

The TIO's busy year

The first year under the regime of the 1997 Telecommunications Act has been a testing one for the Telecommunications Industry Ombudsman, reports John Pinnock

One of the many changes introduced to the telecommunications industry by the 1997 *Telecommunications Act* was the expansion of the powers of the Telecommunications Industry Ombudsman (TIO).

The TIO's extended jurisdiction now gives it the authority to investigate consumer complaints about Internet service providers (ISPs) and to participate in the development and monitoring of new industry-wide codes and standards. These new functions resulted in significant changes to the shape and the work of the TIO in 1997-98.

Most obvious was the dramatic increase in the number of members of the TIO scheme. Prior to July 1, 1997, the TIO had three compulsory carrier members (Telstra, Optus and Vodafone) and 16 voluntary telecommunications service provider members. At June 30, 1998 there were 535 members, and this has since further increased to more than 650. The increase in members has been accompanied by a change in the composition of the membership. While prior to 1997-98, all TIO members were providing telephony services, today almost 90 per cent of the TIO membership is engaged in providing Internet access services.

The ISP industry, if you can call it an industry, is a dynamic and rather freewheeling collection of organisations which is largely unused to the regulatory environment of the telecommunications industry. It is therefore pleasing that the majority of ISPs operating in Australia have now joined the TIO and are cooperating in the speedy resolution of consumer complaints.

Under the 1997 Act, all carriage service providers, including ISPs, are required to be members of the TIO scheme. Over the past 12 months, the TIO has invested significant resources into informing eligible members of their legal obligation to join the scheme. The ISP industry, if you can call it an industry, is a dynamic and rather freewheeling collection of organisations which is largely unused to the regulatory environment of the telecommunications industry. It is therefore pleasing that the majority of ISPs operating in Australia have now joined the TIO and are cooperating in the speedy resolution of consumer complaints.

There is, however, a small but significant group of some 60 ISPs who have so far refused to join the TIO, making it impossible for the ombudsman to investigate complaints about these companies.

Earlier this year the TIO referred these companies to the Australian Communications Authority (ACA) for being in breach of the *Telecommunications Act*.

In September, following a series of notifications and warnings, the ACA issued its first direction to an ISP to join the TIO. Given that failure to comply with an ACA direction is likely to result in prosecution, it is not surprising that the company has since joined the TIO, and so have a number of others who had previously refused to do so.

The TIO strongly supported the ACA's action, and believes it is entirely appropriate for the ACA to insist on adherence to the *Telecommunications Act 1997*.

The new regulatory structure has been designed to encourage competition as well as to ensure an adequate level of consumer protection. It is only through full membership by the industry that the TIO can properly perform its role and guarantee consumer protection.

In the 1997-98 financial year, 3.2 per cent of the total 52,138 cases handled by the TIO were about Internet access services. Some seven per cent of these cases could not be investigated by the TIO because the ISP in question was not a TIO member. The TIO expects this percentage to drop fairly quickly over the next few months as more ISPs join the scheme.

The 1997 Act also brought new areas of responsibility for the TIO in terms of its role in liaising with other regulators, or self-regulators, such as the ACA, the Australian Competition and Consumer Commission (ACCC) and the Australian Communications Industry Forum (ACIF). The TIO's role has increased dramatically in this regard, going beyond the traditional

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function of referring cases or issues to these bodies for investigation to playing an active part in the development and monitoring of industry-wide practices and codes.

The consumer codes currently being developed through ACIF will be a vital underpinning to the self-regulatory regime and will provide minimum standards for the delivery of telecommunications products and services.

The major challenges ahead for the telecommunications industry are the completion and industry-wide acceptance and implementation of self-regulating codes. In particular, codes are urgently needed to address emerging and existing consumer issues such as billing delays, unauthorised customer transfers between service providers, and the terms and conditions of service contracts.

The 1997 Act gives the TIO the power to investigate breaches of these new codes where a company is a signatory to the code, irrespective of whether the signatory is a member of the TIO.

The introduction of the ACA-administered Customer Service Guarantee (CSG) in January 1998 has given the TIO a new role in ensuring that the guarantee is properly applied in individual cases of delays in telephone ser-

vice connections and fault rectification. In its collection of statistics about CSG-related complaints the TIO also has an important role to play in monitoring the operation of the CSG at an industry-wide level.

The experience of the TIO to date is that there are a number of definitional and operational problems with the CSG as it is currently specified, including the meaning and extent of exemptions from the guarantee, and the calculation of compensation payable. These concerns have been included in the TIO's submission to the ACA's review of the guarantee.

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Although significant progress has been made in the development of these codes, the industry had underestimated the resources needed to accomplish this task and the speed with which it could be completed. The year ahead will be a telling time in terms of the industry's ability to put its self-regulatory mechanisms into practice.

As it is a much younger section of the industry, it is not surprising that ISPs have further to go than the telephony service providers in order to improve some fundamental areas of their customer service.

The quality and cost of services vary widely from one ISP to another, and the TIO's experience in its first 12 months of jurisdiction over Internet access complaints indicates that there is a real need for some industry standards

in areas such as the quality and speed of access, technical support, and billing and payment arrangements.

The TIO has recognised that changes in its membership and functions are necessitating some changes to the TIO scheme itself. An ISP representative has already been appointed to the TIO board, and a review of the board and council structures is being undertaken to ensure fair representation for new members. At the same time, a review of the TIO's funding arrangements is being carried out, examining the standard costs to members for complaints, and the definition of what constitutes a complaint, rather than merely an enquiry. It should be mentioned that members do not pay to join the TIO, but fund it on the basis of the number and proportion of cases received against them.

Despite its expanded role since July 1, 1997, the principal focus of the TIO's work continues to be the investigation and resolution of individual consumer complaints. By providing an impartial avenue for dispute resolution, and by reporting to the industry and the public at large on the level and nature of consumer complaints about telecommunications services, the TIO is performing a crucial service in the increasingly competitive telecommunications industry. <

John Pinnock has been Telecommunications Industry Ombudsman since 1995. Complaints are handled from residential and small business users of telecommunications and Internet access services. The TIO is an office of last resort, only taking up complaints if consumers have first attempted to resolve their problem with their service provider. The TIO currently receives some 1,200 cases a week