



Monday 16 April 2018

ACMA Consultation Hub

Via webform: <https://www.acma.gov.au/theACMA/nbn-migration-complaints-handling-rules>

To The Australian Communications and Media Authority

RE: NBN Migration – Complaints-Handling Rules

I write regarding the consultation on new complaints-handling rules intended to improve the consumer experience in moving to, and using, the National Broadband Network (NBN). In the context of a surge in complaints to the Telecommunications Industry Ombudsman regarding the NBN, it is clear that the introduction of an enforceable standard for handling complaints is needed.¹ Coupled with transparent publication of relevant data via the Record-Keeping Rules (RKR), these initiatives will drive positive outcomes for consumers, provided they are implemented effectively. CHOICE is broadly supportive of these two instruments, and appreciates the opportunity to provide this feedback. CHOICE supports the comments and recommendations made by the Australian Communications Consumer Action Network (ACCAN) in its submission, and adds the following comments:

1. The Telecommunications (Consumer Complaints Handling) Industry Standard 2018 (the Standard)

The Standard aims to achieve positive outcomes for consumers moving to the NBN by setting clear time frames for resolving complaints and by requiring that NBN Co provide defined 'reasonable assistance' to retailers in responding to a complaint.

¹ For complaint figures, see the Telecommunications Industry Ombudsman 2016-17 Annual Report, available at http://www.tio.com.au/_data/assets/pdf_file/0018/250911/Telecommunications-Industry-Ombudsman-Annual-Report-2017.pdf

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The existing Telecommunications Consumer Protection Code (the Code) that the Standard is based on provides consumers with some robust protections, but the introduction of the Standard is a positive change from the status quo. The Standard adds to the Code by also placing obligations on upstream providers, such as NBN Co. The introduction of the Standard is a positive move but there are still elements of it that could be improved upon.

The Standard sets clear timeframes for complaint resolution, but these are too long to result in any significant improvement to the consumer experience. Currently, the Standard states that the general response time for non-urgent complaints is 15 working days, unless the carriage service provider 'does not reasonably believe that a complaint can be resolved' within that time period, a trigger which allows the provider an additional 10 working days to resolve the complaint.² Finally, the carriage service provider is obliged to implement the solution to the problem complained about with a further 10 working days. In effect, the Standard allows complaints about NBN connections to take up to seven weeks to move from initial complaint to resolution. For most consumers, this is far too long to wait for a resolution to a complaint about an important service. Consistent access to the internet is particularly important for people in life-threatening circumstances and those who use the internet to connect to other, important services such as Centrelink or online bill payments. As internet connectivity becomes ever more vital for a broad range of consumers, it is likely that seven weeks will be seen as unacceptably long period of time to wait for a problem to be fixed.

A Standard that encourages carriage service providers to aim for such lengthy time periods for complaint resolution may result in increased consumer dissatisfaction. An example of a more effective time period for resolution can be seen in the financial sector in the United States. There, the Consumer Financial Protection Bureau encourages businesses to respond appropriately to complaints received within 15 calendar days. After 15 days, the complaint (and response, if received) is made public on a searchable database. A company that fails to respond, or provide an adequate response, consequently risks bad publicity.³

² The *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, sections 13 and 14.

³ See the Consumer Complaints Database by the Consumer Financial Protection Bureau, available at <https://www.consumerfinance.gov/data-research/consumer-complaints/>

This has resulted in a 97% success rate, in terms of meeting the suggested 15 day deadline.⁴ CHOICE supports the enforceable nature of the Standard, but the example from the US demonstrates that approximately two weeks for a proposed resolution is achievable and a more appropriate timeframe than the five weeks (plus two weeks for implementation) currently allowed.

The Standard also provides that complaints must be acknowledged with two working days when they are made via email, post, telephone message or through the carriage service provider's website.⁵ Given the ease with which automated responses can be provided, this time period should be shortened to 24 hours.

The time periods for resolving 'urgent' complaints are much shorter, and provide this group of consumers with stronger rights. Due to this, it may be that those with urgent complaints will have a more positive complaint resolution experience than other customers. While CHOICE supports these shorter timeframes, we are concerned that the Standard does not define what constitutes an urgent complaint. It is suggested that the categories listed above (people in life-threatening circumstances and those who use the internet to connect to other, important services) could be the starting point for defining when a complaint may be considered urgent. In addition to this, the nature of the complaint should be considered. A connection that has completely failed may require a remedy more urgently than a connection that is merely performing more poorly than expected, for example.

2. The Record-Keeping Rules (the RKR's)

We note that the ACMA has indicated its intention to publish data gathered via the RKR's on a quarterly basis, to enable consumers to make informed choices about providers, encourage better complaints-handling by providers, and enable more effective monitoring of complaint trends and levels. CHOICE is strongly supportive of this approach. Complaints data can provide a useful tool for consumers, driving demand-side competition, but this can only be achieved when the data is available publicly and updated regularly.

An example of a regulator who has been successfully publishing complaints data on a monthly basis for 18 months now is NSW Fair Trading.⁶

⁴ Ibid.

⁵ The *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, section 12.

⁶ Access the Complaints Register at http://www.fairtrading.nsw.gov.au/biz_res/ftweb/Public_Register/FT_Public_Register.htm

The NSW Fair Trading Complaints Register publishes information about the businesses that are the subject of the most complaints to the regulator, provided these meet the minimum threshold of having been the subject of 10 or more complaints in the previous calendar month.⁷ The Complaints Register publishes the name of the business, its location, the total number of complaints received, and the number of complaints received by complaint category type. The experience of NSW Fair Trading has been that the Complaints Register has had a direct, positive impact on the way businesses respond to consumer complaints. In the months leading up to the first publication of the Complaints Register, many businesses who had previously been the subject of high volumes of complaints successfully improved their internal complaints handling processes, leading to a drop in complaints being made to NSW Fair Trading and consequently enabling these businesses to avoid the public naming and shaming that comes with an appearance on the Complaints Register.⁸

Another example of an approach to complaints data publication that ACMA could look to is the new publication power that the Australian Securities and Investments Commission (ASIC) has been granted under the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Bill 2017* (the Bill).⁹ Under this new regime, ASIC will be able to publish information about companies' internal dispute resolution (IDR) processes, including where the data identifies a specific firm. As the explanatory memorandum to the Bill states 'publishing IDR data will drive IDR Firms to improve their IDR Practices, by providing industry benchmarks on how long it takes to resolve disputes by highlighting poor performing firms'.¹⁰ CHOICE supports this approach to publishing complaints data.

⁷ March 2016, NSW Fair Trading, 'NSW Fair Trading Complaints Register Guidelines', available at http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Complaints_Register_Guidelines.pdf

⁸ 28 July 2016, NSW Fair Trading, 'NSW Businesses Lifting Their Game Ahead of Publication of Consumer Complaints Register', available at <https://www.finance.nsw.gov.au/about-us/media-releases/nsw-businesses-lifting-their-game-ahead-publication-consumer-complaints>

⁹ See Schedule 2, s243C of the Bill.

¹⁰ *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Bill 2017*, Explanatory Memorandum, p50, available at https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=s1093

While the information captured in the RKR looks positive, we recommend it be expanded to also cover the volume of complaints resolved each quarter and information about the remedy provided for complainants. This is important information for consumers – two large carriage service providers might both receive comparatively high numbers of complaints. In this case, a consumer deciding between the two will want information on whether one is performing better than the other in terms of complaint resolution. The Consumer Complaints Database by the Consumer Financial Protection Bureau in the United States again provides a good example of this kind of data being made available to consumers in a useful, accessible format.¹¹

In relation to the specific questions posed by the ACMA, we do not see a reason to limit the application of the RKR only to those providers with 30,000 and above consumer services in operation. Smaller providers should still have in place adequate complaints handling processes. Provided they do, the RKR will not require them to collect additional data. Rather, they will be required to populate it in a report to the ACMA once a quarter. This requirement would not be onerous, and would provide consumers with more relevant information about which provider they should choose.

In addition to broadening the number of suppliers required to meet the RKR, CHOICE recommends that the number of top complaint categories to be reported to the ACMA also be broadened. The current proposal is for the top three most prevalent complaint categories to be reported – this is too limited to be useful and provide an accurate overview of trends and changes in the market. We recommend that carriage service providers report on all categories of complaints that they receive, with detailed information about the volume of complaints in each category.

For further information please contact CHOICE on sagar@choice.com.au

Yours sincerely,



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¹¹ Consumer Complaints Database by the Consumer Financial Protection Bureau, available at <https://www.consumerfinance.gov/data-research/consumer-complaints/>