



5 November 2021

Julian Leeser MP
Level 11, Pennant Hills Road
Pennant Hills
NSW 2110

By email: julian.leeser.mp@aph.gov.au

Dear Julian,

RE: Telco Private Members Bill 2021

We appreciate the opportunity to respond to your proposed members' bill to improve the standards of telco services in Australia (the *Telecommunications Reform (Telstra, NBN and Other Providers) Bill 2021*).

Your interest and intervention in this space is very welcome. In particular, we support explicit customer service guarantees in this sector to strengthen the expectations around how telco providers respond to service complaints, disputes, and significant hardship issues, and we expand on our experience in this area in the letter below. We conclude with some short points about the current effectiveness of the Telecommunications Industry Ombudsman (TIO).

Background

WEstjustice is a community legal centre based in the Western Suburbs of Melbourne with an established consumer and debt practice. Our key impact areas are to deliver meaningful services to young people under 25, victim-survivors of family violence, culturally and linguistically diverse (CALD) communities and the economically disadvantaged.

Our clients, like all Australians, depend on telecommunications as an essential service. Even before Covid, they were increasingly dependent on staying connected to access public services, a need intensified by the pandemic and the introduction of check-in and vaccine certificate requirements. During the extended lockdown in Victoria, our clients with families described the stress and anxiety of trying to home-school children with unreliable, expensive or slow home internet.

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WEstjustice sits on the ACMA Consumer Consultative Forum and meets regularly to consult with both ACCAN and the TIO. In September 2021, we fed back to the *Telecommunications Consumer Safeguards Part C: Choice and Fairness* review with Consumer Action Law Centre (CALC) and a coalition of other community groups: [our final submission can be read here](#).

We maintain our recommendations to the Consumer Safeguards Review and hope that you will take a keen interest in that Review delivering its recommendations promptly. However, we believe your Bill aligns with our recommendations last year that direct regulation of the sector be expressed in prescribed standards.

Enhanced Consumer Protections– Schedule 2

WEstjustice supports metrics of what will amount to misleading and deceptive conduct by a telecommunications provider in terms of representations for coverage of mobile services, as well as baseline standards for mobile service provision that would apply to a relevant primary mobile service provider.

Service deficiencies or ‘black spots’ for mobile service users (and indeed, broadband issues) remain both a suburban and a regional issue. Absent any prescribed threshold for effective coverage in a home or place of business, the process of establishing that a provider has misrepresented its service under section 18 of the Australian Consumer Law (“ACL”) or breached reasonable consumer guarantees under section 61 of the ACL is laborious, especially for an individual or a household. The TIO have nevertheless assessed evidence at length in final and binding decisions to make findings of misleading and deceptive conduct with regard to telco service provision in past decisions – however, a clear and understandable metric will set appropriate expectations for consumers and industry alike.

We would suggest that clear guidelines for what constitutes misleading and deceptive conduct not stop at quality/standard of coverage. Recent telco conduct in the area of misleading sales tactics or other irresponsible selling behaviours have clearly shown certain providers acting in ways that essential services should not, and that offend public sensibilities. Examples include:

- The ACCC's proceedings against Telstra, Optus and TPG for allegedly misrepresenting the performance of their NBN plans, and how they would self-monitor the performance of those plans;¹
- Telstra admitting breaches of the ACL in which Indigenous clients were given false representations that products received (or parts of packaged products and services) were free when they were not;²
- A TIO report published in May 2021 indicated that advertising and point-of-sale material for telco products was omitting key terms and conditions, and that consumers were sometimes unknowingly signing up for products they did not need (suggesting a failure to sell a product appropriate to the needs communicated).³

We suggest that amendments to the *Consumer and Competition Act 2010* in regards to the telco industry could therefore codify a number of other behaviours as *prima facie* misleading and deceptive conduct – or that, ideally, a comprehensive direct regulation regime specifically for the telco industry be established.

Expanded Customer Service Guarantee – Schedule 3

We believe that Schedule 3's expanded customer service guarantee by way of call waiting times will greatly improve the responsiveness of telcos and mitigate the harm of an unresolved fault or service difficulty.

Notwithstanding the Telecommunications (Consumer Complaints Handling) Industry Standard and its requirements for timelines in which complaints must be resolved, many consumers struggle simply to get in touch in the first instance with a provider on a timely basis to resolve issues.

We believe this has two adverse outcomes:

- Matters which could be resolved by prompt engagement from the telco are escalated into complaints;

¹ "Telstra, Optus and TPG allegedly misled consumers over NBN maximum speeds", ACCC Media Release, 9 August 2021 <https://www.accc.gov.au/media-release/telstra-optus-and-tpg-allegedly-misled-consumers-over-nbn-maximum-speeds> (accessed 21 Oct 2021)

² "Telstra to pay \$50m penalty for unconscionable sales to Indigenous consumers", ACCC Media Release, 13 May 2021 <https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers> (accessed 21 Oct 2021)

³ *Helping telco consumers sign up to the right phone and internet products- Systemic investigation report*. Telecommunications Industry Ombudsman https://www.tio.com.au/sites/default/files/2021-05/TIO%20Systemic%20Report_Helping%20Telco%20Consumers%20sign%20up%20to%20the%20right_fa_HiRes.pdf (accessed 21 Oct 2021)

- Consumers with valid complaints cannot get through in the first instance to raise them, particularly if they are trying to resolve matters while meeting work commitments, travelling, or facing service faults such as dropouts, and may simply disengage.

We offer the following example from our casework of where a client is placed in financial hardship and distress due to a telco provider failing to offer fast and accessible responses to service problems:

Josie's story

Josie (name changed) is a 55 year old refugee. She is a single mother to a teenage daughter, as well as legal carer and guardian to two grandchildren aged under 10. Josie came to Australia after spending many years in a refugee camp in Africa. Her knowledge of Australian legal and regulatory systems is low. Her technological literacy is very low.

At the time of WEstjustice's assistance to Josie, a family violence intervention order excluded a person from Josie's home.

Josie's telecommunications dispute related to her attempt to transfer from one land-line provider to second landline provider. Josie did not have a mobile phone prior to attempting to transfer providers. She has low technical literacy and is not proficient with computers. Her landline was her primary mode of communication with service providers, friends, and family.

Josie approached WEstjustice in confusion after two months had passed since her request to transfer, and her original provider was still billing her, despite the second provider also having commenced billing. WEstjustice called both Josie's first and second provider seeking an explanation for the double billing. Josie's first provider told WEstjustice that no port-out request had been received. WEstjustice assisted Josie to make a TIO complaint about the second provider's failure to port her line and transfer her account, despite commencing and continuing billing. Sometime shortly after, Josie's first provider disconnected her landline and her phone became unusable.

WEstjustice also contacted Josie's first provider, which said that the phone had been disconnected automatically by the first provider's system, and that it was likely to be because of a port-out request had now been received, however the representative was unable to confirm this.

Josie's phone remained disconnected for over nine weeks while Josie and WEstjustice waited for a response from the second provider at various stages in the TIO process. The second provider was on notice that Josie's phone was disconnected via Josie's TIO complaint, but no interim or alternative service was provided.

Josie was extremely distressed by this period of disconnection: there was family violence in her home and she was unable to speak friends and relatives. Moreover, she was unable to contact or be contacted by WEstjustice, who were trying to help her resolve the issue.

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Josie eventually purchased a cheap mobile phone and prepaid credit to alleviate the situation, but this caused her further distress, as she had difficulty using the phone (she was not accustomed to using a mobile phone at all), and she couldn't afford to purchase sufficient credit. On occasions when she attended WEstjustice seeking an update, Josie was frustrated and tearful.

We note that telephoning a telco provider is one of a number of options a consumer may rely on to address a service fault. WEstjustice has had clients who will use public libraries to send emails or online messages to social services or providers where their phone service is not functioning or has been disconnected, and clients who may favour emails or messages due to the need for discretion if there is family violence in the home and they are planning to separate.

However, this has meant that a range of faults, service issues, or complaints not made by phone go unanswered.

Molly's Story

Molly left an abusive relationship of several years with her two young children, fleeing the family home after her partner's violent behaviour escalated. Shortly after relocating, she tried to contact her old provider to let them know she wanted the internet and home phone line disconnected or transferred to her ex. With so much going on, she gave up on the long wait times on the phone to the provider and focused on priorities like a new home, new schools for her children, and a court safety order process.

When Molly came to WEstjustice for assistance some time later for help because the telco debt had been referred to a debt collector in her name, her worker also tried to ring repeatedly for her. She also contacted an email provided for 'special assistance', but never received an answer to three months of follow-up requests. In a subsequent call to the provider, our caseworker was told to put the problem in writing through the provider's 'Contact us' website portal. It took a month for that enquiry to be addressed and remedied.

If a provider offers multiple pathways to access assistance when needing to report a service issue, change, or fault we believe that consumers should not have either roll the dice picking the one with

the quickest (if any) response, or go to the trouble of contacting all the provider's access points to get a response.

We would suggest that additional response times (appropriate to the medium in question) also be prescribed for customers who raise an issue through any other form of electronic transmission a provider offers (email, webform, SMS).

We also support the mandatory publication of complaints data in annual director's reports. This will be useful to regulators, but particularly to those consumers who want to make informed decisions when choosing products and services.

An Executive Accountability Scheme and Continuous Improvement Framework – Schedule 4

We believe the proposed Executive Accountability Scheme is a promising step to ensure that telco providers be truly responsive and that recurring instances of misleading and deceptive conduct or inadequate customer service not be dismissed as mere challenges of a large organisation.

We believe the Scheme dovetails well with Recommendation 7 of the *Choice and Fairness* submission that a licensing regime be instituted for all telecommunications providers – meaning that ongoing and serious non-compliance could have consequences such as revocation or conditions on continued operation.

We also believe the Continuous Improvement Framework, if implemented, would better enable ACMA to assess providers' compliance with the TCP Code (or any relevant future industry code or standards made under the Telecommunications Act). We support provisions that let ACMA determine the guidelines by which providers will show efforts to improve their services.

Telecommunications Industry Ombudsman Reforms – Schedule 6

In our response with Consumer Action Law Centre to [Part A of the Consumer Safeguards Review](#) we noted:

“While there is room for improvement, we support the TIO and the well-established industry-based external dispute resolution model...”

The fact that the TIO is industry funded body does not itself render the TIO an ineffective or non-independent external dispute resolution body. Rather, we consider the greatest

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impediment to the TIO in appropriately or efficiently resolving disputes has been the absence of strong, clear codes or appropriately empowered regulators within the telecommunications sector. Industry self-regulation has failed to empower its EDR body with a sufficiently robust set of rules. In this regard, we reiterate our call for better direct regulation across the industry.”

We note that, properly empowered by effective guiding regulation, industry-based ombudsmen can be highly effective. Apart from providing predictable and effective resolution to consumers and industry alike, they also provide valuable data on the industry to regulators. Although refinement of an industry-based ombudsman is an iterative process and jurisdictional and systemic powers are improved over time, we consider both AFCA and the Energy and Water Ombudsman of Victoria are examples of where such bodies work well.

The TIO (unlike industry) continues to be held to [government-set benchmarks](#), which it is presently meeting. It has continued to produce valuable reports into systemic issues, including May 2021’s investigation into poor selling practices, and has sought to modernise its terms of reference, including consideration of clearly formalising access to the TIO for consumers who have issue with the functionality of the devices they purchase from telcos (and not simply the services the devices are to connect to). That industry can take an oppositional standpoint to these developments is not an indictment of the ombudsman itself.

With this in mind, we consider that the proposal to replace the present TIO with a statutory body with similar powers may not address the core problems in the sector, while also creating unnecessary potential delay and disruption to the provision of telco ombudsman services. In such the event of such delay and disruption, consumers will be the losers and poor practice by telcos that isn’t directly regulated will continue unseen.

Conclusion

We welcome the interest by you and your colleagues in holding the telco industry accountable to coverage and service standards in explicit terms, and signalling to the Federal Government that Australian individuals, households and businesses have reasonable expectations for delivery of an essential service that need to be met.

Direct regulation of the industry’s standards could and should extend into selling practices, the addressing of hardship and family violence situations, and the internal resolution of disputes. We

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hope that the Consumer Safeguards Review will deliver findings and recommendations that reflect your concerns and ours, and appreciate your persistence in this area.

Please contact us on 03-9749-7720 or joe@westjustice.org.au if you would like to discuss this letter further.

Yours sincerely,



Melissa Hardham
CEO
WEstjustice