

28 March 2022



Vicky Finn

Strategy and Regulatory Affairs Lead
Telecommunications Industry Ombudsman

By email: Vicky.Finn@tio.com.au
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Dear Vicky,

RE: Consultation on draft guidance - Complaints about telecommunications equipment

Thank you for the opportunity to provide feedback on the TIO's draft guidance document, *Complaints about telecommunications equipment*.

In response to earlier consultations on this issue, Communications Alliance outlined its concerns about the TIO's proposed jurisdictional expansion into dealing with complaints and warranty issues about devices and equipment offered and supplied by members. We suggested that these issues were already within the jurisdiction of other consumer-protection bodies, including the Australian Competition and Consumer Commission (ACCC) and state and territory fair trading bodies, and tabled concerns about regulatory overlap, duplication, confusion about where to escalate disputes to, and potentially 'complaint forum shopping' by consumers.

These concerns still stand.

The draft guidance document remains silent on or does not provide sufficiently clear advice about how the TIO will manage issues of overlap, duplication, or potential 'complaint forum shopping'. There are also inconsistencies, contradictions and 'catch-all' statements in the guidance that we believe should be corrected.

It may be that the TIO is planning to address some of these issues in the staff training and guidance documentation that we understand is currently being drafted, rather than including detail in the consumer-focused guidance document that is the subject of this consultation. Although we consider such complementary guidance to be useful and necessary, we suggest that the consumer-focused brochure needs to also include more information on many of these issues. As it stands, the guidance is not sufficiently clear, nor detailed enough, to serve its intended purpose: to help consumers understand whether the TIO will hear their complaint about telecommunication equipment or devices.

This submission focusses on the consumer guidance document, providing section-by-section comments on the draft. Our comments include suggested clarifications and

proposals for new content, including case studies and other material to illustrate and provide clarity on the type of issues that will (or will not) be considered by the TIO.

However, Communications Alliance would also appreciate the opportunity to see – and provide comment on – any material drafted for TIO staff training purposes. We suggest that this material be shared with industry, to ensure that our members can appropriately advise and train their own staff. We look forward to discussing this.

Section-by-section comments on the draft guidance

1. What is or is not in scope

The first two sections (extracts below) attempt to address what is – or is not – in scope for the TIO to consider.

Claims about telecommunications equipment we can consider

We can consider complaints about faults or failure to supply the following equipment:

- handset
- mobile phone
- tablet
- modem
- router.

The equipment must have been purchased from a telco. It may have been purchased as part of a bundle with a telecommunications service or separately on its own.

We may consider complaints about any other equipment offered with a service if you didn't get what you were promised or were misled.

Claims about telecommunications equipment we generally will not consider

We will generally not consider complaints about equipment where the problem does not impact your access to a telecommunications service.

For example, we will generally not consider complaints solely about:

- the appearance of the equipment (for example, a mobile phone not being the colour you ordered)
- a problem with equipment purchased from a telco that does not affect your access to a telco service.

We will not generally handle complaints solely about problems with the following types of equipment if they were not offered with a service:

- smart home devices
- smart watches
- drones
- accessories (for example, earbuds or headphones)
- gaming consoles
- laptops.

We do not believe that the information, as currently presented, provides the necessary clarity on scope. We highlight the following issues:

- i) The paragraph: 'we may consider complaints about any other equipment...' seems to be a catch-all; it is confusing and appears to contradict the information in the second section 'claims about telecommunications equipment we generally will not consider'. It is not clear whether a device has to be connected to a service to be considered, and how this differs from it being 'offered with a service'. Similarly, it is not obvious what is meant by problems that do 'not affect your access to a telecommunications service'. Finally, the wording is vague and unhelpful in relation to the type of equipment covered.
- ii) It is not clear what is accepted under a 'failure to supply' complaint. Presumably it means that a telecommunication provider has taken payment for the named equipment but has not delivered the product to the customer **as agreed** under the contract **and allowing for reasonable delays** outside of the telco's control,

provided that communication with the customer about expected and unexpected delays is clear and reasonable.

To address these concerns, Communications Alliance suggests that the TIO re-write this section to:

- provide a definitive list of the equipment that will be considered (and commit to regular updates of the guidance to ensure it remains current)
- provide a definitive list of the equipment/type of complaint that will not be covered
- remove the 'catch all' paragraph
- clarify what is meant by 'offered with a service' and 'impacts a service'
- find and link to existing example case studies under the Australian Consumer Law, and /or develop telco-specific case studies or a link to existing information to provide clarity on all the above issues.

For example, one case study/example could focus on 'complaints about equipment where the problem does not impact your access to a telecommunications service' (not generally considered); another could focus on 'failure to supply', etc. The examples should clearly illustrate both reasonable retail service provider (RSP) behaviour (e.g. clear communication with the customer about known supply delays at time of sale, and any further delays that are out of the RSP's control, such as delays due to a pandemic, flood, fire or other such disaster) and unacceptable behaviour (misleading sales practices such as advising a customer that their new device will be delivered the next day, when the RSP knows that there is a 4 week delay on product).

The TIO may also wish to consider some restructuring to include a short paragraph at the beginning of this (and each) sub-heading section about what the consumer *should* expect, to provide context to, and provide clarity about, the guidance points following. We acknowledge that there is relevant information in the 'what we take into account section', but a short note and link to this section may assist flow and comprehension.

2. Remedies

The remedies section, like the first section, would benefit from more detail and examples; the heavily caveated ('we may', 'depending on'), light-on-detail approach does not provide the guidance that a consumer needs to understand their position, and is also not helpful to TIO staff or to industry.

As suggested earlier, links to further information and case studies would provide useful detail to assist all parties assess their position. In addition to the already-included link to the TIO's guidance on seeking compensation, we suggest that the following issues/concepts be covered:

- wording within this section to provide more context about issues that are considered under the ACL. This would include introducing the concepts of 'reasonableness' and of major and minor faults.
- advice that, under the ACL, RSPs must be provided the opportunity to assess a faulty device (this is alluded to in the final section, but the information needs to be clear, and linked).
- examples of delays in providing equipment that are considered reasonable (linking clearly with 'failure to supply' information).
- clearer information about when it might (or might not) be reasonable for an RSP to release a customer from a contract without exit fees. For example, it would not be reasonable to direct an RSP to release a customer from a contract covering multiple devices to one minor account issue; or where the equipment has no connection to a service fee.

The remedies we may consider

We may consider the following remedies to be reasonable depending on individual circumstances:

- fixing faulty telecommunications equipment
- replacing faulty telecommunications equipment
- providing a refund for faulty telecommunications equipment
- releasing you from your contract with no exit fee
- compensation for unreasonable delays in supplying telecommunications equipment.

For more information about compensation, please see our guidance on [seeking compensation](#).

3. Issues that the TIO considers

This section provides an outline of issues the TIO considers when assessing complaints.

We suggest that clarification be provided in this section (and staff training information) about actions already taken in relation to a complaint.

The guidance must make it clear that the consumer must have attempted to resolve the issue directly with the RSP before the TIO will consider any complaint. This is probably best stated up front.

Additionally, we suggest that the TIO state that it will seek information from the consumer about any advice they have requested from a third-party body (e.g. their local Fair Trading office), and will take the approach (and any advice received) in to account.

In addition to considering providing and linking some of this information in earlier sections to provide better context, we note that the second sentence in the final point of 'what we take into account' (see extract, right), looks at remedies. This has been covered earlier and does not belong in this section.

- **Your contract as a whole:**

Your telecommunications equipment may be bundled with your services as part of your contract. Where this happens, we will consider whether releasing you from your contract is an appropriate remedy.

4. Expectations of customer actions and behaviour

This section outlines the TIO's expectations about consumer behaviour.

As with earlier sections, we suggest that the included information is not clear enough in many areas to provide useful guidance.

We suggest:

- that the guidance makes it clear that proof of purchase may be required.
- that issues of minor and major faults are briefly explained. That is, that under the ACL:

*“Generally, **if the problem is minor, the seller can choose whether to remedy the problem with a replacement, repair or refund.** If you choose to repair and it takes too long, the consumer can get someone else to fix the problem and ask you to pay reasonable costs, or reject the good and get a full refund or replacement.”*
(www.accc.gov.au/business/treating-customers-fairly - [link](#))

What we expect from you

When we assess the appropriate remedy for complaints about telecommunications equipment, we expect you to:

- report problems with equipment to the telco as soon as possible
- be open to sending the equipment to the telco so they can assess the fault
- where relevant, be open to returning the equipment in exchange for a refund or exiting your contract
- take reasonable steps to minimise the impact the problem with the equipment has on you.

- that it would be useful to provide further information about the requirement to report problems 'as soon as possible' to make it clear that delays in reporting can change a minor issue into a major issue and can affect warranty rights.
- that the wording is strengthened in the second and third bullets to make it clear that the customer **must** cooperate with the RSP to allow them (or an authorised supplier) to undertake a fault assessment and determine appropriate remedies; and understand that an RSP may legitimately require them to return equipment in return for a refund/exiting a contract.

Again, in addition to changing the language and providing more detail within the guidance document, we suggest linked case studies or similar guides may be a useful way to educate and advise the consumer on these issues.

We trust that you find this feedback helpful. If you have any questions, would like to discuss any aspects of this submission, or would like to discuss related guidance and training material (as proposed), please do not hesitate to contact Peppi Wilson, Manager Policy and Regulation, or me.

Yours sincerely,



John Stanton
Chief Executive Officer