More Extensive Dispute Resolution Obligations are Needed to Support the Digital Duty of Care

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Introduction

The proposed draft Digital Duty of Care (DDoC) is an important opportunity to improve accountability in Australia's digital environment. However, the proposed framework lacks two critical components: the need for digital platforms to provide complaint and dispute resolution processes capable of handling a wide range of complaints; and an accessible and independent mechanism for resolving disputes between users and digital platforms.[1]

A positive feature of the draft DDoC is the proposed s 26F, which would require designated digital platforms to have internal dispute resolution processes for users who have complaints about platform decisions concerning the safety of their online environments. While this is an important step, the proposal does not go far enough as it is an internal dispute mechanism and relies on platforms resolving complaints about their own conduct. Moreover, because the definition of a 'safe online environment' is narrowly defined, the internal dispute mechanism provision fails to capture the full range of complaints made by adult and child users of digital platforms about both the practices of digital platforms themselves and other users on those platforms: in its proposed form it will capture complaints relating only to 'seriously harmful material, 'material and conduct that is harmful to children,' and content and 'harms associated with the operation of design features of services'. This does not substantially improve the status quo. It means that individuals will be unable to have complaints resolved unless they meet a high threshold of harm. The problem is particularly acute for adults in situations where material or conduct (and combinations thereof) is harmful but falls below the high threshold of 'serious harm'. However, children may also be adversely affected in situations where the Minister has not yet determined that the underlying causes of potential complaints are harmful to them.

As we have previously highlighted,[2] complaints can be distinguished in two ways:

1. complaints about the conduct of digital platforms themselves or complaints about the conduct of third-party users of those platforms, including advertisers, sellers and users who post content
2. 'social disputes'—disputes that occur between users of digital platforms; or 'transactional disputes' —two-party disputes involving unmet contractual expectations.

Application of these criteria leads to four types of complaints that are illustrated in the table below.

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* This submission is funded by a grant from the ARC -Derek Wilding, Karen Lee, David Lindsay and Anita Stuhmcke, ARC Discovery Project (DP230101322), *Optimising Industry-led Regulation for the Digital Platform Era* Australian Research Council.

[1] For more information and discussion of the points raised in this submission see Wilding D, Raiche H, Lee K, Stuhmcke A, *Digital Platform Complaint Handling: Options for an External Dispute Resolution Scheme* (2022) UTS Centre for Media Transition.

[2] Ibid 12-15.

	Social	Transactional
User-to-platform Complaints	• Illegal content including terrorism, CSAM, instruction in criminal acts • Pornography and other offensive content • Disinformation and misinformation • Content moderation disputes • Sale of prohibited goods or services • Election advertisements • Proliferation of fake accounts and other inauthentic behaviour	• Unfair digital platform business practices • Complaints about digital platform service, charges etc. • Privacy / other personal violations by digital platform • Failure to protect user eg, account hacking • Complaints about service disruption eg, account suspension • Dispute over terms of service / account suspension etc. • Complaints involving digital platform failure to comply with dispute resolution obligations
User-to-user Complaints	• Abuse, harassment and discrimination and other personal harms with an online dimension • Damage to reputation • Identity theft, impersonation • Disclosure of confidential or protected information • Other privacy breaches by third parties • Advertising content eg, community standards, offensive material • News content eg, accuracy and fairness	• Scams and fraudulent transactions • Misleading advertising and product claims, unfair terms, product defects, other sales disputes • Breach of copyright • Comments in reviews of products and services • Spam and unwelcome notifications or communications

Table 1: Types of complaints made about content and conduct on digital platforms
Source: Centre for Media Transition

Without amendment, under s 26F, unless the Minister pre-determines that an underlying cause of a complaint 'seriously harms' adults or 'harms' a child, digital platforms subject to the duty of care have no responsibility for developing internal complaint and dispute processes for user-to-platform complaints (other than those that detract (actually or potentially) from a 'safe online environment'); most transactional user-to-platform complaints listed in the table unless the underlying causes of those complaints also undermine the 'safe online environment'; and user-to-user platform complaints, again unless their underlying causes undermine the 'safe online environment'. This means that adult and child users with these types of complaints will likely be left without any recourse to internal digital platform processes.

Furthermore, even if the definition of 'safe online environment' is substantially expanded to include the full range of complaints illustrated above, under s 26F, adult and child users will still be required to navigate internal review systems that are often automated, opaque and ineffective. Individuals, small businesses and community organisations increasingly depend on digital platforms for communication, commerce, participation and access to information. Decisions made by platforms about account access, content moderation, algorithmic ranking, advertising, identity verification and privacy can have significant consequences. Yet affected users have no effective avenue for redress when these decisions are wrong. In its current form, section 26F will fail these users as it means there is no guarantee of a transparent and independent review.

The draft therefore falls short of addressing the accountability problem. To provide meaningful redress, the DDoC should be amended to require platforms to develop internal complaint

dispute processes for the full range of complaints their users experience and for platforms to participate in an independent external dispute resolution scheme, giving individuals, small businesses and community organisations access to a free and impartial avenue for complaint. Without access to a comprehensive system of internal dispute resolution, legitimate complaints will be left unaddressed. And without access to the additional layer of the oversight that external dispute resolution brings, users remain largely dependent on the same platform that made the disputed decision in the first place.

The DDoC should therefore require major digital platforms to:

- have internal complaint and dispute processes for all types of complaints that users are likely to experience now and in the future;
- participate in an independent external dispute resolution (EDR) scheme.

The most effective and efficient approach would be to establish the EDR function within an existing ombudsman institution, particularly the Telecommunications Industry Ombudsman (TIO).

Existing mechanisms for independent review such as the eSafety Commissioner perform a vital regulatory role[3] and should continue to address serious online harms, systemic risks and safety-related matters. However, eSafety is not designed to resolve the large volume of individual disputes involving other matters that arise between users and platforms or between users and users. The DDoC therefore requires complementary mechanisms focused on individual redress.

Why an Ombudsman Model Is Appropriate

Australia has a long and successful history of using ombudsman schemes to address power imbalances in essential services. Ombudsman institutions provide an accessible, low-cost and independent pathway for resolving disputes where consumers face large, sophisticated organisations.[4] The relationship between users and major digital platforms increasingly resembles that found in other sectors where ombudsman schemes have proven successful. Platform users face:

- significant information asymmetries;
- standard form contracts that cannot realistically be negotiated;
- dependence on the platform/service for social and economic participation;
- limited market alternatives;
- substantial barriers to litigation.

These are precisely the circumstances in which ombudsman schemes have traditionally emerged.

An independent ombudsman – the TIO - would provide a practical remedy where existing rights are difficult or impossible to enforce. The mission of the TIO to resolve individual complaints by consumers has been a feature of the telecommunications regulatory framework since 1993

[3] Ibid 42.

[4] See generally: Anita Stuhmcke, 'Australian Ombudsmen: A call to take care' (2016) 44(3) *The Federal Law Review* 531-556; Anita Stuhmcke, 'The rise of the Australian Telecommunications Industry Ombudsman' (2002) 26 *Telecommunications Policy* 69-85.

even as the telecommunications sector has evolved. The TIO has proven to be adaptable and effective, providing community benefit,[5] against a changing landscape of regulation and consumer and citizen needs and expectations.

Why the Telecommunications Industry Ombudsman Is the Best Home for Digital Platform Dispute Resolution

The strongest and most efficient option is to extend the jurisdiction of the Telecommunications Industry Ombudsman (TIO) to cover major digital platforms.

Digital platforms have become essential communications infrastructure. Individuals, small businesses and community organisations now rely on services such as social media, search, messaging and platform-based marketplaces in much the same way previous generations relied on telephone services. When a platform suspends an account, removes content, restricts advertising access or makes an erroneous algorithmic decision, the consequences can be significant for participation, communication and economic activity.

The rationale that justified the creation of the TIO to cover telecommunications providers[6] therefore applies equally to major digital platforms. Like telecommunications providers, platforms exercise significant control over services on which people depend, operate largely through standard-form contracts, and create substantial power imbalances that make legal action impractical for most users.

The TIO is particularly well placed to address these concerns because its expertise is not tied to a specific technology but to resolving disputes between powerful communications intermediaries and their users. It already has established complaint-handling procedures, investigative expertise, governance arrangements and public recognition as an independent dispute resolution body. Expanding its jurisdiction would build on these existing strengths rather than requiring government to create an entirely new institution.

A TIO-based scheme would also promote regulatory coherence. Australians already navigate a complex system involving the eSafety Commissioner, the OAIC, the ACCC and ACMA. Creating a separate external dispute mechanism such as a Digital Platforms Ombudsman risks adding further complexity and confusion. By contrast, extending the TIO would provide a single, trusted and accessible point of contact for individuals seeking redress.

Importantly, such a model would complement, rather than duplicate, the role of the eSafety Commissioner. eSafety should continue to focus on serious online harms, child safety, cyber abuse and systemic risks. The TIO would instead deal with everyday disputes such as account suspensions, privacy-related service complaints and failures in platform complaint handling.

The benefits are substantial. Users would gain access to a free, independent and accessible mechanism for resolving disputes. Platforms would benefit from a credible process that encourages early and fair resolution of complaints. Government and regulators would gain valuable insight into emerging systemic issues through complaint data and reporting.[7]

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[5] *Telecommunications Industry Ombudsman Ltd v Commissioner of State Revenue* [2017] VSC 286 [54]
[6] Anita Stuhmcke 'The Role of the Telecommunications Industry Ombudsman' (1993) 21(3) *University of New South Wales Law Journal* 807.
[7] TIO data and investigations are already used to influence government policy. See TIO, *Digital Platforms Complaints Insights Report* - TIO_Digital_platforms_complaints_insights_report_December_2025.pdf

In summary:

The TIO is particularly well positioned to undertake this role.

The TIO already possesses:

- extensive experience in external dispute resolution;
- expertise dealing with technology-related complaints;
- established investigative procedures;
- recognised independence from industry participants;
- existing case management systems;
- national accessibility and visibility.

Using an established institution would avoid the cost and delay associated with creating a completely new organisation. It would also allow Parliament to build on the TIO's existing expertise and governance arrangements.

The communications sector and major digital platforms increasingly operate within an integrated digital ecosystem. Users generally do not distinguish between connectivity services and digital services when seeking remedies. A single, trusted body could provide a straightforward point of contact for complaints about platform conduct.

Scope of Jurisdiction – TIO

An ombudsman scheme should focus on individual disputes and low-level harms and contribute to systemic improvement while leaving other specific regulatory functions with eSafety and other regulators.

Potential jurisdiction could include, for example, complaints relating to:

- account suspensions and removals;
- privacy-related service complaints;
- advertising account restrictions;
- access to business pages and digital storefronts;
- failures to respond appropriately to internal complaints.

The ombudsman would not replace courts, tribunals or regulators. Nor would it determine matters involving significant online safety harms, which should remain with eSafety.

Instead, it would fill the current gap between ineffective internal complaint processes and costly formal legal proceedings.

Benefits for Users, Platforms and Government

Access to Justice

Most users cannot realistically commence legal action against large multinational technology companies. An ombudsman scheme would provide a free or low-cost alternative capable of delivering practical outcomes.

Improved Platform Accountability

Independent scrutiny encourages better internal decision-making and complaint handling. Platforms would have incentives to resolve complaints fairly at an early stage.

Systemic Learning[8]

Aggregated complaint data would provide valuable insights into recurring problems and emerging risks. This information could assist regulators, policymakers and platforms to identify systemic issues before they become widespread harms.

Public Trust

An independent dispute resolution scheme would improve confidence in the DDoC and demonstrate that accountability extends beyond regulatory enforcement to practical remedies for ordinary users.

Conclusion

The Digital Duty of Care will be significantly strengthened by addressing the weaknesses this submission has identified, including by mandating digital platforms establish internal dispute resolution processes for the full range of complaints their users are likely to make, and they participate in an independent external dispute resolution mechanism.

At present, Australians affected by incorrect platform decisions often have nowhere meaningful to turn. Internal complaints processes, such as that proposed by 26F in the draft Act, are too narrow in their scope and lack independence, while regulators such as the eSafety Commissioner appropriately focus on a specific jurisdiction to prevent online harms and systemic issues rather than general digital platform individual disputes involving transactions.

An ombudsman model offers a proven, proportionate and institutionally familiar solution. The Telecommunications Industry Ombudsman provides a particularly attractive option because it already possesses the expertise, infrastructure and public legitimacy necessary to deliver independent dispute resolution.

The DDoC should therefore be widened to provide complaint and dispute resolution processes capable of handling a wide range of harms and require major digital platforms to participate in an external dispute resolution scheme, preferably operated through the TIO, ensuring that individuals, small businesses and community organisations have access to fair, independent and effective remedies when digital platforms get things wrong.

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[8] The systemic function is outlined in Part 4 of the Terms of Reference which came into effect on 1 January 2022 and titled 'Our Industry Improvement Role'. Telecommunications Industry Ombudsman Terms of Reference