

Perspectives on future models for empowering and protecting consumers

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Perspectives on future models for empowering and protecting consumers. I have been asked to draw on my experiences from other sectors. But first the consumer experience in this industry is summed up in a Choice opinion piece to be published shortly. It begins:

“Consumer protection in telecommunications is a mess. It’s a self-regulatory system based on a set of confusing industry codes that companies can choose to belong to — or not. Some codes have no members at all. And when the industry drafts codes, does it take into account consumer viewpoints? Not often.”

The article then goes on to say what we really think.

So against that background I’m going to talk about four main tools for empowering and protecting consumers:

- codes of conduct
- dispute resolution schemes

- consumer representation and
- information tools.

But learnings from other sectors indicate that these are only effective when they are underpinned by core principles.

Whatever the content of these principles, they need to provide a strong robust framework to guide the work of the regulator, the industry and consumer groups in devising responses to market place problems. Setting these out in legislation is a good way of integrating the various mechanisms - of ensuring the law, regulatory policies and industry initiatives fit together in a comprehensive and coherent manner.

The Consumers Telecommunications Network has proposed a Charter of Communications Rights. Seven rights to guide policy responses.

In the financial services sector the law sets out general obligations for financial services licensees.

From these the regulator has provided policy guidance on dispute resolution mechanisms, codes of conduct, compensation arrangements and disclosure standards.

Now to the first of the four areas I want to talk about:

I. Codes of conduct

Self regulation through codes of conduct is a feature of this industry.

Telecommunications codes have the status of subordinate legislation but there is nothing requiring industry to sign on to a code or to comply with it. Unless a code has good coverage across suppliers it may as well not exist.

A few things that could be said about codes in the telecommunications industry compared to other sectors.

- 1) There are no agreed standards or processes for code development and review.
- 2) There is little industry buy-in and commitment – 13 codes have no signatories. Even the new amalgamated consumer code has no signatories – it was registered in May after a lengthy preparation process. If the industry was serious about codes it would have been ready to sign on the day the new consumer code was registered.
- 3) There are too many codes.
- 4) There is not enough focus on the core content or the substance – the reason any code exists
- 5) Consumer participation in code development and review is weak
- 6) There is no consumer participation in code administration.

One conclusion might be that the current framework for developing voluntary codes just isn't working, so it's worth looking at why voluntary codes are working elsewhere.

Code effectiveness in other sectors usually derives from the framework in which the codes originate. That framework is typically set by the regulator. Let's compare ACMA's requirements with those set by the financial services regulator ASIC.

As you can see, ACMA's requirements aren't very clear. By contrast the financial services regulator specifies development processes, content requirements, and how enforcement and administration should work.

ASIC says codes should be

- enforceable;
- developed in a consultative fashion to address the range of issues of concern to consumers;
- set standards that elaborate on, exceed or clarify the law;
- compliance must be monitored; and
- remedies and sanctions must be available breaches of the code.

Against this backdrop some very useful codes have been developed covering entire market segments - banking, general insurance, insurance broking. There is also the sector wide electronic funds transfer code. Each has code has substantial coverage – approaching the entire market.

Each was developed and continues to be reviewed with significant consumer input. Processes typically include the employment of an independent reviewer, a stakeholder working party that includes balanced representation, preparation of an issues paper, release of a draft code, funding for preparation of consumer submissions and participation in the working party.

Perhaps the contrast in code frameworks helps understand the level of consumer agitation about code reviews that start with a page of dots points, followed by a draft code four months later with two weeks notice of a meeting to discuss the content.

Another central aspect of codes in the financial services sector is the independent administration and enforcement bodies that govern the codes. Drawing down from the framework set by the regulator – these bodies comprise equal numbers of consumer and industry representatives and an independent chair.

They exist quite separately from the industry associations that once spawned them. Many are co-located with the relevant external dispute resolution schemes.

The code administration bodies - slide(bank code compliance) – here's the website of the banking code compliance committee - not only investigate complaints but produce annual reports and regular bulletins which address

specific problems – giving guidance to signatories on the meaning and practical application of clauses.

2. Now to **complaints mechanisms**.

Redress is a basic consumer right and embedded in consumer policy domestically and internationally. Modern consumer policy conceives of redress in two parts – complaints systems internal to suppliers, and then external independent mechanisms.

This sector has the Telecommunications Industry Ombudsman – which is the largest of its external dispute bodies but it also has a number of other smaller, sectoral, disputes bodies which fragment complaint handling and cause consumer confusion.

So looking to the financial industry - Until recently there were seven sector specific ombudsman schemes. Consumers were confused accessibility – one of the core principles underpinning external dispute resolution - was compromised.

Pressure for rationalisation led to the establishment of a front of house referral centre - basically a umbrella reception centre sitting across the top of the seven schemes. But this didnt deal with problems that went to effectiveness – the capacity for the smaller schemes to provide **effective** dispute services. So as a next step some of the small schemes contracted their complaints handling functions to the one of the big schemes.

And now just three weeks ago to better facilitate access and consistency across the sector the three largest schemes covering banking, insurance and investment merged to form the Financial Ombudsman Service.

In your sector most complaints are dealt with by the TIO, but other agencies deal with complaints about pay TV, privacy, content issues, premium mobile services and telephone information services. There is concern that the existing arrangements are complex, confusing and reducing the capacity to deal with industry wide problems. It may be that the umbrella referral model successfully used in the financial services sector is a good first step towards one stop shop complaints handling.

A couple of other issues I want to mention

- The level of monetary awards for the TIO and the
- what sort of matters can be raised as complaints.

So briefly on monetary awards – the TIO can make binding awards up to \$10,000 and non binding awards up to \$50,000. And these have been unchanged since the schemes inception 15 years ago.

Other sectors have faced substantial pressure to lift dollar limits as the cost and range of services have risen. Most schemes now automatically index the monetary limits – usually on a three yearly basis. This came about

because a number of schemes saw their limits stagnate at inappropriately low levels for long periods of time – 14 years in one case. The TIO’s limit has been unchanged for 15 years.

Over that period the range and cost of teleco services have expanded dramatically. With a dollar cap on awards of \$10,000 it is hard to see how the Ombudsman can really hold itself out as a court alternative. The NSW small claims court can make awards up to \$25,000.

While it does have a voluntary jurisdiction up to \$50,000 and decisions up to these limits have been accepted by the large companies it’s an open question whether non-binding decisions would be accepted by smaller newer industry participants – experience in other sectors suggests not. It would be a very poor result for an award of say \$15,000 to be paid to up to the mandatory amount of \$10,000 but not the balance to \$15,000.

Another issue I want touch on is what types of complaints can be covered.

First - bundling – when a range of services are sold together - consumers rarely appreciate that they are contracting with a range of suppliers. This comes up in other sectors too – typically where a finance product to fund the primary purchase is bundled in.

Other complaint schemes look to what it was reasonable to expect consumers to understand. In the insurance broking area, brokers have had to wear the costs of premium funding arrangements because they had not

clearly revealed the nature of the funding contracts or loans to consumers. Consumers had not realised they were entering into a loan with another party.

Then there is the issue of fees. Most schemes exclude the complaints about the level of fees from jurisdiction on the basis that they are essentially commercial matters. However the wisdom of this in an era where fees are not cost reflective and have become effectively a business line in themselves is being challenged.

Litigation and policy processes in the UK are currently testing whether non cost reflective charges are fair and whether they should be within the remit of industry ombudsman.

Effective governance

Another difference between external dispute resolution in the telco sector and other sectors is the lack of equal representation on the governing bodies of the external dispute schemes.

Unlike other sectors the TIO Board is comprised solely of industry participants and this does impact on perceptions of independence. Consumers perceive the scheme as under industry control and therefore biased.

Equal stakeholder participation in governance arrangements has long been recognised as the most important way for industry-based complaint schemes to gain consumer confidence and to be seen to be free of industry bias.

While industry ownership has been an important plank behind the success of these schemes - and industry is to be credited for establish these schemes in the first place - as the schemes have matured it has become clear that to retain consumer confidence it has been necessary for industry to share governance with consumer stakeholders.

This has lead in other sectors – utilities, financial services, travel, advertising, building, motor trades to name a few - to the parity principle - that is equal representation of industry and consumer stakeholders in the governing and advisory bodies associated with the schemes.

I can say from years of involvement with other sectors that it has been highly successful and you would hear the same thing from industry participants.

The reluctance of industry to share governance of codes and complaints schemes does compromise the integrity of these important initiatives. It signals a mistrust and suspicion of consumers –an unwillingness to acknowledge consumer participants as legitimate and equal stakeholders who have valid and useful contributions to make.

Internal dispute resolution

External dispute resolution is part of a continuum that starts with internal dispute resolution – ie within an individual company.

TIO data suggests this industry has a way to go with its internal complaint handling mechanisms

More than 25,000 complaints to TIO last year ere about internal complaint handling mechanisms – things like failure to acknowledge a complaint - failure to advise on outcome of a complaint. There were 4000 complaints that suppliers failed to do what they said they would in relation to a complaint – ie failed to honour promises to consumers

But the biggest overall category – nearly 20,000 complaints – was that suppliers did not tell consumers about the existence of EDR

One issue that TIO investigations have exposed is that many – mainly smaller ISPs - don't have systems in place for properly responding to complaints.

So how have other sectors handled these issues?

IDR improvements have been driven in two ways – firstly from the regulator via a strong policy framework and secondly by external dispute resolution schemes.

In 2001 the financial services regulator established standards for internal dispute resolution tailored to the size of a business, the nature of the customer base and the likely number and complexity of complaints.

The policy includes self certification linked to the licensing regime. It makes the point that effective internal procedures must link to the external procedures –that is consumers must be made aware of their rights to take complaints to the external dispute schemes.

As a consequence the EDR schemes require members to inform consumers about their existence and failure to do so means the matter can be raised with the member as a systemic issue, and if unresolved with the regulator.

But this can be very problematic when the members themselves barely know the scheme exists. The investment ombudsman conducted a shadow shop of its members in 2001 and found only 58% of members appear to be aware that external dispute resolution existed. Only a quarter of members could name the external dispute resolution service – the TIO equivalent - and half of those had to look it up to do so.

The research led to a sustained communication campaign across the investment industry and subsequently the scheme's rules became more prescriptive and now require members to notify consumers about their rights to access EDR when a supplier makes any adverse decision in respect of a consumer.

The general insurance code of practice also requires general insurers to notify consumers about the insurance ombudsman at the time of an adverse claim outcome. And some insurance companies have gone further and voluntarily include information about the ombudsman on all bills and claim related documents.

In around 2003 the investment ombudsman began rolling out a campaign to assist its members develop internal complaints handling systems and provided cheap training for members. It's developed a template internal dispute resolution policy and complaints handling manual which members can adopt. It has hand holding procedures the first few times a member has a complaint brought about them. This gives the ombudsman staff an opportunity to work with members to improve their complaints handling practises.

3. Consumer representation

Attention to the demand side of markets involves listening to consumer representatives who have access to the collective experience of consumers.

They operate close to the ground and are often the first to notice emerging problems. They are quick to identify systemic issues and have a wealth of expertise and knowledge in both informing policy and developing solutions. Mature industries recognise the value of consumer groups and have

developed structures not only to listen to them, but to include them as equal partners.

However community organisations operate under significant constraints and government and industry need to understand the nature of the sector to ensure their voices can be heard. This means designing consultative structures to assist consumer representatives to participate effectively. This requires an understanding of the strengths and weaknesses of the sector.

Slide characteristics of the community sector – comes from chemical sector

A key thing in for policy makers is redressing the imbalance. Large, powerful, well resourced stakeholders on one hand against small, poorly resourced stakeholders on the other.

Resourcing

Across the telco sector the funding of consumer participation is disproportionate to the complaints and issues. The lack of funding hampers the capacity of community stakeholders to raise awareness of issues at the earliest possible stage and to participate effectively in policy processes.

When consumers participate in government and industry processes they are often doing it on a voluntary basis – sometimes taking a day off paid work.

When staff of consumer organisations are asked to contribute to policy processes they have to weigh up priorities and sometimes it's just not possible to fit work in. Even large comparatively well resourced organisations like Choice have only a small number of policy staff to cover the entire consumer policy spectrum.

IN recognising these constraints many government agencies pay consumer representatives remuneration tribunal rates to attend meetings. Some pay additional hourly rates for preparation work.

Some make funds available to their advisory committees for research work and other important projects. Some confine this to work that fits with the regulator's priorities. Others recognise the intrinsic value of hearing community concerns even if they relate to issues outside the current focus.

Industry bodies also fund consumer participation in code development and dispute schemes reviews, in selection panels, consultative committees etc. Industry tends to pay above remuneration tribunal rates largely because they are more aware of market rates generally.

Beyond resourcing there is also the issue of what constitutes an effective consumer consultative body.

We need to clearly distinguish here between **stakeholder** consultative bodies and consumer consultative bodies. They serve different purposes and therefore need to be differently constituted. We also need to differentiate between experts and representatives. They are different and play different roles.

A stakeholder body serves the function of bringing the stakeholders together, having them hear alternate points of view and hopefully gaining a better understanding of issues for the purposes of working towards solutions.

Consumer consultative committees are a vehicle for two way dialogue between government or industry and consumers. These bodies should be comprised mainly of consumers representatives – organisational representatives - and where appropriate individuals with consumer expertise.

So stakeholder committees are excellent forums to air issues and facilitate constructive relationships and to jointly tackle persistent problems. But consumer consultative committees offer something different – early warning of emerging issues and creative suggestions to deal with persistent issues.

4. Information tools

Competitive markets rely on **informed** consumers to choose between competing suppliers to drive innovation, raise standards and deliver fair prices. So many models for consumer empowerment and protection are in the information space – initiatives designed to ensure consumer have enough of the right information to enable them to make good decisions. These include:

- Independent advisory services
- Switching services
- Unfair contracts legislation
- Template disclosure
- Comparison standards or rates
- On-line calculators
- Web based tools
- Education initiatives
- Shadow shopping exercises

The main thing to say here is its time to think beyond the traditional tools of education and disclosure. Industry innovation is now faster than the combined capacity of industry, government and community groups to educate consumers.

And as the Choice CEO Peter Kell is fond of saying the definition of madness is doing the same thing over and over again and expecting a different result. And that is what has been happening in the disclosure

space in the financial services sector in an attempt to get standard form disclosure right.

Given the nature of the central demand side problem in this industry – what’s known as the “confusopoly” - there is a clear need for model disclosure – possibly template or standard form contracts - but experience from other sectors suggests it is likely to be painful getting it right and ultimately more heavy handed approaches may be necessary.

The key take home from the financial services sector is that disclosure is not a universal panacea – it has very profound limits. I’ve heard it said: “no amount of sunshine can make a dirty toilet clean”

No amount of disclosure can make a deliberately confusing pricing structure clear.

No amount of disclosure can turn a scam into a legitimate consumer service.

Or “you cant make Christmas pudding from a cow pat.”

Some things have to be dealt with more forcefully by policymakers.

To cut through the confusopoly a mandatory mechanism that allows consumers to compare offerings could assist – this could be via a web based tool provided by companies or the regulator could require the

provision of information in a certain format BUT this must be flexible enough to include all forms of industry inventiveness. Experience in the financial services sector with the credit comparison rate has shown that innovation has no scruples and some of the major costs of credit sit outside the comparison rate, rendering it significantly less useful than it could be.

Or in the case of so called subscription services some things just might have to be banned. The industry code hasn't worked so far – I've just spent two weeks with young people in regional areas who had been paying for subscription services. They didn't want them, they had no idea how they'd signed up to them and had to go through considerable effort to get out of them. A 24 year old told me she discovered she had bought a ring tone subscription when her pre-pay that used to last her a month suddenly only started lasting a week, and it took her eight weeks to work out what had happened as being on pre pay she couldn't get a bill to find out what was chewing through her credit.

Another young person got a text saying "I'm at the pub, can you meet me" only to discover several hundreds of dollars later that by replying "who is this?" she had signed up to a dating service.

Some of these subscription services are so close to scams that no amount of fiddling will make them into legitimate services and certain things may just have to be banned.

There is also a range of market based information solutions employed across a range of sectors including “choice editors”:

- organisations like Choice itself – experts that consumers turn to for advice. slide
- specialist agencies set up by Government to provide independent advice to consumers such as the National Information Centre on Retirement Incomes - NICRI.
- Switching services that will analyse a consumer’s need and switch them to the best service.

Mind you not all these market based solutions deliver optimal outcomes. I know of one switching services that was claiming to save consumers \$100. It turned out this was a one off payment for the switch – after that charges didn’t differ much between the suppliers.

On-line calculators can be a useful tool to assist consumers cut through confusing information. The financial services regulator provides a number of on-line calculators to help consumers work out things like the cost of loans and the effect of different types of fees on retirement savings.

The financial services regulator has tried some innovative approaches to education, including setting up websites providing investment offers “too good to be true”. Then explaining the investment traps to the unwary.

Choice has worked with ASIC on some highly effective shadow shopping exercises. Shadow shopping documents actual consumers’ experiences in

the live market and how consumers actually carry out the shopping exercise and use information to make decisions. It's a very precise tool and experience demonstrates that simply exposing poor practice triggers industry driven reform.

I was asked late yesterday to say something about informed consent in contract signing. Industries see it as a way of mitigating risk. Migration agents do it, financial planners do it. There have been a range of responses. In both instances policy provisions have gone on to require "a reasonable basis" to the advice or supply of the product. The standard way of testing reasonableness has been to use a panel of experts. Other options are to put in place incentives for suppliers to ensure consumers understand the product or service such as cooling off provisions and other easy exit arrangements.

Conclusion

So to sum up in looking at the telco sector as an outsider, it seems to be one characterised by complexity and confusion, where the line between a legitimate service and a scam is obscure. The regulatory framework has been a light touch one - self regulation at its lightest. I hope I've given you some insights into some of the mechanisms operating in other sectors. I think what is clear is that the telco sector needs a **more robust framework** within which industry, consumer groups and government can work together to deliver better and fairer outcomes for consumers and increase confidence in and satisfaction with the industry as a whole.

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