

16 June 2016

Ms Azrienne Rahman
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The Treasury
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Dear Ms Rahman

Review of the Australian Consumer Law 2016

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to respond to the Review of the Australian Consumer Law (ACL) 2016.

The TIO's submission to the ACL Review sets out:

1. Our observations and recommendations on improvements to the structure and clarity of the ACL.
2. Our observations on how consumer guarantees for goods and services operate in practice in the telecommunications industry and our recommendations on how these guarantees may work more effectively.
3. Our observations on the recurring problem of poor telemarketing practices in the telecommunications industry and our recommendations on how the unsolicited agreements provisions in the ACL may work more effectively.
4. Our observations on an emerging issue involving third party content purchases and our recommendation that the ACL needs to be robust and flexible to deal with new digital products and services.

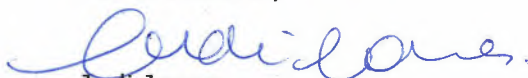
In providing our response to the ACL Review, we have drawn on our experience in handling and resolving thousands of complaints each year from consumers and small businesses about their telecommunications services.

We trust this submission will assist the review of the ACL.

Further information

If you require further information, please contact the TIO's Executive Director – Industry, Community & Government, David Brockman, on 03 8600 8700.

Yours sincerely



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Australian Consumer Law Review

**Submission to the 2016 Australian
Consumer Law Review**

June 2016

About the TIO

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 to provide an independent alternative dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the service provider is given an opportunity to resolve the complaint with its customer.

We are independent of telecommunications providers, consumer groups and government.

For most complaints we receive, we establish the issues in dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at the relevant telephone or internet service provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. On average, around 90 per cent of complaints we receive each year are resolved at this stage of the process.

Where the consumer and service provider do not reach an agreement at this early stage, the TIO becomes more directly involved by seeking to conciliate an agreed resolution between the parties. Around seven per cent of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are progressed for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make a binding decision up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

We record complaints according to service types – internet, mobile and landline services, and by the types of issues that these complaints present. These issues include connection delays and fault repair, contractual and transfer disputes, credit management disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one issue. Some complaints can involve multiple issues – for example, a complaint about a delay in rectifying a faulty internet service may also involve a claim that the consumer's complaint about this fault was not acknowledged or progressed (a complaint handling issue).

Further information about the TIO is available at www.tio.com.au.

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Overview of submission

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to provide our submission to the Australian Consumer Law (ACL) Review 2016.

We set out in this submission:

1. Our observations and recommendations on improvements to the structure and clarity of the ACL.
2. Our observations on how consumer guarantees for goods and services operate in practice in the telecommunications industry and our recommendations on how these guarantees may work more effectively.
3. Our observations on the recurring problem of poor telemarketing practices in the telecommunications industry and our recommendations on how the unsolicited agreements provisions in the ACL may work more effectively.
4. Our observations on an emerging issue involving third party content purchases and our recommendation that the ACL needs to be robust and flexible to deal with new digital products and services.

Since the ACL commenced on 1 January 2011, much has changed within the telecommunications industry – changes to telecommunications policy, regulation and legislation; improved customer service and complaint handling practices by providers; a wider range of new technology, smart devices and over the top services available to consumers; as well as changed consumer preferences and behaviours. The National Broadband Network and its rollout have already started to have an impact on consumers and businesses in Australia.

In providing our response to the ACL Review 2016, we have drawn on our experience in handling and resolving thousands of complaints each year from consumers and small businesses about their telecommunications services. We have included, where relevant, complaint statistics, case studies and ‘consumer voices’ from the complaints we receive, to provide context and to clarify our observations and recommendations on particular issues.

We also set out in Appendix A an overview of TIO complaint trends, the complaint issues analysed in this submission, and how we use the ACL to resolve thousands of complaints each year.

We trust that our observations, recommendations, complaint statistics and case studies will be of assistance to the Review Committee’s consideration of the ACL.

Recommendations

Structure and clarity of the ACL

1. Improve the navigability, structure and location of the ACL within the Competition and Consumer Act 2010.
2. Restructure the consumer guarantee provisions in the ACL so that the guarantees, breaches, and remedies for the breaches are set out in one section.
3. Consider a more consistent threshold for small businesses within the definition of 'consumer' for the specific protections in the ACL.

Consumer guarantees

4. Publish guidance materials to increase clarity about:
 - what is a major or a minor failure of a consumer guarantee for goods in the telecommunications context, and
 - the application of the remedies in the ACL when there is a major or minor failure of a consumer guarantee for telecommunications goods.
5. Increase guidance and education for consumers and providers about the differences between the consumer guarantees, manufacturers' warranties and extended warranties, so that these are communicated more consistently by providers in their policies and practices.
6. Increase clarity and guidance about the application of sections 265 and 270 of the ACL when services are bundled with goods.

Unsolicited agreements

7. Publish guidance on the minimum requirements for informed consent to unsolicited transactions.
8. Require providers to retain a recording of the complete telemarketing call (including the 'pre-sale' part) to demonstrate that informed consent in an unsolicited transaction is present.
9. Consider introducing a requirement for consumers to opt-in after the telemarketing transaction or alternatively, the prohibition of practices that take unfair advantage of vulnerable consumers.
10. Implement targeted awareness initiatives to promote registration on the Do Not Call Register for vulnerable groups of consumers.
11. Implement targeted guidance and compliance initiatives to reduce the incidence of or reliance on clawback clauses in telecommunications agreements.
12. Extend the unsolicited agreements protections to more small business consumers by using the unfair contract terms threshold of the upfront price payable being less than \$300,000, or \$1 million for contracts longer than a year.
13. Implement targeted education, guidance and compliance initiatives to address the poor or unsatisfactory telemarketing practices by providers.
14. Consider introducing financial penalties or criminal sanctions to deter misleading or deceptive conduct.

Emerging issue: Adequacy of existing protections for third party content purchases

15. Consider the adequacy of the ACL to respond to new ways in which digital products and services are sold, including via a mobile service or network-connected device.

1. Structure and clarity of the ACL

The TIO recommends:

- Improving the navigability, structure and location of the ACL within the Competition and Consumer Act 2010.
- Restructuring the consumer guarantee provisions in the ACL so that the guarantees, breaches, and remedies for the breaches are set out in one section.
- Considering a more consistent threshold for small businesses within the definition of 'consumer' for the specific protections in the ACL.

1.1 Overall structure of the ACL

Recommendation 1:

Improve the navigability, structure and location of the ACL within the Competition and Consumer Act 2010.

The current location and structure of the ACL makes it difficult to find or navigate online through its different headings, parts and sections.

Currently the ACL is hidden at the end of the Competition and Consumer Act 2010 (the Act), located within a Schedule, and within a Volume. This makes it difficult to find and navigate online. The way the ACL is set up as a Schedule to the Act and the way it is structured online also makes it difficult to navigate between sections and parts. The ACL's rights and obligations, and penalty provisions are separate. Ideally a particular provision and its penalty should be located together.

Considering the ACL is the most relevant aspect of the Act for consumers, its location within the Act and structure should be reconsidered.

1.2 Structure of the consumer guarantee protections

Recommendation 2:

Restructure the consumer guarantee provisions in the ACL so that the guarantees, breaches, and remedies for the breaches are set out in one section.

The location and structure of the consumer guarantees and remedies within multiple sections in the ACL makes it difficult for users to navigate, find, and understand the consumer guarantees and how they operate.

Currently the consumer guarantee protections are set out over multiple sections:

- 3 (Definition of consumer)
- 51-63 (List of guarantees)
- 169 (Offences relating to guarantees), and
- 259-270 (Enforcement and remedies).

We believe it would be easier to navigate and understand the consumer guarantees if these protections were structured within a single section that sets out:

- the guarantee
- who/what is covered
- when the guarantee would be breached, and
- remedies for a breach.

This approach is consistent with New Zealand's [Consumer Guarantees Act 1993](#), on which the ACL consumer guarantee protections are based. This approach would make it easier for users of the ACL to navigate, find and understand the consumer guarantees and how they operate.

1.3 Threshold for small businesses within the definition of 'consumer'

Recommendation 3:

Consider a more consistent threshold for small businesses within the definition of 'consumer' for the specific protections in the ACL.

A more consistent threshold for small businesses within the consumer guarantees and unsolicited agreements protections in the ACL would ensure disputes about similar products and services are resolved in a consistent way.

Each of the ACL protections has different thresholds or criteria for the persons protected:

- misleading or deceptive conduct – applies to all persons (includes businesses)
- unconscionable conduct – applies to all persons (includes businesses but not public companies)
- unsolicited agreements – applies to a consumer who has acquired particular goods or services that are ordinarily acquired for personal, domestic or household use or consumption, or the amount paid is less than \$40,000
- consumer guarantees – applies to a consumer who has acquired particular goods or services that are ordinarily acquired for personal, domestic or household use or consumption, or the amount paid is less than \$40,000
- unfair contract terms – applies to contracts for the supply of goods or services to an individual for wholly or predominantly personal, domestic or household use or consumption.¹

We received around 3,500 to 4,000 new complaints from small business consumers each quarter over the past two and a half years. Complaints from small businesses formed approximately 12.1 per cent of all complaints to the TIO over this period. We are not able to ascertain how many of these small business complaints involved amounts over the \$40,000 threshold. However, we observe that the same considerations that have led to the extension of unfair contract term laws to protect small business consumers

¹ From November 2016, this will be extended to contracts for the supply of goods or services to a small business of less than \$300,000 or \$1 million for contracts longer than a year.

(effective from November 2016) are equally relevant when considering the consumer guarantees or unsolicited agreements protections for small businesses.

In our experience, most if not all small businesses that come to the TIO with a problem with their telecommunications services or contracts are not able to negotiate any of the terms and conditions of their services with their provider. Small businesses face similar problems with their telecommunications goods or services as individual consumers, including unauthorised transfers or faulty products and services. Small businesses do not have the resources to seek legal advice or deal with these types of issues through other forums, other than directly with their provider or through the TIO.

These are relevant matters in considering a more streamlined approach to the small business thresholds within the definition of 'consumer' for the specific protections in the ACL.

See also our comments in section 3.4 below about extending the unsolicited agreements protections in the ACL to more small businesses.

2. Consumer guarantees

The TIO recommends:

- Publishing guidance materials to increase clarity about:
 - what is a major or a minor failure of a consumer guarantee for goods in the telecommunications context, and
 - the application of the remedies in the ACL when there is a major or minor failure of a consumer guarantee for telecommunications goods.
- Increasing guidance and education for consumers and providers about the differences between the consumer guarantees, manufacturers' warranties and extended warranties, so that these are communicated more consistently by providers in their policies and practices.
- Increasing clarity and guidance about the application of sections 265 and 270 of the ACL when services are bundled with goods.

2.1 Improving clarity and guidance on consumer guarantees for goods

Recommendation 4:

Publish guidance materials to increase clarity about:

- what is a major or a minor failure of a consumer guarantee for goods in the telecommunications context, and
- the application of the remedies in the ACL when there is a major or minor failure of a consumer guarantee for telecommunications goods.

We believe guidance materials are required because:

1. consumers need to easily and quickly resolve problems with their telecommunications goods as these are essential to their communications needs, and
2. there is a lack of clarity for both consumers and providers on what is a major or minor failure, and therefore the appropriate remedy that applies.

2.1.1 Problems need to be easily and quickly resolved

Consumers need to easily and quickly resolve problems with their telecommunications goods as these are essential to their communications needs.

The increasing reliance that consumers place on telecommunications as an essential communications tool means that there are significant consequences to them if these products and services do not work. These consequences can range from loss of business or employment opportunities, isolation or exclusion from social participation, to considerable frustration and distress due to lack of access to government and medical services, or family and friends.

The consumer guarantees in the ACL contain important protections and safeguards to ensure consumers have remedies when their telecommunications products are faulty or do not work.

The Productivity Commission in its 2008 Report on the Review of Australia's Consumer Policy Framework² commented that the essential nature of telecommunications services has warranted both generic and specific consumer protection measures.

Telecommunications products and services are vital to consumers' communications needs and to the way in which they interact with each other or do business. Telecommunications affect almost every aspect of society – from health services and education, to banking and employment, and relationships with family and friends. Today, Australian consumers are increasingly taking up mobile services (with around 31.77 million services as at 30 June 2015) and broadband services (around 12.95 million services as at 31 December 2015), with landline services remaining relatively static over the past few years (around 9.08 million services as at 30 June 2015).³ The National Broadband Network is or will be a prominent enabler for the delivery of fast broadband in most parts of Australia, thus driving further demand for innovative, fast and reliable internet services.

In our experience, consumers who approach the TIO are sometimes not aware of their consumer guarantee rights under the ACL or find it difficult to articulate and apply their rights when something goes wrong with their telecommunications products or services. This issue is outlined in more detail in section 2.1.2 below.

Even when consumers are aware of their rights under the ACL, providers (or their front line staff) may be unaware of their obligations under the ACL, apply these incorrectly or inconsistently, or reject consumers' assertions. See **Case studies 1** and **2** in section 2.1.2 below.

2.1.2 Lack of clarity on what is a major or minor failure, and therefore the appropriate remedy

We believe there is a lack of clarity on what is a major or minor failure, and therefore the appropriate remedy, in the telecommunications context.

In complaints to the TIO about faulty equipment, we observe providers and consumers have different views on what is a major or minor failure of a consumer guarantee and the application of the relevant remedies, particularly around the 'acceptable quality' guarantee.

The areas we have identified that would benefit from further clarity or guidance include:

- What constitutes 'acceptable quality' in the guarantee as to acceptable quality and what constitutes a major or minor failure of this guarantee.

² Productivity Commission (April 2008), [Review of Australia's Consumer Policy Framework, Final Report, Volume 2](#), at page 7 and 109.

³ As at 30 June 2015 there were 31.77 million mobile voice and data services in Australia compared to 31.01 million as at 30 June 2014: Australian Communications and Media Authority, [Communications Report 2014-15](#), at pages 17-18. As at December 2015 there were 12.95 million active internet subscribers in Australia compared to 12.69 million as at December 2014: Australian Bureau of Statistics, [Internet Activity Australia Report December 2015](#). As at 30 June 2015 there were 9.08 million landline services in Australia compared to 9.19 million landline services as at 30 June 2014: Australian Communications and Media Authority, [Communications Report 2014-15](#), at page 14.

While case law provides some guidance around the interpretation of the consumer guarantee as to acceptable quality and what constitutes a major or minor failure of this guarantee,⁴ this is not easily accessible for consumers or providers.

- The criteria in section 260 of the ACL and how these are interpreted.

Providers sometimes reject a particular problem with a telecommunications product as not being a major failure of the guarantee, because it can be remedied by repairing this problem or by replacing the product with a refurbished product.

Consumers seek to rely on the criterion in section 260(a) of the ACL, namely that 'the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure'.

- The application of 'acceptable quality' in the context of how long a particular telecommunications product (or class of products) would reasonably be expected to last.

Consumers generally expect their telecommunications equipment to work well for at least as long as their service contract with their provider – usually this is two years. Complaints to the TIO indicate providers do not consistently use a two year timeframe for how long a mobile handset is expected to last, particularly if a significant problem arises closer to the end of the consumer's service contract.

- Who decides on what is a major or minor failure of a consumer guarantee.

Providers are more likely to have the resources to understand their obligations under the ACL compared to a consumer. Providers also have the technical expertise to assess the nature of the fault. For this reason, the onus should not be placed on the consumer to prove that a failure of a consumer guarantee is a major failure. The consumer should also not have to send in their telecommunications product for multiple attempts at repair in order to show a major failure.

- When a provider can require the consumer to submit a telecommunications product for assessment and how long such an assessment should take.

This is particularly important when the product does not work soon after purchase.⁵ Clarity is also required as to when a consumer should be offered an interim replacement for the product (if an assessment is required) so that the consumer can continue to access their telecommunications service.

- How a major or minor failure of a consumer guarantee is described in the ACL and the various ACL Guides, fair trading guidance material or provider's website information can cause confusion.

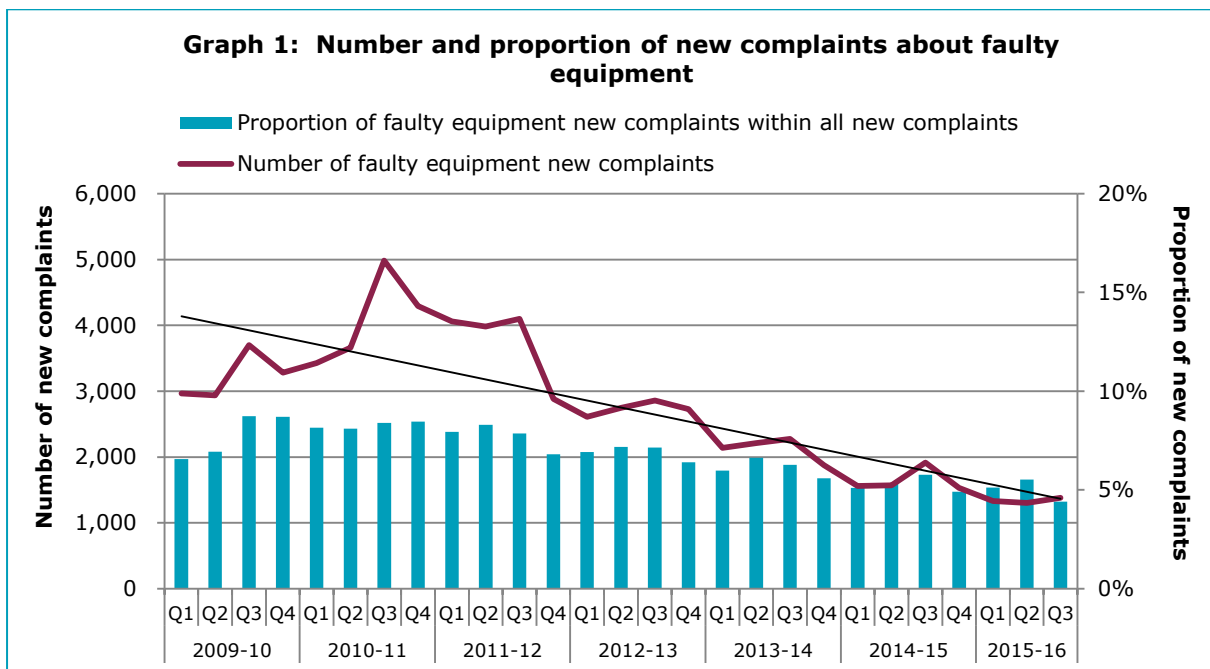
⁴ See for example, *Safi v Heartland Motors Pty Ltd trading as Heartland Chrysler* [2016] NSWCATAP 80, at paragraph 87.

⁵ The [Electrical and Whitegoods: an industry guide to the Australian Consumer Law](#) (2013) states that when a consumer's phone requires repair, 'a consumer could reasonably expect their phone to be repaired within one to two weeks. This includes the time it takes to assess the phone, communicate the nature of the fault and remedy with the consumer, and carry out repairs'; and that 'Consumer protection agencies also encourage businesses to provide consumers with loan handsets during the repair period.' (page 13). However, this guidance suggests a product should be put in for assessment and repair in all circumstances even if the product does not work at all soon after purchase or has significant ongoing problems.

For example, 'failure' is variously stated as a failure of a consumer guarantee as well as a failure of the goods or services themselves; or faults are described as 'major faults' or 'minor faults'.⁶

As highlighted in **Graph 1**, new complaints to the TIO about faulty telecommunications equipment formed around six per cent of all TIO new complaints over the past three and a half years.⁷

In the first three quarters of 2015-16, new complaints about faulty telecommunications equipment formed around five per cent of all TIO new complaints. On average, we received approximately 1,300 to 1,500 new complaints each quarter about faulty telecommunications equipment. Around 78.5 per cent of these new complaints involved mobile handsets.



From 1 July 2014 to 31 March 2016 around 10 per cent of consumers who made a complaint to the TIO about faulty telecommunications equipment returned to the TIO with their complaints unresolved. This is higher than the unresolved rate of 7.5 per cent for all TIO complaints over this period. In the same period, 90 per cent of consumers with complaints about faulty telecommunications equipment did not return to the TIO after referral of their complaints to a specialist dispute resolution area with their provider.

⁶ See for example, Telstra's [Consumer Advice on Faulty Products](#), Optus' [Consumer Terms](#), and Vodafone's [Repair, Exchange and Refund Policy](#).

⁷ While the number of new complaints about faulty equipment has decreased over time (consistent with the overall decrease in TIO new complaints), this decrease could be due to a number of factors, including improved complaint handling practices by telecommunications providers. The relatively steady proportion of new complaints about faulty equipment (and our qualitative analysis below) shows there are still issues that the ACL may not have fully addressed.

The 'consumer voices' or excerpts from written complaints to the TIO in recent months set out on the next page provide an insight into consumer experiences when they encounter a faulty telecommunications product.⁸

⁸ These consumer voices are a small sample of consumer experiences and may not be representative of all consumer experiences about this particular issue. The consumer names and other identifiable information in these complaints have been changed or modified. The details in these extracts have not been changed.

Consumer voices – faulty equipment

1 "I have a faulty phone. As recommended by the provider I have taken the phone to the manufacturer three times to be replaced. I am now on my fourth phone in three months. The current phone is now faulty AGAIN.

I contacted the provider after the first fault, the best they would offer me was a \$500 cancellation fee plus I still have to pay \$5 handset repayments per month until the contract ends. I want the contract to be cancelled with no cancellation fees or phone repayments to be made. I should not need to pay for a phone which is continually faulty, it's not good enough."

GP, VIC, 2015

2 "I attended my provider's shop to discuss my options for internet. After approximately one hour with the sales person, and based on my usage history, it was recommended that I take a 15GB plan. Almost immediately from the first bill, I was being charged excess data usage. I called my provider in excess of twenty times to resolve the excess data usage billing. I thought there was a technical fault with the modem because I had not changed my usage pattern in any way.

My provider told me it would send my modem away for 6 weeks to verify if it was faulty. They would not offer a temporary modem."

MC, WA, 2016

3 "I'm locked into a 24 month contract and this handset has been faulty really from 5 months after the contract started. I returned it to my provider for repairs after many weeks of poor performance. Within a few months it was faulty again. The manufacturer guided me to 'restore factory settings' but within a week I realised it was still not performing. My provider again sent it for repairs but as soon as I got it home I realised it was still faulty. I returned it to my provider and again it was sent away for repairs.

Each time my provider told me to sign an authority to say I would be liable for the cost of repairs. I insisted I would not be paying for repairs. Each time I asked for a replacement device only to be told they did not provide this.

I have been without a device for over two weeks each time it's sent away for repairs and yet I still have to pay my contract! When I pointed out that I continue to pay a monthly fee for a device and service that I'm not getting they told me they could do nothing about that."

DC, NSW, 2016

4 "The screen would continuously freeze (several times daily) and I was unable to access the phone without restarting the phone each time. I told the provider the screen was completely blacking out and generally unusable.

I was offered a 'new' refurbished phone or a repair using refurbished parts. I said that under the consumer laws I was entitled to a refund for a major failure. Major failure being: 'it has a problem that would have stopped someone from buying it if they'd known about it'. I would not have purchased this phone had I known it would either not recognise being touched (via the touch screen) or freeze each time I try to unlock it. I was clear that I wanted a refund, however they said they don't do that."

SE, NSW, 2015

5 "My phone overheats and has warped because of this. Recently it became so hot I dropped the phone and cracked the screen. I went to the provider's store who refused to assist me. The provider stated the phone was no longer covered by warranty once the screen was cracked, even though it was cracked as a result of overheating. He refused to take a complaint or assist me.

After the provider refused to help, I purchased a replacement phone as the current phone was too dangerous to continue to use. I would like the provider to waive the cancellation fees for refusing to help. A retailer cannot refuse to help a consumer if the product has a major fault. The product clearly had a major fault."

GM, ACT, 2015

6 "We were promised a great phone system with excellent service. The dramas started from the very first day. It took three months to actually get the phones installed, we lost our fax and EFTPOS line for just under three weeks, then when we finally got the phones installed they didn't work properly. The provider either says they will have an account manager call us back - which they never do - or just makes us sit on hold for up to the 45 minute mark and then still says they will call back and we wait and wait and wait.

We want out of our contract. We have given them a whole year's worth of chances but they just will not get it right. My phones are the heart of my business. We have lost business due to the constant technical issues and the loss of the EFTPOS and fax machine, which we had to get a private company to fix."

BM, QLD, 2016

We analysed a random sample of 50 new complaints about faulty telecommunications equipment to draw out some of the issues that present in these types of complaints.⁹ While a small data set, we believe these issues are indicative of the common problems in these types of complaints. We observed the following issues in these complaints:

(i) Repeated faults or failed attempts at repair: Providers requiring consumers to submit their telecommunications devices for repair several times before a replacement or cancellation of contract is offered. Devices often become faulty again or are returned with the fault still present.

(ii) Refurbished handsets: Providers offering consumers a refurbished handset when consumers report a significant problem with their new handset (within a few months of purchase), without the providers conducting any assessment of the problem. Providers may require consumers to pay for the new handset although they now have a refurbished one. Sometimes refurbished handsets become faulty, too.

(iii) Loan handsets and assessment/repair delays: Consumers are frustrated with not being able to stay connected whilst the provider assesses or repairs the handset. Providers do not often make loan handsets available, or when loan handsets are available, cannot be used in the way they normally would (for example, because the loan handset is an older model with no smartphone capability).

(iv) Disputed cause of fault: Providers say they have no obligation to repair or replace the device because the device has cosmetic damage or liquid ingress. Consumers say the cosmetic damage is unrelated to the fault, or that the damage is wear and tear associated with normal use or in accordance with advertised abilities (e.g. a handset that is advertised as waterproof is now faulty but will not be repaired because of liquid ingress).

(v) Early life failures: Devices are reported as faulty soon after purchase but outside of the provider's early life failure policy period, during which a straight swap might have been possible. Consumers are told they have to submit their device for repair, with the option of getting a refurbished handset if their device cannot be fixed.

(vi) Customer service and complaint handling issues: Consumers face customer service problems such as providers not calling back as promised when faults are reported, promises about resolving faults that are not met, satchels not sent as promised (preventing handsets being returned for assessment or repair), and being told to contact the manufacturer about their faulty device instead of the provider handling the fault.

⁹ This analysis is limited given these complaints reflect what consumers tell us, as we do not collect information from the relevant providers at the referral stage of new complaints.

Case studies 1 and **2** highlight some of the above issues about the application of the consumer guarantees and associated remedies to faulty telecommunications equipment.

Case study 1: Faulty telecommunications equipment

In August 2015, Mr Brown signed a contract with Provider A for a mobile service bundled with a new handset. A month later the handset started to lag, exhibited difficulty making connections via Bluetooth, and seemed to regularly consume much of the available memory. When Mr Brown contacted Provider A to complain about this, it told him that because the handset was two days outside the 30-day return period, it would not accept a return of the handset.

Mr Brown asked to be recontracted to a new contract with a different model of handset, or to continue his current contract with a different model of handset, but Provider A would not agree. Mr Brown then asked Provider A to release him from his contract instead, but Provider A would not do so. Provider A offered to replace the handset immediately with a like-for-like refurbished handset, or send the handset away for two weeks for the fault to be assessed.

Mr Brown gave Provider A a video of the lag and memory usage to show the fault with the handset. Provider A told Mr Brown that it would need to assess the handset. Mr Brown found the two week time frame for assessment to be unacceptable because he needed the handset for his work. Provider A said it thought the handset was operating at acceptable speeds, and told Mr Brown to contact the manufacturer directly.

Dissatisfied, Mr Brown lodged a complaint with the TIO. Mr Brown also contacted the handset's manufacturer, who offered a much faster two day timeframe for assessment. The manufacturer replaced the handset's motherboard and also updated the handset's firmware. These actions did not fix the problems, and Mr Brown asked the TIO to continue handling his complaint.

When the TIO progressed the matter for conciliation, Provider A told us the handset was covered by the manufacturer's warranties, and any faults could be repaired by the manufacturer. If the fault could be repaired, Provider A believed this made it a minor failure to comply with a consumer guarantee under the ACL. Provider A said a like-for-like refurbished handset or a repair of the handset were all sufficient remedies, and that it was up to Provider A and not the consumer to decide which remedy was appropriate.

We considered that the problems with the handset amounted to a major failure to comply with the consumer guarantees, based on the significance of the problems with the handset, the limited time Mr Brown had used the handset before the problems started, and the assessment and attempted repair undertaken by the manufacturer. We considered Mr Brown was entitled to reject the handset (and the mobile service), and could choose his preferred resolution, which was to be released from the contract without termination fees with a refund of the handset charges paid between August to November 2015. Mr Brown was required to pay for valid usage charges.

Provider A agreed to resolve the complaint by releasing the consumer from the contract without termination fees and refunding the handset charges. Mr Brown was satisfied with this and agreed to pay the usage charges.

Case study 2: Faulty telecommunications equipment

Ms Teal told us that in September 2014 she began a 24 month contract with Provider B for a mobile service, with a handset included. In December 2015 the handset stopped charging, making it unusable. Ms Teal took the handset to Provider B.

Provider B told Ms Teal it was likely that a running software application was causing the battery to drain faster than it would charge, and she should deactivate this application. Ms Teal followed Provider B's advice and deactivated the application. Provider B also sent the handset for assessment and repair if needed.

Two weeks later Provider B told Ms Teal the handset was working and could be picked up. However, when Ms Teal tested the handset in Provider B's store it would not turn on. The handset was sent for further assessment, but with no resolution. Provider B insisted that the problem was caused by the application and would not accept that Ms Teal had deactivated it. Ms Teal contacted the TIO.

After we referred the complaint to Provider B's senior complaint handling area, Provider B offered Ms Teal a new handset if she started a new 24 month contract. Alternatively Ms Teal could seek a replacement handset directly from the manufacturer but Provider B would not help with this. Ms Teal did not accept Provider B's offer and returned to the TIO.

During conciliation Provider B acknowledged that the handset was faulty and offered two ways to resolve the complaint. The first was to release Ms Teal from her contract with no fees if she returned the faulty handset. The second was for Ms Teal to continue her contract for the remaining 5 months with a different handset. This would not be a new handset because Provider B's policy was to replace faulty handsets with refurbished handsets only.

After further conciliation Provider B agreed to offer a new handset. However, the model of the faulty handset was no longer available, so Provider B offered to supply a more recent model if Ms Teal paid \$300 to cover the difference in value of the handsets. No matter which option Ms Teal chose, Provider B also offered to apply credits to her account equivalent to five months of service charges for the period she could not use the service.

Ms Teal considered both options to be reasonable and agreed that the TIO should close the complaint.

2.2 Improving clarity and guidance on consumer guarantees, warranties and extended warranties

Recommendation 5:

Increase guidance and education for consumers and providers about the differences between the consumer guarantees, manufacturers' warranties and extended warranties, so that these are communicated more consistently by providers in their policies and practices.

We believe increased guidance and education for consumers and providers is needed because information provided to consumers shows telecommunications providers may confuse the manufacturers' warranties or extended warranties with the consumer guarantees under the ACL.

Confusing information about the consumer guarantees, manufacturers' warranties or extended warranties can lead to inconsistent resolution of disputes about faulty telecommunications goods.¹⁰

From a desktop analysis of website information of three of the major telecommunications providers¹¹ and two major handset manufacturers,¹² we found that each explains the consumer guarantees and associated remedies under the ACL and manufacturers' warranties differently – ranging from a clear, easy to understand and detailed explanation to very general statements. The more detailed and clear explanations around the consumer guarantees, manufacturers' warranties and extended warranties issued by Apple were as a result of an enforceable undertaking given by Apple to the ACCC in December 2013.¹³

These different explanations can be confusing to consumers when they interact with their providers and may be barriers to early resolution of their disputes. For consistency of resolution, consumer guarantee rights and associated remedies, and how these differ from manufacturers' warranties and extended warranties, should be explained clearly and in terms consistent across all providers.

¹⁰ See our analysis in section 2.1.2 and **Case study 1** above.

¹¹ See Telstra's [Consumer Advice on Faulty Products](#), Optus' [Consumer Terms](#), and Vodafone's [Repair, Exchange and Refund Policy](#).

¹² See Samsung's [Your rights under the Australian Consumer Law](#), and Apple's [Apple products and the Australian Consumer Law](#).

¹³ See [ACCC Media Release on 18 December 2013](#) about Apple's enforceable undertaking to improve its consumer guarantee policies and practices.

2.3 Improving clarity when services are bundled with goods

Recommendation 6:

Increase clarity and guidance about the application of sections 265 and 270 of the ACL when services are bundled with goods.

We recommend increased clarity and guidance because consumers and providers may not be aware of their respective rights and obligations when there is a problem with either the telecommunications good or service sold as a bundled product.

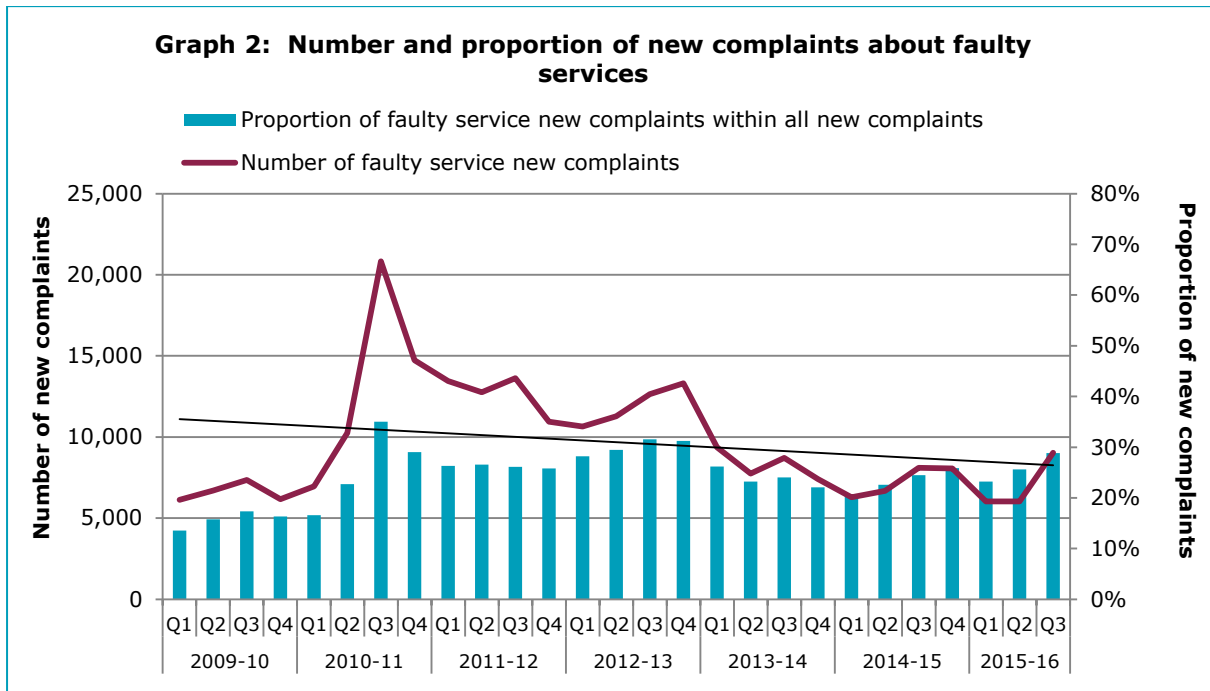
From complaints to the TIO about faulty services, we believe further clarity and guidance is required about the applications of sections 265 and 270 of the ACL when services are bundled with goods.

Consumers who have a major failure of a consumer guarantee in relation to their telecommunications service or product may not know their rights under sections 265 and 270 of the ACL if they have a bundled service and product. Providers, on the other hand, may not proactively consider the operation of these provisions when a consumer raises a dispute about a major failure of a consumer guarantee for a product or service, or may refuse the consumer's choice to reject the goods or terminate the supply of the services.

As highlighted in **Graph 2**, new complaints to the TIO about faulty telecommunications services formed approximately 25.8 per cent of all TIO new complaints over the past three and a half years.¹⁴

In the first three quarters of 2015-16, new complaints about faulty telecommunications services formed 25.9 per cent of all TIO new complaints. On average, we received approximately 6,000 to 7,000 new complaints each quarter about faulty telecommunications services. While previously more than half of these new complaints involved faulty mobile services, faulty internet services formed close to 58 per cent of these new complaints.

¹⁴ While the number of new complaints about faulty services has decreased over time (consistent with the overall decrease in TIO new complaints), this decrease could be due to a number of factors, including improved complaint handling practices by telecommunications providers. The relatively steady proportion of new complaints about faulty services shows there are still issues that the ACL may not have fully addressed.



There are specific consumer protections in the form of the Customer Service Guarantee (CSG) Standard for landline services with mandated timeframes for the connection and fault repair of landline services. Internet, mobile, and landline services (to the extent not inconsistent with the CSG Standard), are subject to the consumer guarantees under the ACL.

From 1 July 2014 to 31 March 2016, around 8.6 per cent of consumers who made a complaint to the TIO about faulty telecommunications services returned to the TIO with their complaints unresolved. This is higher than the unresolved rate of 7.5 per cent for all TIO complaints over this period. In the same period, 91.4 per cent of consumers with complaints about faulty telecommunications services did not return to the TIO after referral of their complaints to a designated point of contact at the relevant provider.

The 'consumer voices' or excerpts from written complaints to the TIO in recent months set out in the next page are examples of consumer experiences when they encounter a faulty telecommunications service.¹⁵

¹⁵ These consumer voices are a small sample of consumer experiences and may not be representative of all consumer experiences about this particular issue. The consumer names and other identifiable information in these complaints have been changed or modified. The details in these extracts have not been changed.

Consumer voices – faulty services

7 "I signed up for a home internet bundle..., a service that I require for my work as well as for private use. I phoned them at 11am and was told that the technician was on his way, which was not true. I was then advised of another rescheduling and again asked to be at the house from 8-12pm. Despite the service not yet operating, I was sent a bill for the service... I have just spent one hour on the phone with still no resolution. I cannot afford to miss more work.

Three weeks on, I still have no internet or home phone... It is difficult enough living remotely without this."

EF, QLD, 2015

8 "There have been problems with both internet and phone line connection as we have a temporary line because the underground line was damaged by works on an adjoining property. This has been ongoing and has been reported several times... This is the third time I have now reported this fault.

I am an operator of a small business and it has been impossible to conduct business for the past four weeks... The provider has stated that it would be 14 days before they check the problem... This will take it to five weeks - how do I conduct business in this manner?"

GH, VIC, 2015

9 "I received a text message saying my new NBN service is now switched on. But I have no dial tone or internet connection. My line is a medical priority line and at no stage have I been offered an interim phone or a device to connect to the internet. I have been advised there is no medical priority service provided with the NBN.

I would have spoken to no less than 30 different people over the past week, trying to get some satisfaction or a solution. All I have been told is, I will have to wait for the order to complete in the system, then if there is still a problem they will investigate further...

I have requested they cancel the existing orders and put everything back the way it was. I've been told it can't be reversed."

MP, NSW, 2016

10 "I have a total lack of indoor reception and often lack of outdoor reception. My provider's coverage web site shows 'Good outdoor and indoor reception' for this address and surrounding areas – this has not been achieved. Technicians from both my provider and another provider have attended my house for landline matters and found mobile phone reception not existing.

I have contacted my provider's helpline on this matter and they seem unable to explain or assist. They have been dismissive of my mobile reception issues."

CM, NSW, 2015

11 "My internet is barely usable as it is too slow to download and I have 56 GB remaining this month. I have tried to contact customer service for over a week for 40 minute periods and they have not even answered the phone to assist my problem. They just ignore my phone calls and I can't contact them for technical support.

I want to cancel my contract... as the essential term of my contract was fast internet with good customer service. They have breached these essential terms and I am still suffering detriment, paying for a faulty product."

JN, QLD, 2016

12 "I started experiencing dropped calls not long after getting a new phone. The calls continued to drop or cut out mid conversation so I repeatedly had to call the people back - meaning I was making twice if not three times the amount of calls I should have.

I contacted my provider yet again and had a very unsympathetic response - they told me to go and get a free SIM. The SIM made no difference. I then went to hand in my phone at a store. No replacement phone was available. I then got a text saying that I had to pay \$300 as the problem was not under guarantee. They then claimed I had a faulty camera - completely untrue! And not related to my problem whatsoever.

They don't seem to understand that I have been paying a lot of money (\$100 each month) for terrible coverage and drop outs!

ST, NSW, 2016

Case studies 3 and **4** highlight some of the issues that we see in complaints to the TIO about the application of the consumer guarantees to faulty telecommunications services that are bundled with goods.

Case study 3: Faulty telecommunications service bundled with a good

Ms Orange had two mobile services with Provider C on \$70 per month plans. She said her mobile services experienced frequent call drop outs, she didn't receive messages or they were delayed, and her data speed was slow to non-existent. Ms Orange also said the quality of calls was very poor, with significant 'crackling' noise on the line often making it impossible to hear the person on the other end and forcing her to hang up and call back repeatedly.

According to Ms Orange, when she entered the contracts, Provider C told her there would be good coverage at the address to which she was moving. When she first complained to Provider C, it told her that towers in the area were being upgraded. The next three times she complained she was told the coverage was fine.

When the TIO referred Ms Orange to a senior level of complaint at Provider C she was given replacement SIM cards to see if that would fix the problem, but it didn't. She then accepted refurbished handsets of a different model to see if that would help, but they were faulty and had to be replaced with more refurbished handsets. These handsets also failed to improve the coverage situation.

In the face of these failed resolution efforts, Ms Orange asked Provider C to cancel the services without early termination fees because of the problems she was experiencing. However, Provider C told Ms Orange she would have to pay contract termination fees of approximately \$1,000 on each service and for the handsets.

Ms Orange declined this offer and returned to the TIO for assistance.

When the TIO progressed the complaint to conciliation, Provider C agreed to accept the return of the handsets and allow Ms Orange to cancel the contract without early termination fees. Ms Orange accepted this as a fair resolution to her complaint and elected not to pursue a refund of access fees.

Case study 4: Faulty telecommunications service bundled with a good

Mr Blue lives in regional Victoria and needed a reliable mobile service for his business, as he was travelling a lot and needed to be able to conduct negotiations over the phone.

According to Mr Blue, when he agreed to recontract with Provider D he told it he was experiencing coverage issues, and he was told new mobile towers would be installed within the next six months that would rectify the problems. After six months, with the problems still occurring, he told Provider D that he would like to cancel the service and seek the services of an alternative provider. Provider D refused to accept there were any coverage issues and told him he would have to pay out the cost of his fixed term contract.

Mr Blue asked for the TIO's assistance because he was unable to resolve the complaint with Provider D.

After the TIO referred Mr Blue to a senior level of complaint at Provider D, he was offered a release from his contract but told he would have to pay out the cost of his mobile handsets. Mr Blue declined this as he could not afford the equipment payout and wanted to return the handsets instead.

When the TIO raised the complaint for conciliation, Provider D renewed the offer to reduce the contract to the value of the handsets and said it would allow Mr Blue to enter a payment arrangement to make those costs more affordable. Mr Blue accepted this as a resolution to his complaint.

3. Unsolicited agreements

The TIO recommends:

- Publishing guidance on the minimum requirements for informed consent to unsolicited transactions.
- Requiring providers to retain a recording of the complete telemarketing call (including the 'pre-sale' part) to demonstrate that informed consent in an unsolicited transaction is present.
- Considering the introduction of a requirement for consumers to opt-in after the telemarketing transaction or alternatively, the prohibition of practices that take unfair advantage of vulnerable consumers.
- Implementing targeted awareness initiatives to promote registration on the Do Not Call Register for vulnerable groups of consumers.
- Implementing targeted guidance and compliance initiatives to reduce the incidence of or reliance on clawback clauses in telecommunications agreements.
- Extending the unsolicited agreements protections to more small business consumers by using the unfair contract terms threshold of the upfront price payable being less than \$300,000, or \$1 million for contracts longer than a year.
- Implementing targeted education, guidance and compliance initiatives to address the poor or unsatisfactory telemarketing practices by providers.
- Considering the introduction of financial penalties or criminal sanctions to deter misleading or deceptive conduct.

3.1 Informed consent and verbal recordings in telemarketing transactions

Recommendation 7:

Publish guidance on the minimum requirements for informed consent to unsolicited transactions.

Recommendation 8:

Require providers to retain a recording of the complete telemarketing call (including the 'pre-sale' part) to demonstrate that informed consent in an unsolicited transaction is present.

1. We believe guidance on the minimum requirements for informed consent may address the recurring problem we observe in unauthorised transfer complaints and in our systemic interventions about the lack of informed consent.
2. We believe a recording of the complete telemarketing call presents a more comprehensive picture of the information given or representations made by the provider during the 'pre-sale' part of the call.

3.1.1 No informed consent is a recurring problem in unauthorised transfer complaints

We have observed that a lack of informed consent is a recurring problem in unauthorised transfer complaints to the TIO and in our systemic interventions about telemarketing practices.

The following list sets out examples of complaints to the TIO in which the consumer alleges a transfer of their telecommunications service without their informed consent:

- the consumer gets incorrect or insufficient information about who the provider is, or why they are being contacted – for example, they are told the provider is their existing provider, or the wholesaler, or the only 'NBN' provider in their area
- the consumer may have only agreed to receive more information from the provider, but is then made to go through the sales confirmation process and their service is then transferred to the provider
- the service is transferred after the provider spoke to a party who is not the account holder, although that party told the provider they were not the account holder
- there is no information given about cooling off rights under the ACL, or the welcome pack sent after the call does not contain this information or the notice to rescind (cancellation notice)
- the provider proceeds with the transfer even after the consumer cancels the transfer within the cooling off period, and
- the consumer is told they have entered into a valid contract and have to pay the charges when the consumer disputes the transfer with the provider.

In our experience, telemarketing is a common business model used by newer entrants and smaller providers in the telecommunications industry. Smaller providers are disproportionately represented in unauthorised transfer complaints when compared to all new complaints to the TIO.

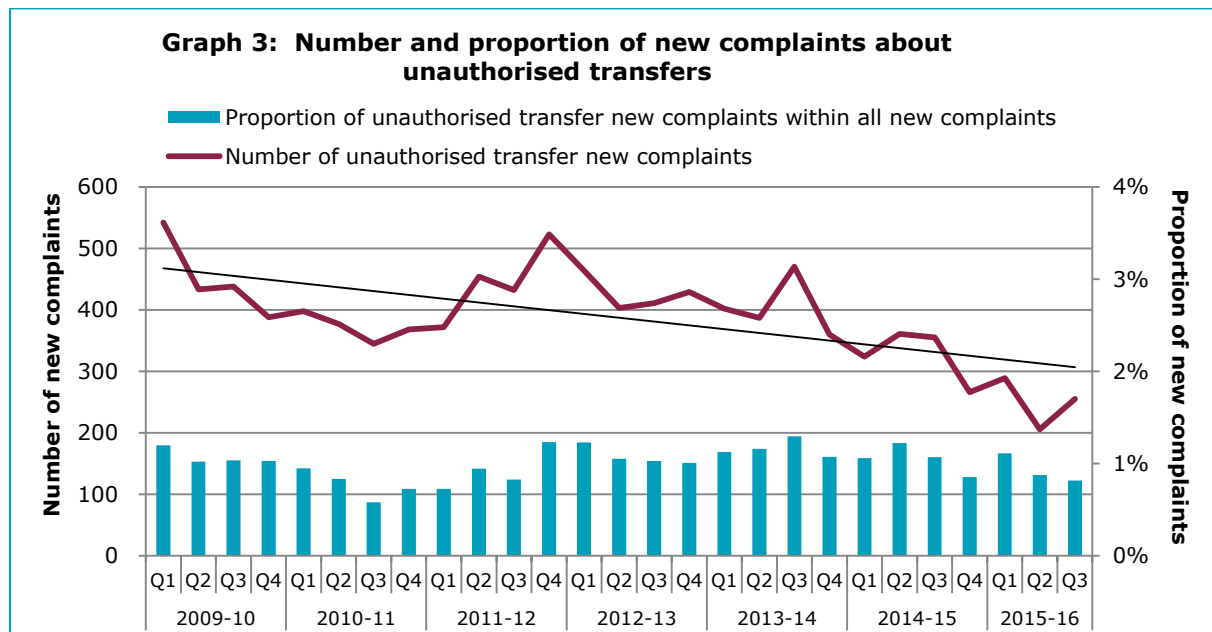
When we engage with new (small) providers, we find they may not be aware of or understand their obligations including those under the ACL and the Telecommunications Consumer Protections Code. Existing providers may be aware of their obligations, but may not have proper processes in place to adhere to these obligations.

As highlighted in **Graph 3**, new complaints to the TIO about unauthorised transfers formed approximately one per cent of all TIO new complaints over the past three and a half years.¹⁶ While this is a small percentage, on average, we recorded 1,600 to 1,700 new complaints about unauthorised transfers each year since 2011-12, with this number decreasing to around 1,400 in 2014-15.

In the first three quarters of 2015-16, new complaints about unauthorised transfers formed 0.9 per cent of all TIO new complaints. On average, we received approximately 250 to 300 new complaints each quarter about unauthorised transfers.

¹⁶ While the number of new complaints about unauthorised transfers has decreased over time (consistent with the overall decrease in TIO new complaints), this decrease could be due to a number of factors, including improved complaint handling practices by telecommunications providers. The relatively steady proportion of new complaints about unauthorised transfers (and our qualitative analysis below) shows there are still issues that the ACL may not have fully addressed.

Around 76.5 per cent of all unauthorised transfer new complaints since 1 July 2013 involved landline services.

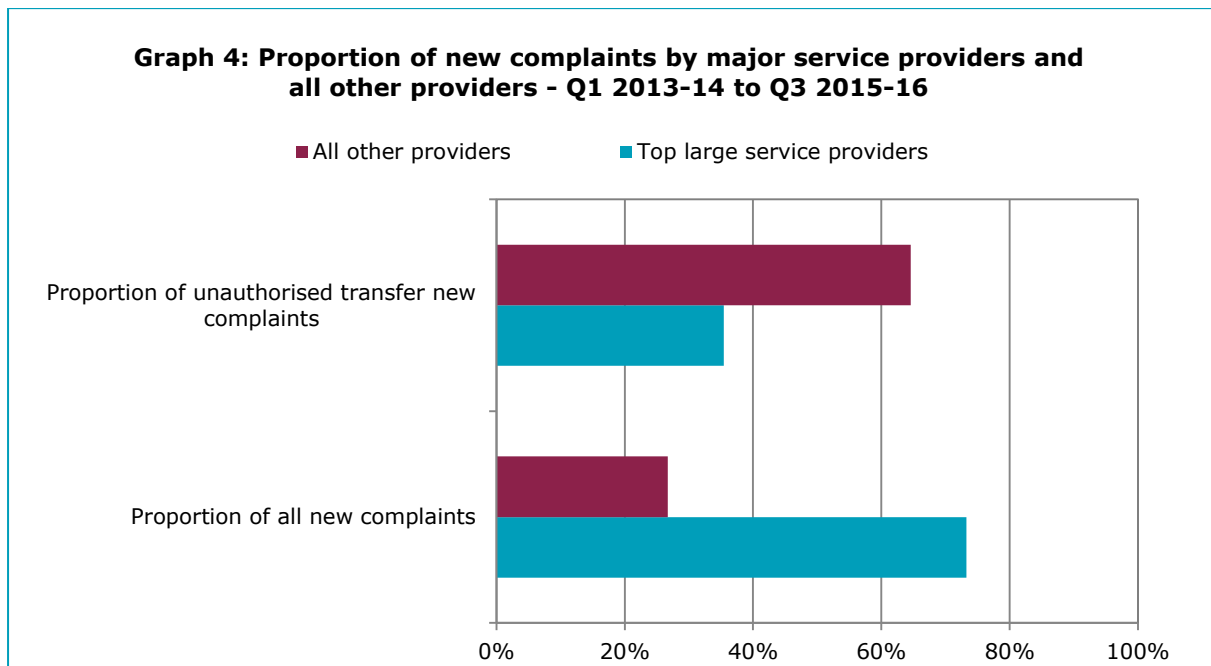


Unauthorised transfer new complaints to the TIO feature disproportionately against smaller providers when compared to the distribution of all new complaints.

As highlighted in **Graph 4**, around 64.6 per cent of unauthorised transfer complaints recorded from 1 July 2013 to 31 March 2016 are about providers other than the top large providers.¹⁷ This means that around three out of five new complaints about unauthorised transfers are registered against one of the smaller providers.

Over the past two and a half years, unauthorised transfer new complaints have been recorded on average against 37 to 40 smaller providers each quarter, primarily about the transfer of landline services. This has involved 146 different smaller providers over the same period.

¹⁷ The top large providers involve the top six provider groups (comprising 18 individual providers).



From 1 July 2014 to 31 March 2016 around 8.1 per cent of consumers who made a complaint to the TIO about unauthorised transfers returned to the TIO with their complaints unresolved. This is higher than the unresolved rate of 7.5 per cent for all TIO complaints over this period. In the same period 91.9 per cent of consumers with complaints about unauthorised transfers did not return to the TIO after referral of their complaints to a designated point of contact at the relevant provider.

The 'consumer voices' or excerpts from written complaints to the TIO in recent months set out in the next page are examples of consumer experiences when they are telemarketed or encounter an unauthorised transfer of their service.¹⁸

¹⁸ These consumer voices are a small sample of consumer experiences and may not be representative of all consumer experiences about this particular issue. The consumer names and other identifiable information in these consumer voices have been changed or modified. The details in these extracts have not been changed.

Consumer voices – unauthorised transfers

13 "My mother received a phone call from a provider telling her that her current provider was closing down, and they would be taking over. My mother felt she had no choice but to change her provider. My mother is 81 years old and had her telephone service for this same number since 1978. My mother admits she agreed to take on this service but only because they had told her that her current provider was being taken over and she had no choice.

The provider told me that my mother had agreed to the offer and the amount owing had to be paid, but if I paid the account no fee would be charged for cancelling the service. The time, concern and stress caused to my mother over this is appalling."

TG, ACT, 2015

14 "I noticed my home internet was not working. I phoned my provider and they told me my contract was cancelled because another company is my new provider, and I had to phone them. After five attempts I finally got to speak with a representative. I asked how and why they managed to have me under a contract as I did not set up an account with them. The dates they gave for when they phoned me I was actually on a boat cruise with no phone service.

It took me a whole week and more long conversations and redirected calls to finally get this service cancelled. I was notified at a later date that both providers were charging me for phone use and line rental! I am definitely not happy that they cancelled my original provider's contract in the first instance."

CW, QLD, 2016

15 "The provider rang my father about changing his telephone provider. My father asked that before he made a decision could the provider please send out any relevant information and forms for his sons to look at, due to him being elderly and not speaking or understanding a lot of English. But he never received anything until he received a bill for \$904.51. His original provider contacted the new provider on his behalf and assured him that the new provider would contact him within 48 hours. But to date no one has.

My father is on a pension and cannot afford to pay this. He also lives on his own and is hard of hearing and does not speak a lot of English."

KR, NSW, 2015

16 "I was contacted to transfer my phone service. I was given a savings estimate over the phone. I agreed and asked for the details to be emailed. Upon receipt of details I rang the provider and asked for the transfer not to proceed based on the incorrect savings given. Two days later my internet was disconnected as the transfer had not been cancelled. My business was unable to operate without the internet. My staff were unable to work.

It took weeks for the provider to correct the issue despite my multiple daily phone calls and discussions with them. As a result my business suffered considerable lost revenue and incurred extra staff costs."

OP, VIC, 2016

17 "I received a call offering me a package for my landline and internet. I was told I would be sent the information to consider about the offer. Shortly after that I started getting bills from them. I had not agreed to transfer my services to them at all.

I contacted my original provider to transfer the service back. But the new provider continued to transfer my service to them many times and each time I had to contact my original provider again to take it back. Yesterday I found out that the new provider took my land line back to them and disconnected it. I did not get any proper advice from the new provider at all – they only keep threatening me."

BP, NSW, 2015

18 "My child told me someone rang his phone saying he owed money for a phone bill. He then received a text saying the service was to be suspended so I called the number given.

Apparently a telemarketer representative of an unknown provider had phoned my house offering a good deal to switch our home phone over to them. My son being a young teen said OK so without them having any information to say he was the authorised account holder they switched our home phone to them.

We never received anything in the mail, email, by phone etc to even be aware until yesterday that this occurred. How can a company call people without having the account details to confirm who they are talking to?

They said they will mark it as an 'unauthorised account' and cancel the account and arrange for it to be changed back to my original provider but that I still need to pay the charges."

GS, QLD, 2015

We analysed a random sample of 50 new complaints about unauthorised transfers and telemarketing practices, to draw out some of the issues that present in these types of complaints.¹⁹ While a small data set, we believe these issues are indicative of the common problems in these types of complaints. These issues are as follows:

(i) Most of these complaints involved smaller providers: Consistent with our overall complaint trends about unauthorised transfers, over 80 per cent of the unauthorised transfer complaints in the sample involved 32 smaller providers.

(ii) Key issues in these unauthorised transfer complaints: Within complaints made about smaller providers, key issues included a lack of informed consent to the transfer, no information given about cooling off rights, the provider accepting a transfer based on the authority of someone other than the account holder of the service, and the clawback of the service when the consumer tried to return to their preferred provider.

Complaints made about larger providers involved issues about the provider not preventing another provider from transferring the service without authorisation, the provider not transferring the service back in a timely manner after an unauthorised transfer by another provider, or about administrative errors resulting in a transfer.

(iii) Problems with the practices of smaller providers. More than half of the sample complaints involved problems with the telemarketing practices of the providers that resulted in the transfer of the services. These problems (some of these overlap) included:

- the consumer being told the provider was one of the larger providers or their current provider, when this was not true
- the consumer only agreeing to receive paperwork so they could think about an offer, but their service was then transferred to the provider
- the service being transferred after the provider spoke to a party who was not the account holder, even where that party told the provider they were not the account holder, and
- the provider going ahead with the transfer even after the consumer cancelled the transfer within the cooling off period.

In one-fifth of the sample complaints, the consumers told us they only became aware of the transfer after receiving their first bill, and had no recollection of having spoken to that provider.

(iv) Clawback of services without consent. One-fifth of the sample complaints involved the clawback of a service without consent of the consumer. In these complaints, the provider clawed back the service after the consumer transferred the service to their preferred provider. In some instances, these clawbacks occurred repeatedly.

(vi) Vulnerable consumers subjected to telemarketing. Six of the sample complaints involved vulnerable consumers who are more likely to be at home (and alone) at the time the telemarketing calls are made. These consumers were elderly, could not understand English or had a mental health issue. Another three complaints involved transfers after the provider spoke to a minor.

¹⁹ This analysis is limited given these complaints reflect what consumers tell us, as we do not collect information from the relevant providers at the referral stage of new complaints. However, our observations from this analysis are consistent with findings from our systemic interventions and investigations into telemarketing practices and unauthorised transfer complaints.

Unauthorised transfers and telemarketing practices form 10 to 30 per cent of the TIO's systemic interventions each year.²⁰

Through our systemic interventions, we have engaged and worked with a number of smaller providers with unauthorised transfer complaints to help them improve their telemarketing sales practices. We have regularly undertaken a number of initiatives²¹ to raise awareness and improve telemarketing sales practices by:

- highlighting and reporting our findings from a number of systemic interventions into potentially misleading sales practices
- providing guidance to smaller providers on how they can improve their telemarketing practices
- providing guidance to consumers about registering on the [Do Not Call Register](#), and what to ask when they receive telemarketing calls, and
- referring providers to regulators after providers failed to improve their practices as the result of a systemic intervention.

Key improvements we observed as a result of our systemic interventions included the affected providers:

- amending the sales scripts that their telemarketers use
- re-training call centre staff on the obligations required for informed consent
- terminating contracts with call centre agencies that were causing the issue
- implementing better quality assurance processes to make sure new customers give informed consent to the transfer
- introducing processes for verification of authorisation of the transfer, and
- transferring affected consumers back to their preferred providers without pursuing outstanding charges.

While we see positive improvements in the practices of the providers we engage with through our ongoing dispute resolution and systemic interventions, we continue to see poor telemarketing practices with new or different providers each year. Sometimes these issues re-emerge with the same provider after a period of improved practices.

Our systemic interventions about unauthorised transfers and telemarketing practices in the first three quarters of 2015-16 currently comprise one-third of all our systemic interventions. Over this period, we have undertaken 17 systemic interventions into unauthorised transfers and telemarketing practices, with 10 of these completed and another seven in progress. All 17 involved different providers.

²⁰ See [TIO Annual Report 2011-12](#) (page 15); [TIO Annual Report 2012-13](#) (page 19); [TIO Annual Report 2013-14](#) (page 13); [TIO Annual Report 2014-15](#) (page 29).

²¹ See the TIO's [report into monitoring telemarketing complaints](#) (2011), the TIO's [guidance about misleading advice about a provider's identity](#) (2011), and the TIO's [update on monitoring misleading telemarketing practices](#) (2013).

Case study 5 is an example of a recent systemic investigation into unauthorised transfers and telemarketing practices of a small provider.

Case study 5: Systemic investigation into unauthorised transfers and telemarketing practices

Background

We received several complaints from consumers suggesting there was a systemic issue regarding Provider E's telemarketing practices and unauthorised transfers.

Complaints included that Provider E:

- telemarketed consumers multiple times on the same day
- gave the impression that its telemarketers were calling from the consumer's current provider
- transferred services without authorisation
- charged consumers while they were still being charged by their previous provider
- did not offer the correct cooling off period and did not provide a copy of the agreement within the required time
- provided inadequate point of sale advice about the cost of the service, internet speed and contract length, and
- charged a termination fee and pursued debt collection if a consumer transferred their service back to their preferred provider.

Systemic interventions and investigation

We carried out a number of informal systemic interventions into Provider E's telemarketing practices, and a formal systemic investigation. We provided feedback to Provider E about the systemic issue and potential areas of non-compliance, including:

- the call recordings did not demonstrate the consumer had provided informed consent to transfer their service
- Provider E's training package needed to be updated as it referred to the Trade Practices Act, with some of the information simply collated together from government websites and not relevant to call centre employees
- the Critical Information Summary needed to be provided as a separate document under the Telecommunications Consumer Protections Code, and not as part of the welcome pack
- although Provider E had some quality assurance procedures in place, these were not effective, and
- Provider E needed to improve its identification of systemic issues and take action to address the root cause of complaints.

Over this period, Provider E said it had taken a number of corrective measures. These included provision of new training packages for its call centre staff, updated welcome pack information and improved authorisation and verification processes. However, we continued to receive complaints about Provider E's practices every few months after it

took these corrective measures.

As part of the formal systemic investigation Provider E gave us copies of recordings of its telemarketing calls. We were concerned about the content of the recordings and the conduct of Provider E's staff during the telemarketing sales transactions. We held a face-to-face meeting with the provider to discuss our feedback and concerns.

Provider E accepted our feedback about the systemic issue, and other areas of non-compliance. Provider E continued to engage with us and provided regular updates on the actions it had taken to address the issues.

TIO assessment

Provider E's further improvements appear to have addressed the systemic issue, and complaints to the TIO about this issue have reduced. We continue to monitor the systemic issue.

3.1.2 Retaining a recording of the complete telemarketing call

A recording of the complete telemarketing call presents a more comprehensive picture of the information given or representations made by the provider during the 'pre-sale' part of the call. Requiring all of the call to be recorded may also drive better conduct by providers in the initial part of the conversation.

Over the past two years, around 8.1 per cent of consumers with complaints about unauthorised transfers returned to the TIO with their complaints unresolved. These complaints progressed through our conciliation process to help the parties reach resolution.

During our conciliation process and in systemic interventions (see section 3.1.1 above), we ask for the full recordings to assess each party's point of view as to what transpired during the telemarketing and sales transaction. The verbal recordings usually contain only the final section of the sales transaction, without the full details of the conversation being recorded. When full recordings are produced by the provider, these typically show that the verbal authorisation stage is 30 to 40 minutes into the conversation with the consumer. The full recordings also show consumers may be misled during the 'pre-sale' part of the transaction and as a result, they may remain misled in the verbal authorisation stage when they say 'yes' to the transfer.

This was a gap identified by the ACCC when it undertook enforcement action against Zen Telecom Pty Ltd for its telemarketing practices in remote Indigenous communities.²²

An abridged transcript of the first few minutes of the 'pre-sale' part of a telemarketing transaction extracted from a call recording relating to a recent complaint to the TIO is

²² See [ACCC Media Release in October 2014](#). In commencing these proceedings, the ACCC identified that "...Zen Telecom's methodology was to cold-call consumers to promote the sale of fixed line telecommunications services. During the first "marketing" part of a number of calls, representations were made by Zen Telecom representatives that the call was from a business or company associated with Telstra. This first part of the telemarketing calls was not recorded by Zen Telecom, although the subsequent phase which involved negotiating an agreement was recorded. The ACCC was concerned that by the time consumers progressed to the second stage of the call where they agreed to acquire services from Zen Telecom, they had already been misled by misrepresentations of an association or affiliation with Telstra which had been made during the marketing part of the call." The Federal Court found that Zen Telecom had engaged in misleading and deceptive conduct during these telemarketing calls, and also breached the unsolicited agreement provisions of the ACL.

set out in **Box 1**. The nature of the telemarketing practices as reflected in this transcript is similar to what we hear in other call recordings obtained through our systemic interventions or dispute resolution processes.

Our analysis and observations in section 3.1.1 and **Case study 5** above provide further detail about this issue.

Box 1: Abridged transcript of 'pre-sale' part of telemarketing transaction

Telemarketer: Hello, sir, I'm not selling anything. It's a call to fix an appointment for you. For the NBN service... I believe you're aware of the fact that you have to switch onto an NBN line... if you don't switch over to NBN, you will lose your home telephone, sir.

Consumer: Yeah, well, I can't do that.

Telemarketer: That's correct. So that's right - and the entire setup is coming to you totally free of charge. You're not paying for it. It's a government national project... Are you the authorised person on the account?

Consumer: No.

Telemarketer: Who is authorised? Your Mum? Or your Dad?

Consumer: Mum.

Telemarketer: Alright, can you put your mum on the phone? I need to take the authorisation from your Mum.

Consumer: Uh, she doesn't speak English.

Telemarketer: Alright. Just tell her to say 'yes, we do authorise you on this telephone'... I just need a 'yes' from her. Just one 'yes.' I'll just ask the question, and she can say 'yes.' Because this call is being recorded, you know.

Consumer: Hold on a second. She's very old. Okay. [pause]

Consumer's mother: Hello?

Telemarketer: Yes, Mrs X? Do you authorise -

Consumer's mother: Yes.

Telemarketer: Do you authorise your son on your behalf to make decisions about this phone? Is that a yes?

Consumer's mother: Yes.

Telemarketer: Okay, give me your son... Okay, so your telephone bill is going to be \$59.95 per month, write it down.

Consumer: No, hang on a minute. But I want to get my own provider.

Telemarketer: Your provider is providing a service on the Telstra line now. The Telstra line is getting disconnected permanently. You have to switch over to an NBN line... Now... this is coming to you as a 24 month contract...

Consumer: A 24 month contract? Yeah, but what if I want to get my own provider?

Telemarketer: Now you know that your provider is providing your service on the Telstra line. Copper wires. Now that copper wire is getting disconnected permanently. Telstra is not providing any more network. It's going to be NBNco. It's a government national project. And it's not only happening with you, it's happening with everyone in Australia. And they have to switch onto an NBN line. Alright?

Consumer: Okay.

Telemarketer: Now, I'll just do a quick verbal authorisation...

3.2 Telemarketing practices and vulnerable consumers

Recommendation 9:

Consider introducing a requirement for consumers to opt-in after the telemarketing transaction, or alternatively, the prohibition of practices that take unfair advantage of vulnerable consumers.

Recommendation 10:

Implement targeted awareness initiatives to promote registration on the Do Not Call Register for vulnerable groups of consumers.

We recommend requiring consumers to opt-in after a telemarketing transaction (or prohibiting unfair telemarketing practices), and promoting registration on the Do Not Call Register, because these measures may protect vulnerable consumers. We believe vulnerable consumers are more likely to be impacted by telemarketing practices that ignore or take advantage of their vulnerability.

One approach to telemarketing practices that unfairly impact on vulnerable consumers could be to require consumers to opt-in (after the telemarketing or sales conversation) instead of cancelling during a cooling off period. This would help consumers confirm and be sure of their decision to purchase the product or service, and save compliance costs for providers. While an opt-in process may not be the only available solution, consideration needs to be given to better protections for vulnerable consumers than a cooling off period.

Alternatively, the [European Union Directive on Unfair Commercial Practices](#) (the EU Directive) is a model that could be considered in the ACL Review. The EU Directive covers omissions as well as unfair practices. The EU Directive prohibits certain behaviours by setting this out in a 'black list', with no need to prove the behaviours have caused or could cause consumer harm. The EU Directive also protects vulnerable consumers, measuring what is unfair based on an average person within that vulnerable group.

The Do Not Call Register enables consumers who register with it to opt out of unsolicited telemarketing calls and marketing faxes permanently. Targeted awareness initiatives to promote registration on the Do Not Call Register by vulnerable groups of consumers may help reduce consumer harm.²³

In several systemic interventions we undertook about unauthorised transfers, we identified complaints that suggest providers do not take appropriate steps to identify vulnerability in consumers they contact or to cease telemarketing when this is identified. In some of these complaints, providers insist the unsolicited sales transaction is valid and the consumer was not misled, although the call recording demonstrated a clear and obvious vulnerability. **Case study 6** is an example of this.

²³ Anecdotally, we are aware through our systemic interventions that a number of consumers with unauthorised transfer complaints are not aware of the Do Not Call Register.

Case study 6: Telemarketing a vulnerable consumer

A Government agency made a complaint to the TIO on behalf of Mr Grey. It said Mr Grey was elderly and had no immediate family to assist him in handling his complaint. Mr Grey also experienced vision and hearing impairments, and had difficulty participating in telephone calls.

In October 2013, Mr Grey received a telephone call from Provider F. At the time, Mr Grey thought he was talking to his existing provider. The caller did not tell Mr Grey which provider they were calling from until more than 20 minutes into the call. The caller also mentioned Mr Grey's existing provider at the start of the call. The caller told Mr Grey that he was entitled to a pensioner discount, and all he had to do was give the caller his Medicare number and bank details.

Throughout the call, Mr Grey told the caller he was hard of hearing. He also had difficulty repeating information back to the caller when asked.

Mr Grey's services were transferred to Provider F. It is not clear if Mr Grey received information in the mail about the contract with Provider F or his cooling off rights.

Following the transfer of Mr Grey's service, Provider F was placed into administration and transferred its customer base to Provider G. Provider G was also placed into administration and transferred its customer base to Provider H. It appears Mr Grey's services were transferred on both occasions, and Mr Grey was not advised by Provider G or Provider H that they were his new provider.

Mr Grey received another unsolicited telemarketing call from an unrelated provider, Provider O. Mr Grey's services were then transferred to Provider O without his consent, and Provider H charged him an early termination fee, relating to the original contract with Provider F.

Mr Grey's complaint was raised with the TIO when he received a demand for payment from a legal firm acting for Provider H. The demand for payment included monthly service charges, early termination fees and legal costs. Mr Grey made a payment towards the debt because he was worried what would happen if he didn't.

After we referred Mr Grey's complaint to Provider H it gave us a copy of the call recording and asked for medical evidence of Mr Grey's health issues. This was provided. However, Provider H said it believed Mr Grey understood the contract and was liable for the charges.

To help Provider H and Mr Grey reach a resolution we conciliated and later investigated Mr Grey's complaint. During our investigation, Provider H continued to contact Mr Grey demanding payment of the disputed charges. This stopped on our request.

Initially, Provider H offered to waive the outstanding charges, but it would not refund Mr Grey the money he paid towards the debt after he received the demand for payment. Following the conclusion of our investigation, Provider H refunded all charges to Mr Grey. We then closed the investigation.

Telemarketing calls to residential premises are allowed during business hours on weekdays. People who are home during business hours to receive calls on their landlines (e.g. the elderly or minors) are more likely to be vulnerable to telemarketing pressures (see the analysis in section 3.1.1 and **Case study 6** above). Poor telemarketing practices that distort the consumer's understanding of the service, how much it costs, how it works and which provider is offering it, reduce the consumer's ability to make informed choices about goods or services that meet their needs.

These practices are particularly of concern if they target groups of consumers who are more vulnerable, for example, contacting elderly consumers in retirement villages (see **Case study 7**) or selling mobile services to remote Indigenous communities in areas where there is no mobile coverage.²⁴

Case study 7: Unauthorised transfer of a vulnerable consumer's service

Ms Purple is 87, has dementia, and is a permanent resident of a nursing home. Ms Purple's daughters have power of attorney and are the only people authorised to make changes to Ms Purple's phone service.

Provider I contacted Ms Purple by phone and transferred her service without authorisation of Ms Purple's daughters. The service was returned to Ms Purple's original provider, however Provider I kept calling Ms Purple demanding payment of service charges. Ms Purple's daughters contacted Provider I on multiple occasions and were told that Provider I was looking into the matter, however the phone calls to Ms Purple did not stop.

Ms Purple's daughters contacted the TIO. After we referred the complaint to Provider I's designated complaint handling area, Provider I waived all the charges, finalised the account and stopped calling Ms Purple.

²⁴ See for example, the [ACCC Media Release in September 2012](#) about the Federal Court orders for pecuniary penalties against EDirect Pty Ltd trading as VIPtel Mobile for telemarketing and contracting consumers in remote and regional Indigenous communities who had no mobile network coverage where they live; and the [ACCC Media Release in April 2013](#) about the Federal Court orders against Excite Mobile Pty Ltd for engaging in misleading and unconscionable conduct through its telemarketing practices that represented to consumers in remote indigenous communities that mobile phone coverage was available when this was untrue. This enforcement action also covered a range of other unconscionable conduct, including representations that complaints about Excite Mobile were being handled by an independent organisation and debts had been referred to debt collection, when these were untrue.

3.3 Clawbacks are unauthorised transfers

Recommendation 11:

Implement targeted guidance and compliance initiatives to reduce the incidence of or reliance on clawback clauses in telecommunications agreements.

We recommend targeted guidance and compliance initiatives to reduce clawback clauses. This is because clawbacks by providers amount to an unauthorised transfer as there is no informed consent or authorisation by the consumer.

As indicated in our analysis in section 3.1.1 above, one-fifth of the sample complaints we reviewed about unauthorised transfers related to 'clawbacks'. Clawbacks involve the provider that initially telemarketed and transferred the consumer's service, taking back the service if the consumer tries to transfer the service to their preferred provider. This can result in considerable difficulties and distress for the consumer when they try to resolve this issue, or sometimes the loss of the number or the disconnection of the service as a result of the clawback (such as the case in Consumer voice 18).

Providers rely on terms in their standard forms of agreement as the basis for these clawbacks. It is likely that terms that allow a provider to take back a service without the consumer's consent are potentially unfair terms. A provider's reliance on this type of term can result in difficulties for its customers, as highlighted in **Case study 8** below.

Case study 8: Clawbacks and unauthorised transfers

In late September 2015, Ms Cyan transferred her service from Provider J to Provider K.

Following this, her service was transferred back to Provider J without her authority. Ms Cyan tried to transfer her service to Provider K three more times, but each time Provider J would claw it back. On the fifth time, in October 2015, the transfer was successful.

When Ms Cyan contacted Provider J she was told she had not completed and submitted the necessary forms to enable the transfer. Provider J also relied on a clause in its standard form of agreement that allowed it to cancel a transfer if the relevant forms were not completed, or if Ms Cyan owed it money. Provider J then issued a bill for service charges for October. Ms Cyan disputed this, and contacted the TIO.

The TIO position statement [Transfer of services](#) sets out our view that a losing service provider should not prevent a transfer because of outstanding debt, or take back a transferred service without the informed consent of the person authorised to transfer the service.

After we referred the complaint to Provider J's senior level of complaint, Provider J told Ms Cyan there would be no further charges and the bill for October 2015 would not be pursued. However, Provider J continued to send her bills, letters of demand and a notice that Provider J intended to report a credit default. We started conciliation of Ms Cyan's complaint.

During conciliation Provider J offered to credit all charges and close the account as it had originally offered. The consumer accepted this and we closed the complaint.

3.4 Extending unsolicited agreements protections to more small businesses

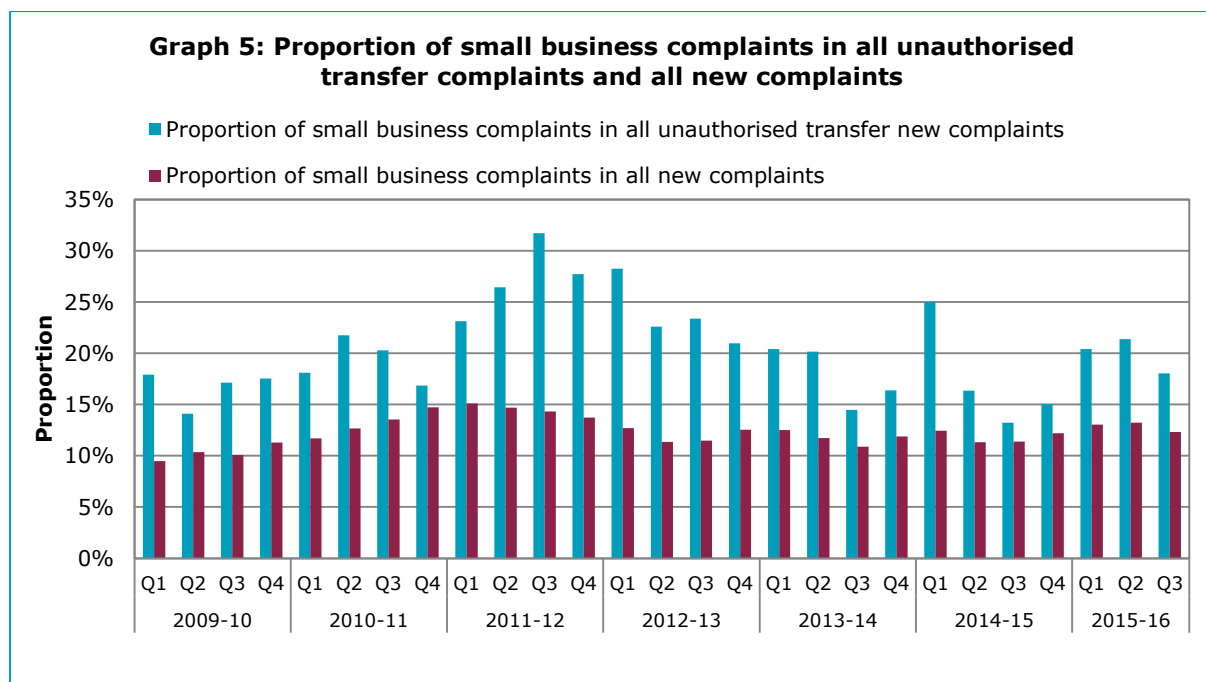
Recommendation 12:

Extend the unsolicited agreements protections to more small business consumers by using the unfair contract terms threshold of the upfront price payable being less than \$300,000, or \$1 million for contracts longer than a year.²⁵

We recommend extending the unsolicited agreements protections to a wider group of small businesses because small businesses are more represented in complaints to the TIO about unauthorised transfers and may not always be protected by the current unsolicited agreements provisions.

As shown in **Graph 5**, new complaints to the TIO from small business consumers formed approximately 12.1 per cent of all TIO new complaints over the past three and a half years. On average, we recorded 4,000 to 5,000 new complaints from small businesses each quarter in 2012-13 to 2013-14, with this number decreasing to around 3,000 to 4,000 each quarter in 2014-15.

The proportion of complaints to the TIO from small businesses about unauthorised transfers is not consistent with the proportion of small business complaints in all new complaints. Small businesses are more heavily represented in complaints about unauthorised transfers – forming 19.7 per cent of all unauthorised transfer new complaints over the past three and a half years. While these complaints are much smaller in number – averaging 80 to 90 new complaints each quarter across 2012-13 to 2013-14, and 50 to 60 new complaints each quarter across 2014-15 – they indicate that small businesses are disproportionately affected by poor telemarketing practices and unauthorised transfers with their services.



²⁵ From November 2016, the unfair contract terms protections will be extended to contracts for the supply of goods or services to a small business of less than \$300,000 or \$1million for contracts longer than a year.

Some small businesses are not protected by ACL provisions for consumer guarantees or unsolicited agreements if the value of the telecommunications contract is more than \$40,000 (and this threshold could be reached or exceeded if the contract is for four to five years), and if the type of telecommunications product is not one that is ordinarily acquired for personal, domestic or household use or consumption.

The TIO has previously dealt with complaints about unsolicited sales of telecommunications services bundled with finance leases for non-telecommunications equipment on four to five year contracts, targeted at small businesses. These sales resulted in small businesses having to pay thousands of dollars for finance leases for equipment such as plasma TVs, photocopiers or laptops, and more expensive telecommunications services. The equivalent state based fair trading protections for unsolicited agreements did not apply to these small businesses because the amounts disputed exceeded the \$40,000 threshold.

Enforcement action by the ACCC in 2008 against a number of companies involved in this type of business model resulted in declarations by the Federal Court in 2012 that some of these companies engaged in misleading and deceptive conduct and third line forcing.²⁶ Complaints to the TIO about this type of model reduced significantly since this decision.

While we now rarely see these types of complaints, we do see modified versions of this business model that target small businesses via solicited and unsolicited methods. Small businesses are offered equipment on finance leases, as part of a bundled deal with their telecommunications services. Problems occur when the small business disputes what they have contracted for or are not aware of the finance agreements. See for example **Case studies 9** and **10**.

²⁶ See [ACCC Media Release in April 2012](#) about the Federal Court declarations against Clear Telecoms (Aust) Pty Ltd and others.

Case study 9: Bundled telecommunications services and equipment on a finance lease

In August 2013 Ms Black, after receiving a Provider L brochure advertising business services, arranged for a Provider L technician to visit her childcare business. Ms Black's business required a phone system, several phone lines, and internet access. The technician confirmed Provider L could provide all required services, so Ms Black agreed to a contract.

A month later Provider L replaced Ms Black's existing phone system. It then told Ms Black it could not connect an internet service until the business changed internet wholesaler. Provider L would arrange this at a cost of \$750, and there would be a significant downtime when internet would not be available at the premises.

Ms Black told Provider L she was unhappy with the inability to fulfil the contract as previously agreed. She asked to cancel the contract with no termination fees and return her services to their previous set up. Provider L responded saying a \$5,000 cancellation fee would be applied for the phone and internet services, and an additional \$5,000 cancellation fee would be applied for the equipment already supplied.

Ms Black complained to the TIO.

Provider L told us Ms Black had signed three contracts at the same time. The first was a 24 month contract for landline, internet and mobile services with Provider L. The other contracts were with a finance company called ABC Finance. One was a 60 month agreement for the supply of phone system equipment, and the other was for maintenance of the phone system equipment.

Provider L offered to release Ms Black from the landline, internet and mobile services contract without a cancellation fee. However, it told us it was not liable for cancellation fees for the ABC Finance contracts.

Ms Black told us she was unaware the three agreements were separate. She believed she made one contract with Provider L.

During conciliation we raised the fact that Provider L was aware at point-of-sale that Ms Black's internet services were supplied by a provider it had no wholesale relationship with. We considered the fact that the equipment and maintenance were discussed with Ms Black as part of the bundle of services as a whole, that ABC Finance did not independently accept Ms Black as a customer, and that it was Provider L that was billing Ms Black for the equipment and maintenance charges, not ABC Finance.

The case was resolved when Provider L agreed to pay out ABC Finance's cancellation fees.

Case study 10: Bundled telecommunications services and equipment on a finance lease

In May 2015 Mr Burgundy agreed to a 24 month contract with Provider M. The contract was for phone services and associated equipment. Mr Burgundy told us that Provider M's representative filled in the front page of the contract and gave it to Mr Burgundy to sign, along with other pages that Mr Burgundy assumed were part of the contract. Mr Burgundy was not given a copy of the contract.

Mr Burgundy received bills for services before the agreed contract start date and before any equipment was received, so he contacted Provider M.

He discovered that he had been entered into three separate contracts. The first was a 24 month contract for one landline. The second was a 36 month contract for three other lines, and the third was a 60 month contract with a finance company called DEF Finance for the supply of the equipment.

One of the contract start dates was different from the others. Also, a 'guarantor' section of the contract that Mr Burgundy remembered as being left blank was now filled in, along with Mr Burgundy's signature. However, the signature in this section did not match Mr Burgundy's signature in other sections of the contract.

Mr Burgundy contacted the TIO and told us he wanted Provider M to release him from the three contracts without cancellation charges, and take back the equipment.

Although Provider M told us it had evidence that contradicted Mr Burgundy's claims, it did not show us this evidence and instead agreed to resolve the complaint according to Mr Burgundy's request.

3.5 Poor telemarketing practices that continue or re-emerge

Recommendation 13:

Implement targeted education, guidance and compliance initiatives to address the poor or unsatisfactory telemarketing practices by providers.

Recommendation 14:

Consider introducing financial penalties or criminal sanctions to deter misleading or deceptive conduct.

We recommend targeted education, guidance and compliance initiatives, and the introduction of financial penalties or criminal sanctions for misleading or deceptive conduct, because we continue to see poor telemarketing practices with new or different providers each year or see these practices re-emerge with the same providers.

From the TIO's experience in dealing with providers that establish business models around telemarketing practices that potentially mislead or deceive consumers, there are no obvious deterrents to such practices.

As stated in section 3.1.1 above, the TIO has worked with a number of small providers to improve their telemarketing practices through our systemic interventions. We have also referred non-compliance to the regulators. The ACCC has taken a number of enforcement actions about misleading or poor telemarketing practices by telecommunications providers.²⁷

While there are improvements, we continue to see potentially misleading conduct or poor telemarketing practices with new or different providers each year, or see these practices re-emerge with existing providers (see for example, **Case study 5** and our analysis in 3.1.1).

Another factor that contributes to the re-emergence of poor telemarketing practices and unauthorised transfer complaints is the potential for these providers to easily cease trading, with their customer base being taken over by another new provider. The new provider may have a similar name and management team, and may adopt similar transfer practices as that of the previous provider. We see this pattern or 'phoenix' type behaviour occur more frequently with providers who use telemarketing as their business model. See for example, **Case study 6** above and **Case study 11**.

The ACL does not presently include specific financial penalties and criminal sanctions for organisations that engage in misleading or deceptive conduct.

²⁷ For example, see the section 87B enforceable undertaking obtained by the ACCC against Utel Networks Pty Ltd for non-compliance with the unsolicited agreements provisions in the ACL (June 2013): <http://registers.accc.gov.au/content/index.phtml/itemId/1116902>; the Federal Court orders for pecuniary penalties following proceedings by the ACCC against Startel Communications Co Pty Ltd for misleading telemarketing practices and non-compliance with the unsolicited agreements provisions in the ACL (April 2014): <http://www.accc.gov.au/media-release/startel-to-pay-320000-for-telemarketing-breaches-of-consumer-law>; the Federal Court orders for pecuniary penalties following proceedings by the ACCC against Zen Telecom Pty Ltd for misleading conduct and non-compliance with the unsolicited agreements provisions in the ACL (October 2014): <http://www.accc.gov.au/media-release/zen-telecom-to-pay-225000-for-telemarketing-breaches-of-the-acl>.

Case study 11: Unauthorised transfer of services and phoenix like behaviour

In June 2015, Provider N called a restaurant to offer a transfer of phone services. Provider N spoke to the floor manager of the restaurant, who asked Provider N to email the restaurant more information about the services. After receiving the information, the restaurant owner, Ms Red, emailed Provider N to say she did not want to transfer the phone services.

In July, Provider N sent the restaurant a modem. Ms Red contacted Provider N and discovered the phone services had been transferred to it.

Ms Red told Provider N that Provider N had not spoken to anyone with the authority to transfer the phone service. Further, even if the floor manager had had authority to transfer the service, Ms Red had contacted Provider N and declined the services well within the cooling off period required by the ACL for unsolicited sales made by phone. Ms Red told Provider N that since no transfer had been authorised or agreed to, the subsequent delivery of the modem and transfer of phone services constituted unsolicited services under the ACL, for which it was unlawful to seek payment.

Provider N responded by saying it would only reverse the transfer if Ms Red paid it \$115 for the services.

Ms Red complained to the TIO. After we conciliated the complaint, Provider N reversed the transfer and waived all service charges. We undertook a systemic investigation with Provider N about its transfer practices, which resulted in some improvements.

Three months later Provider N ceased trading. Another provider, with a similar name and management team, took over Provider N's customer base and began using similar transfer practices to those of Provider N from before our systemic investigation. We currently have an open systemic investigation with the new provider.

It must be noted that the predecessor of Provider N also had a history of poor transfer practices before it ceased trading and sold its customer base to Provider N.

4. Emerging issue: Adequacy of existing protections for third party content purchases

Recommendation 15:

Consider the adequacy of the ACL to respond to new ways in which digital products and services are sold, including via a mobile service or network-connected device.

We believe the ACL needs to be able to respond to new ways in which digital products and services are sold to consumers. This is because a recent increase in complaints to the TIO about third party content purchases via a mobile service or network-connected device indicates a gap in existing protections.

Since early 2015, we have seen a gradual increase in new complaints to the TIO about third party content purchases. These complaints are about mobile premium services where content is delivered by way of text messages using a 19 shortcode, or about direct carrier billing where content is delivered online via a mobile service or network-connected device. Both mechanisms involve the consumer being charged for the content purchases by their telecommunications provider, either via their mobile bill or by deducting pre-paid credit (if this is enabled on the consumer's service).

While mobile premium services and direct carrier billing are enabled and operate differently, complaints to the TIO present in a similar manner. Complaints to the TIO suggest consumers are not able to differentiate between mobile premium services and direct carrier billing, how each works, or how content is subscribed. In a number of these complaints, when consumers disputed charges for third party purchases, the provider initially said it could not assist and referred the consumer back to the content provider. These complaints were generally resolved with either the telecommunications provider or the content provider offering a refund or waiver.

The specific protections for mobile premium services currently in place²⁸ do not apply to content purchases made via direct carrier billing, although the protections provide guidance on good industry practice. The ACL contains general protections such as the prohibition against misleading or deceptive conduct. However, the ACL may not be sufficiently flexible to address how direct carrier billing is enabled on a mobile service, the multiple parties in the supply chain (the content provider, the aggregator, the online store e.g. Google Play, and the telecommunications provider), and which party is responsible for resolving a problem with faulty content or for incorrect charges.

Direct carrier billing is an example of the way the digitisation of the economy keeps ahead of regulatory protections, and why the ACL needs to be robust and future proofed to deal with new ways in which digital products and services are sold to consumers.

²⁸ [Telecommunications Service Provider \(Mobile Premium Services\) Determination 2010 \(No. 1\)](#); and [Telecommunications Service Provider \(Mobile Premium Services\) Determination 2010 \(No.2\)](#); Mobile Premium Services Code 2009, subsequently replaced by the [Mobile Premium Services Code 2011](#) (as varied in 2014).

Mobile premium services

In 2006 to 2008, we saw large numbers of complaints relating to mobile premium services where third party content was delivered by way of text messages using a shortcode beginning with 19. This content included ringtones, horoscopes, quizzes and competitions. Consumers were charged at premium rates for content delivered via text message. These charges could amount to hundreds of dollars very quickly over short periods. The problems associated with mobile premium services included inaccurate or no point of sale information, lack of informed consent and subscriptions for content the consumer did not request, and a lack of spend management controls or tools to block mobile premium services or manage expenditure for these content purchases.²⁹

Two legislative instruments³⁰ and an industry code³¹ were developed and implemented to address the problems associated with mobile premium services. The numbers of mobile premium services new complaints to the TIO decreased significantly after the introduction of these initiatives – reducing from a high of around 13,500 new complaints in 2008-09 (7.7 per cent of all new complaints) to around 1,500 in 2013-14 (1.1 per cent of all new complaints).

The specific protections that apply for mobile premium services include:

- clear information at the point of sale and at regular intervals that these services can be blocked or barred, and how to do this
- a double opt-in process when mobile premium content is purchased
- clear information about how much each subscription costs, the frequency of the subscription, and how to stop the subscription, and
- timeframes for cancellation of the subscription once a stop request has been sent by the consumer.

Direct carrier billing

Direct carrier billing allows consumers to make content purchases (for example, apps, games and entertainment) on a mobile device or network-connected tablet without the need to enter their bank or credit card details. Instead, the consumer's provider pays the content provider for the content, and then charges the consumer directly for the content, either through their mobile bill or by deducting pre-paid credit (if this is enabled on the consumer's service).³²

A key issue with direct carrier billing is that a consumer's mobile account is used to pay for purchases made online via the consumer's mobile service. While this may present a convenient payment option for some consumers, it is important that consumers understand how direct carrier billing works and how they may be charged for content purchases. This function may be automatically enabled on a mobile service, and

²⁹ See [TIO submission on the Review of the Mobile Premium Services Code \(April 2014\)](#) and [TIO submission on the draft changes to the Mobile Premium Services Code \(August 2014\)](#) for more background information about mobile premium services complaints.

³⁰ [Telecommunications Service Provider \(Mobile Premium Services\) Determination 2010 \(No. 1\)](#); and [Telecommunications Service Provider \(Mobile Premium Services\) Determination 2010 \(No.2\)](#).

³¹ Mobile Premium Services Code 2009, subsequently replaced by the [Mobile Premium Services Code 2011](#) (as varied in 2014).

³² Australian Media and Communications Authority, [The 101 of direct carrier billing](#), November 2015.

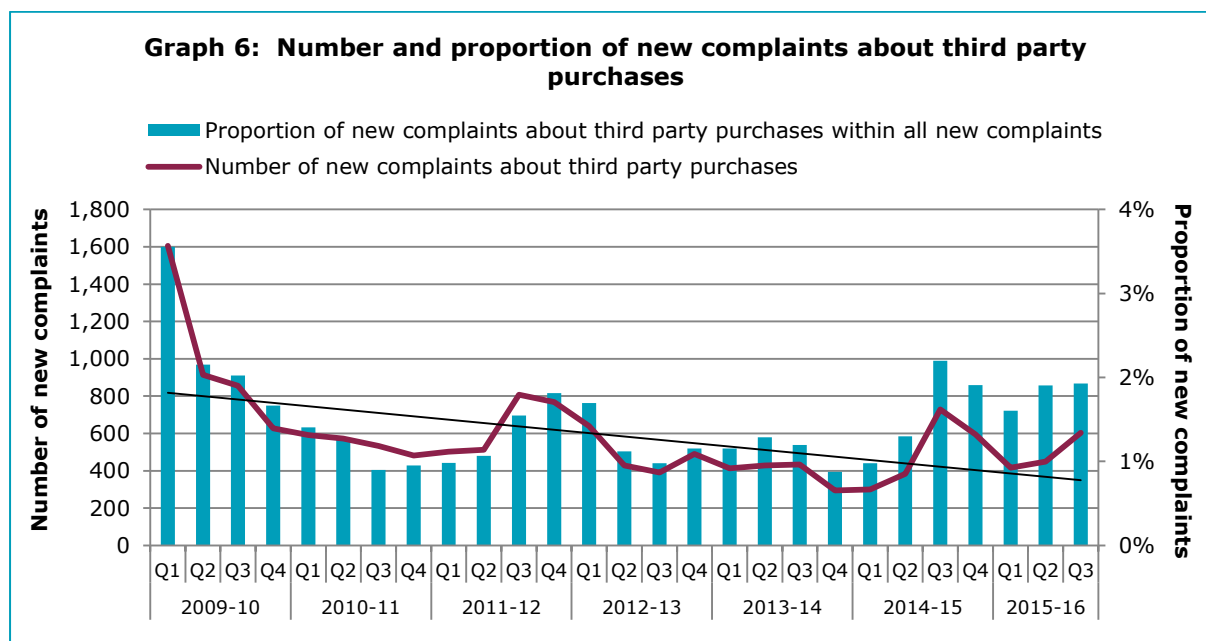
consumers may not be fully aware that third party purchases can easily be made as a result.³³

Another issue with direct carrier billing is the presence of multiple parties in the supply chain for third party content namely, the content provider, the aggregator, the online store (e.g. Google Play), and the telecommunications provider. Consumers may not know which party to approach for help, and which party is responsible for resolving a problem with faulty content or for incorrect charges. It is also not clear how current ACL protections would apply to the different parties within this supply chain.

Since early 2015 we have seen a gradual increase in new complaints to the TIO about third party content purchases. We are not able to identify which of these complaints relate to mobile premium services and which relate to direct carrier billing, as consumers who complain to us are unable to tell us how these purchases were made, or who is providing them. Because of this, TIO new complaints about third party purchases can include mobile premium services and purchases made through direct carrier billing.

Graph 6 shows the number and proportion of new complaints to the TIO about third party purchases since 2009-10. These complaints formed, on average, 1.4 per cent of all TIO new complaints over the past three and a half years. On average, we recorded 1,500 to 1,900 new complaints each year since 2012-13, with this number increasing to 2,000 in 2014-15.

In the first three quarters of 2015-16, new complaints about third party purchases formed 1.8 per cent of all TIO new complaints. Over this period, we received approximately 450 to 600 new complaints each quarter about third party purchases.



From 1 July 2014 to 31 March 2016, around 3.6 per cent of consumers who made a complaint to the TIO about third party purchases returned to the TIO with their complaints unresolved. This is lower than the unresolved rate of 7.5 per cent for all TIO complaints over this period. In the same period, 96.4 per cent of consumers with complaints about third party purchases did not return to the TIO after referral of their complaints to a designated point of contact at the relevant provider.

³³ Australian Media and Communications Authority, [The 101 of direct carrier billing](#), November 2015.

The 'consumer voices' or excerpts from written complaints to the TIO in recent months set out in the next page are examples of consumer experiences with third party purchases (either via mobile premium services or direct carrier billing).³⁴

³⁴ These consumer voices are a small sample of consumer experiences and may not be representative of all consumer experiences about this particular issue. The consumer names and other identifiable information in these consumer voices have been changed or modified. The details in these extracts have not been changed.

Consumer voices – third party purchases

19 "A company is charging me for using a game at 8.35am each Sunday morning. This is at a time when nobody is home, the internet service is locked in the house, and my wife and I are bushwalking in an area with no mobile service. My provider explained that an account was created by clicking on a banner ad.

Firstly you don't click on an advertisement on a mobile service, you touch it, and equally you can accidentally touch it. Secondly, this system doesn't seem to allow for adequate authorisation of charges, if a simple touch locks in ongoing charges. Thirdly, the games seem to be playing by themselves every Sunday.

My provider told me to contact the company. If the charges are billed by my provider, they should ensure proper authorisation occurs."

LN, QLD, 2015

20 "I was reading a website on my mobile. I clicked on a 'test your IQ' survey. After answering five questions I received a text telling me I had 'subscribed' to a service. I texted back STOP and also called my provider. My provider explained to me I had purchased and subscribed to a third party service. My provider told me they had stopped future payments but I would have to call the third party company myself to get the first payment back. I asked why my provider couldn't do this as they both host and take payments from this company. I got words to the effect of 'not my problem'. I am very upset with this and ask that you help me put a stop to this."

TQ, NSW, 2016

21 "I've been charged by my provider on my invoice for a subscription I never heard of and been told it's for online gaming. I never subscribed to this. I have never authorised my provider to release my personal information for the purpose of charging me extra fees. I feel my provider should be responsible for the fees, not some unknown identity I have no business relationship with.

My provider has not appropriately dealt with the matter. They stated I had to go to the third party and cancel the subscription. I have no idea who the third party is. My provider has now cancelled the subscription on my behalf but has declined the refund for the unauthorised payment."

BM, WA, 2016

22 "I received a message from my provider alerting me to third party charges on my account. As I have never to my knowledge responded to or entered any competition on my mobile phone, I rang my provider to find out what the charges were. They told me they were for a competition that I had entered. I have only deleted these competitions from my messages. My provider told me to contact the third party to request cancellation and a refund.

The third party said I had responded and entered the competition. If my entry was received, it must have been when I was deleting the message.

But my main complaint is that on the two following weeks recurring charges of \$26.40 kept being debited from my account. As I did not authorise these charges or responded to the weekly competitions I requested a refund which was denied by the third party."

GG, SA, 2016

23 "When I have opened messages (on Facebook) I have been automatically 'subscribed' to internet sites. When I have inadvertently opened these sites that state they offer novelty style quizzes, they have automatically subscribed me without me providing information or any agreement. On some occasions I have received a text at the time of 'subscribing' advising me of the billing.

When I opened my mobile account I did not enter into any agreement to subscribe to any other site and I have not since made any agreement. I was not advised at the time or since that my provider would automatically bill me for any subscription to other sites.

Resolving these ongoing issues has taken an extraordinary amount of my time."

OP, VIC, 2016

24 "My provider has been letting an unauthorised third party company to charge things to my account. I have given no one any authority to charge things to my account at all. Each month I call them and they advise me to call the third party company and tell me they will 'block' the charges, the following month another invoice with these charges arrives. I have not authorised any of this but my provider refuses to refund me and nor will they provide proof that I authorised for them to be allowed to do this in the first place."

FV, NSW 2015

There are some common themes in what consumers tell us about mobile premium services and direct carrier billing. These themes include:³⁵

- they could not tell if these purchases were mobile premium services or direct carrier billing
- they incurred charges for third party purchases they said they did not ask for
- their provider told them they may have subscribed to online content or services by accidentally touching a banner advertisement or pop-up on an app or a game
- they were not told they would be charged for the online content or how these charges would be applied to their mobile bills
- they received unexplained or unclear charges on their bills
- their provider did not stop these charges or purchases when the consumer asked for this nor told the consumer how these could be blocked
- their provider referred them to the content provider or aggregator to resolve their complaint – and sometimes these parties sent the consumer back to their provider
- they could not identify who the content services were from, or
- they may have entered an online quiz or competition and then discovered they were signed up for a subscription service with ongoing charges.

We analysed a sample of 20 conciliated cases closed in the last 12 months to draw out further details about these types of complaints. While a small data set, we believe these details are indicative of the common problems present in these types of complaints. Our findings are as follows:

1. Nine cases involved direct carrier billing, and one case involved mobile premium services. It was unclear in the other 10 cases which type of third party content service was involved.
2. In 19 cases the consumer denied any knowledge of subscribing to the content service. In the remaining case, the consumer said they only subscribed by accident, after entering what appeared to be an online competition.
3. In 15 cases the provider did not dispute the consumer's version of events or tell us the consumer was liable for the disputed charges. In four other cases, the provider initially said the consumer was liable but either the provider or the content provider then refunded the charges. In one of these four cases, the provider acknowledged the content may have been subscribed through accidentally touching a banner advertisement.
4. In 19 cases the telecommunications provider initially told the consumer (either at first contact or after the TIO's initial referral to a designated point of contact at the relevant provider) to go to the content provider if they wanted a refund.

³⁵ This analysis is from our general review of around 1,000 new complaints about third party purchases received over the period 1 January 2015 to 31 March 2016. This analysis is limited given these complaints reflect what consumers tell us, as we do not collect information from the relevant providers at the referral stage of new complaints. However, our observations from this analysis are consistent with findings from our more detailed review of conciliated cases.

5. In 14 cases the consumer attempted to resolve their complaint by contacting the content service provider (either at first contact or after the TIO's initial referral to a designated point of contact at the relevant provider):
- in two cases the consumer said the content provider never answered their calls
 - in six cases the consumer was unable to negotiate a satisfactory resolution because the content provider only offered a partial refund or refused any refund
 - in two cases the consumer said they were promised a cheque refund but never received it. In another three cases the consumer was offered a refund by bank transfer or cheque, but said they were unwilling to give the content provider their personal information because they did not trust the content provider, and
 - in one case the consumer could not get in contact with the content provider because they needed to have log in details in order to unsubscribe and did not have that information.

In another three cases the consumer said they did not want to contact the content provider to dispute the charges because they believed this was the responsibility of their telecommunications provider as the party with whom they had a direct relationship.

6. In 16 cases the telecommunications provider did not attempt to make contact with the content provider about the consumer's dispute until after the TIO became involved.
7. In four cases the amounts in dispute were over \$400, with the largest amount being \$1,280. In eight cases, the amounts in dispute were between \$100 and \$400. In seven other cases the amount in dispute was less than \$100, and in the one remaining case the amount in dispute was unknown because the charges were bundled with other disputed charges.
8. In all but one case (in which the consumer ultimately accepted liability for the disputed third party charges) the consumer's complaint was resolved with a full refund or waiver. In 11 cases the provider waived all the charges during conciliation. In six other cases the content provider supplied a full refund. In two cases the content provider refunded part of the disputed amount and the provider credited the remainder.

Appendix A: Complaints to the TIO

This Appendix contains the following information:

- an overview of TIO complaint trends
- complaint issues relevant to the ACL, and
- how the TIO uses the ACL to resolve complaints.

A.1 Overview of TIO complaint trends

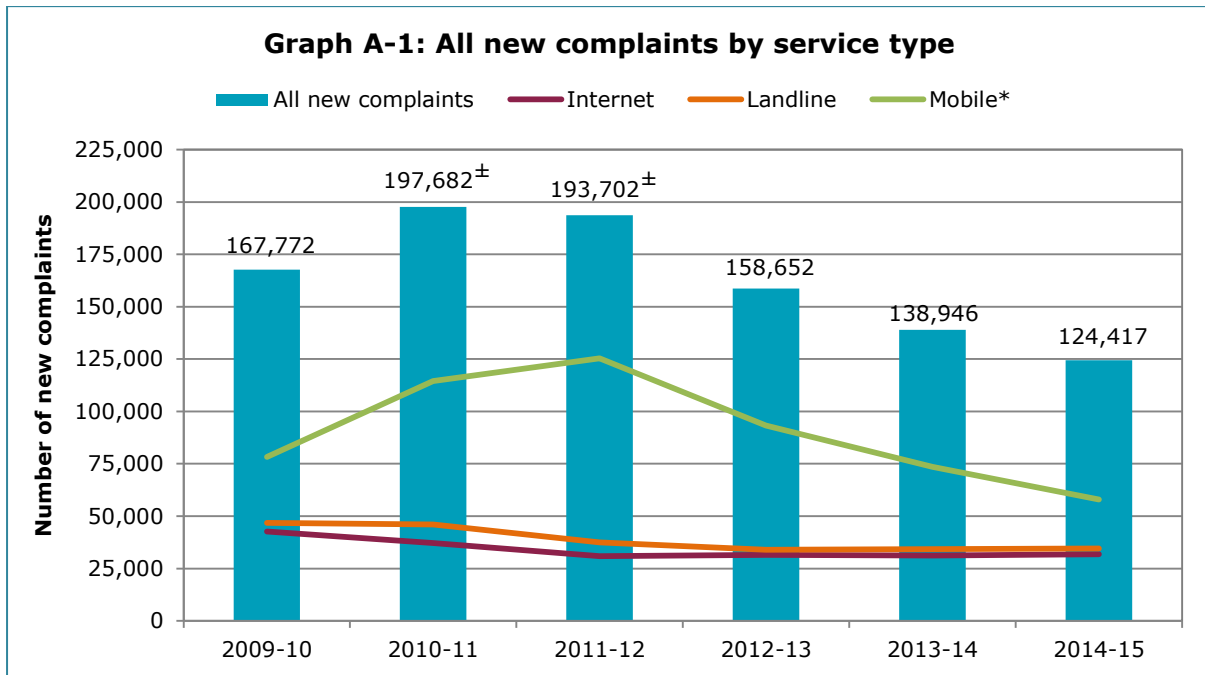
Although new complaints to the TIO have reduced over the past four years, we continue to receive over one hundred thousand complaints about telecommunications services each year.

In 2014-15 we recorded and handled 124,417 new complaints from small business and residential consumers across Australia.³⁶ This is a 37.1 per cent reduction compared to 197,682 new complaints recorded in 2010-11. The year on year gradual decreases in new complaints since 2011-12 is in sharp contrast to the previous year on year increases in new complaints from 2007-08 through to 2010-11.

The reduction in TIO new complaints – particularly over the past four years – is primarily due to the reduction in new complaints about mobile services. These complaints have dropped by 53.8 per cent in 2014-15 compared to 2011-12 when mobile complaints peaked. The reduction is due to a drop in mobile new complaints about poor coverage, excess data charges and slow data speeds or drop outs.

Graph A-1 shows the breakdown of new complaints over the past six years by service type – internet, landline and mobile services (including mobile premium services).

³⁶ When a consumer – residential or small business – contacts us about an expression of grievance or dissatisfaction about a matter within the TIO's jurisdiction that the service provider has had an opportunity to consider, we record this as a 'new complaint'.



* New complaints about mobile premium services and similar third party purchases are included in mobile new complaints.

± The sharp increase in mobile complaints from 2010 to 2012 was driven by complaints about Vodafone's network issues.

We recorded around 80,000 new complaints in the first three quarters of 2015-16. Landline and mobile new complaints have reduced over this period compared to the same period last year. New complaints about internet services have increased by around 20 per cent over the first three quarters of 2015-16 compared to the same period last year.

A.2 TIO complaint issues relevant to the ACL

Complaint issues relevant to our observations and recommendations in this submission about the protections in the ACL, while decreasing over the past four years, remain proportionately steady over this period.

The TIO records 'issues' to capture the different grievances that are presented in each new complaint. Issues are selected from a choice of keywords that are aligned to industry codes or common complaint categories that the TIO has identified. These include contractual and transfer disputes, connection and fault repair delays, credit management disputes, customer service/complaint handling and billing disputes.

Every new complaint involves at least one complaint issue. Some complaints can involve multiple complaint issues – for example, a complaint about a faulty mobile handset may also involve a concern over the clarity of the information from the service provider about the limitation of the handset at the point-of-sale. In such circumstances, the TIO would record one complaint comprising two issues – a faults issue and a contract issue.

We have identified a number of complaint categories relevant to our observations and recommendations in this submission about the protections in the ACL. These categories are faulty equipment, faulty services, unauthorised transfers and third party purchases.³⁷

³⁷ There are other complaint categories relevant to the ACL such as point of sale information, unfair contract terms, enforcement of terms, termination of contracts and sales tactics. These other categories have not been

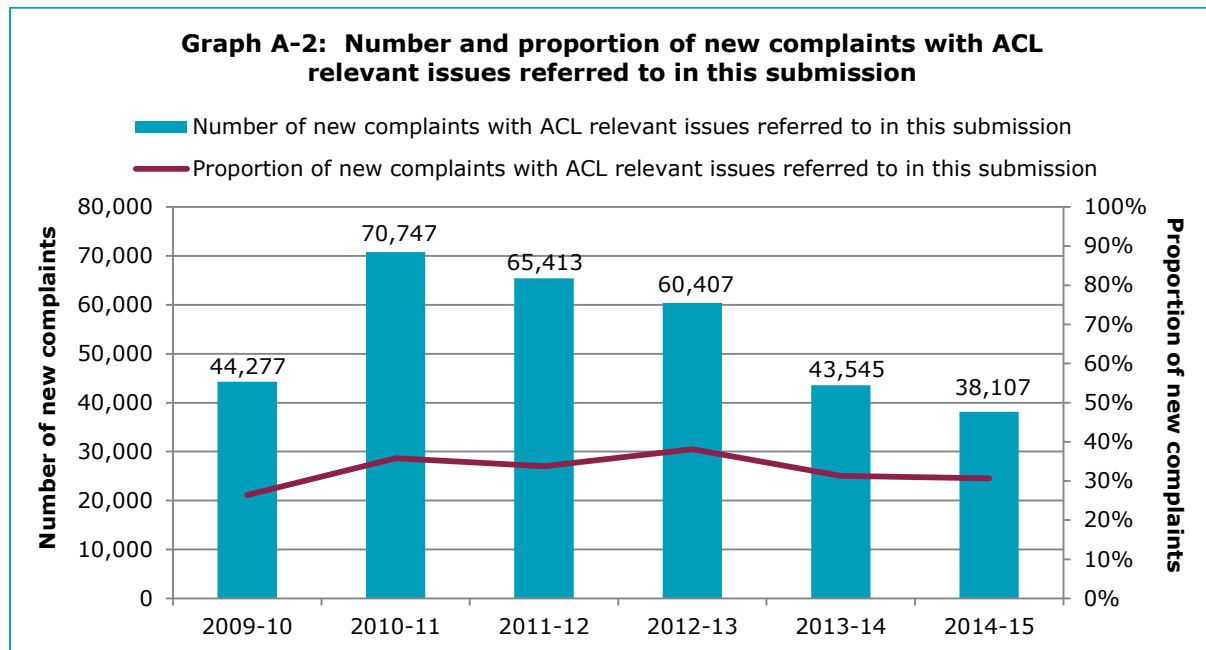
Specific issues in these categories are outlined in **Table A-1**. Details of the number and proportions of new complaints about these categories are set out in **Sections 2 to 4** of this submission (see **Graphs 1 to 6** in this submission).

Table A-1: Complaint categories referred to in this submission about ACL protections	
Broad category	Specific issues
Faulty equipment	Complaint about a delay in repairing faulty equipment, a recurring fault in equipment where the underlying cause has not been addressed, or a delay in replacing the equipment after this has been offered and accepted.
	Complaint about the appropriateness of a remedy that a service provider has offered to their customer to resolve a complaint about faulty telecommunications equipment that is bundled into a carriage service contract.
	Complaint about the rejection of a consumer's request to have their telecommunications equipment (that is bundled into a carriage service contract) repaired/replaced under warranty.
Faulty services	Complaint about poor coverage on a mobile or wireless / satellite internet service.
	Complaint about a delay in the repair of a partially or completely unusable service.
	Complaint about a service not working as promised including expectations in relation to the speed of a broadband service.
Unauthorised transfers	Complaint about a service provider transferring a service where the request for transfer was made by somebody other than the account holder.
	Complaint about the transfer of the consumer's service where the consumer has not given informed consent to the transfer.
	Complaint about a transfer that the consumer denies any knowledge about.
Third party purchases (mobile premium services or direct carrier billing)³⁸	Complaint about charges for third party purchases incurred without request, or after having declined the purchases.
	Complaint about a provider not actioning a request to block third party purchases, or not providing convenient methods to request this.
	Complaint about a provider not providing sufficient information about potential third party purchases, and how to opt out of these purchases.

included in the data sets in this submission because we have not made specific recommendations relevant to these categories.

³⁸ Complaints about third party purchase via direct carrier billing are an emerging issue. See section 4 of this submission.

Graph A-2 shows the number and proportion of complaints with ACL relevant issues referred to in this submission compared to all new complaints for the period from 2009-10 to 2014-15.



Consistent with the overall decrease in new complaints over the past four years (see **Graph A-1**), the numbers of new complaints about faulty equipment, faulty services and unauthorised transfers have decreased (see **Graphs 1, 2 and 3**). New complaints about third party purchases have increased since January 2015 (see **Graph 6**). The proportions of these complaints have been relatively consistent over the past four years, forming around one third of all new complaints.³⁹

A.3 Our experience in using the ACL to resolve complaints

The TIO uses the ACL when applicable and relevant to guide the resolution of telecommunications disputes between consumers (including small businesses), and their providers.

The 2016 Consumer Law Survey reveals that telecommunications and internet services are the two consumer categories associated with the highest incidences of consumer problems.⁴⁰ Of surveyed participants, 85 per cent of participants had purchased a telecommunication product or service within the past two years, and 26 per cent of these consumers had experienced a problem with it. Further, 77 per cent of participants had purchased an internet product or service within the past two years, and 25 per cent had experienced a problem with it.

Given the number of complaints the TIO receives about telecommunications products and services each year, keeping our staff trained in ACL protections is an important part of our ongoing commitment to our service quality. In 2014 the TIO launched a first-of-its-kind industry-based postgraduate qualification that focuses on developing the dispute resolution, case management, communication and legal skills of our dispute resolution staff. One module is dedicated to legislation relevant to the telecommunications industry,

³⁹ The relatively steady proportion of these categories of new complaints shows there are still issues that the ACL may not have fully addressed.

⁴⁰ Consumer Affairs Australia and New Zealand, [Australian Consumer Survey 2016](#), page 40.

and instructs staff on applying ACL provisions about misleading conduct, unfair contract terms, the consumer guarantees and unsolicited agreements.

The TIO uses the ACL at each stage of our dispute resolution process as outlined in **Table A-2**.

Table A-2: How the TIO uses the ACL in our dispute resolution processes	
Process	How we use the ACL
Referrals	<ul style="list-style-type: none"> • We ask the consumer questions to identify specific issues within the complaint, including questions to discover whether the complaint suggests protections in the ACL have been met (e.g. if a consumer is complaining about an unsolicited agreement, the consumer may be asked if the provider told them about their cooling off rights). • We record the complaint issues based on a selection of complaint keywords in our complaint management system (e.g. Transfer>Unauthorised>No informed consent). • We may refer consumers to our published position statements. These statements outline our approach to handling specific types of complaints and take into account various laws and relevant industry codes. Eight of our 24 position statements refer to the protections in the ACL.⁴¹ • We may also refer providers to our position statements through our referral process, to promote the effective and fair resolution of complaints.
Conciliations and investigations	<ul style="list-style-type: none"> • If a consumer returns to the TIO with an unresolved complaint after our referral process, the complaint progresses to conciliation. • During conciliation and where relevant, the TIO refers to the ACL when discussing and testing options with the parties. TIO dispute resolution staff use the ACL (if relevant to the complaint) as a tool to independently assess resolutions offered by providers, and to guide parties toward agreed resolutions. • Complaints not resolved through conciliation may be further investigated by our senior dispute resolution staff. At this stage, our senior dispute resolution staff may discuss protections under the ACL with the provider and the consumer, and identify any issues of non-compliance. The investigation process may also help guide parties toward agreed resolutions.
Systemic interventions and investigations	<ul style="list-style-type: none"> • If the TIO identifies a broader pattern of complaints as a systemic issue of interest, we may raise this with the provider concerned, either informally or formally, depending on the significance of the issue and the risks or likelihood of detriment to consumers. • When engaging with providers, we offer guidance on the legislative provisions (including the ACL provisions) or industry protections that may apply to the issue. We do this so that providers can better determine whether their systems, processes or practices comply with legal obligations or industry standards. The identification of these issues also serves to guide providers to make changes to their systems, processes or practices, improve compliance with the law and industry standards, and reduce consumer detriment.

⁴¹ See for example, TIO position statements on [Contracts, Pre-sale information or conduct](#), and [Faulty services or equipment](#).