



**Submission to the Department of Broadband, Communications and the Digital
Economy Telecommunication Industry Ombudsman Scheme Discussion Paper**

31 March 2011

Introduction

ASTRA welcomes the opportunity to provide a submission to the review of the Telecommunications Industry Ombudsman (TIO) scheme by the Department of Broadband, Communications and the Digital Economy.

About ASTRA

ASTRA is the peak industry body for subscription television in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major subscription television operators, as well as channels that provide programming to these platforms.

General comments on the timing of the review

ASTRA questions the timing of this review, given that:

- the Government has just commenced a major review of the current policy and regulatory framework for the production and delivery of media content and communication devices, in light of convergence, and
- there is already a major external review of the TIO underway, commissioned by the TIO.

While the role and responsibilities of the TIO may need re-examination in the context of a converging communications environment, ASTRA submits that this would seem far more appropriate after any policy and regulatory changes in response to the outcome of the Convergence Review are in place. The Department's review would also have benefited if its discussion paper had incorporated the up-to-date analysis and data that will become available once the external TIO review on foot is completed.

Comments on the discussion paper

ASTRA's submission to the review of the TIO is limited to the issue of jurisdiction (8.1 in the discussion paper). ASTRA opposes any widening of the jurisdiction of the TIO to include subscription television services, including services provided by content service providers and services supplied by subscription television service licensees that are ancillary to, and connected with, the primary subscription television service offering. ASTRA submits that customer-related issues for subscription television or content services, including complaints, are effectively and appropriately dealt with within the existing regulatory framework for subscription television services under the *Broadcasting Services Act 1992* (BSA).

Existing arrangements work well for consumers of subscription television services

The operations of subscription television broadcasting licensees are regulated under the BSA, overseen by the industry regulator, Australian Communications and Media Authority (ACMA). Under the BSA, industry groups representing particular sections of the broadcasting industry, including the providers of subscription television broadcasting services, are required to develop codes of practice applicable to their section of the industry.

The subscription television industry has developed Codes of Practice for subscription television broadcasting operations. These codes are registered with the ACMA after a period of extensive consultation with the ACMA, stakeholders and the general public. The ACMA may only register a code of practice if, amongst other things, it is satisfied that the code of practice provides appropriate community safeguards for the matters covered in the code, and members of the public have been given an adequate opportunity to comment on the code.¹

Under the BSA, codes of practice developed by broadcasters are expected to include methods of handling complaints.² Codes of practice developed by subscription television broadcasting licensees are also expected to include dealings with customers of the licensees, including methods of billing, fault repair, privacy and credit management.³

The *Subscription Broadcast Television Codes of Practice 2007* (the Codes) make provision for dealing with subscriber issues relating to fault repair, subscriber privacy and credit management and billing. Under the Codes, where a subscriber is not satisfied with the outcomes of discussions with the Licensee in relation to fault repair or credit management and billing, the Licensee will refer the subscriber to the relevant consumer advisory service of the state or territory in which the subscriber resides.⁴

In the context of this existing regulatory framework, subscription television licensees have developed consumer assistance and complaints procedures and systems that are highly receptive to the particular needs of their subscribers. As noted in the Codes, the viability of subscription television services is directly dependent on the level of customer service achieved.

The TIO is not the appropriate body to deal with subscription television consumer issues

Each “carrier” and “eligible carriage service provider” (as defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) must join and comply with the TIO scheme (unless specifically exempted from the scheme by the ACMA). A subscription television broadcasting service is not a carrier, nor is it an eligible carriage service provider as it does not provide a standard telephone service, or a public mobile telecommunications service, or is a carriage service that enables end-users to access the internet.⁵

As the Discussion Paper notes, the Productivity Commission recommended in its 2008 Report of its *Review of Australia’s Consumer Policy Framework* that the remit of the TIO be extended to include subscription television services. The Productivity Commission argued that this would address “potential consumer confusion about where to pursue telecommunications complaints”, because subscription television services “share so many features with standard communications services and are often bundled with them.”⁶ The Discussion Paper also states that “it is understood that the TIO is proposing to amend its constitution to widen its jurisdiction over some bundled products and services”.

¹ *Broadcasting Services Act 1992* (BSA), s 123(4).

² BSA, s 123(1)(h).

³ BSA, s 123(1)(k).

⁴ See Part 4 of the *Subscription Broadcast Television Codes of Practice 2007*. The Codes are available on the ASTRA website at: <http://astra.org.au/pages/codes-of-practice>

⁵ *Telecommunications (Consumer Protection and Service Standards) Act 1999*, s 127.

⁶ Productivity Commission, *Report of the Review of Australia’s Consumer Policy Framework*, 2008 (PC Report), Vol 1, p.40; Vol 2, p.203.

ASTRA notes that where a subscription television service of an ASTRA licensee member is provided by an eligible carriage service provider as part of bundled offering, that carriage service provider is the subscription television broadcasting licensee and is responsible under the Subscription Television Codes for account management and billing issues associated with the subscription television service provided as part of that bundle.

ASTRA submits that there are specific issues related to the operation and service delivery of a subscription television service compared to the delivery of telephone and internet services, and that these issues are already effectively and appropriately addressed under the Subscription Broadcast Television Codes developed within the regulatory framework for broadcasting services under the BSA. ASTRA submits that it is not necessary for subscription television services to be subject to an additional scheme established for telephone and internet services under a different regulatory framework.

As detailed above, the existing complaints processes under the Codes, registered by the ACMA under the BSA, work well for subscription television consumers. The ACMA is the primary statutory body for regulating content service providers and is the agency best suited for overseeing issues that arise in the subscription television industry. It would be entirely inappropriate for the TIO to handle complaints arising with respect to subscription television services in circumstances where the ACMA is responsible for managing complaints for free to air television services. The fact that subscribers pay for subscription television services should not of itself give rise to a need for complaints arising from the delivery of those services by the TIO where the BSA was specifically designed for the ACMA to be the relevant statutory authority for subscription broadcasting television services.

ASTRA submits that the TIO has a specialist remit for telecommunications-related consumer issues and complaints, and understands that the TIO is regarded as performing its role well with respect to consumer issues related to telephone and internet services provided as a carriage service. However, ASTRA concurs with submissions made to the Productivity Commission in 2008 that widening the TIO's jurisdiction may risk creating a mega complaint body that dilutes the specialised expertise within the TIO for dealing with telecommunications and internet-related consumer issues while at the same time taking on consumer issues from a different sector of the communications industry.⁷

The Productivity Commission Report noted that the Telephone Information Services Standards Council was considered effective in dealing with issues specific to 190 services, and that the division of responsibility for mobile handsets between the TIO and various Offices of Fair Trading was considered to be working well.⁸ Similarly, ASTRA submits that the established consumer assistance and complaints processes developed by the subscription television industry, with escalation to State and Territory Fair Trading agencies where the consumer is not satisfied with outcome of its discussion with their subscription television provider, is the simplest and most appropriate path to address subscription television consumer issues.

⁷ See, for example, Telstra Submission to Productivity Commission Review of Australia's Consumer Policy Framework, 2008, p. 20.

⁸ PC Report, vol 2, p.203.

TIO jurisdiction over internet-delivered and IPTV subscription services

Subscription television services provided by ASTRA members are now becoming available to consumers via the internet. For example, Microsoft Xbox 360 users are able to subscribe and receive a selection of 30 FOXTEL channels and on-demand services via the user's internet connection. Telstra, through its TBox, will soon be offering a similar FOXTEL selection to its Bigpond broadband customers delivered via its broadband network. Both FOXTEL and AUSTAR offer 'catch-up' services online to their subscribers.

ASTRA understands that the TIO has asserted jurisdiction over non-content related consumer issues arising from the provision of subscription television services delivered over the internet where that subscription television service is provided by an "eligible carriage service provider" under the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. ASTRA notes that the TIO, in its submission to the draft Terms of Reference to the Government's Convergence Review, states that it handles complaints about IPTV services because "IPTV services are delivered via an internet connection (and therefore by an internet service provider that is also a member of the TIO scheme)." The TIO also states that complaints about the equipment related to IPTV services are also generally within the TIO's jurisdiction because "the equipment can only be used in conjunction with a service provided and billed for by a TIO member who sells this product."⁹

ASTRA submits that all content services and content related matters should be regulated under the BSA as with other subscription television services. Further, if such services are provided as an ancillary service to the primary subscription television service and accessible only by households that subscribe to the primary subscription television service, then these services should, likewise, be dealt with under the BSA and managed by the ACMA.

Services such as the FOXTEL branded services provided via TBox or the X-Box should, therefore, be regarded as coming under the jurisdiction of the BSA and the ACMA and, as such, should not be within the jurisdiction of the TIO.

Please feel free to contact Simon Curtis, ASTRA Policy and Regulatory Affairs Manager, or myself on (02) 9776 2684 if you wish to discuss further any of the issues raised in this submission.

Yours sincerely



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⁹ TIO submission to Convergence Review Draft Terms of Reference, January 2011, p. 4.