Australian Telecommunications Alliance

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AUSTRALIAN TELECOMMUNICATIONS ALLIANCE SUBMISSION

To: The Telecommunications Industry Ombudsman

Re: Non-Financial Loss

30 September 2026



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1. AUSTRALIAN TELECOMMUNICATIONS ALLIANCE

The Australian Telecommunications Alliance (ATA) is the peak body of the Australian telecommunications industry. We are the trusted voice at the intersection of industry, government, regulators, and consumers. Through collaboration and leadership, we shape initiatives that grow the Australian telecommunications industry, enhance connectivity for all Australians, and foster the highest standards of business behaviour. For more details, visit www.austelco.org.au.

For questions on this submission, please contact Peppi Wilson, p.wilson@austelco.org.au.

2. INTRODUCTION

2.1 The ATA appreciates the opportunity to make a submission in response to the TIO's review of the non-privacy non-financial loss (NFL) compensation limit.

2.2 The ATA supports having an NFL scheme that is fair and accessible, providing consistent and, to the greatest extent possible, objective redress for consumers that have experienced NFL.

2.3 As this submission explores, there is no evidence that a change to the current binding cap of $1500 for NFL is required; it does not appear to be limiting outcomes for telecommunications customers and is appropriate when compared with comparable schemes both within Australia and overseas.

2.4 There is evidence, however, that the scheme could be improved. This submission proposes a number of changes that would make the assessment and management of NFL claims less subjective and more transparent – resulting in more consistent, balanced, fair and efficient outcomes.

2.5 The ATA would welcome the opportunity to meet with the TIO to explore the issues raised in the consultation further, should that be of assistance.

3. SCHEME OBJECTIVES AND PRINCIPLE

1. What principles should guide the TIO's approach to compensating non-financial loss?

2. Does the current NFL framework appropriately balance fairness, proportionality and consistency?

3. Are there circumstances where the current framework does not adequately recognise consumer harm?

3.1 The consultation paper states that the objectives of the scheme are that compensation be remedial rather than punitive; fair, accessible and promote confidence in the scheme. The ATA supports these as objectives.

3.2 However, it is not clear that the scheme is consistently meeting these objectives. This is because the assessment framework is subjective, resulting in inconsistent outcomes.

3.3 To address this and allow for fairer and more consistent outcomes for both consumers and industry, reform of the NFL framework should focus on consistency, transparency and evidentiary standards. This is further explored in section 7: Operational and system implications.

4. ADEQUACY OF THE CURRENT LIMIT

4. Is the current $1,500 non-privacy NFL limit appropriate?

5. If not, what evidence supports an alternative limit?

6. What factors should be considered in determining an appropriate compensation limit?

7. Should any future limit be fixed, indexed, periodically reviewed, or adjusted through another mechanism?

4.1 The ATA is unaware of any evidence to suggest that the $1500 non-privacy NFL limit is consistently constraining outcomes, or that it needs increasing:

- The NFL compensation amounts awarded in all case studies cited in the consultation paper are well under the $1500 cap, both for cases where the TIO found in the consumer favour, and where it did not.
- Similarly, our members' analysis of their own data suggests that the current cap is not constraining outcomes.

4.2 In considering this issue in more detail, our members' analysis of their NFL claims is instructive, with members reporting that:

(a) customers peg their claim to the maximum available.

The ATA notes that this behaviour – known in behavioural economics as anchoring - is widely researched and recognised. When asked to quantify something abstract and subjective, like emotional distress, stress, or inconvenience (i.e. NFL), people struggle. Consumers therefore tend to take the first available data point as their starting point for any claim[1]. In the case of NFL claims under the TIO scheme, the only number published is the cap: $1500. Consumers therefore peg their claim against this, not recognising that this sum is the upper end of claims for most claims of NFL, not an indicator of reasonable compensation in the majority of cases.

[1] Anchoring and legitimacy bias is described in copious research on behavioural economics, linked to the original work of psychologists Daniel Kahneman and Amos Versky

Not surprisingly, then, providers report that most claimants are unable to substantiate their claim, with awarded compensation generally *well* under this limit. The case study evidence presented in the consultation paper similarly supports these findings, with NFL loss for escalated cases well under the $1500 cap.

(b) where a customer has suffered an impact requiring compensation, it is generally tied to financial loss. This type of loss should be addressed through financial loss provisions, not NFL compensation. NFL awards generally are seen as a good will gesture.

4.3 Additionally, although the TIO cannot issue a binding decision for an amount greater than $1500, a negotiated resolution can involve NFL of any amount. While we understand that most claims are well under the limit, we are informed that compensation above the cap has been negotiated, with one of our members reporting a $10,000 NFL payment. This again supports the position that the cap is not unreasonably limiting compensation.

4.4 This information suggests that increasing the NFL cap would not result in fairer outcomes. Indeed, it may be counterproductive, as:

- behavioural economics suggests it would result in customers pegging their claim against the increased cap, regardless of actual NFL harm – particularly if it is the only number published. Time spent to reach a substantiated resolution would likely increase as a result, which is not desirable for any party.
- it could result in a punitive regime, particularly for smaller CSPs, which is against the stated objectives.
- it risks becoming a substitute pathway for claims involving actual financial loss (which should continue to be managed through a separate path).

4.5 Other factors that should be taken into account include the fact that the telco industry is highly competitive at the retail level, with:

- a wide range of service available, for every price point.
- prices for telecommunications services having fallen while offerings and the complexity of services have increased.
- providers having automatic and in-built incentives to ensure their customer complaints are resolved in a timely and effective manner. It is not good business to have unhappy customers – they can and do change service providers, and poor (or good) service affects reputation.

This means that there will reasonably be different NFL compensation applied to different services offerings and scenarios.

5. CONSUMER OUTCOMES

8. Does the current limit adequately recognise non-financial harm experienced by consumers?

9. Are there particular categories of complaints where the current limit appears insufficient?

10. Are there particular categories of complaints where the current limit appears excessive?

11. Are there circumstances where consumers experience harm that is not currently well recognised within the NFL framework?

5.1 As already stated, the ATA believes that the $1500 financial limit is appropriate. We are unaware of any examples where it has not recognised NFL experienced by consumers, or any categories of complaints where the limit appears insufficient.

5.2 It is also unclear how the limit might be considered excessive in any particular category given that it is a limit, not a set payment. It *could,* however, be considered excessive if it is interpreted as a guide for compensation rather than a (binding) limit (with negotiated outcomes not limited), or if it is viewed as a punitive measure, noting that consumers often peg their claim to the limit.

5.3 In response to the question about whether there are circumstances where consumers experience harm that is not well recognised within the NFL framework; we are unaware of such examples.

5.4 If the TIO's internal review of NFL outcomes, or evidence presented to the TIO through this consultation process suggests that the current cap is problematic, we would be keen to have visibility of the evidence and analysis, and for further discussion about complaints and settlement behaviour ahead of the TIO making any decisions about increasing the cap. This should include looking at whether consumer claims through the TIO reflect genuine consumer detriment or simply awareness of published compensation limits, and whether claims are pursued through other avenues as a result of the TIO having a $1500 cap, and if so, which avenues and with what outcomes?

6. BENCHMARKING AND COMMUNITY EXPECTATIONS

15. What lessons can be drawn from comparable Australian or international dispute resolution schemes?

16. How should contemporary community expectations influence NFL compensation settings?

17. Have community expectations regarding non-financial harm changed since the current limit was established?

6.1 The ATA notes that consumer groups have advocated to align the TIO cap with that of 'equivalent bodies' such as the financial complaints body, AFCA, which has higher NFL caps.

6.2 We urge caution when considering such comparisons, noting that comparisons as there are significant differences between the two schemes:

- The AFCA NFL scheme cap covers both privacy and non-privacy-related non-financial losses. These are separated in the TIO's scheme, with the TIO cap for privacy-related NFL considerably higher than AFCA's ($100,000 vs $6,300 per claim).[2]
- The prices of the products covered by the schemes is quite different (financial products vs telecommunications services) – with the complexity to total losses objectively higher with financial products.

6.3 Looking further afield to comparable jurisdictions, the ATA has been unable to find an example of any jurisdiction with a higher cap than Australia for NFL-specific compensation for telecommunications services:

- In the UK, telcos must join one of two Ombudsman services. Both have a similar approach to NFL, where any NFL payment awarded is seen as a 'top up' to acknowledge consumer inconvenience, paid on top of any compensation for actual financial loss, and within the same all-inclusive aggregate cap that covers financial loss, privacy NFL and other NFL. While there is no mandated sub-cap for the NFL component of a payout, meaning, theoretically, an award for NFL could technically come in at the all-inclusive maximum cap of £10,000, it appears that NFL payouts are low – typically between £50 and £100[3], [4], with payouts above £500 exceedingly rare.

[2] AFCA, The AFCA Approach to non-financial loss claims, August 2026, p.2.

[3] https://www.cedr-assist.com/hubfs/CEDR%202025/Consumer_Documents/CISAS-Guide-to-compensation-for-inconvenience-and-distress-Oct21.pdf

[4] We are unaware of the average NFL paid under the Communications Ombudsman scheme, but the average aggregate payment (total compensation including any NFL) is reportedly around £50 per complaint, suggesting a very low average NFL component to compensation payouts. Ref: https://www.commsombudsman.org/we-may-be-able-to-help-resolve-your-broadband-dispute

At current exchange rates, £500 is a little under AUD $1000 – well under the current TIO non-privacy NFL cap.

- The approach in other European countries varies. Belgium, for example, runs an automatic compensation scheme strictly designed to refund (or provide account credit for) a proportional slice of the consumer's subscription. It does not provide for any separate NFL payment. Likewise, in France and Germany, a consumer's ability to claim also appears to be limited to quantifiable, direct losses, not NFL, except for cases involving privacy-related breaches[5].
- Canada runs a scheme through its Commission for Complaints for Telecom-Television Services (CCTS). Like the TIO's scheme, this is compulsory. However, it has a $5000 CAD cap per complaint that includes privacy and non-privacy related NFL issues, and financial loss compensation within the same cap[6].
- New Zealand does not have an NFL scheme for telecommunications. Customers facing a severe privacy breach or extreme emotional distress caused by a provider must make a claim through Office of the Privacy Commissioner or use the New Zealand Disputes Tribunal.

6.4 Finally, we note the suggestion that the TIO cap should be raised to better align it with NFL compensation awarded under Enforceable Undertakings (EU), which have generally been much higher than those awarded under the TIO scheme.

6.5 The ATA suggests that a comparison to the EU compensation scheme is not valid; while both schemes aim to resolve grievances and provide financial redress, they stem from completely different regulatory objectives, legal frameworks and calculation methodologies. The primary purpose of the EU is to address systematic issues at a corporate level, whereas the ombudsman's scheme is designed to resolve individual consumer issues based on what is 'fair and reasonable' in the circumstances, without it being punitive.

7. OPERATIONAL AND SYSTEM IMPLICATIONS

18. What impacts might different compensation settings have on:

(a) consumers

(b) telecommunications providers

(c) complaint resolution processes

(d) scheme administration?

19. Are there alternative approaches, other than changing the limit itself, that could improve outcomes?

20. What implementation considerations should be taken into account if changes were made?

7.1 Although the ATA does not believe that any change to the binding cap is required, we support changes to the NFL scheme to make the assessment and management of NFL claims less subjective, more consistent, balanced and fair, whilst still retaining the flexibility to consider a complainant. We note that the TIO's factsheet on non-financial loss is 2 pages whereas AFCA's approach document is 19 pages and includes 12 case studies to illustrate the application of its approach[7].

7.2 We suggest that this could be achieved by expanding the existing factsheet by developing and publishing a structured NFL assessment framework that:

(a) clearly identifies the factors considered when determining compensation.

[5] https://www.cullen-international.com/news/2026/02/Compensation-for-network-outages-mandated-in-11-EU-countries.html

[6] https://www.ccts-cprst.ca/wp-content/uploads/2017/07/Procedural_code.html (s12.2)

[7] See: Non-financial loss claims pdf on the AFCA website

This should include consideration of:

- severity and duration of impact,
- provider conduct,
- customer vulnerability,
- efforts made by the customer to resolve the issue,
- the extent to which the provider took reasonable steps to address the complaint, including any payments or credits already provided that already include a NFL component, and
- the type and price point of the service, to ensure a proportionate response.

(b) includes indicative compensation ranges and clearer guidance for different categories of NFL harm.

By providing compensation ranges for different categories, consumers would be given the tools to consider the level of NFL harm they have suffered. This would provide a range of anchors for consumers to assess and peg their claims, consistent with the aforementioned behavioural phenomenon of anchoring and legitimacy bias.

(c) includes de-identified case studies and decision-making guidance that provides practical example of how compensation assessments are made, types of evidence required, and the circumstances that justify higher compensation outcomes.

(d) makes clear when evidence is required (which we suggest should be early in the complaint process to improve efficiency and reduce unnecessary escalation).

7.3 The ATA suggests that by having clear and transparent guidance available to both consumers and providers, processes and assessment will be more efficient, with frustrations and inconsistent management and outcomes reduced, and expectations better managed.

7.4 We do not believe that a change to the NFL binding cap of $1500 is necessary or justified as part of this review; as this submission has explored, the cap does not appear to be unreasonably limiting outcomes currently, and benchmarking against other schemes (in Australia or overseas) also does not suggest that the current binding cap is too low.

7.5 Indeed, the ATA suggests that the introduction of a higher cap might be counterproductive, as it would likely lead to unrealistic consumer expectations about the amount of compensation they will receive (noting the evidence that consumers peg their claim to the advertised cap). This would lead to claims taking longer to resolve and consumers being more unhappy with both the process and outcome.

8. FUTURE FRAMEWORK

21. What framework would best ensure that NFL compensation settings remain appropriate over time?

8.1 The ATA suggests that the guidance and case studies in the structured NFL framework (described above) be periodically reviewed and updated as required.

Ends

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