

**Submission to the Senate Standing Committee on
Environment and Communications**

***Inquiry into the Telecommunications Legislation
Amendment (Consumer Protection) Bill 2013***

INTRODUCTION

The Senate Standing Committee on Environment and Communications (**the Committee**) has been requested to consider the Telecommunications Legislation Amendment (Consumer Protection) Bill 2013 (**the Amendment Bill**). The Amendment Bill makes amendments to the following Acts:

- *The Telecommunications Act 1997 (Telco Act).*
- *The Telecommunications (Consumer Protection and Service Standards) Act 1999 (the Consumer Protection Act).*
- *The Do Not Call Register Act 2006.*

The Committee is seeking written submissions from interested individuals and organisations about the Amendment Bill.

iiNet Limited (**iiNet**) is a carriage service provider and carrier¹. iiNet is Australia's second largest DSL Internet Service Provider. iiNet employs more than 2000 staff across four countries and supports over 1.7 million broadband, telephony and Internet Protocol TV services nationwide. iiNet welcomes the opportunity to comment on the Amendment Bill. iiNet wishes to comment on the provisions of the Amendment Bill that relate to the Telco Act and the Consumer Protection Act. iiNet's comments are set out below.

AMENDMENTS TO THE TELCO ACT

According to the Explanatory Memorandum to the Amendment Bill, the Amendments made to the Telco Act by the Amendment Bill include amendments that will²:

- enable industry codes to be varied (rather than being required to be wholly replaced); and
- require code developers to publish on their websites:
 - draft codes and draft variations; and
 - any submissions received about the draft code or draft variation.

iiNet believes that these proposed amendments are sensible and pragmatic and they would allow industry codes to adapt to changing circumstances in a much more efficient and transparent manner than under the current legislation. Accordingly, iiNet supports these amendments.

¹ The relevant carrier licence is held by Chime Communications Pty Ltd which is a subsidiary of iiNet Limited.

² Telecommunications Legislation Amendment (Consumer Protection) Bill 2013, at p. 1.

AMENDMENTS TO THE CONSUMER PROTECTION ACT

The Amendment Bill makes the following amendments to the Consumer Protections Act:

- giving the Minister the power to determine standards that must be complied with by the Telecommunications Industry Ombudsman (TIO) Scheme (for ease of expression such determinations will be referred to as **TIO Determinations**); and
- requiring independent periodic public reviews of the TIO Scheme.

While iiNet supports the high level principles behind these amendments, iiNet has concerns regarding the implementation of these principles. In particular, iiNet is concerned that in making a TIO Determination the Minister is not required to

- consult with industry; or
- have regard to the administrative and financial burden that may be imposed on participants of the TIO Scheme.

Each of these issues will be considered in turn.

Consultation with industry

Proposed sub-section 128(11) of the Consumer Protection Act provides that before the Minister makes a TIO Determination, the Minister must consult the TIO and the Australian Communications and Media Authority. Given that the TIO Scheme is funded by industry and a TIO Determination has the potential to have potentially onerous administrative and financial impacts on industry, iiNet believes that it would be reasonable and appropriate for the Minister to be required to consult with industry before making a TIO Determination. Therefore, iiNet submits that proposed sub-section 128(11) should be amended to include such a requirement.

Administrative and financial burden on TIO participants

iiNet notes that it is Parliament's stated intention that telecommunications be regulated in a manner that does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry³. iiNet notes that proposed sub-section 128(10) of the Consumer Protection Act provides that the criteria that the Minister must have regard to when making a TIO Determination are as follows:

³ Section 4(b) of the Telco Act.

- accessibility;
- independence;
- fairness;
- accountability;
- efficiency;
- effectiveness; and
- such other matters (if any) as the Minister considers relevant,

(for ease of expression referred to collectively as the **sub-section 128(10) Criteria**)

Although the sub-section 128(10) Criteria require the Minister to have regard to ‘efficiency’ and ‘effectiveness’, these terms are not defined in the legislation. Given that the sub-section 128(10) Criteria are based on the *Benchmarks for Industry-based Customer Dispute Resolution Schemes* which were originally released by the Minister for Customs and Consumer Affairs in August 1997 (**the Benchmarks**)⁴, it is likely that these criteria will be interpreted in line with the Benchmarks.

The Benchmarks define efficiency as follows⁵:

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

The Benchmarks define effectiveness as follows⁶:

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

In light of this, iiNet is concerned that in making a TIO Determination there is no mandatory requirement for the Minister to have regard to the financial and administrative burdens on participants in the Australian telecommunications industry that may result from the TIO Determination. Although, the Minister *could* have regard to this matter under the last catch all criterion (i.e. ‘such other matters (if any) as the Minister considers relevant’), it would also be permissible under the sub-section 128(10) Criteria for the Minister to simply

⁴ See Telecommunications Legislation Amendment (Consumer Protection) Bill 2013 Explanatory Memorandum, at p. 12.

⁵ Benchmarks for Industry-based Customer Dispute Resolution Schemes, at p. 10.

⁶ *ibid.*

ignore the effect that a TIO Determination would have on the financial and administrative burden on participants in the Australian telecommunications industry.

iiNet submits that given Parliament's stated intention that telecommunications be regulated in a manner that does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry, it is not reasonable for the Minister to be given determinative powers that could result in an undue financial and administrative burden being put on participants in the Australian telecommunications industry. Accordingly, iiNet submits that the sub-section 128(10) Criteria should be expanded to include a requirement for the Minister to have regard to the financial and administrative burden on participants in the Australian telecommunications industry.

iiNet Limited
2 May 2013