

**COMMUNICATIONS
ALLIANCE LTD**



**TIO Survey on joining more than one member to
a complaint**

COMMUNICATIONS ALLIANCE SUBMISSION

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About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

The most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society. To create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the Telecommunications Industry Ombudsman's survey on joining multiple members to a complaint.

We appreciate that the TIO is considering the numerous complexities and potential consequences of this change to its Terms of Reference in advance of implementing this new procedure, and support the TIO's intention to not begin using this ability until these many questions are worked through. Communications Alliance's members would like to underline the necessity of clear guidance and procedures, given previous concerns raised about mis-attribution of complaints and a lack of consistency in complaints.

This is particularly important, due to the range of consequences it could have on the industry, including the financial impact of complaint fees and reputational considerations from regular and systemic reporting. If handled incorrectly, it would also have considerable resource impacts on providers due to potentially being involved in more complaints – for national infrastructure providers, the numbers could be significant with limited justification of additional benefits to consumers.

That being said, we also recognise the value that this new process could contribute to certain situations by bringing multiple parties together to resolve a complex complaint where existing processes have been proven to not be sufficient.

In light of this, **we propose that the TIO consider a pilot program or otherwise only introducing this power on a very limited basis at first**, in order to allow for adaptation to any unexpected circumstances or impacts.

Our members have differing views on some of the matters in the survey, so we have focused our input on areas where there are shared positions. However, most of these positions are only initial views from limited consultation, and may evolve over the course of these discussions as members have more time to consider the details of any proposal.

WHEN TO JOIN MEMBERS TO A COMPLAINT

1. **Should members be responsible for making the decision to join another member to a complaint?**
2. **If yes, should the decision to join another member to a complaint be made by the first member within two business days of receiving a referral from the TIO?**
3. **What other circumstances do you think it would be reasonable for the TIO to join other members to a complaint?**
4. **Please comment on anything else in this section not covered by your responses to the questions.**

We have offered some thoughts on the questions posed, but think there needs to be further consideration of the overall process and the reasons a member would be joined to a complaint.

It may be helpful to set out key principles for procedures and guidance. At this point, we would propose efficient resolution of complaints and procedural fairness for TIO members as important principles to keep in mind. Procedural fairness takes into account the need to ensure that complaints are handled – and recorded against members – in a way that is equitable across the industry.

What member should a complaint be initially recorded against?

This new process may open questions about which member a complaint should be initially accepted against. The current process should be retained – a complaint should be made against the RSP that a consumer has the relationship with, in particular in a complaint connected to a multi-level supply chain. Additional members should only be joined at a later point in the complaint process, as addressed in the next section.

However, there should be further consideration of which member a complaint should be recorded against in situations that involve two or more RSPs – for example, in a complaint involving a transfer.

Under what circumstances should another member be joined to a complaint?

Joining additional members to a complaint should be reserved for exceptional circumstances. As the TIO still retains the ability to direct providers to assist or provide information, that step should be taken prior to joining a provider to a complaint. Then, the TIO should consider the relevant information (as provided by all parties) and have a standard and universally applied procedure about under which circumstances multiple members will be joined.

Once information is obtained, a provider should only be joined if there is evidence that they contributed to the reason for the complaint and/or are able to assist with its resolution. To clarify, this should not be in all circumstances where a member provides information relevant to the complaint.

There should be further consultation and discussion of the parameters for when the TIO would choose to join multiple members to a complaint. This framework should be set out and accessible by both consumers and TIO members. It would be helpful for the TIO to set out examples of prior cases where it views joining an additional member to a complaint would have helped with resolution.

One example Industry considers could be a candidate for this process would be complaints about porting, in particular claimed unauthorised ports.

Who can request to join another member to a complaint?:

Members should be able to request that another member be joined to a complaint – noting that this should be when they have a reasonable expectation that the other member has accountability for the complaint, or can help to resolve it.

It would not be appropriate for consumers to be able to request joining multiple members to a complaint, as this would likely result in a skewed application of this power, with financial and reputational impacts. Consumers will likely be unaware of all of the parties involved in the supply chain, or the technical reasons that another member may be related to the complaint.

Who should make the decision on if another member is joined to a complaint?:

The TIO, as an independent arbiter, should make this decision.

At what point in the process should another member be joined to a complaint?:

The aforementioned framework on why the TIO would choose to join an additional member to a complaint should also set out the steps that would need to be taken by all parties prior to that decision.

Joining another member should not take place at the referral stage, but only once the complaint has proceeded to another level of escalation.

The timing of joining another member is important due to procedural fairness. No member should be expected to pay a fee or have a complaint recorded against them until they have had an opportunity to consider and resolve the complaint. These timeframes should be sufficient for them to investigate and provide information, noting that there will be many times when a member who has been contacted may ultimately not be relevant to the complaint. This is one of the reasons we have recommended using the existing direction/reasonable assistance provisions before proceeding to joining, as it will provide that first opportunity.

As to the two days posed in Question 2, we strongly object to the proposal of a universal timeframe for any of these steps due to the differing nature of complaints. For example, it could take a week before the cause of a complaint is identified, and only at this point would it become clear that another party should be involved in the complaint, and which party that should be.

THE COMPLAINT HANDLING PROCESS

1. What changes might be necessary to our complaint handling process to ensure complaints with multiple members joined are handled appropriately?

While it is likely that the TIO's authorisation forms already reflect that it can contact other RSPs or parties in the supply chain (due to the ability to require other members' assistance), these procedures should be reviewed to ensure they fully account for these new circumstances. This includes seeking explicit consent from the consumer before sharing any personal information the TIO has gained from one RSP with another TIO member.

2. Should a retailer explicitly obtain the consent of a consumer before requesting to join another member to the complaint?

It is important to balance consumer control over their complaint with the fact that consumers may not understand the complexity of the supply chain or the various parties related to their complaint.

In light of this, we do not consider that a retailer should have to obtain the consent of a consumer before requesting to join another member, but that the TIO should – if it decides that another member is relevant to the complaint – confirm with the consumer that they consent to that other member being joined. However, the TIO would also need to clearly establish with the consumer that if that consumer does not give their consent, the TIO cannot investigate or assist any further.

This is necessary because it would not be appropriate for an RSP or other member to have a complaint recorded against them escalated to a higher level simply because the other party cannot be involved in the complaint due to a consumer withholding consent.

3. Should joined members between themselves, appoint a primary contact who is responsible for communication between TIO and the consumer, and also to facilitate exchanging information with other joined members?

In general, yes, this proposed process would be preferable (in particular for communication directly with the customer).

However, there may be circumstances in which this isn't possible, either due to a lack of agreement from some of the members, or a member who has been appointed as the primary contact not actioning key steps. In these cases, the TIO should fill this role.

4. Please comment on anything else in this section not covered by your responses to the questions

Reclassification and disputes: The TIO will need to develop and implement a more robust reclassification and dispute process than currently in place, including a new reclassification category. If a party – particularly one who would not otherwise have any direct relationship with the consumer and therefore be expected to handle the situation regardless of fault - is ultimately found to not have a bearing on a complaint, they should not have a complaint assigned against them and be expected to pay a fee. This would also be relevant where a member was incorrectly joined to the complaint.

Ensuring a robust reclassification process is in place will also assist in supporting the goal of procedural fairness.

Reallocation: It should be expressly stated that joining members must not be used as an alternative to reallocating a complaint where a member was incorrectly assigned – for

example, it would not be appropriate to add the 'correct' member to the complaint and suggest the first assigned member apply for reclassification.

Commercial in Confidence information: The TIO should protect any commercial-in-confidence information provided to the TIO in the process of resolving complaints in cases where more than one member is joined to a complaint.

CHARGING

As the TIO would be aware, this is an important matter. The assigning of complaints to new sections of the telecommunications industry could have a significant impact on costs – both for industry and ultimately for consumers.

- 1. Should the TIO charging structure remain unchanged, so the first member to the complaint will be charged the TIO case fees and additional members joined to the complaint will not be charged by the TIO?**

No, cost should be shared among parties who are found to have responsibility for the complaint (and similarly, should not be borne by parties with no responsibility for the complaint).

- 2. Should the TIO charge for a complaint remain the same, but be split equally between all members joined to that complaint, regardless of when the joining occurs and regardless of the level of cooperation in the process and regardless of the outcome?**

We agree that the charge for a complaint should absolutely be the same, and be split among members joined.

However, members are still considering the question of how such a fee should be split. This would partially be impacted by how the TIO sets out its intended use for assistance provisions vs when it would join another member.

We acknowledge that it would be both onerous, and in many situations likely impossible, to fairly allocate a fee based on 'fault' – simultaneously, we have concerns over the appropriateness of charging a member a fee if ultimately it is established that they were in no way at fault.

We look forward to further discussing this matter with the TIO as these procedures are developed.

- 3. Should all members joined to a complaint be each charged the same complaint charge based on the TIO's current charging structure, regardless of when the joining occurs and regardless of the level of cooperation in the process and regardless of the outcome?**

We strongly object to this proposal as the potential to multiply fees could lead to a perception of an inappropriate financial incentive for assigning complaints to multiple members. Additionally, we understand that this proposal was intended to streamline processes for all parties involved, and therefore should not require extra resourcing from duplicated fees.

- 4. Please comment on anything else in this section not covered by your responses to the questions**

There must be transparency in fee calculation (noting that we already have significant concerns about the lack of transparency in this space) – if the TIO is to charge multiple parties, all of the parties need to be able to reconcile those charges and understand how they are calculated.

REPORTING

Similar to the prior section, procedural fairness and the reputational impact of reporting must be taken into consideration. While we are still considering these matters, the initial thought is that the process in question 1 is preferable to that in question 2.

The question of reporting goes beyond reputational and commercial impact, as TIO reports are also often used by regulators and Government when considering rule changes. How reporting is understood and disseminated by the media and other stakeholders should also be taken into consideration.

- 1. Should the current reporting process be retained where the complaint statistic for a complaint will be reported against the first member to the complaint, with an additional report showing how many cases had additional members joined (and the numbers for these joined members)?**

We prefer this option, noting our earlier proposal that complaints should continue being recorded against the relevant RSP in the first place. It is also important that overall complaint numbers remain recorded by the number of individuals with a complaint, and are not altered if – for example – an individual has a complaint about a fault with their service and related billing. This should still be recorded as one complaint, even if the billing complaint remains against the RSP and the fault complaint is ultimately dealt with by a network provider.

Separate reporting for additional members would ensure that this is clearly understood by all parties as a new and separate process, and would prevent any potential misinterpretations of data as increased complaints or otherwise. Separate reporting would also work well for a trial of this process as recommended in our introduction.

- 2. Should all members joined to a complaint receive the same recognition in reporting case numbers, with the overall reporting clarifying how many individual cases were handled?**

Industry does not support this proposal, as in our experience clarification is often not taken into account in how media and other stakeholders present reports. This risks creating confusion.

- 3. Please comment on anything else in this section not covered by your responses to the questions**

Comparison against previous years: As already addressed in the survey, we agree that it is important that complaint statistics are able to be analysed against previous years. Any changes should not (for example) increase the number of 'complaints' by counting a complaint against 2 members as 2 complaints, as this would prevent such longitudinal consideration of trends.

Membership costs: There should be further discussions of how any changes to reporting will impact membership fees.



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