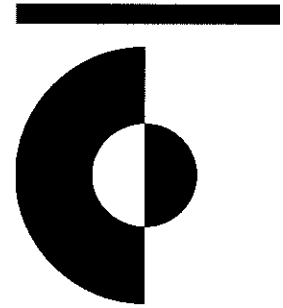


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**Telecommunications  
Industry  
Ombudsman**

**Deirdre O'Donnell  
Ombudsman**

27 November 2007

The Executive Officer  
Victorian Parliament Law Reform Committee  
Parliament House  
Spring Street  
East Melbourne VIC 3002

Dear Sir/Madam

Thank you for inviting the TIO to comment on the Alternative Dispute Resolution discussion paper. I apologise for the delay in providing this submission to the Committee.

Given the TIO's specific role as an industry-based ADR scheme, I have chosen to comment only on those questions where I believe the TIO has some relevant knowledge or experience.

### **Background**

The TIO is a national scheme that investigates complaints from small business and residential customers about fixed, mobile and Internet telephone services. The TIO is a company limited by guarantee and is independent of government, consumer groups and telecommunications carriers and service providers. The TIO was originally established in 1993 in fulfilment of a legislative requirement that licensed telecommunications service providers enter into an ombudsman scheme. Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* now provides that all eligible carriage service providers must join and comply with the Scheme.

The TIO's performance is guided by the federal government benchmarks for industry-based customer dispute resolution schemes (see <http://www.consumersonline.gov.au/downloads/selfreg/benchmarks/BMARK1.rtf>).

The mission of the TIO is to provide free, independent, just, informal and speedy resolution of complaints. When investigating complaints, the TIO has regard to the law and any applicable codes of practice, and also what would be fair and reasonable in all the circumstances.

In 2006-2007, the TIO received a total of 122,721 contacts, 102,463 of which were recorded as complaints. As a single complaint may contain more than one complaint issue, the TIO recorded 166,885 complaint issues.

*"providing independent, just, informal and speedy resolution of complaints"*

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**Question 6 - *How should parties be able to make a complaint or lodge a claim with ADR service providers?***

The TIO's view is that offering consumers a wide variety of mechanisms to make complaints is an important part of ensuring the accessibility of an ADR service. The TIO accepts complaints by phone, letter, email, TTY, fax or in person, and is currently looking at the possibility of accepting complaints via mobile text to ensure that the TIO keeps pace with consumers' changing communications preferences. While the TIO still receives the majority of its complaints by telephone (86.6% of contacts came via telephone in 2006-07), there has been a steady increase in the number of complaints received by email. In 2006-07, email accounted for 10.4% of all contacts with the TIO, up from 8.2% the previous year.

Offering a variety of means by which to make a complaint also ensures that all different kinds of consumers are catered for, including culturally and linguistically diverse consumers and consumers with a disability. It is the TIO's past experience that limiting the way consumers are able to make complaint, e.g. by letter only, can act as a significant impediment to pursuing a complaint. It is important to ensure that the different means of making a complaint are adequately promoted so that consumers are aware of the various options available. To highlight this point, in a recent review of the TIO scheme, it was noted that while complaints do not have to be in writing, this fact was not adequately promoted to consumers.

In addition to ensuring that there are various means by which to make a complaint to an ADR service, the TIO believes that it is equally as important to ensure that there are appropriate service levels set for actioning complaints received through different mediums. While it is not practical to set the same service level for all mediums, for example phone and email response times are invariably different due to the nature of each communication method, an ADR body should ensure that consumers receive a comparable level of service irrespective of the medium through which they make a complaint. By way of example, these are the service levels we strive to achieve at the TIO:

- answer 80% of calls in 60 seconds,
- respond to 100% of unsolicited emails from consumers within 2 days,
- respond to 100% of correspondence from consumers in 7 days, and
- action 100% of responses in 14 days.

**Question 7(a) - *What features of ADR services offer the potential to increase access to Justice.***

In addition to ensuring that there are various mechanisms for making complaints, the TIO also ensures accessibility by using interpreter services when required and ensuring that the office is physically accessible to consumers with a disability.

The TIO is only open during standard business hours, and while offering a national service, is physically located in Melbourne. In the TIO's experience these limitations do not appear to have impeded access to our services. While the TIO does occasionally receive complaints from consumers who believe we should have multiple locations or be open longer hours, most consumers appear to prefer making their complaint by remote means, probably because of the convenience it affords them. In

the TIO's experience, having a variety of means by which consumers can lodge complaints, responding to consumers within reasonable timeframes and ensuring consumers receive the assistance they need to lodge a complaint, such as through access to interpreter services, all improve access to justice.

Another important factor in improving access to justice through ADR services is independence. Independence is one of the critical features that underpins the success of the TIO and increases access to justice. The structure of the TIO is designed to ensure its independence. The TIO is governed by a Council, comprising equal industry and consumer representatives with an independent Chair, as well as a Board of Directors. The Board is made up of industry members (who fund the scheme) and an independent director. The Board is responsible, among other things, to set global limits for the TIO's funding and approve budgets. The TIO is managed by an independent Ombudsman. Responsibility for the day to day administration of the TIO scheme rests with the Ombudsman. The Council's primary responsibilities are the oversight of the scheme and maintenance of the independence of the Ombudsman.

It is the TIO's view that independence and impartiality should be core features of any ADR service and should be reflected in the ADR service provider's procedures. The TIO does this in a number of ways - by affording all parties to a complaint procedural fairness; by considering the facts provided by both parties in a dispute, and reaching a resolution based on what is fair and reasonable, good industry practice and the law; and by offering consumers the right of review if they are not satisfied with the outcome of their complaint.

**Question 8(a) - *To what extent does ADR increase access to justice by reducing the cost and time required to resolve disputes?***

In the TIO's experience, reducing the cost and time required to resolve disputes significantly increases access to justice. The TIO service is free to consumers, in that consumers are not charged for making a complaint. The TIO charges service providers for each complaint it receives on a quarterly basis. If no complaints are received against a provider in a quarter, the provider is not charged.

Taking into account that all of the TIO's complaints are made by small business or residential customers, the types of complaints we deal with, and the average amount that is disputed, it is possible that the majority of complaints that the TIO deals with would not have been progressed further by consumers if there were some level of costs involved.

Time is an equally important factor in increasing access to justice. One of the appeals of an organisation such as the TIO is that the timeframes involved are considerably shorter than those associated with court proceedings.

**Question 9 - *Is there a need to better promote ADR providers and services? If so, how should this be done, for example, by individual services or by government? What kind of promotional material is required and at whom should it be targeted?***

The TIO believes that there is a real need to promote ADR services to ensure that consumers are aware of the correct ADR body to contact in relation to their complaint.

In the case of industry ADR schemes such as the TIO, our view is there should be an onus on the relevant industries to promote their individual schemes. In the telecommunication industry, the ACIF Complaint Handling Code requires telecommunications providers to advise complainants who are dissatisfied with the outcome of their complaint of their external avenues of recourse, such as the TIO. A survey conducted by the Australian Communications and Media Authority in 2006 on providing information found that consumers require information at various times and that consumers expect information to be provided by their service providers in an objective way.

In the TIO's view, the time that the information is provided impacts on the effectiveness of that information. Information on complaint handling, including ADR schemes, would more likely be of assistance if provided at the time when a consumer has a complaint. Service providers are therefore in the best position to provide this information, as they are generally aware when a consumer has an unresolved complaint. The TIO has for many years encouraged industry to place the TIO contact number on telephone bills, but with limited success.

The TIO believes that there is also a need for ADR schemes to promote their own services, ensuring that promotional materials cater for all types of consumers. The TIO's last public awareness survey, conducted in 2006, found that total aided awareness of the TIO was 54%. The survey identified low awareness levels amongst the following groups:

- People under 25
- People with disabilities
- Proprietors of small businesses
- People from indigenous backgrounds
- People from non-English speaking backgrounds
- Rural and regional consumers.

The TIO is conducting the following activities in an attempt to improve awareness in the groups identified above:

- Attendance at seminars and conferences designed to reach key groups
- Partnerships with key agencies who work with target groups
- Advertising in publications that reach key groups
- Media activity targeted at key groups
- Participation in joint awareness raising activities with industry regulators and other Ombudsman schemes
- Preparation of material – brochures, booklets, fact sheets.

The TIO has found that joint awareness activities can be beneficial as they minimise the potential for duplication of resources and also give the participating ADR providers an opportunity to explain the different jurisdictions that each covers.

**Question 10(a) - *Can we do more to help Victorians to resolve disputes themselves?***

The TIO is an office of last resort, in that consumers must attempt to resolve their complaint directly with their telecommunications provider prior to bringing the complaint to us. In the TIO's experience, the myriad of legislation, codes and guidelines that apply to the telecommunications industry can make it difficult for an individual to pursue their complaint without assistance. Part of the TIO's role is to

help redress the information power imbalance that exists between providers and consumers, by ensuring that consumers are aware of their rights so that they can make informed decisions in relation to resolving their complaints. In many of the cases that we deal with, it is industry or provider specific information and guidance that a consumer requires, rather than general complaint resolution skills.

Even where the TIO refers a consumer back to their provider to give that provider a final opportunity to resolve the complaint, we will often advise of specific questions the consumer needs to ask or of certain obligations the provider must abide by. We also refer the consumer to a higher level of complaint handling within the provider, to which the consumer may not otherwise have access. It seems unlikely that a central dispute resolution point would be able to provide the same level of information.

**Question 10(c)**      *Should there be a central gateway (for example, phone line or website) for accessing information about dispute resolution and ADR services? If a central gateway for ADR disputes is desirable, who should operate this service and what services should it provide?*

The TIO has reservations about establishing a central gateway for accessing information about ADR services. In our experience consumers can already experience 'complaint fatigue', caused by them having already made numerous contacts, either by telephone or otherwise, to resolve their complaint. Most of the major ADR services already advertise or promote their own services, so an ADR referral service would be yet another contact that consumers could make, after which they would be referred on yet again.

In addition, many of the larger ADR schemes have arrangements whereby the industry they deal with refers unresolved complaints to the relevant scheme. In the TIO's case, the ACIF Complaint Handling Code requires providers to advise complainants of their external avenues of recourse, such as the TIO. A central gateway would need to be aware of the myriad of such arrangements to ensure it provided consumers with correct information. The administrative costs in ensuring that referral information was always accurate risk outweighing the potential benefits, in the TIO's view.

Another factor that would impact on having a central gateway for ADR services is the variety of ADR providers available in Victoria and the complexities of their various jurisdictions. It may not always be clear which ADR provider a complaint should be referred to, which could result in referrals to the wrong body. In turn, this would lead to yet another referral, adding yet another step for consumers trying to resolve complaints.

Finally, in our experience, placing the onus on the agency or service provider to advise its customers or clients of their dispute resolution options, including referral to an ADR scheme, is the best option. It is consistent with the International Standard on Complaints Handling, and, most importantly, means that the agency or provider must assume responsibility for good complaints handling, including appropriate referrals. In our experience this can enhance the possibility that the agency's culture is genuinely open and responsive to complaints.

Please contact Silvia Superina on (03) 8600 8723 if you have any questions about this submission.

Yours sincerely

Deirdre O'Donnell  
**Ombudsman**