

Telecommunications Industry Ombudsman Independent five-year review

Legal Aid NSW submission to Queen
Margaret University, Consumer
Dispute Resolution Centre
May 2022

Legal Aid
NEW SOUTH WALES

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Artwork: © Luke Penrith

Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law.

Specialist services focus on the provision of Family Dispute Resolution Services, family violence services and the early triaging of clients with legal problems through the Family Law Early Intervention Unit.

Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners, older people experiencing elder abuse and communities impacted by disasters.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

1. Industry Benchmark 1: Accessibility

Intention: The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

It is Legal Aid NSW's view that overall, the TIO is relatively easy to access for consumers. A complaint can be lodged online, via the telephone or a hard copy of the complaint form can be completed and faxed or posted. There are provisions to make the TIO accessible for the deaf or hard of hearing community and there is information about accessing a language interpreter.

It is an essential aspect of the TIO's accessibility that it is and remains, free for consumers.

It is noted that the TIO engages in regular outreach and has a dedicated outreach team. The TIO should continue with their current outreach work which is a vital component of the scheme as it, among other things, a means of targeting rural and remote areas and Aboriginal communities. The TIO could consider proactively expanding their outreach work in order to increase and maintain awareness of the TIO in the broader community; and this could include the addition of Aboriginal community engagement officers.

When conducting advice sessions with our clients, our solicitors and financial counsellors report that consumers are often unaware of the existence of the TIO until they make contact with a legal service or financial counselling service.

It is positive to see that the TIO has information and resources available in 37 different languages including brochures available in three Aboriginal languages.

The importance of outreach work and efforts to improve and maintain accessibility for vulnerable consumers should be considered in the context of any budget reviews of the TIO.

2. Industry Benchmark 2: Independence

Intention: To ensure that the processes and decisions of the office are objective and unbiased and are seen to be objective and unbiased.

Legal Aid NSW's engagement with the TIO has resulted in our view that the processes and decisions are objective and unbiased.

3. Industry Benchmark 3: Fairness

Intention: To ensure that the office performs its functions in a manner that is fair and seen to be fair.

Legal Aid NSW's engagement with the TIO has resulted in our view that the TIO performs its functions in a manner that is fair and seen to be fair

4. Industry Benchmark 4: Accountability

Intention: The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

It is Legal Aid NSW's view that the TIO regularly and openly reports on its systemic investigations and outcomes. It is hoped that this results in a positive impact for consumers, as it is a mechanism to help prevent future harm to consumers by leading to change in the conduct of providers.

The consistent investigation and reporting on systemic issues and problems should be considered as a vital aspect of the TIO in the context of any review of the TIO's budget.

To enhance the transparency and impact of the TIO's reports on complaint data, supporting analysis and systemic issues, providers could be named and linked to particular issues. Publishing these details is likely to increase the accountability of providers and motivate a positive change in overall industry conduct. It would also result in more information being available to consumers about the behaviour of providers. This may help inform a consumer's choice to purchase particular services and products or keep their business with a particular provider.

5. Industry Benchmark 5: Efficiency

Intention: The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance and provides value for money.

The TIO should consider an additional step in Stage 1 of the complaint process to enhance consumer service standards. This would involve the TIO actively contacting the consumer and following up with a message, phone call and/or email to confirm that the provider has contacted the consumer and whether the matter has resolved, or not.

For benchmarking, this contact could occur at 7 or 14 days after the TIO has referred the consumer's complaint to the provider.

As it currently stands, it is up to the consumer to go back to the TIO to say why they are not happy with the provider's response (or failure to respond) in order to initiate Stage 2 of the complaint process which leads to either conciliation or investigation by the TIO.

The consumer has generally been attempting to resolve their matter with the provider prior to contacting the TIO and adding a further step to Stage 1, as proposed above, would help to ensure that the TIO retains matters rather than potentially losing complaints. Under the existing complaint structure there is a risk that the consumer may give up if the provider does not resolve their matter or the consumer may mistakenly assume that the TIO will automatically investigate their matter once a complaint has been lodged.

6. Industry Benchmark 6: Effectiveness

Intention: To promote community confidence in the office and ensure that the office fulfills its role.

Legal Aid is of the view that it would assist in promoting confidence if awareness of the TIO is increased further in the broader community and we refer to our response to Industry Benchmark 1: Accessibility.

Issue: Revised Terms of Reference

Legal Aid NSW notes that the new TIO Terms of Reference have only recently been introduced.

Legal Aid NSW welcomes the increase in the financial limit and the new power to award compensation for non-financial loss as it is a further means to assist consumers to see the TIO as a forum in which to effectively resolve their complaints.

Issue: Systemic investigations

Legal Aid NSW considers that the investigation and reporting of systemic problems and issues is a significant aspect of the TIO and it is important that resources and funding are available to ensure this work continues. This should be considered an integral part of the TIO, in the context of any budgetary reviews.

We welcome the TIO engaging more with organisations, such as Legal Aid NSW and community legal centres, about their systemic work and the criteria used to assess whether an issue will be investigated, as illustrated in the example below:

In August 2022 a complaint, identifying a systemic issue, was lodged with the TIO by Legal Aid's Refugee Service. The complaint detailed at least 10 examples of mis-selling of telco services to members of a particular CALD community. Unfortunately, the complaint was declined by the TIO and the Legal Aid Refugee Service was advised to contact the regulator instead.

Individual outcomes were eventually obtained for the consumers.

Moving forward it would be helpful to have more transparent information about why particular complaints are not accepted as part of a systemic issues investigation.

Issue: Member and stakeholder engagement and outreach activities

Legal Aid NSW supports the continuation of the TIO Consumer Panel as the diverse membership of the Panel provides an effective and direct means for the TIO to engage with a range of consumer organisations across Australia. Our comments on outreach activities are noted under Industry Benchmark 1: Accessibility.



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