



Review Secretariat
Department of Infrastructure, Transport, Regional Development,
Communications and the Arts

By email: OptusReview@infrastructure.gov.au

To whom it may concern

Thank you for the opportunity to provide feedback to the Review into the Optus Outage of 8 November 2023.

The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides advice, advocacy and affordable dispute resolution services to small businesses across NSW.

As an advocate for small business, I share concerns relating to the quality of communications from Optus as well as the adequacy of arrangements in place to respond to events of this nature. Those concerns are set out in the below submission.

The communication from Optus to affected customers

Small businesses experienced significant frustration and disappointment due to Optus's minimal communication regarding the reasons for the outage and the expected timeline for service restoration. On the morning of 8 November 2023, the majority of available information came from third parties and the media, leading to widespread inaccuracies and contradictions.

Indeed, the information and statements provided by the Hon Michelle Rowland MP contrasted the lack of information provided by Optus. The Minister's statements were not only highly appreciated but demonstrated effective leadership in her capacity as Minister for Communications.

The lack of timely information from Optus during the outage caused significant distress to small businesses and hindered their ability to mitigate the impacts. Many small businesses suffered substantial financial losses due to the outage, as they were unable to operate at their usual capacity or at all. For example, small businesses reliant on internet services to process electronic payments may have been unable to trade without an alternative carrier service or back up arrangement.

In the event of an outage, it is a reasonable expectation for customers and particularly businesses reliant on these services to be provided accurate and regular information so they can make decisions to help mitigate losses. Furthermore, where it is known that the source of an outage is not a cyber attack this information should also be conveyed publicly as soon as possible. Again, this information was not provided in a timely fashion in regard to the Optus outage of 8 November 2023.

The use of known inoperative data and voice channels to communicate service outages was a further frustration. Proactive and regular public messaging, using an omnichannel approach, is required.

Emergency and backup communications

Incident response and crisis management protocols should be reviewed, and mandated to ensure an emergency communication network can be established for providers to communicate with Government and customers, and to ensure continued functioning of emergency services.

A similar outage in 2022 suffered by Canadian telecommunications service provider (Rogers) that affected 12 million users of cable internet and cellular networks, led to new laws requiring all telecommunications providers to provide mutual assistance to one another in the event of an outage, including emergency roaming services for rivals' affected customers. It also spurred new requirements for telecommunications providers on how to communicate to the public in the event of an outage.

The adequacy of customer complaints and compensation processes

While industry-based external dispute resolution can support customers in resolving certain types of disputes, this model is not well-suited to addressing customer concerns relating to network outages. Network outages can give rise to a high volume of complaints that would overwhelm existing dispute resolution channels if a case-by-case approach is taken, while the nature of the problem requires both timely information and response.

Before contacting the Telecommunications Industry Ombudsman (TIO), customers typically must first attempt to resolve their issues directly with the provider. Only after this can they file an application for assistance with the TIO, which is then resolved individually, often taking an average of 120 days, as reported in the TIO's 2022-2023 Annual Report.¹

The TIO has also commented on its own effectiveness noting the need to be able to provide advice and/or manage disputes proactively with a group of complainants and/or engage with ACMA and the government on the management of large-scale issues. The TIO notes:

...the TIO will be focused on ensuring a fit-for-purpose regulatory regime that reflects current consumer expectations of the telecommunications market. We will continue to push for an empowered regulator in the industry which enforces government-made regulation.²

The customer service guarantees (under the *Telecommunications Act 1997*) do not apply to internet connections. The customer service guarantee applies an obligation to ensure that any equipment provided is of an acceptable quality, and services provided with due care and skill. If these standards are not met, the consumer has the right to certain remedies under the Australian Consumer Law (ACL) including damages for losses that result from a failure to meet a consumer guarantee or other consumer law obligation.

The Commission encourages consideration of additional consumer protections to guarantee basic user rights and provide powers to a national regulator to levy fines and high penalties for non-compliance - penalties that incentivise quality and reliable essential service delivery.

While providers may not be held liable for consequential losses, such as a loss in commercial trade, there should be clarity over the rights and obligations of small businesses in respect to existing services so they are aware of potential disruption risks to their business and can take reasonable actions to mitigate losses.

¹ Telecommunications Industry Ombudsman, *Annual Report 2022-23 Transformation through innovation*. Available at: [TIO Annual Report 2022-2023](#), 119

² Ibid, 12

It is also important for further information to be provided in regard to how service outages may impact business. For example, a business may understand that a service outage impacts mobile services or access to the internet but may not be aware that merchant payment systems are also impacted. It is noted that complaint mechanisms do not place sufficient emphasis on the range of business impacts that may arise from a service outage, the Commission has recently raised this point in discussions with the TIO.

Thank you for the opportunity to make a submission. The Commission supports improvements to the regulatory framework of the telecommunications sector to ensure that small businesses are adequately protected in the future. If you require further information, please contact Megan Bennett, at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

Date: 20/12/23