WISPAU Wireless Internet Service Provider Association of Australia

Telecommunications Industry Ombudsman
Public Consultation Team
Via email: PublicConsultation@tio.com.au

RE: Submission – Targeted Review of Non-Financial Loss Limits

1. Introduction

The Wireless Internet Service Providers Association of Australia (WISPAU) welcomes the opportunity to respond to the TIO's Targeted Review of the non-privacy Non-Financial Loss (NFL) compensation limit.

WISPAU represents fixed wireless internet service providers (WISPs) in Australia, most of them small, independently owned businesses.

Our members serve regional, rural and peri-urban communities across Australia. They are often the only practical alternative to satellite or NBN fixed wireless, and in many cases were the first to deliver usable broadband to their areas. A typical WISPAU member has limited staff numbers and generally operates its own tower/s, radio and backhaul infrastructure.

WISPAU's position is that **the current $1,500 limit should be retained and not increased**. The TIO's own consultation materials show the limit is working as intended. Its impact on small providers would also be disproportionate to any benefit for consumers.

2. The evidence does not support a change

The consultation paper states that the available evidence does not show the current cap is routinely constraining outcomes. WISPAU submits that this finding should be decisive. The review's guiding principles include evidence-based decision making. Without evidence that the cap is preventing fair outcomes, there is no basis to change it.

The TIO's own case examples support this view:

- **Financial hardship and suspension:** $1,000 was awarded, below the cap.
- **Five-day disconnection:** the provider's $84.22 credit was found reasonable.
- **One-month faulty service:** the provider's offer of two months' access fees was found reasonable.
- **Six-week connection delay:** $600 was awarded.

None of these outcomes reached the $1,500 limit. The largest awards turned mainly on the provider's poor communication and failure to meet its TCP Code obligations, rather than on the service interruption itself. This shows the current framework already has room to recognise serious harm while scaling awards to the circumstances.

3. Enforceable undertakings are not an appropriate benchmark

The consultation paper refers to remediation programs under enforceable undertakings that delivered compensation well above the NFL limit. Those programs are negotiated with regulators in response to systemic breaches, usually by large carriers, and often cover large numbers of consumers. They include an enforcement and deterrence element that is foreign to the TIO's remedial, non-punitive purpose.

Using them to set the level of individual complaint compensation would blur the line between dispute resolution and regulatory enforcement. It would also expose small providers to award levels designed for national carriers.

For similar reasons, WISPAU does not support aligning the TIO's limit with financial services schemes such as AFCA. The nature and scale of harm in financial disputes is fundamentally different from the inconvenience and stress typically associated with a telecommunications service issue.

4. Disproportionate impact on small providers

The review asks what impact different settings would have on telecommunications providers (Question 18b). For small WISPs, the answer is significant.

- **Revenue per customer.** A typical residential WISP service earns roughly $60-100 per month. A single $1,500 award equals about 15 - 25 months of that customer's revenue. Any increase would widen this gap.

- **Existing complaint costs.** Small members already pay TIO complaint-handling fees that can exceed the value of the service connected in dispute, before any compensation is paid.

- **Settlement pressure.** The consultation paper acknowledges that the limit shapes settlement behaviour. A higher cap would raise the amount small providers feel pressured to offer to avoid escalation, whatever the merits. Large carriers can absorb this as a cost of doing business. Small providers generally cannot.

- **Investment and competition.** Small providers have limited ability to absorb unpredictable liabilities. Higher exposure makes it harder to justify investing in new towers and coverage in marginal regional areas. The likely result is less competition and fewer connectivity options for regional consumers at a time when the TIO's own report indicates a lack of service in these very regions from national carriers.

The TIO scheme is funded by its members. Any change that increases complaint values or volumes will also raise scheme costs, which fall on all members, including the smallest.

5. The regional operating environment

WISP networks operate in environments where many service interruptions are outside the provider's control. Common causes include severe weather, extended grid power outages at tower sites, lightning, bushfire and flood, landholder access constraints, and faults on third-party or wholesale backhaul.

WISPAU is not asking the TIO to exclude outages from NFL consideration. We recognise that how a provider responds to an outage (communication, escalation, restoration effort, and rebates) is properly within the TIO's consideration.

However, the NFL framework should continue to distinguish clearly between harm caused by a provider's action or inaction and harm caused by events beyond its reasonable control.

A higher limit would put more pressure on that distinction in exactly the circumstances where small regional providers are most exposed.

6. Alternatives to changing the limit

In response to Question 19, WISPAU submits that the TIO can improve consistency and consumer confidence without changing the cap.

- **Publish NFL guidance.** Clear, published guidance on how NFL amounts are assessed, with bands or worked examples by complaint type, would improve consistency and help both consumers and providers settle complaints earlier and fairly.

- **Give weight to mitigation.** Guidance should state that genuine proactive steps by the provider count toward an assessment of fair compensation. Examples include timely communication, service rebates, interim mobile data or alternative connectivity, and prompt escalation.

- **Consider provider scale and control.** The framework should explicitly recognise whether the cause of harm was within the provider's reasonable control.

- **Improve data transparency.** The TIO could publish anonymised data on NFL outcomes, including the distribution of awards and how many cases approach the cap. This would give all stakeholders a factual basis for any future discussion.

7. Future framework and timing

On Question 7, WISPAU does not support automatic indexation of the limit.

Automatic adjustment would increase provider exposure over time without any assessment of whether a change is warranted.

WISPAU notes the TIO Board considered deferring this matter to the 2027 Independent Review.

We submit that any structural change to NFL compensation is better considered through that review, where it can be weighed against the scheme's broader governance, funding and jurisdiction settings, and where small-provider impacts can be properly examined.

8. Recommendations

WISPAU recommends that the TIO:

1. Retain the current $1,500 non-privacy NFL limit *without increase.*
2. Not adopt automatic indexation, and refer any future consideration of the limit to the 2027 Independent Review.
3. Not use enforceable undertaking remediation outcomes or financial-sector schemes as benchmarks for individual NFL awards.
4. Publish clear NFL assessment guidance that recognises provider mitigation efforts and whether harm was within the provider's reasonable control.
5. Publish anonymised NFL outcome data to support evidence-based discussion.
6. Explicitly consider the impact on small and regional providers, and on regional consumer choice, in its impact assessment and Board decision paper.

WISPAU and its members are committed to fair outcomes for consumers and to the effective operation of the TIO scheme. We would welcome the opportunity to participate in targeted consultation and to provide further member data to assist the review.

Yours sincerely,

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