



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

**Discussion paper**

**Telecommunications Industry Ombudsman scheme**

**March 2011**

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# 1. Introduction

## 1.1 Overview

Since the commencement of Australia's current telecommunications co-regulatory regime, the Telecommunications Industry Ombudsman (TIO) has played an important and successful role as the industry's alternative dispute resolution scheme. As demonstrated by the significant rise in the number of complaints to the TIO (approximately 50 per cent per annum in some years), the TIO continues to provide an important service for telecommunications consumers.

As the industry undergoes significant reform and given the Australian Communications and Media Authority's (ACMA) Reconnecting the Customer inquiry into customer service and complaint handling processes, the Australian Government considers it an opportune time to examine the telecommunications industry's alternative dispute resolution framework to ensure it is adequately equipped to:

- provide fast, fair and just resolution of complaints for consumers and other complainants
- operate as efficiently and effectively as possible in line with best practices for escalated dispute resolution schemes
- promote and encourage industry endeavours that deliver quality complaint resolution prior to outside intervention.

This discussion paper is structured around the Benchmarks for Industry based Customer Dispute Resolution Schemes<sup>1</sup> developed by the then Department of Industry Science and Technology (DIST). These benchmarks give reference to principles of independence, accessibility, fairness, accountability, efficiency and effectiveness. These principles were also adopted within the finance industry, with the Australian Securities and Investments Commission (ASIC) using them as a guide in structuring its requirements for approving alternative dispute resolution schemes, as outlined in ASIC Regulatory Guide 139<sup>2</sup> (the ASIC regulatory guide).

This paper also draws substantially on the 2006 review of the TIO conducted by the Allen Consulting Group<sup>3</sup> (2006 review). Although this review was conducted over four years ago, it remains the most recent independently-conducted review of the TIO.

In this paper the Department of Broadband, Communications and the Digital Economy (the department) draws a number of comparisons with the Financial Ombudsman Service (FOS). The FOS was recently established after the boards of three external dispute

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<sup>1</sup> DIST Benchmarks for Industry-based Customer Dispute Resolution Schemes, 1997, [www.anzooa.com.au/National%20Benchmarks.pdf](http://www.anzooa.com.au/National%20Benchmarks.pdf)

<sup>2</sup> ASIC Regulatory Guide 139—Approval and oversight of external dispute resolution schemes, May 2010.

<sup>3</sup> Review of the Telecommunications Industry Ombudsman Scheme—Independent Review, Report to the Telecommunications Industry Ombudsman, Allen Consulting Group, November 2006, [www.tio.com.au/TIORReview/TIO\\_review\\_web\\_version.pdf](http://www.tio.com.au/TIORReview/TIO_review_web_version.pdf)

resolution schemes operating in the financial sector merged to form a single scheme. The department does not intend to draw any conclusion about the effectiveness of the FOS, but considers it a useful comparative model.

Whilst the government acknowledges the generally high performance of the TIO, in particular over the last few years in dealing with the complaints explosion, the purpose of this paper is to generate discussion and promote potential reforms to the scheme if appropriate. The department seeks input from all interested stakeholders, noting that while the TIO deals primarily with consumer and small business complaints, it can also deal with objections from landowners about carrier access to land.

## **1.2 How to make a submission**

The department is seeking views on the issues raised in this discussion paper to assist in providing advice to the government regarding the TIO. This paper is for consultation purposes only and does not represent current government policy.

Questions are included in boxes throughout the paper to guide discussion. Respondents are invited to provide written submissions or comments to address these questions, or provide a more general response if preferred. For convenience, the full list of questions is provided at **Attachment A**.

Submissions must include the respondent's name, organisation (if relevant) and contact details. The department will not consider submissions with no verifiable contact details.

The department may make submissions publicly available, including on its website ([www.dbcde.gov.au](http://www.dbcde.gov.au)). However, the department reserves the right not to publish any submission, or part of a submission, which in its view contains potentially defamatory material, or where it considers it appropriate to withhold a submission for confidentiality or other reasons.

The department will treat all submissions as non-confidential information unless the respondent specifically requests the submission, or a part of the submission, is kept confidential, and provides acceptable reasons with the request. Email disclaimers are not considered sufficient confidentiality requests. Respondents should note that submissions or comments are generally subject to the provisions of the *Freedom of Information Act 1982*.

If you would like to receive a copy of the discussion paper by post or in an alternative format, please contact the department via email at [tiodiscussionpaper@dbcde.gov.au](mailto:tiodiscussionpaper@dbcde.gov.au)

If you have a hearing or speech impairment, or are deaf, you can contact the department through the National Relay Service between 8.30 am and 5.30 pm (eastern time) Monday to Friday.

- TTY users phone 1800 555 677 then ask for 02 6271 1000.
- Speak and Listen (speech-to-speech relay) users phone 1800 555 727 then ask for 02 6271 1000.

- Internet relay users connect to [www.relayservice.com.au](http://www.relayservice.com.au) and then ask for 02 6271 1000.

All email submissions should adhere to the following requirements:

- wherever possible emails (including the submission and any appendices to a submission) should not exceed three megabytes
- all files should include the submitter's full name (whether individual or organisation—as noted above) and indicate whether the file concerned is a submission or an appendix to a submission
- to ensure that your email is not blocked by antivirus software, please attach only files in a standard document format (such as .doc, .odf, .pdf, .rtf, .txt), or a standard image format (such as .jpg, .gif, .tif).

**Please note:** a person who makes a submission on behalf of another person or on behalf of a company in response to a call for submissions does not need to be registered as a lobbyist. For more information about the Lobbying Code of Conduct, visit [www.pmc.gov.au/lobbyistsregister](http://www.pmc.gov.au/lobbyistsregister)

### ***Lodgement of submissions***

Please lodge your submission in one of the following ways.

**Email:** [tiodiscussionpaper@dbcde.gov.au](mailto:tiodiscussionpaper@dbcde.gov.au)

**Post:** Director  
Consumer Policy and Privacy  
Department of Broadband, Communications and the Digital  
Economy  
GPO Box 2154  
CANBERRA ACT 2601

**Fax:** 02 6271 1780

The closing date for submissions is **31 March 2011**.

Please direct enquiries about issues raised in this paper by email to [tiodiscussionpaper@dbcde.gov.au](mailto:tiodiscussionpaper@dbcde.gov.au) or by telephone to Mr Garry Croker, Director, Consumer Policy and Privacy, through the department's switchboard on 02 6271 1000.

## 2. Background

The TIO was established in 1993 in accordance with the *Telecommunications Act 1991* to provide a free and independent alternative dispute resolution scheme for small business and residential consumers in Australia who have complaints about their telephone or internet services.

The *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) requires that each carrier and eligible carriage service provider enters into a scheme providing for a TIO to:

- investigate
- make determinations, or give directions, relating to complaints about carriage services by end users of those services.

The TIO has the authority under its constitution to make binding decisions (determinations or directions) up to the value of \$30 000, and non-binding recommendations up to the value of \$85 000.

The *Telecommunications Act 1991* was superseded by the *Telecommunications Act 1997* (Telecommunications Act) which further provides that:

- the Ombudsman may (with consent) have powers and functions conferred on him or her by industry codes or standards under Part 6
- the ACMA must be satisfied that the TIO has been consulted about the development of an industry code before it registers the code
- the ACMA must consult with the TIO before it mandates an industry standard.

The TCPSS Act also gives the TIO certain powers and functions in relation to the Customer Service Guarantee (CSG) scheme:

- to issue an evidentiary certificate stating that a carriage service provider has contravened a CSG performance standard
- to investigate complaints about breaches of performance standards under the CSG
- to investigate complaints about the application of mass service disruption notices under the CSG.

In certain circumstances the TIO can also examine objections by land owners and give directions in relation to the exercise by a carrier of its land access powers under Schedule 3 of the Telecommunications Act and associated subordinate legislation.

## 3. Independence

### 3.1 Governance structure

The TIO has a tripartite governance structure. It is governed by a council and a board of directors, and is managed by an ombudsman appointed by the board on the recommendation of council. The TIO council provides advice to the ombudsman on policy and procedural matters and is comprised of five industry representatives and five consumer representatives, with an independent chairman. The board has corporate governance responsibilities including financial management requirements and ensuring compliance with the memorandum and articles of association and the constitution. The board is comprised primarily from industry, with the exception of two independent directors, who are appointed by the board. The ombudsman is responsible for the day-to-day operations of the scheme, including the handling of individual complaints.

The members of the TIO scheme pay fees for complaint resolution services provided by the TIO. Members consist of telecommunications carriers, carriage service providers and internet service providers.

The TIO is independent of government, industry and consumer groups. Directors do not represent their employers, and are bound by corporations law to act only in the interest of the scheme.

The TIO constitution sets out the functions, powers, procedures and jurisdiction of the TIO with final authority for approval of any amendments to the constitution resting with the industry-controlled board. The current TIO governance structure has raised concerns about whether the scheme can balance the interests of the industry that provides funding and constitutes its membership with the best interests of consumers. One suggestion for ensuring legitimate independence is that the TIO should adopt a single overseeing governance body with an independent chair and equal numbers of consumer and industry representatives. Such a structure is a more commonly-accepted standard for dispute resolution schemes both nationally and internationally.

As an example, the ASIC regulatory guide for the approval and oversight of alternative dispute resolution schemes in the financial sector requires, in relation to the principle of independence, that among other things, the scheme must:

- be independent of the industry that provides its funding and constitutes its membership
- not give its members a right of veto over changes to the scheme's constitution or terms of reference.

The department also notes recent comments by three former Telecommunications Industry Ombudsmen—Mr John Pinnock, Ms Deidre O'Donnell, and Mr Simon Cleary (in responding to the ACMA's Reconnecting the Customer inquiry<sup>4</sup>)—recommending the

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<sup>4</sup> Cleary, O'Donnell, Pinnock, Submission to the ACMA's Reconnecting the Customer inquiry, 2010, [www.acma.gov.au/webwr/\\_assets/main/lib311946/126\\_cleary\\_odonnell\\_pinnock-reconnecting\\_the\\_customer.pdf](http://www.acma.gov.au/webwr/_assets/main/lib311946/126_cleary_odonnell_pinnock-reconnecting_the_customer.pdf)

collapse of the TIO's current governance structure into a single overseeing board, comprised of equal industry and consumer representation with an independent chair.

#### *Questions*

- 3.1.1 Does the TIO's current governance structure negatively impact on its ability to adopt effective client-focused policies?
- 3.1.2 Does the TIO governance structure need to change? If so, should a single governance body be adopted with equal industry and consumer representation or would an alternative structure be more appropriate?
- 3.1.3 Does the TIO's current funding model, where all costs/overheads are recovered from members, need review? (Note that fee increases are examined at 8.3.4.)

### **3.2 Transparency in the governance structure**

In the past, consumer representative bodies have raised concerns about the current structure of the TIO and the manner in which disagreements are resolved between the board and council. In its submission to the 2006 review of the TIO, the then Consumer Telecommunications Network (CTN) noted:

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-ridden 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.<sup>5</sup>

CTN had representation on the TIO council during the time of the 2006 review. The CTN submission contended that the board's industry dominance is invoked in practice and that industry could block consumer interests 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. The submission also asserted the prevailing view amongst consumer groups at that time was that the existing governance structure effectively stifled consumer representatives on the council, who were unable to pursue changes in the best interest of consumers if these were in conflict with the interests of industry.<sup>6</sup>

The 2006 review noted that since the inception of the TIO scheme only a small number of disagreements had occurred between the board and the council about proposed amendments to the constitution. At that time, the arrangements relied on individuals on the board and council adopting a cooperative approach to resolving differences by way of informal discussions between the respective chairpersons, or via occasional joint sittings.

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<sup>5</sup>Consumer Submission for the TIO Review—August 2006 (CTN submission), p. 29.

<sup>6</sup>Consumer Submission for the TIO Review—August 2006 (CTN submission), p. 29.

This provided an informal mechanism for resolving an impasse between the board and the council. The 2006 review recommended that the TIO implement a formal procedure for resolving impasses to enhance the integrity of the TIO scheme.

In response, the TIO prepared a paper to formalise the responsibilities of the board and council and to enhance understanding of their respective roles. The TIO considered that this document, in conjunction with the existing mechanisms of joint meetings between board and council, should help in resolving any impasse that may arise.<sup>7</sup>

It is unclear to what extent that these measures may have reduced concerns about the capacity for industry to control the of high-level policy direction of the scheme. The confidential nature of board and council meetings impedes the visibility of governance processes. Insight into how conflicts between the board and council are resolved in the best interests of consumers is hindered by this lack of transparency.

#### *Question*

3.2.1 Is the transparency of the TIO's governance and decision-making processes adequate? If not, what is needed to achieve greater transparency?

### **3.3 Government involvement in TIO governance**

All issues associated with TIO governance currently reside with the TIO board, council and ombudsman. The way the scheme operates is outlined within its constitution.

However, such arrangements have raised concerns around their effectiveness, particularly as the TIO is not required to undertake reviews of its constitution within any designated time frames. Stakeholders currently rely on the TIO to ensure its functions, powers and procedures deliver the required outcomes for consumers and industry. The TIO Ltd articles of association require the board to commission reviews. Since 1993 the board has only used this power once in the 2006 review.

Although the TIO has introduced amendments to its constitution and has consulted with the Minister for Broadband, Communications and the Digital Economy and the Assistant Treasurer on these amendments, there is no requirement for approval by either Minister nor is there any requirement for the involvement of the ACMA as regulator.

Under the financial sector's regulatory regime, it is a statutory requirement that financial licensees (and others) must belong to an ASIC-approved external dispute resolution scheme. The ASIC regulatory guide sets the standards for approval of such schemes. This includes the ability for ASIC to vary or revoke that scheme's approval on an ongoing

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<sup>7</sup> TIO Response to the 2006 Review of the TIO scheme, [www.tio.com.au/TIORReview/TIO%20Response%20to%20Review.pdf](http://www.tio.com.au/TIORReview/TIO%20Response%20to%20Review.pdf) (TIO response) p. 3.

basis. The FOS principles and procedures for dealing with the resolution of disputes involving its members are set out in its terms of reference which were developed following an extensive consultation process. The FOS constitution requires the directors to consult with ASIC and other key consumer, community and industry organisations when developing or amending the terms of reference. Since ASIC must approve the scheme, ASIC may direct the FOS board to amend the terms of reference following consultation.

The TIO document on complaint handling procedures is the TIO's nearest counterpart to the FOS terms of reference. It outlines the TIO's main procedures when receiving, classifying, handling, investigating and resolving complaints. The ACMA has no oversight of these procedures, nor is there any requirement for these procedures to comply with any particular standard, other than to have regard to the DIST benchmarks.

Developing a terms of reference or operational memorandum similar to the FOS with possible oversight by the ACMA may provide an opportunity for the TIO and government to address any emerging operational failings or deficiencies within the TIO scheme as they arise. A further potentially desirable provision in the TIO constitution is a requirement for the council to consult with certain stakeholders in developing such a document.

#### *Questions*

- 3.3.1 Should the TIO develop a terms of reference document or operational memorandum for approval by the ACMA as regulator? If so, what matters should be included and how should such a reform be implemented?
- 3.3.2 Is the TIO's current constitution an appropriate underpinning mechanism?
- 3.3.3 Would an overhaul of the TIO's current complaint handling procedures effectively achieve the same result as the introduction of a terms of reference document or operational memorandum?
- 3.3.4 What, if any, are the potential positive and/or negative impacts of government involvement in TIO governance?

## 4. Accessibility

### 4.1 Awareness

For the effectiveness of any alternative dispute resolution scheme, consumers and other clients must know of its existence and the assistance it can provide. The TIO constitution states that the primary responsibility for promoting the scheme lies with the TIO itself. Currently, the TIO undertakes a mixture of broad promotional activities and smaller focused initiatives to build public awareness. These activities include appearances in the media (especially current affairs programs and talkback radio), the TIO website and a quarterly newsletter titled TIO Talks.

The TIO has successfully raised awareness of the scheme amongst telecommunications consumers since its inception. In 2008, a TIO survey of 1200 adults found 65 per cent of consumers were aware of the TIO. A separate survey by Consumer Affairs Victoria in 2007 supports this, finding that 65 per cent of consumers had heard about the TIO<sup>8</sup>. However ACCAN has expressed concern that 29 per cent of consumers surveyed in 2010 had not heard about the TIO<sup>9</sup>.

The TIO continues to focus on groups that show low levels of awareness. It is implementing a disability action plan every three years in conjunction with advocacy organisations to better meet the needs of people with disabilities. It has also attended university campuses during orientation weeks to promote itself to people under 25 years of age. Rural and regional residents were targeted with a specific television and radio community service announcements.

It is important for current levels of awareness amongst the general public to continue to grow and for the TIO to maintain its existing focus on promotional activities. Of particular relevance is the reliance on the TIO website and publications as a major means of promoting the scheme to the public. The 2006 review and internal TIO statistics found the TIO website and publications as generating only a low rate of referrals (less than 10 per cent of the total)<sup>10</sup>. Data also suggests that only a low number of complainants become aware of the TIO scheme through a TIO member (a figure described by the TIO in its 2005–06 annual report as ‘disturbingly low’). The TIO constitution does not specifically require TIO members to publicise the scheme, while other ombudsman schemes in Australia that require members to advise consumers about their existence have experienced success in raising overall awareness. The Telecommunications Consumer Protections Code (TCP Code) only requires suppliers to advise customers of their external avenues of recourse after a customer has indicated he or she is dissatisfied with the outcome of their complaints.

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<sup>8</sup> Dispute Resolution in Victoria: Community Survey 2007, Ipsos Australia, [www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV\\_Publications\\_Reports\\_and\\_Guidelines\\_2/\\$file/cav\\_report\\_dispute\\_resolution\\_community\\_survey\\_2007.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines_2/$file/cav_report_dispute_resolution_community_survey_2007.pdf)

<sup>9</sup> Conducted by Galaxy Research, [www.accan.org.au/uploads/Galaxy%20Research%20Fact%20Sheet.pdf](http://www.accan.org.au/uploads/Galaxy%20Research%20Fact%20Sheet.pdf)

<sup>10</sup> Review of the Telecommunications Industry Ombudsman Scheme—Independent Review, Report to the Telecommunications Industry Ombudsman, Allen Consulting Group, November 2006 [www.tio.com.au/TIORReview/TIO\\_review\\_web\\_version.pdf](http://www.tio.com.au/TIORReview/TIO_review_web_version.pdf), p. 33.

### *Questions*

- 4.1.1 Do you think the TIO could improve the current levels of awareness of its activities? If so, how?
- 4.1.2 How can the government assist in raising awareness of the TIO?
- 4.1.3 Should industry be required to advise customers about the TIO both prior to and at the time they are handling a complaint? If so, when should specific advice be provided about the TIO?
- 4.1.4 Should industry be required to publicly advertise the TIO more widely including though advice on bills?

## **4.2 Ease of use**

Ease of use is the second key factor in ensuring high levels of accessibility to the TIO. Efforts to improve public awareness of the scheme are ineffectual if people are unable to easily understand or access the scheme's services—for example, because of a lack of clarity as to jurisdiction or complex processes. This greatly reduces the ability of the TIO to function as an alternative dispute resolution scheme.

The TIO has continued to develop its profile and ease of use in community groups that it has identified as requiring further engagement. This includes working with the Indigenous community through the TIO's Indigenous investigations team and working with people with disabilities.

A key focus area for the TIO is addressing the difficulties faced by people with culturally and linguistically-diverse (CALD) backgrounds when accessing the scheme.

This issue was highlighted during the 2006 review and in the second TIO Talks publication of 2010. The 2006 review called for a review of the TIO website, particularly its ease of use and adoption of languages other than English. At the time, the TIO proposed to investigate the cost of redesigning its website to improve the accessibility of information, including the provision of foreign languages. It does not appear that this has occurred, and it is unclear what other measures were put in place to improve the ease of use of the TIO scheme for people with a CALD background. It is understood that the TIO is currently finalising details around its website redesign project and anticipates a new website going live in mid-2011.

*Question*

4.2.1 Is the TIO accessible to all customers including people with disabilities, low income groups, CALD, and Indigenous people? If not, where is improvement required?

## 5. Fairness

The DIST benchmarks and ASIC regulatory guide both highlight the importance of alternative dispute resolution schemes that adhere to principles of natural justice in decision-making. The DIST benchmarks note the key principle as follows:

The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.

The DIST benchmarks highlight four key practices a successful alternative dispute resolution scheme should follow.

1. Determinations (decisions are fair and reasonable and give regard to regulation/laws).
2. Procedural fairness.
3. Provision of information to the decision-maker.
4. Confidentiality.

The 2006 review found that, in broad terms, fairness was not an issue that stakeholders gave significant attention to in their submissions. It concluded that stakeholders believe that the TIO is fair and that a majority of stakeholders are satisfied with the TIO's performance in this area. Independent research conducted for the TIO by Customer Service Benchmarking Australia in April 2010 showed that 89 per cent of the consumers and small businesses who brought a complaint to the TIO were satisfied with how their complaint was handled.

The 2006 review also found that the transparency of the TIO's complaint investigation and resolution processes were effective, with the TIO's position statements providing valuable guidance to members.

The 2006 review also found that the TIO's internal audits, which were frequently included in annual reports, provided a useful mechanism for assessing compliance with established policies around the issue of fairness.

### *Questions*

- 5.1.1 Does the TIO dispute resolution scheme provide a satisfactory level of fairness from the complainant's perspective? If not, what is required to improve it?
- 5.1.2 Does the TIO satisfactorily adhere to, and follow, the four key practices for fairness highlighted in the DIST benchmarks?

## 6. Accountability

The 2006 review found that the TIO annual report and TIO Talks are the primary mechanisms through which TIO stakeholders are able to analyse the accountability of the TIO scheme.

The TIO annual reports include a large volume of complaint statistics and a description of the TIO's activities throughout the reporting period—including internal audits, reporting and promotional activities. The 2006 review found that, while stakeholders generally agree that this is a useful document, there is potential scope to expand the type of information included.

For example, the TIO has developed internal key performance indicators for some of its activities that it could publish. Publication of performance against appropriate benchmarks may enhance the TIO's accountability, provide further basis for assessment, identify problem areas and potentially indicate a need for additional funding (where this information demonstrates that targets are not consistently met).

The DIST benchmarks note alternative dispute resolution schemes should publish an annual report with statistical and other data about the performance of the scheme, including:

- information about how the scheme works
- the number and types of complaints it receives and their outcome
- the time taken to resolve complaints
- any systemic problems arising from complaints
- examples of representative case studies
- information about how the scheme ensures equitable access
- a list of scheme members supporting the scheme, together with any changes to the list during the year
- where the scheme's terms of reference permit, the names of those scheme members which do not meet their obligations as members of the scheme
- information about new developments or key areas in which policy or education initiatives are required.

Although not publicly available, the TIO provides regular and detailed reports to the ACMA.

The TIO also regularly meets informally with government agencies such as the ACMA, ACCC, and the department in various forums to discuss complaint issues.

*Questions*

- 6.1.1 How well does the TIO perform in reporting on the DIST list of recommended issues within its different reporting mechanisms (that is, annual report, website, TIO Talks)? Are these mechanisms providing appropriate levels of accountability for the TIO or should there be mandatory requirements about what the TIO should publicly report (for instance, in its annual report)?
- 6.1.2 Should any other accountability measures be introduced? For example, more formal reporting to the regulator or public reporting against key performance indicators?
- 6.1.3 Should the TIO publicly report members who do not comply with TIO determinations?

## 7. Efficiency

### 7.1 Tracking and reporting of complaints

Alternative dispute resolution schemes should have a consistent approach to time limits for the processing and handling of a complaint. This should also include setting maximum time limits for resolving complaints to ensure they are treated consistently.

Approaches to the TIO are classified as a complaint or an enquiry. A complaint is an expression of grievance or dissatisfaction about a matter within the TIO's jurisdiction that the member concerned has had an opportunity to consider. An enquiry is a matter that is not classified as a complaint. Where a complaint remains unresolved, the TIO may increasingly escalate it until it is resolved, or until TIO involvement is no longer appropriate. A flow chart on the TIO dispute resolution processes is provided at **Attachment B**.

The TIO has developed key performance indicators for the resolution of level 2, 3 and 4 complaints with 48 days, 62 days and 90 days respectively to resolve a complaint following escalation. The TIO reports on complaint resolution times in its annual report.

The TIO regularly reviews its internal performance benchmarks—including time frames for handling and responding to initial correspondence, assessing member responses and providing advice to complainants. Its statistics have shown complaint resolution times (days to resolve) have, at times, exceeded designated benchmarks.

The TIO is implementing a new complaint management system and billing platform to help its members deal with an increased volume of complaints received over the past two years. It is critically important that the TIO continues to provide timely resolutions and outcomes for complaint investigations.

When assessing the TIO's performance, it is necessary to give due consideration to the volume, complexity and technical nature of many complaints received and what constitutes the fairest outcomes for both parties.

#### *Questions*

- 7.1.1 How important is the timely resolution of complaints to the fairness of a dispute resolution scheme?
- 7.1.2 Are stakeholders satisfied with current TIO complaint resolution time frames?
- 7.1.3 Should TIO investigations have shorter, and binding, time frames?
- 7.1.4 Should the TIO be required to report publicly against its internal performance benchmarks about complaint resolution?

## **7.2 Appropriate review**

The implementation of appropriate internal review mechanisms, practices and procedures for alternative dispute resolution schemes is vital in maintaining and/or achieving complaint resolution benchmarks.

The DIST benchmarks specifically note that an alternative dispute resolution scheme should set objective targets against which it can assess and review its performance. It also recommends keeping systemic records covering all complaints, enquiries and outcomes.

The 2006 review noted that the TIO employs a number of mechanisms for regularly assessing its performance, including drafting regular investigation reports. It also noted that these reports consider issues of staffing, recruitment, training, volume of complaints received and complaints resolution time frames.

The TIO also has an established process where a complainant can request an independent review officer to review a complaint if the complainant disagrees with the initial decision by a TIO officer. The review officer may recommend further investigation, which may result in another outcome. This does not apply to the ombudsman's or deputy ombudsman's decisions.

Regular reviews of the TIO scheme is another mechanism available to ensure the TIO keeps pace with a rapidly evolving industry. Although the TIO undertakes quarterly complaint satisfaction surveys and regular member surveys, the adoption of a broader, scheme-focused, regular review process would enable the incorporation of emerging best practices for alternative dispute resolution schemes and feedback from stakeholders into other elements of the TIO scheme.

The ASIC regulatory guide requires external dispute resolution schemes to commission independent reviews of their operations and procedures three years after initial ASIC approval, and thereafter every five years. The overseeing body of the scheme must consult with ASIC regarding the terms of the review and the appointment of the independent reviewer.

Currently, there is no statutory requirement for a review of the TIO scheme. The TIO constitution merely notes the constitution's efficacy will need review from time to time. This means the TIO board controls the timing and scope of reviews of the TIO scheme.

The comprehensiveness and effectiveness of any TIO-commissioned review has caused some concern. For example, the 2006 review made 20 recommendations which covered many facets of the scheme. In response, the TIO did not directly respond to each individual recommendation but released a report setting out the TIO's approach to the recommendations with a view to incorporating any recommendations 'where appropriate into the TIO's existing activities'.

*Questions*

- 7.2.1 Does the TIO adequately assess its own performance in relation to issues of efficiency? Could it improve in this regard?
- 7.2.2 Does the TIO have adequate mechanisms available for stakeholders to provide appropriate feedback?
- 7.2.3 Should the TIO become subject to public independent reviews every three or five years?
- 7.2.4 Should the TIO constitution incorporate more specific requirements around TIO reviews?

## 8. Effectiveness

### 8.1 Jurisdiction

It is critically important that the TIO continues to achieve its objectives and meet stakeholder expectations in an ever-evolving industry.

To achieve this, the TIO must have sufficient scope in considering complaints and implementing appropriate remedies and resolutions. In an NBN-enabled environment, the telecommunications industry will continue to see new supply arrangements, convergence and technology advancement. In this environment it is essential that the TIO keeps pace with the needs and expectations of consumers and industry in providing an effective option for redress. It is also important that the TIO's jurisdiction is clear.

The 2008 Review of Australia's Consumer Policy Framework conducted by the Productivity Commission suggested extending the remit of the TIO to include pay TV services.<sup>11</sup> The continued popularity of bundled services/packages for telecommunications consumers and continuing consumer confusion about where to pursue complaints on this topic remains an unresolved issue. It is understood that the TIO is proposing to amend its constitution to widen its jurisdiction over some bundled products and services.

#### *Questions*

8.1.1 Should the TIO's jurisdiction be widened?

8.1.2 What impacts will the future technological landscape have on the TIO?

### 8.2 Enforcement and compliance

A key component of any successful ombudsman scheme is the operation of an effective compliance and enforcement regime.

Once the TIO conducts its formal investigation process and conciliation or investigation cannot achieve a fair and reasonable outcome, the TIO can issue binding decisions (determinations or directions) to the value of \$30 000. While determinations and directions are binding on members, complainants can elect to accept or decline them. In addition to binding decisions, the TIO can make non-binding recommendations to members, provided that these do not exceed the value of \$85 000. The issuing of non-binding recommendations by the TIO has been rare and the TIO advises that it is currently dealing with the first instance of a recommendation that has not been accepted by a member.

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<sup>11</sup> Review of Australia's Consumer Policy Framework, Productivity Commission Report, (Volume 1) 2008, [www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0006/79170/consumer1.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0006/79170/consumer1.pdf), p. 40.

In 2009–10 the TIO issued 37 ‘preliminary views’. The TIO regards preliminary views as draft determinations to put members on notice that, unless complaints are resolved in line with the suggested outcomes, the TIO is likely to issue a binding determination. In that period, 18 of the 37 preliminary views issued by the TIO became binding determinations. Members did not actively comply with 13 of these. Reasons for non-compliance with TIO determinations can vary and the TIO may have only limited visibility of the precise motivations behind the non-compliant members.

Section 132 of the TCPSS Act provides that members of the TIO scheme must comply with the scheme. The service provider rules under Schedule 2 of the Telecommunications Act requires service providers to comply with the TCPSS Act and the Telecommunications Act. This means the ACMA may give written directions or a formal warning to a non-compliant member and/or apply to the Federal Court for either a civil penalty or seek an injunction to enforce the terms of a determination. The ACMA is also empowered to accept enforceable undertakings for failures to comply with section 132 of the TCPSS Act under section 572B of the Telecommunications Act, which could detail the actions that an entity will take to ensure it complies with section 132 in the future.

The TIO constitution is silent on the procedures for dealing with non-compliant members, although the TIO’s complaint handling procedures provide that the TIO may refer members to the ACMA for non-compliance with a binding decision and that members may be named in the annual report if they do not comply with a recommendation. In 2010, the TIO referred two members to the ACMA for a range of non-compliance issues—including failure to provide information, failure to comply with determinations and failure to pay for TIO services.

Comparatively, the FOS terms of reference make clear that members may be expelled for non-compliance after first being given the opportunity to explain in writing why they should not be. Expulsion from the FOS scheme means that a member can no longer provide financial services.

Although instances of non-compliance relate to only a very small fraction of the overall number of complaints received by the TIO, it is important to ensure adequate compliance mechanisms and incentives are in place. The current Telecommunications Industry Ombudsman, Mr Simon Cohen, has recently called for stronger powers for the ACMA to deal with cases of non-compliance.

#### *Question*

8.2.1 Is the current compliance and enforcement regime working effectively?

### **8.3 Remedies**

Giving additional enforcement options to the TIO could provide greater incentives for industry compliance with the TIO directions.

Some options to strengthen the compliance and enforcement regime could include, but are not limited to:

- introducing a new industry code or standard
- providing the TIO with a public reporting power
- strengthening the compliance mechanisms under the existing TCP Code
- providing the ACMA with the ability to issue infringement notices.

*Question*

8.3.1 Does the TIO or the ACMA need additional powers? If so, what are they?

**Systemic issues**

One important role ombudsman schemes play beyond the resolution of individual complaints is to provide information to stakeholders, and undertake action, on systemic and/or emerging problems that need action by the regulator or government.

The TIO has an established process for dealing with systemic issues as outlined in clause 5A.2 of its constitution. In 2008–09, despite the TIO seeing a significant rise in complaints over the reporting period, the TIO did not formally classify any matters as systemic (but noted three matters as ‘potentially systemic’). During the same period, the FOS classified 81 issues it identified as systemic.

Although the investigation of systemic issues is a resource-intensive and lengthy exercise, the TIO has adopted a subjective approach to dealing with systemic issues. The TIO’s constitution allows it to consider whether it is ‘practical, fair, and efficient’ to commence an investigation into a systemic issue. The TIO outlined in its 2009–10 annual report it reviewed its approach to systemic issues, which included developing clearer processes and providing additional resources for dealing with systemic issues. The TIO has reported that this review has resulted in changes to systems and processes by a number of its members.

*Questions*

- 8.3.2 Are systemic issues appropriately defined? How can the handling of systemic issues improve?
- 8.3.3 Should the TIO formally report systemic issues to relevant agencies, including the ACMA, ACCC and the Office of the Australian Information Commissioner (OAIC)? If so, how often and what information should be reported?
- 8.3.4 Should information about systemic issues be made publicly available?

### **Internal dispute resolution (IDR)**

Service providers with efficient and robust IDR processes provide consumers with improved complaint resolution outcomes prior to, and during, TIO intervention. Industry is always best-placed to prevent and deal with consumer complaints prior to the need for intervention.

An effective alternative dispute resolution scheme can influence and impose greater incentives on industry to prevent and resolve complaints before any need to escalate these complaints is required.

The TIO's 2008 'connect.resolve' campaign successfully raised awareness of the importance of good customer service and complaint handling practices by industry. The campaign highlighted the effective role of the TIO in exposing poor industry performance and influencing improved IDR processes.

Over 90 per cent of complaints to the TIO are resolved by the service provider after referral back to the provider (level 1) but prior to the commencement of any TIO investigation (level 2—see **Attachment C** for more details on the escalation process for complaints). Apart from complainants that illegitimately approach the TIO before seeking resolution with their service providers, the high number of complaints resolved by referral may suggest industry is using TIO level 1 complaint-handling processes as a substitute for their own initial complaints handling procedures.

The *Corporations Act 2001* requires financial service licensees to have IDR procedures that comply with standards/requirements approved by ASIC. There is no such comparable requirement for service providers under either the Telecommunications Act or the TCPSS Act. Signatories to the TCP Code must 'have regard' to Australian standards regarding complaint handling, but are not compelled to comply with this standard.

Options for addressing the high number of level 1 complaints to the TIO and the early resolution of complaints through IDR mechanisms may include:

- changing the fee structure—if providers were charged a higher fee for level 1 complaints they would have greater incentive to resolve these complaints before customers resort to the TIO
- making it a statutory requirement that providers have IDR procedures that comply with Australian standards and/or have ACMA approval
- revision of the TCP Code to make compliance with Australian standards compulsory for signatories
- providing the TIO scheme with greater oversight of its member's IDR procedures.

*Questions*

- 8.3.5 Would a rise in TIO fees for level 1 complaints provide greater incentive for industry to improve IDR processes?
- 8.3.6 Should the TIO's processes change to promote greater responsibility for industry to resolve complaints? If so, how?
- 8.3.7 Should compliance with Australian standards regarding internal complaint resolution processes become mandatory? If so, should this be a statutory requirement and/or should the ACMA have oversight?

**Sharing complaint data**

Establishing stronger relationships and more complementary processes between industry regulators (that is, the ACMA, ACCC and the OAIC) may assist in improving compliance and enforcement processes.

The development of a national complaints sharing and information database may assist in establishing a national/cross-jurisdictional management system for sharing complaint data. This could allow sharing of complaint data between the TIO and Commonwealth, state and territory consumer affairs agencies and assist all agencies and regulators to more efficiently analyse complaints data, identify systemic issues and take timely action to address ongoing problems for consumers.

Industry has commented on the degree of effectiveness of some elements of the data collected and reported by the TIO. For example, when a consumer takes a complaint to the TIO, the TIO complaint handling/logging process enables collection of 'possible code issue' data. Although this data is only collected at levels 1 and 2, and may not result in a confirmed or actual code breach, the data is reported to the ACCC, the ACMA and the industry body, the Communication Alliance. It is important that the data reported by the TIO reflects constructively the issues facing consumers and industry and is used productively to improve the telecommunications end user experience.

*Question*

- 8.3.8 Do existing processes (that is, data-sharing MOUs) between different complaint handling bodies (for example, the ACMA, TIO, and the OAIC) require greater clarity and improvement?
- 8.3.9 Is the data currently collected and reported by the TIO useful and relevant? If not, what would improve it?

## 9. Conclusion

The information provided during this consultation process will assist the department to make recommendations to the government on potential reforms to the telecommunications alternative dispute resolution scheme.

### *Question*

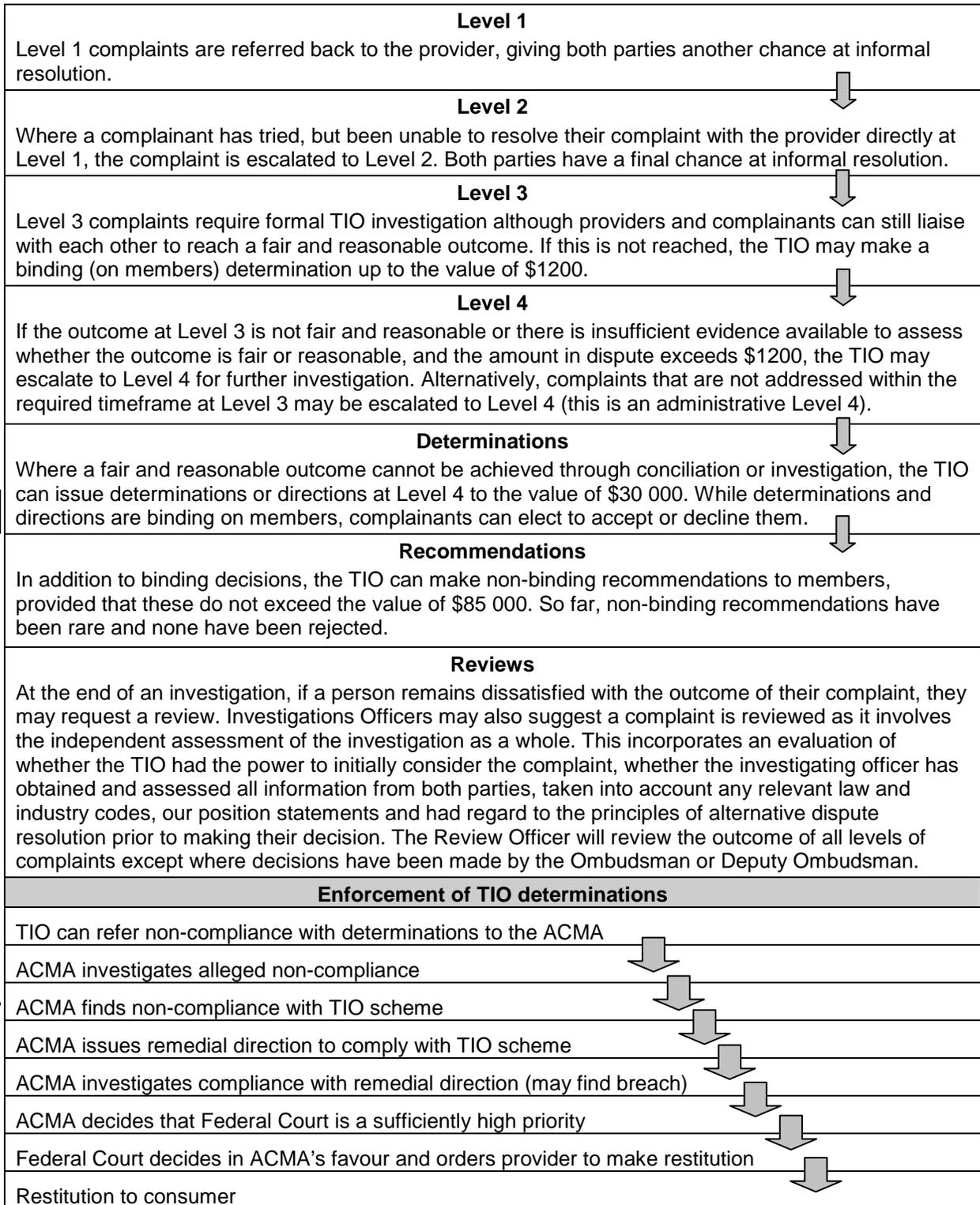
9.1.1 Do you have any other comments or issues you would like to raise about the TIO?

## Attachment A: Discussion questions

- 3.1.1 Does the TIO's current governance structure negatively impact on its ability to adopt effective consumer-focused policies?
- 3.1.2 Does the TIO governance structure need to change? If so, should a single governance body be adopted with equal industry and consumer representation or would an alternative structure be more appropriate?
- 3.1.3 Does the TIO's current funding model, where all costs/overheads are recovered from members, need review? (Note that fee increases are examined at 8.3.4.)
- 3.2.1 Is the transparency of the TIO's governance and decision-making processes adequate? If not, what is needed to achieve greater transparency?
- 3.3.1 Should the TIO develop a terms of reference document or operational memorandum for approval by the ACMA as regulator? If so, what matters should be included and how should such a reform be implemented?
- 3.3.2 Is the TIO's current constitution an appropriate underpinning mechanism?
- 3.3.3 Would an overhaul of the TIO's current complaint handling procedures effectively achieve the same result as the introduction of a terms of reference document or operational memorandum?
- 3.3.4 What, if any, are the potential positive and/or negative impacts of government involvement in TIO governance?
- 4.1.1 Do you think the TIO could improve the current levels of awareness of its activities? If so, how?
- 4.1.2 How can the government assist in raising awareness of the TIO?
- 4.1.3 Should industry be required to advise customers about the TIO both prior to and at the time they are handling a complaint? If so, when should specific advice be provided about the TIO?
- 4.1.4 Should industry be required to publicly advertise the TIO more widely including through advice on bills?
- 4.2.1 Is the TIO accessible to all customers including people with disabilities, low income groups, CALD, and Indigenous people? If not, where is improvement required?
- 5.1.1 Does the TIO dispute resolution scheme provide a satisfactory level of fairness from the complainant's perspective? If not, what is required to improve it?
- 5.1.2 Does the TIO satisfactorily adhere to, and follow, the four key practices for fairness highlighted in the DIST benchmarks?
- 6.1.1 How well does the TIO perform in reporting on the DIST list of recommended issues within its different reporting mechanisms (that is, annual report, website, TIO Talks)? Are these mechanisms providing appropriate levels of accountability for the TIO or should there be mandatory requirements about what the TIO should publicly report (for instance, in its annual report)?
- 6.1.2 Should any other accountability measures be introduced? For example, more formal reporting to the regulator or public reporting against key performance indicators?

- 6.1.3 Should the TIO publicly report members who do not comply with TIO determinations?
- 7.1.1 How important is the timely resolution of complaints to the fairness of a dispute resolution scheme?
- 7.1.2 Are stakeholders satisfied with current TIO complaint resolution time frames?
- 7.1.3 Should TIO investigations have shorter, and binding, time frames?
- 7.1.4 Should the TIO be required to report publicly against its internal performance benchmarks about complaint resolution?
- 7.2.1 Does the TIO adequately assess its own performance in relation to issues of efficiency? Could it improve in this regard?
- 7.2.2 Does the TIO have adequate mechanisms available for stakeholders to provide appropriate feedback?
- 7.2.3 Should the TIO become subject to public independent reviews every three or five years?
- 7.2.4 Should the TIO constitution incorporate more specific requirements around TIO reviews?
- 8.1.1 Should the TIO's jurisdiction be widened?
- 8.1.2 What impacts will the future technological landscape have on the TIO?
- 8.2.1 Is the current compliance and enforcement regime working effectively?
- 8.3.1 Does the TIO or the ACMA need additional powers? If so, what are they?
- 8.3.2 Are systemic issues appropriately defined? How can the handling of systemic issues improve?
- 8.3.3 Should the TIO formally report systemic issues to relevant agencies, including the ACMA, ACCC and the Office of the Australian Information Commissioner (OAIC)? If so, how often and what information should be reported?
- 8.3.4 Should information about systemic issues be made publicly available?
- 8.3.5 Would a rise in TIO fees for level 1 complaints provide greater incentive for industry to improve IDR processes?
- 8.3.6 Should the TIO's processes change to promote greater responsibility for industry to resolve complaints? If so, how?
- 8.3.7 Should compliance with Australian standards regarding IDR processes become mandatory? If so, should this be a statutory requirement and/or should the ACMA have oversight?
- 8.3.8 Do existing processes (that is, data-sharing MOUs) between different complaint handling bodies (for example, the ACMA, TIO, and the OAIC) require greater clarity and improvement?
- 8.3.9 Is the data currently collected and reported by the TIO useful and relevant? If not, what would improve it?
- 9.1.1 Do you have any other comments or issues you would like to raise about the TIO?

## Attachment B: How the TIO handles complaints



## Attachment C: Complaint statistics<sup>12</sup>

Complaint classification	Definition/action	No. of complaints in 2008–09	% of total complaints
Level 1	Level 1 complaints are referred back to the provider, giving both parties another chance at informal resolution.	207 709	90.2%
Level 2	Where a complainant has tried, but been unable to resolve their complaint with the provider directly at Level 1, the complaint is escalated to Level 2. Both parties have a final chance at informal resolution.	17 582	7.6%
Level 3	Level 3 complaints require formal TIO investigation although providers and complainants can still liaise with each other to reach a fair and reasonable outcome. If this is not reached, the TIO may make a binding (on members) determination up to the value of \$1200.	4321	1.9%
Level 4	If the outcome at Level 3 is not fair and reasonable or there is insufficient evidence available to assess whether the outcome is fair or reasonable, and the amount in dispute exceeds \$1200, the TIO may escalate to Level 4 for further investigation. Alternatively, complaints that are not addressed within the required timeframe at Level 3 may be escalated to Level 4 (this is an administrative Level 4).	453	0.2%
Determinations	Where a fair and reasonable outcome cannot be achieved through conciliation or investigation, the TIO can issue determinations or directions at Level 4 to the value of \$10 000. While determinations and directions are binding on members, complainants can elect to accept or decline them.	8	N/A
Recommendations	In addition to binding decisions, the TIO can make non-binding recommendations to members, provided that these do not exceed the value of \$50 000. So far, non-binding recommendations have been rare and none has been rejected.	1	N/A
Reviews	At the end of an investigation, if a person remains dissatisfied with the outcome of their complaint, they may request a review. Investigations Officers may also suggest a complaint is reviewed as it involves the independent assessment of the investigation as a whole. This incorporates an evaluation of whether the TIO had the power to initially consider the complaint, whether the investigating officer has obtained and assessed all information from both parties, taken into account any relevant law and industry codes, our position statements and had regard to the principles of alternative dispute resolution prior to making their decision. The Review Officer will review the outcome of all levels of complaints except where decisions have been made by the Ombudsman or Deputy Ombudsman.	217	0.1%

<sup>12</sup> Adapted from the TIO's 2009 Annual Report, p. 36.

## Attachment D: Abbreviations

The following abbreviations are used in this discussion paper:

ACCAN:	Australian Communications Consumer Action Network
ACCC:	Australian Competition and Consumer Commission
ACMA:	Australian Communications and Media Authority
ASIC:	Australian Securities and Investments Commission
CALD:	Culturally and Linguistically Diverse
CSG:	Customer Service Guarantee
CTN:	Consumer Telecommunications Network
Department:	The Department of Broadband, Communications and the Digital Economy
DIST:	Department of Industry Science and Technology
FOS:	Financial Ombudsman Service
IDR:	Internal dispute resolution
Minister:	Minister for Broadband, Communications and the Digital Economy
NBN:	National Broadband Network
OAIC:	Office of the Australian Information Commissioner
2006 review:	Review of the Telecommunications Industry Ombudsman Scheme—Independent Review, Report to the Telecommunications Industry Ombudsman, Allen Consulting Group, November 2006
Telecommunications Act:	<i>Telecommunications Act 1997</i>
TCP Code:	Telecommunications Consumer Protections Code
TCPSS Act:	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
TIO:	Telecommunications Industry Ombudsman