

Recommendation 33: That the TIO conduct complainant satisfaction surveys to ensure consumers do not feel they have been inappropriately pressured to accept dispute resolutions that do not meet their needs and ensure that staff receive on-going training to prevent this occurring.

Serious complaints are often raised in cases by advocates (including systemic ones), but advocates have reported that sometimes investigative staff don't give a complaint the attention and consideration it deserves, that is, the full merit of the case is not recognised. This can make it difficult to ensure that all components of a complaint are dealt with but be addressed through on-going staff training. One organisation has made complaints to the TIO outlining what they consider to be systemic issues, and have received no acknowledgement or response to the issues they raised from the TIO.

- **Natural justice and properly managing customer expectations**

Persuading a complainant to accept a lesser outcome that doesn't necessarily address any systemic issues in order to be able to simply close the case is a key issue. When this occurs, the right of the customer to natural justice is being denied. This issue ties into the appropriateness of the funding base coming predominantly from the number of complaints and levels.

Some advocates raised objections to so-called "knock-out" letters, which respond to a complaint by giving an indication of whether there is an issue that can be dealt with – but this happens at an early stage without giving consideration to evidence being provided or full consideration of the facts and the story! Advocates are of the view that not only is it poor practice, it can be misleading to a customer as to the merit of their dispute. Moreover, it can also be entirely incorrect and discourage the complainant from pursuing the matter further. More broadly, there is a need for the TIO to provide guidance to consumers on what type of evidence they may need to provide and the timeframes within which they will need to produce it.

Recommendation 34: That the TIO review the use of "knock-out" letters to avoid giving the wrong impression about the merits and outcomes of a complaint before due consideration.

- **Escalation of complaints**

Another fundamental problem with the perceived fairness of the TIO is a reluctance to escalate complaints for investigation. On the whole, Enquiries Officers (EOs) do a good job in terms of solving really basic problems, but with any degree of complexity there can be difficulties. It was suggested that EOs try too hard to simplify the problem in order to deal with it, rather than escalate it to an Investigation Officer (IO) which may be more appropriate. This decision seems to be at the discretion of the EO. It would be useful to ensure that a process to double check closed cases is instituted at the TIO, if it does not already exist.

- **Capturing the *whole* complaint**

Complaints with multiple components can be problematic. When the complainant is referred back to the service provider, usually only the main component (as decided by the telco) is likely to be dealt with. The complainant then either feels unsure whether the rest of the complaint is legitimate, or just gets

tired of the whole process so the remaining issues are lost. These include such issues as privacy, complaint handling, and so on. It would be useful for the TIO to audit how well it is capturing all the elements of the complaints they receive (after resolution) and make this information publicly available. Ensuring fairness involves making sure all aspects of the complaint are addressed, not just part of it.

Some advocates had strong views about how involved the EOs get into shaping the actual complaint, as implied earlier. There are objections to EOs interfering with the actual complaint, such as making judgments on the validity, scope, etc. Whilst they shouldn't comment on the case in the stages before a complaint is investigated and dealt with, it is claimed that quite often they do. This interference can obstruct access to redress and the right of the customer to make their complaint in order for it to be properly considered. Once again this can be addressed through adequate training and follow up systems. Some respondents also suggested that TIO staff don't have enough weight to make decisions when they are needed.

- **Imbalance in treatment of members and consumers**

There is a view amongst case-workers who advocate on behalf of consumers that the scheme effectively protects the telco from the customer in the dispute resolution process. This occurs when in written complaints the complainant's details are stated, but the complainant's details are removed from correspondence. This makes any quick resolution between the consumer and the telco virtually impossible, as there can be no direct contact between the consumer and the staff member at the telco with the power to resolve the matter. This in turn lengthens the dispute resolution process, which is an enormous inhibitor to timely resolution – which is precisely what the complainant and no doubt the supplier ultimately want.

There is a lack of transparency with TIO referrals to a telco, and the practice of blacking out names on correspondence forwarded to the complainant should cease. While there was considerable debate among consumer advocates about the privacy rights of telco staff members, it was recognised that easier access to the telco's contact person can dramatically lessen the length of time a complaint can be resolved in. This is to the benefit of both the telco and the customer.

Recommendation 35: That the TIO consider better ways to facilitate contact between the complainant and the supplier directly in order to resolve complaints quicker.

Yet another problem raised by advocates is the different times given to the two parties to respond to a dispute - namely that the telco receives twice as long to respond to a complaint as the consumer! Again this is a procedural unfairness that needs to be addressed. There need to be equal response opportunities for both parties, with the ability to extend those upon reasonable application.

Recommendation 36: That the TIO implement equal response times for both the consumer and telco in the dispute resolution process, with the ability for extensions upon reasonable application.

Finally, some advocates consider the 12 month limitation on a consumer's ability to lodge a complaint to be far too short. Other EDR schemes in Australia have a 6 year timeframe. The TIO should reconsider what an appropriate time frame is, given this discrepancy.

Recommendation 37: The TIO re-consider the 12 month limitation on a consumer's ability to lodge a complaint and bring it into line with other EDR schemes in Australia.

Chapter Four – Accountability

The consumer consultation found strong support for the establishment of formal mechanisms for both greater accountability of staff for their decisions, and the Ombudsman for the scheme as a whole. It appears that the TIO has most of these mechanisms in place, with a few notable exceptions. CTN's comments on how accountable the TIO is for individual decisions have already been made in the Fairness Chapter, so this section deals with accountability to stakeholders *other* than individual complainants.

Publications

- **Annual Report**

Consumer stakeholders found the *TIO Annual Report* a useful resource, and relatively easy to locate on the website (though it was pointed out by one workshop participant that it is about the only thing easy to find on the website!).

The TIO appears to make as much information as possible available on-line, apart from the forementioned *Awareness Research 2006* survey. Aside from the usability of the website matters raised earlier in this report, the amount and kind of information was considered to be satisfactory from an accountability perspective by many consumers advocates. However, the point was made that not all interested parties are web savvy. The TIO should ensure that all publications can be ordered in hard copy, and avoid following the same path as some government departments who only offer information as a download from a website and are reticent to provide hard copies any more.

Recommendation 38: That the TIO ensure all publications can be requested in hard copy as well as on-line.

There was a suggestion that more regular reporting between *TIO Annual Reports* would be useful. This information is actually contained in the *TIO Talks*, so it may be useful for the TIO to make this clearer.

- **Case studies**

As mentioned elsewhere in this report, TIO case studies are particularly useful and provide great assistance to advocates in understanding the rationale for a decision. This is an important accountability tool, as it encourages transparency in the decision making process. A database of case studies would be a useful tool for consumer advocates.

It was also suggested that TIO case studies be cited in Australasian Legal Information Institute (AustLII) databases, so researchers and advocates can locate them easily.

- **TIO Talks**

TIO Talks is widely considered a useful publication, but circulation does not seem particularly widespread. Ensuring consumer and community groups get a copy of *TIO Talks* each quarter will ensure the TIO's profile and contact details are regularly distributed.

It was suggested that opportunities exist for TIO Council members to provide regular information about their activities through consumer networks, as a means of ensuring their work is accountable and transparent. One suggestion is an update via the Consumers Federation of Australia newsletter, or even the *TIO Talks*.

- **Reporting**

Consumers reported being pleased that the TIO conducts some self-auditing, such as analysis of Level 2 and 3 complaints as outlined in the Issues Paper, which did not appear to be well known by consumer stakeholders. It is very difficult to gauge what proportion of self-auditing undertaken by the TIO is ever actually published, and this is of concern. There is an expectation by consumer groups that it should be possible to find out about any self-auditing activities, at least via the website. It is difficult to obtain detailed information about consumer awareness and customer satisfaction surveys undertaken by the TIO, which are of great importance but are not readily available via the website.

A short summary of this research may appear in the *TIO Talks*, because it is appropriate that these types of research be publicised, as it is intimately linked to the publicity role of the TIO. Without this, it can be assumed that the TIO is trying to not draw attention to poor levels of public awareness and down playing the importance of consumer awareness. Media releases need to be issued highlighting the survey results, also because they will in themselves provide promotion about the TIO if they get picked up in the media. There needs to be a separate section on the TIO site to hold this information – perhaps “Research” – with a detailed list about what information can be obtained (including how to find out more).

Recommendation 39: That the TIO create a separate section on the TIO site for any research conducted by the TIO, such as consumer awareness surveys, and internal review information.

- **Complaint Statistics**

The complaint statistics published by the TIO are of critical importance to consumer groups, because they are a way to assess trends and identify new issues on which advocacy work needs to be undertaken. However, some consumer groups were highly critical of the current statistics the TIO provides and their ambiguity. In particular, statistics in the TIO annual report are not adequately dissected and the reasons for changes are not well identified. There was also a request for greater detail in types of complaints within their broad categories. The more detail available on the types of problems people are having, the greater opportunity there is to identify the systemic causes of problems and address them.

Accountability to Government

The Issues Paper offers very little detail on the mechanisms by which the TIO is actually accountable to government agencies (i.e. ACMA and the ACCC), which was of concern to a number of stakeholders who asked exactly *how* the scheme is accountable to government agencies. The lack of detail and certainty about what mechanisms *do* actually exist makes it quite difficult for any relevant comment to be made. There is a general view that the TIO should be directly accountable to government for its activities. There is also an expectation that the TIO should be able to demonstrate that it is meeting the needs of individual consumers and that the scheme is meeting appropriate benchmarks, such as achieving increased consumer awareness or complainant satisfaction.

For consumer groups, it is absolutely critical that there be a formal mechanism for the TIO to report to ACMA and the ACCC on systemic complaints issues, or other reasons as necessary. The TIO can provide data to ACMA that demonstrates the actual need for the regulator to take enforcement action, which it may otherwise be reticent to undertake. CTN understands there is a new system of informal meetings between the TIO and ACMA that has been recently established. This needs to be a formal meeting with a commitment to use the information provided to ACMA is provided with, for enforcement purposes.

Recommendation 40: That the TIO develop an accountability framework document which outlines its obligations in relation to industry, government and consumers, and makes the document publicly available.

Better Benchmarks

A number of advocates suggested that the Australian Security and Investment Commission's Policy Statement 139 (ASIC PS139) Financial Services Benchmarks that apply to financial services EDRs is an example of industry best practice which the TIO should aim to match. PS 139 sets out clear guidelines on how an external complaints resolution scheme should be established and function. It also incorporates the DIST principles. PS 139 is clear and concise and the principles underlying the functioning of the TIO Scheme could be improved by better reflecting these more up-to-date principles¹³.

Recommendation 41: That the TIO seeks to incorporate all PS139 principles, not already benchmarked by DIST principles, into its practices.

Chapter Five – Efficiency

Timeliness

There was a strong view that people should be clearly advised at the outset of a complaint what to expect from the TIO in addressing a dispute, and on the whole this seems to be occurring.

Timeliness is an important factor in ensuring an EDR scheme meets the needs of complainants. Whilst on the whole consumers suggested the TIO is fairly efficient, particular criticism was made about how long it takes to actually have a complex complaint resolved. Consumer advocates also singled out as problematic the length of time it took for the TIO to undertake basic administrative processes for complaints that need escalation.

Based on CTN's consultation with advocates, outlined below is a rough sketch of the process for complaints at Level 2 and above:

- A pro-forma letter is sent at the start of the formal complaint resolution process, acknowledging receipt of the complaint letter, advising it will take 8-10 weeks to look at the letter outlining the complaint;
- After the 8-10 week period has passed and the actual complaint resolution process starts, the TIO sends a cover letter to the telco attached to the consumer's complaint;
- The telco is allowed 4 weeks to respond to the complainant's letter;
- The consumer is allowed 2 weeks to respond (although advocates have complained that often a lesser period has been allocated and this has been taken up directly with the office and extensions have been granted);
- The telco again gets 6 weeks to reply if the customer is unhappy with the outcome to this point; and finally
- At some point thereafter, the customer receives a letter from the TIO advising the final outcome of the complaint.

As demonstrated above, following through a complaint can be a long and arduous process for the individual consumer. 8-10 weeks is an unacceptably long period of time for a customer to have to wait for their complaint to be even forwarded to the relevant Telco for consideration. Such a delay is a disincentive for the customer to continue their complaint, and this will affect the general perception of the TIO as an effective body. Long delays in dealing with escalated complaints could also be prejudicing the quality of the investigation, because memories and accounts of events fade over time. Complainants need to be well informed on the progress of their complaint at all times.

It can only be presumed that resource limitations are affecting how quickly TIO staff are dealing with high level complaints. The efficiency and timeliness of the complaint resolution process needs to be given higher priority if consumers are to have faith in the process that aims to fairly mediate disputes between customers and their service providers. A process that takes several months is unacceptable and is not meeting the stated aims of the scheme.

It is also worth highlighting that the most recent Complaint Culture Survey recognised that, as in previous years, consumers continue to expect speedy resolution times for their complaints. Given the preference for written correspondence at higher complaint levels, it is disturbing that an estimated 48% of respondents in that survey indicate they are dissatisfied with a complaint if it takes the respondent more than a week to address¹⁴. There is a gap between how long a TIO complaint process takes and

how long is reasonable to expect a person to wait for a complaint to be resolved, and this needs to be addressed with a high priority.

Ideally, a typical case should see 1 week to forward complaints to a member and 2 weeks for subsequent correspondence.

Recommendation 42: That the TIO resources be directed toward faster processing of administrative aspects of its complaint handling processes.

Recommendation 43: That the TIO investigate options to improve the timeliness of resolving escalated complaints.

Right of review

The problem is even worse for those who want the outcome of their complaint reviewed. Complainants are advised they have a right to review when they receive the final complaint resolution letter from the TIO. It advises the customer that if they would like a review to re-contact the TIO for escalation to a Senior Investigations Officer. It then takes approximately 8-12 weeks for this process to commence. Whilst the right to review is an excellent practice (and highly appropriate), the length of time this takes is an enormous disincentive to the interested party.

Recommendation 44: That the TIO ensure requests for case reviews are commenced immediately upon receipt of any such request.

Complaints process drop outs

CTN is unaware of any TIO research into what proportion of people drop out of the process due to “complaint fatigue” but it would be very useful information and would help to understand where the TIO succeeds or fails. This would involve consideration of why people drop out of a complaint under investigation and seek to identify how the TIO can help prevent this occurring. Factors to consider would be timeliness, ease of use, etc. This information should be featured in a *TIO Talks* article.

Recommendation 45: That the TIO undertake research into why people drop out of its complaint process when a complaint is still under investigation and seek to identify how and when the TIO could help prevent this occurring.

Information Provided by the TIO

Consumer stakeholders expressed interest in the following information being provided by the TIO, in addition to comments throughout this report:

- The statistical breakdown of complaint categories is a very important tool for most consumer advocates, particularly those working within self-regulatory forums to address regulatory failures and improve industry practices. It is imperative that the TIO continue to publish this information, with some adjustments as referred to previously.
- One broad criticism of the complaints data coming from the TIO is that it doesn't really say much about individual decisions, only about the *volume* of certain types of decisions. Some advocates have expressed an interest in greater detail about complaints being published by the TIO, in addition to the statistics published in the *TIO Talks*, which use very broad categories of general complaints.
- The statistical information published by the TIO indicates the volume of the complaints received, rather than how effectively the TIO has dealt with them. Apparently the TIO does review closed cases to ensure the correct outcome was reached. It would be useful to have that information published, as a way of ensuring the TIO is transparent and accountable.

- Some consumers have suggested it would also be useful to indicate what proportion of complaints at each of the different levels of complaint are upheld.
- Of particular interest to consumer groups (and the broader industry) would be specific information published in the *TIO Talks* about the backlog or queue waiting to have a complaint resolved, and at what level these complaints are being investigated.
- It has also been requested that the TIO ensure all information, including *TIO talks*, be published in alternative formats (community languages, Braille, etc.)

Use of Key Performance Indicators (KPIs)

Consumer groups thought it was useful to have timeframes for resolving issues, to ensure cases progress and the customer is given an expectation of how long their complaint will take to resolve. However, the timeframe shouldn't compromise the outcomes in any way. KPIs would need to be appropriate, for example based on the level of customer satisfaction with the outcome rather than achieving high numbers of resolved complaints without regard to the customer satisfaction or call handling times, for example.

KPIs were clearly seen as a threat to the ability of the consumer to get a fair outcome for their dispute, if timeframes were used as the sole driver toward resolving a complaint. In this industry there are lots of changes and new developments, and often when a systemic issue arises for consumers it can have a big impact on the resources of the TIO. Benchmarks would need to be reviewed regularly to ensure that changes to Industry Codes and the like were taken into account. There needs to be typical timeframes with extension upon request in reasonable circumstances.

TIO investigations and complaint outcomes need to be based on a system, to ensure consistency and efficiency. It is important that the TIO is flexible when consumers ask for more time, given the lack of resources that a consumer has versus those available to their telco.

Chapter Six – Effectiveness

Assessing the TIO

The majority view of consumer stakeholders consulted for this Review indicates a view that the TIO appears to be a reasonably effective mechanism for dealing with genuine complaints. As discussed elsewhere in this report though, the timeliness of dispute resolution can be a disincentive for consumers to use the TIO, particularly if they have not used a dispute resolution service previously and may have unrealistic expectations. It is important that the TIO continue to advise complainants of the realistic time frame within which their complaint can be dealt with.

One important role of the TIO is identifying gaps in consumer protection regulation. Another role is identifying where industry practices are simply failing to abide by the rules they have established. The role of the TIO in identifying regulatory gaps based on real cases highlighted by new and emerging technologies has been very useful for consumer groups, even though content issues have been specifically excluded from the scope of the TIO.

Systemic Issues

One of the biggest consumer protection gaps to have been identified in recent times has been around premium SMS services. Consumers are experiencing a range of problems through use of these services, which have been effectively captured by the TIO (even though at the same time the industry has steadfastly refused to regulate poor practices that are causing consumers difficulty). This is an example of why it is important that the TIO remain open to emerging issues, and continue to highlight them. At least with the issues captured and publicised by the TIO, the response of industry and the regulator (or lack thereof) is a good starting point for action.

Generally speaking, industry based schemes are appropriate for dealing with individual complaints but not systemic ones. Systemic problems are less successfully addressed, and this is typical of EDRs on the whole. Some consumer advocates suggested the TIO has a role to pro-actively investigate certain areas, particularly where there is evidence of detriment to consumers. It is widely recognised though that the TIO is not a regulator and it is ACMA's role to investigate and enforce better industry practices.

The TIO can collate evidence of a systemic issue and take the matter to a carrier. If they get no response then the Ombudsman can refer the matter to ACMA. The recent constitutional amendment that allows the TIO to look at systemic issues is a good move, and it was noted that systemic issues are also reported in the *TIO Annual Report*. Consumer groups are pleased that a dedicated systemic complaints staff position now exists. This is a step toward identifying problems, even if the industry lags behind in addressing them.

It is crucial that content needs to be included in the scope of the TIO if it is to be effective into the future. Emerging problems derive not only from new technology and services but new business models. It is not always easy to identify who is the carrier and who is the service provider and who is responsible for resolving a customer complaint. Many who had a view on the issue of content-related complaints felt that the division of regulatory responsibility on content issues is ridiculous. Ensuring all responsibility for a single issue lies with one ADR will go a long way toward ensuring complaints are easy to make when necessary and complaint statistics can be captured and adequately reflect the areas that need to be fixed.

Meeting the Needs of *all* consumers, not just those who persevere to complain

The TIO's case management system of tracking complaints from the initial point of contact is as an excellent opportunity to re-examine the merits of cases that the customer does not pursue, and moreover, to assess why people drop out of the complaints process. Questions arose about how "successful" an EDR scheme can be when there is no apparent scrutiny of why people drop out of the process. At present, consumer advocates can only speculate as to why a complainant never returns to the TIO. In theory either they returned to their service provider, as the TIO suggested, and resolved the matter there, or alternatively, they simply gave up before even entering the formal TIO dispute resolution process. Simply because a consumer initially contacts an EDR doesn't mean they will persevere with making a formal complaint, when issues are not successfully resolved. There needs to be closer scrutiny and follow up on cases when a customer never comes back to the TIO. This is essential in order to understanding the role of the TIO and how it can function better to meet the needs of consumers.

Recommendation 46: That the TIO undertakes a project to investigate the proportion of cases where complainants do not escalate their issue back to the TIO after the first contact and why, in order to better understand what proportion of all complainants actually have their complaints resolved.

Complaint Handling Issues

One of the biggest barriers to the TIO being highly effective is that the Internal Dispute Resolution (IDR) processes of service providers are not adequately dealing with the complaints their customers are raising. Often people will be satisfied with an explanation of why they were not "in the right" in their dispute with their telco, and they sometimes only get this information by going through the TIO.

Complaints raised with the TIO are quite often because the service provider in question has simply ignored the customer's attempts to resolve the issue with them directly – that is, the complaint was not seriously addressed by the telco in the first place. As previously discussed, a combination of barriers to entry to the TIO scheme and the unwillingness of consumers to pursue complaints gives the impression that IDRs may be based on the low likelihood of consumers taking their complaint to an EDR. The continued growth of complaints to the TIO scheme reinforces the long held suspicion amongst consumer groups that "fobbing off" internal complaints is the standard approach to dealing with complaints in telecommunications.

Complaint handling has long been a source of frustration for consumer advocates, because they see time and again that service providers *do not* follow processes outlined in the *ACIF Complaint Handling Code*¹⁵. As a result, complaints get to the TIO that could - and should - have been dealt with by an IDR process. CTN has formally approached the Minister for Communications, Senator Helen Coonan, this year asking her to convene a complaints handling inquiry to investigate the practices of the telecommunications industry with a view to finally resolving many long standing systemic problems. Moves towards more converged services are now creating even more confusion when it comes to complaints, and this changing environment provides the perfect opportunity to review the situation.

As previously discussed, often complaints to the TIO have multiple aspects. There is concern that consumer complaints that are in part about the way a complaint was actually handled tend to be lost because the TIO focuses on the detail of the actual complaint (overcharging, incorrect disconnection, etc). The TIO needs to be vigilant in capturing all aspects of a complaint, particularly when it deals with the broad issue of how the industry deals with complainants.

Consumer advocates also conveyed their expectation that the TIO has an opportunity to take a role in improving internal dispute resolution processes. By way of comparison, the Energy and Water Ombudsman Victoria (EWOV) has undertaken education for members on how to better deal with internal complaints. The Financial Industry Complaints Service (FICS) also runs complaint resolution workshops for their members¹⁶. Again, there is a need to address the problems resulting in the growing

demand for the TIO to handle more and more complaints, i.e. the practices of the telecommunications industry.

Recommendation 47: That the TIO consider an education campaign for members on how to improve internal dispute resolution processes, noting that it may be appropriate that such a resource be developed and/or delivered by an independent party to the TIO.

Scope of TIO

- **Jurisdictional overlap**

There appears to be some confusion about the types of issues the TIO can deal with. Notably there is some overlap, for example on privacy issues. Often a customer may be referred to the Office of the Federal Privacy Commissioner (OFPC), which isn't necessarily the quickest way to have their issue dealt with (there is an 18 month waiting list before an issue is dealt with by the OFPC at present).

The TIO's inability (or perhaps more accurately shared jurisdiction) to deal with issues pertaining to content appears is an area that needs clarification and consideration at the Board level. Consumers who have problems with premium services delivered via their mobile phones and landlines are supposed to complain to the Telephone Information Services Standards Council (TISSC). However, if these services appear on a customer's phone bill, the TIO will deal with those complaints. As a result there is an overlap of jurisdiction and as a result there is no big-picture view of the scale of problems consumers have with content services.

- **Jurisdictional gaps**

Similarly, there are issues whereby there is simply no appropriate regulation and customers who complain to a range of agencies without success. A good recent example of this was the missed call scam, whereby consumers were receiving missed calls, and presuming it was a genuine call, they called back. However, most were enraged to find the missed call had been from a telemarketing company, and the cost of that marketing contact had been foisted onto them! The response from all the relevant regulatory and complaint handing agencies was a variation on "it's not within our jurisdiction", leaving consumers angry, confused, and without redress. It would have been useful for the TIO to have collected information on the number of callers and provided appropriate advice on where to complain, but it is not clear that the TIO even knew the answer to this problem.

The TIO is not always able to respond adequately to complaints when they arise. The following exemplifies the gap between the customer problem and the TIO being able to deal with the actual problem effectively (in this case, with the actual source of the problem). The complainant lives in a rural area. His neighbour had a landline phone fault fixed on his property. It was discovered immediately afterwards that the complainant's phone line was down after the neighbouring service had been fixed. The neighbours had 2 different service providers, one being the carrier and the other a reseller. When the newly-affected complainant called their own reseller telco to fix the problem, they were told that the problem would take a long time to fix, as it would need to be done by the carrier. This is often the case with telcos who are resellers of telecommunications products: they are de-prioritised. Whilst the Customer Service Guarantee exists, it does not replace having a phone service, it simply compensates for a loss of service with very specific limitations. Notably, there was no mobile phone coverage in that area either, and the length of time quoted to fix the problem unacceptable to the customer. However, the customer was only able to complain to the TIO about *his* telco – rather than the one actually *responsible* for the fault. It was an example of process being more important than actually solving the problem, and because of the TIO's inability to resolve such complaints it is impossible to know how widespread the problem is.

- **Trial and Payphone exclusions**

The TIO is usually unable to meet the needs of remote indigenous communities because it is often prevented from taking complaints from consumers who are in receipt of services as part of a trial. Contracts for trials regularly deny participants the right to complain to the TIO, leaving consumers only with the ability to complain to the Australian Communications and Media Authority (ACMA). This exclusion particularly affects consumers in rural and remote areas, for whom the roll-out of services is regularly on a trial basis (which seemingly never end).

Similarly with payphone complaints, time and again the TIO advises complainants that it cannot assist. Because trials and payphones are the 2 key telecommunications services available for indigenous consumers in remote areas, it means the TIO is largely irrelevant in these communities and provides no protection or right of redress for them. This is enormously frustrating for people who have problems that they are never able to get addressed by an EDR.

When ACMA is “dealing with” a complaint the TIO is similarly unable to assist a consumer. This is highly unfair and consumers would like to see the TIO able to have jurisdiction over complaints to do with trials. The Department of Communications IT and the Arts (DCITA) needs to ensure that contracts for the provision of services DO NOT deny consumers access to redress. CTN also suggests that the TIO develop a statement about how they will deal with complaints about services being provided on a trial basis.

Recommendation 48: That the TIO develop a statement on how they will deal complaints about services being provided on a trial basis, and encourage DCITA not to deny access to the TIO to consumers who use these services.

Convergence is also challenging the TIO's jurisdiction, and there was general support for a “one-stop-shop” for complaints about telecommunications services. This has been a lobbying point for consumer groups for several years now and was a key recommendation in the *Consumer Driven Communications Report* in 2004 which read:

The Minister and DCITA, in formulating communications policy, recognise the benefits to consumers of a “one stop shop” for resolution of consumer complaints in communications and work towards the most appropriate way of achieving this.

One way of achieving this policy outcome would be by amending the *Telecommunications (Consumer Protection and Service Standards) Act 1999* in order to:

- expand the jurisdiction of the TIO to allow the TIO to evolve into a ‘Communications Industry Ombudsman’;
- bring consumer complaints relating to pay television services within the operations of the TIO; and
- bring network connection & customer equipment issues under the jurisdiction of the TIO¹⁷.

Recommendation 49: That the TIO support a call for the Minister of Communications to convene an enquiry into Complaints Handling in the newly converged communications environment.

One advocate suggested that the approach of financial services to offer a single point of call for all complaints (such as using a 1800 clearing house number) which are then re-directed according to the issue may be an appropriate model to cover communications complaints which may need to be referred to any or all of the TIO, TISSC, ACCC or ACMA. The scope of the TIO needs to be regularly considered in light of these challenges. This is why it is so important that there be equal input to the governance structure of the TIO, which makes decisions about jurisdiction and ensures that consumers have a right to redress in all applicable areas.

Another issue of concern for consumers is how problems with Voice over the Internet Protocol (VOIP) service providers will be dealt with, and are currently being dealt with, given that a search for VOIP on the TIO's website yields no matches. There is a lot of industry hype about VOIP, and CTN's recent

report on the customer experience of VOIP suggests that problems are arising particularly with the accuracy of advertising and marketing of VOIP services, and quality of service limitations¹⁸ both of which would seem clearly within the ambit of the TIO's jurisdiction. Whether this is or is not the case needs to be stated on the TIO's website and promoted in TIO publications. Similarly there needs to be a definitive and clear answer as to whether or not pay television service complaints can be dealt with by the TIO. CTN is also unclear where consumers will complain about telemarketing once the Do Not Call Register is implemented. This is just a few of the many areas likely to be raised in the near future as more and more services are rolled out.

Recommendation 50: That the TIO clarify its scope and jurisdiction issues to assess whether it can deal with pay television services, VOIP, Disability equipment, payphones, telemarketing and content complaints.

- **Small business**

Small business advocates were of the view that emerging issues for their constituents are not covered by the TIO. The biggest problems result due to the lack of clarity about the definition of a small business.

Regulatory enforcement – a preventative measure

Consumer advocates overwhelmingly support the concept of publishing the name of telcos who fail to comply with the TIO. In the absence of any genuine attempts at conforming to the rules set out in Industry codes of practice, it seems appropriate that those inadequacies be publicly highlighted. This is an effective way of promoting compliance with industry regulation. The number of TIO complaints continues to grow as a direct reflection on the industry's under-commitment to self-regulation. Anything that can be done to inhibit that growth should be attempted. It was also suggested that telcos who don't meet the rules of the scheme should lose their license, as a means of promoting compliance with the regulations and TIO determinations.

As previously alluded to, consumer representatives are enormously dissatisfied with the unwillingness of ACMA to enforce self-regulatory mechanisms where problem areas have been identified by the TIO. Whilst the TIO is, to an extent, playing its role in identifying systemic problems and issues caused by poor industry practices, consumers are continuing to experience those problems because there is little or no apparent enforcement. ACMA's hands-off approach to enforcement means that the number of complaints handled by the TIO continue to grow because the industry rules and codes are not being met or followed and so the problems continue.

Recommendation 51: That the TIO works with ACMA to enable the regulator to take swift and decisive enforcement action in areas where the TIO has identified poor industry practices.

Maintain free access to the TIO

Having the right to redress is a key consumer right, and consumers support the continuation of an external dispute resolution scheme that is free for the individual to access. It is important that consumers have a right to have their individual complaints resolved. This is particularly important in light of ACMA's reticence to intervene or enforce self-regulatory rules, despite evidence coming from the TIO that shows problems recurring over and over and over again. Given the challenges that the regulator faces to ensure that consumers are protected within a fair self-regulatory industry framework, the role of the EDR in the telecommunications Industry is absolutely critical.

Chapter Seven – Additional Issues

In this section CTN would like to highlight a number of issues that arose in our consultation about the regulation of the industry as a whole.

Leaving aside all the issues consumers have raised about the TIO's performance, a number of questions loom large in the minds of advocates. What practices in the telecommunications industry are creating such heavy demand for an Ombudsman Scheme? Why are the practices that are fuelling the demand not being fixed by the industry players themselves? Where is the regulator, who is meant to ensure the industry adheres to Codes of practice and compels them to do so when they don't? These are critical questions because they are directly linked to the consumer's experience of the TIO. Consumers become enormously frustrated at having to use an ADR to get their service provider to behave the way they are required to by law in the first place. The TIO is then considered, rightly or wrongly, to be a failure because fundamental problems with industry practices are not addressed at the outset, well before they reach the escalated complaint level and just add to the ever-increasing demands on the TIO. As an unintended result, the TIO is placed into the role of being a quasi-regulator, which is inappropriate and ultimately, ineffectual.

Some consumer advocates are of the view that the self-regulatory model has failed and is inappropriate for the telecommunications industry, citing ever-escalating numbers of complaints and contacts with the TIO. Poor internal complaints handling mechanisms are resulting in increasing complaints getting to the TIO. Whilst efforts are made to cope with the demand side of the equation (i.e. the TIO is resourced in relation to the number of complaints received), there are no efforts being made to address the demand side of the equation (i.e. trying to stop complaints at their source – at the telco). With industry failing to follow its own rules, an under-active regulator allowing the status quo to continue, it is inevitable that confidence in the ability of the self-regulatory regime to deliver for consumers continues to decline.

Consideration was given to how to get around this fundamental point at the TIO's level, given the lack of efforts on the part of the industry and the regulator (even though these are the best places to do so). Some suggest there should be a default ability for the TIO to intervene in serious cases where the law appears to have been breached, for example misleading conduct.

Consumers would like to see a commitment by government agencies and authorities to meet with the TIO on a formal and regular basis to look at ways of effectively using the information captured by the TIO for in depth investigations into industry practices by the regulator. The information provided by the TIO needs to be used, rather than simply serve to highlight the same recurring problems. Those problems need to be acted upon by enforcement agencies. Whilst the ACCC is understood to have a liaison established with the TIO, there would seem to be a pressing need for a formal body to be established linking the TIO, the ACCC, and ACMA, which would properly consider the jurisdictional and enforcement issues being raised in TIO complaints information. Without this commitment to addressing problems from the regulators, there is little reason to think complaint numbers to the TIO will drop, or even plateau, any time in the near future.

In conclusion, while consumer groups see that aspects of the TIO need improvement, a far greater issue is the ineffective use of regulatory compliance powers. Consumers do not wish to see the growth in complaints to the TIO to continue on the same upward trajectory. Consumers want to see regulatory intervention stopping the practices of telecommunications service providers that are fuelling customer complaints in the first place.

Summary of recommendations by category

Accessibility

This Submission recommends that the TIO:

1. Make publicly available the findings of the latest Awareness Research survey, including clear explanations of the categories of aided and unaided awareness.
2. Undertake an awareness-raising campaign about rights of internet users and how to complain about ISPs.
3. Consider whether a more plain-language name for the scheme, such as the Telephone and Internet Complaints Service (or similar), may better describe the purpose and scope of the TIO.
4. Require their members advise about TIO scheme on the bottom of their bill (hard-copy and electronic). Pre-paid or direct debit services should be advised via the appropriate mechanism about the TIO on a regular basis.
5. Continue on-going promotion of its services to professional advocates as a means of ensuring disadvantaged consumers can access the TIO.
6. Locate appropriate dissemination points and networks to send relevant publications with the view to reaching consumers who do not receive bills and would not be reached via a bill insert.
7. Use the Awareness Research survey as the basis for developing campaigns to address low awareness and an evaluation of their success be reported in the following survey.
8. Consider using face-to-face contact points for handling complaints directly with consumers.
9. Introduce an SMS call back scheme to assist low-income consumers to contact the TIO.
10. Create an on-line form that allows the customer to enter their details and be called back by TIO staff.
11. Undertake staff training to ensure they can pro-actively identify consumers who need assistance before asking them to document complaints in writing.
12. Develop resources to assist consumers on how to put problems in writing, when putting a complaint in writing is absolutely necessary.
13. Design process to encourage consumers to access information about the TIO and the complaints management process at the TIO be geared toward making complaining an effective tool for the end user.
14. Emphasise to the complainant that negotiating with their service provider is the first step within the processes of using the TIO, rather than external to it, which often creates an impression with the customer that the TIO cannot or will not help them.
15. Use Complainant Satisfaction information to identify and target sectors who are under-represented in complaint statistics, and develop strategies to ensure their access and usability needs are being met.

16. Undertake staff training to identify customers who indicate they will not proceed with a complaint and ascertain why this is the case and where appropriate address these concerns by developing strategies to help them continue in the complaints process.
17. Conduct or source research on understanding why consumers make complaints and what impact the level of detriment has on that choice.
18. Should promote the scheme through on-going general campaigns as well as using specific target strategies for some groups in the community.
19. Encourage members to proactively promote their ADR.
20. Create consumer rights information resources jointly with ACMA and consumer groups.
21. Provide indigenous consumers resources on how to complain and consider employing an outreach officer who is responsible for promoting the TIO and facilitating complaints resolution.
22. Develop a Community Development/Liaison position as part of a strategy of addressing gaps in consumer awareness and to build better networks with the community.
23. Develop and implement a comprehensive communications strategy by taking into account suggestions from this Consumer Submission.
24. Facilitate regular workshops to bring together key consumer groups and stakeholders to consider how best to design publications for public distribution as well as review them to ensure they are being effective.
25. Publications be reviewed specifically to make them less legal and more user friendly.
26. Publications be created in Braille and large print.
27. Expand its published case studies, and creates an index of case studies linked to position statements, and be available in print and on-line.
28. Re-design the website to ensure information is easy to find and complete, and also to ensure usability and accessibility meets international standards.

Independence

This Submission recommends that the TIO:

29. Recognise the structural policy imbalance between consumer and industry participation in the governance of the TIO scheme as an on-going issue that must be remedied by a structural change to the scheme, implementing a single governance body of equal consumer and industry representatives.
30. Make the appointment process for the TIO Board, Council, Ombudsman and Deputy Ombudsman more publicly available to reassure the public that the process is transparent and accountable.
31. Make a clear statement about the policy rationale for making or not making Determinations.

Fairness

This Submission recommends that the TIO:

32. Create a strategy for raising the profile and usage of position statements especially for professional consumer advocates.
33. Conduct complainant satisfaction surveys to ensure consumers do not feel they have been inappropriately pressured to accept dispute resolutions that do not meet their needs and ensure staff receive on-going training to prevent this occurring.
34. Review the use of “knock-out” letters to avoid giving the wrong impression about the merits and outcomes of a complaint before due consideration.
35. Consider better ways to facilitate contact between the complainant and the supplier directly in order to resolve complaints quicker.
36. Implement equal response times for both the consumer and telco in the dispute resolution process, with the ability for extensions upon reasonable application.
37. Re-consider the 12 month limitation on a consumer’s ability to lodge a complaint and bring it into line with other EDR schemes in Australia.

Accountability

This Submission recommends that the TIO:

38. Ensure all publications can be requested in hard copy as well as on-line.
39. Create a separate section on the TIO site for any research conducted by the TIO, such as consumer awareness surveys, and internal review information.
40. Develop an accountability framework document which outlines its obligations in relation to industry, government and consumers, and makes the document publicly available
41. Seek to incorporate all PS139 principles, not already benchmarked by DIST principles, into its practices.

Efficiency

This Submission recommends that the TIO:

42. Resources be directed toward faster processing of administrative aspects of its complaint handling processes.
43. Investigate options to improve the timeliness of resolving escalated complaints.
44. Ensure requests for case reviews are commenced immediately upon receipt of any such request
45. Undertake research into why people drop out of its complaint process when a complaint is still under investigation and seek to identify how and when the TIO could help prevent this occurring.

Effectiveness

This Submission recommends that the TIO:

46. Undertake a project to investigate the proportion of cases where complainants do not escalate their issue back to the TIO after the first contact and why, in order to better understand what proportion of all complainants actually have their complaints resolved.
47. Consider an education campaign for members on how to improve internal dispute resolution processes, noting that it may be appropriate that such a resource be developed and/or delivered by an independent party to the TIO.
48. Develop a statement on how they will deal complaints about services being provided on a trial basis, and encourage DCITA not to deny access to the TIO to consumers who use these services.
49. Support a call for the Minister of Communications to convene an enquiry into Complaints Handling in the newly converged communications environment.
50. Clarify its scope and jurisdiction issues to assess whether it can deal with pay television services, VOIP, Disability equipment, payphones, telemarketing and content complaints.
51. Works with ACMA to enable the regulator to take swift and decisive enforcement action in areas where the TIO has identified poor industry practices.

Glossary of Terms

ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACIF	Australian Communications Industry Forum
ACG	Allen Consulting Group
ACMA	Australian Communications and Media Authority
ADR	Alternative Dispute Resolution
AMES	Adult Migrations Education Services
ASCCA	Australian Seniors Computer Clubs Association
ASIC	Australian Securities and Investments Commission
AustLII	Australasian Legal Information Institute
BFSO	Banking and Financial Services Ombudsman
CALD	Culturally and Linguistically Diverse
Complaints Culture Survey	TMI/SOCAP Complaints Culture Survey 2005
COTA	Council on the Ageing
CTN	Consumers' Telecommunications Network
DEP	Disability Equipment Program
DCITA	Department of Communications IT and the Arts
DIST	Department of Industry, Science and Tourism
EDR	External Dispute Resolution
EO	Enquiries Officer
EWOV	Energy and Water Ombudsman of Victoria
EWON	Energy and Water Ombudsman of NSW
FAQ	Frequently Asked Questions
FICS	Financial Industry Complaints Service
IDR	Internal Disputer Resolution scheme
IO	Investigations Officer
ISP	Internet Service Provider
OFPC	Office of the Federal Privacy Commissioner
SMS	Short Message Service
Telco	Telecommunications Service Provider
TIO	Telecommunications Industry Ombudsman
TISSC	Telephone Information Services Standards Council
TTY	Telephone Typewriter
VOIP	Voice Over Internet Protocol
WC3	World Consortium
WAI	Web Accessibility Initiatives

Appendix 1 – List of Questions used in Consultation

Questions used in Workshops, On-line or Hard Copy

Accessibility

1. Generally speaking, do your members or your clients know about the existence of the TIO?
2. If not, what do you think are the reasons for this?
3. Are your members aware of the areas the TIO covers – i.e. mobiles, landlines and the internet?
4. How is the TIO scheme promoted to your members or clients, if at all? What are their preferred methods of communication?
5. Do you think that the telcos (including ISP's) should have a role in promoting the TIO and how do you think this could be done?
6. What should be the role of the regulator (the Australian Communications and Media Authority) in publicising and promoting the TIO?
7. How user-friendly is the TIO when you or your members need to make a complaint?
8. Are you aware of problems your constituents have had accessing the TIO? Please give examples if possible.
9. What is the best way to contact the TIO for your members?
10. Overall, does the TIO cater to your contact needs? How could this be improved?

Independence

1. Do you think the TIO is sufficiently independent?
2. Do you have any views on the process for appointing the Ombudsman?
3. Does the TIO have enough power to make independent determinations about complaints?
4. Does the composition of, and appointment procedures for, the Board and Council provide for the independence of the TIO Scheme?

Fairness

1. What are your views of the TIO position statements - are they useful and well utilised by consumer who complain?
2. Are you aware of any instances of different outcomes compared to what is suggested in the position statements?
3. Are complainants given a good overview of how their complaint will be dealt with?

4. Would you like more general detail about how the TIO makes its decisions (i.e. not complaint specific?)
5. Do industry Codes (developed in self regulatory bodies) provide sufficient guidance to consumers of the TIO's likely approach for assessing the validity of a consumer's complaint and a telco's response?
6. Do industry codes give sufficient guidance to consumers who complain as to what the TIO's decision or determination is likely to be?
7. Can you offer any comparisons between the TIO and alternative dispute resolution schemes in industries, in terms of how fairly the scheme works? For example the energy and water or financial services ombudsman schemes.

Accountability

1. How easy do you think it is to find out about the TIO's activities, such as through reporting to the regulator?
2. Do you find the TIO's publications such as the annual report easy to find and is it useful to individual consumers?
3. Are TIO publications easy to find and access?
4. What sort of information do you think would be useful for the TIO to publish
5. How do you think the office of the Ombudsman should be held accountable?

Efficiency

1. Do you think the TIO does enough to audit its own activities?
2. Can you offer any comparisons between how the TIO meets the needs of consumers compared with similar bodies in different industries?
3. Do you think it is appropriate for the TIO to have Key Performance Indicators for resolving disputes?
4. Does the TIO provide sufficient information to allow consumers and the general public to assess its performance? If not, what additional material should be provided?

Effectiveness

1. Is the TIO a good way to resolve the problems people have with their telecommunications providers?
2. Do small businesses (incl. small NGO's) think the TIO Scheme provides an effective mechanism for dispute resolution?
3. Is the current definition of a 'small business' (i.e. employs less than 20 people) appropriate?
4. Does the current scope of the TIO Scheme capture the majority of customer complaints about telecommunications services?

5. Would publication (or threat of publication) of details of telecommunications providers that fail to comply with the TIO's recommendations be useful?
6. Does the time (or expected time) taken by the TIO to resolve a dispute encourage or discourage a consumer from raising a complaint?

Other Issues

Please feel free to add any other comments at this point.

Notes

- ¹ TMI/SOCAP *Complaint Culture Survey 2005 National Report*, November 2005.
- ² Available on line at <http://www.saiglobal.com/shop/Script/Details.asp?DocN=AS0733773117AT>
- ³ *Complaint Culture Survey*, p9.
- ⁴ *Complaint Culture Survey*, p13.
- ⁵ Examples of how to effectively complain are available on the websites of the Australian Consumers' Association (www.choice.com.au) and Complaintline (www.complaintline.com.au)
- ⁶ *Complaint Culture Survey*, p7.
- ⁷ Sweeney Research, *Telecommunications Industry Ombudsman Awareness Research Final Report*, April 2006, p14.
- ⁸ Available on-line at: <http://www.consumer.gov.au/html/download/taking-action-gaining-trust-05-reduced.pdf#search=%22taking%20action%20gaining%20trust%22>
- ⁹ On-line at: http://www.tio.com.au/media_statements/RELEASES/2004/release_1.htm as at 19-08-2006
- ¹⁰ The link to this thread is on-line at: <http://forums.whirlpool.net.au/forum-replies.cfm?t=428011>
Accessed on 19-09-2006
- ¹¹ See for example: <http://www.plainenglishfoundation.com/index.htm>
- ¹² For more information about WAI go to: <http://www.w3.org/WAI/>
- ¹³ The document is available on-line at:
[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps139.pdf/\\$file/ps139.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ps139.pdf/$file/ps139.pdf)
- ¹⁴ *Complaint Culture Survey*, p7.
- ¹⁵ Available on-line at: http://www.acif.org.au/ACIF_documents/codes/C547
- ¹⁶ Details are on-line at: <http://www.fics.asn.au/>
- ¹⁷ Recommendation 43 from *Consumer Driven Communications Report* published by ACA in 2004, p13, online at:
http://www.acma.gov.au/ACMAINTER.131352:STANDARD::pc=PC_1661
- ¹⁸ Consumers' Telecommunications Network, *Expectations and Experiences with Voice Over Internet Protocol (VOIP)*, March 2006. Available on-line at:
http://www.ctn.org.au/admin/ktmlpro/files/uploads/CTN_VoIP_Report_March_2006.pdf