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By email: consumersafeguardsreview@communications.gov.au

3 August 2018

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

Dear Sir/Madam,

Consumer Safeguards Review: Part A- Redress and Complaints Handling

Thank you for the opportunity to provide a submission to Part A of the Department of Communications and the Arts' Consumer Safeguards Review.

The Consumers' Federation of Australia (CFA) is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services. CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

Complaints handling

It is evident that the approach of self-regulation for the telecommunications industry has largely failed to adequately protect consumers. Better incentives for industry to put consumer interests first are needed. Improved regulation including improved code development processes are a fundamental part of improving those incentives.

In particular, consumer complaints arise because of a mismatch between consumer expectations and what is delivered. The current regulatory arrangements in relation to product design and product marketing have proved to be completely unsatisfactory in terms of protecting consumer interests. We note that the Department proposes that later stages of the safeguards review will address upstream regulation however we think that any approach to addressing the volume and nature of consumer complaints should start there.

The current Telecommunications Industry Ombudsman (TIO) system is relatively effective and has indeed formed part of the model for the government's recently introduced and widely supported Australian Financial Complaints Authority (AFCA) initiative in relation to financial services.

Government attention would be much better spent on addressing the weaknesses in the regulation of marketing and product development than on tweaking a system for complaint handling that works reasonably well.

The ACMA's newly implemented Complaints Handling Standard is a step in the right direction to placing greater onus on industry to take responsibility for and effectively handle customer complaints by giving the regulator greater enforcement powers to support this outcome. This Standard has only just come into effect and as such it is too early to know its impact. The effectiveness of the Standard should be assessed down the track to identify areas for improvement.

Stronger regulation should also not result in diminishing the ability of consumers to take a complaint to external dispute resolution (EDR) or making this process more difficult. A Complaints Handling Standard, whilst requiring providers to put in place and follow a certain process, will not necessarily mean that industry will resolve complaints in the interests of consumers. Consumers must therefore be able to easily access EDR to ensure their right to fair and independent dispute resolution.

External dispute resolution

There are clearly opportunities for improvements in the current complaint handling systems. As noted above introducing requirements to report on Internal Dispute Resolution (IDR) outcomes is an important step forward. Further improvements were recommended in the independent review of the TIO completed in 2017¹. As we understand it the TIO is currently implementing those recommendations where necessary in consultation with industry. In particular we hope and expect that the TIO will fully adopt the recommendation to increase its support to regulators and industry to address systemic problems.

One area where the review didn't go far enough in addressing consumer concerns is the 'gap' between IDR and EDR. Consumers need to be sure that it is as easy as possible to take a matter to EDR, and that their problem will be fairly and promptly addressed whether by the industry member or the TIO. At some points the Consultation Paper for Part A appears to be addressing this problem but as far as we understand the proposals put forward will not do anything to solve it.

To the extent that the proposals in the consultation paper to alter the current arrangement for consumers to access EDR need to improve rather than reduce access to EDR. By curtailing the remit of the TIO (as the paper appears to suggest), consumers will be worse off. The consultation paper provides no evidence that setting up a new EDR body with a narrower scope would provide greater benefits to consumers than those offered by the TIO scheme. On the contrary, if this is what the paper is in fact suggesting it is clear this proposal would be detrimental to consumers and would cause them both significant harm and a great deal of resentment and distress. The community has a very high level of concern about their ability to have complaints with service providers like banks, energy companies and telcos, if the government were to reduce access to EDR there would be very likely significant community backlash.

Telecommunications is a complex industry that consumers find difficult to navigate, especially in the context of the National Broadband Network rollout. Issues arise often and when they do, consumers rely on the ability to access the TIO with minimal obstacles. This includes being able to take both simple and complex complaints to EDR and not having to provide a complaints reference number from a provider. Consumers would find it difficult to define their complaint as either simple or complex and the requirement to provide a reference number would be particularly prohibitive for vulnerable consumers, and those with urgent complaints.

Complaints data

CFA supports improving and increasing the collection and analysis of complaints data. Reporting this data is an important element in providing transparency, identifying systemic issues and areas requiring better processes, and improving consumer outcomes. The TIO is capable of reporting its

¹ Cameron, Ralph and Khoury 2017, Telecommunications Industry Ombudsman Independent Review, p.99: https://www.tio.com.au/_data/assets/pdf_file/0005/253643/2017_0929-TIO-Report-Final.pdf

own data and should continue to do so. CFA would encourage more detail of the data to also be reported.

The paper appears to propose to remove from the TIO the expectation and right that it publishes complaints data. This would be inconsistent with the Treasury issued EDR benchmarks² and in any event would reduce transparency and seriously undermine public confidence in the effectiveness and accountability of both the TIO and the regulatory scheme for telecommunications

Further, industry should also be required to publish more internal complaints data. CFA notes that the introduction of the ACMA's Record Keeping Rules in July should facilitate this and enable the ACMA to drive improved complaint handling processes in the industry. The ACMA should also publish the complaints data received from industry.

Should you have any questions about this submission I can be contacted via chair@consumersfederation.org.au or my personal mobile number 0415 223 211.

Yours sincerely,

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Chair
Consumers' Federation of Australia

² The Treasury 2015: <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution/>