



## **How does the TIO decide whether a breach of an industry code is confirmed at Level 3?**

### **On what basis does the TIO allege a provider may have breached a code rule?**

In the first instance, the TIO identifies and investigates possible code breaches based on the information provided by the complainant. The TIO believes that such an approach is consistent with the purpose of consumer codes, which is to provide consumer protection by setting service benchmarks with which providers are expected to comply.

### **How does the TIO assess whether a provider has breached a code rule?**

In assessing whether a code breach is confirmed (regardless of signatory status), Investigations Officers have regard to all of the information provided by the complainant and the provider in the course of the investigation.

There may be circumstances where the provider is unable to provide any documents to substantiate its argument that it has complied with a code. In such instances, the TIO will make a decision based on the available information and on the balance of probability.

### **Does the TIO expect a provider to prove that it did not breach a code rule?**

As the TIO process is an investigative one, no burden or onus of proof rests on a provider to show that it has complied with a code. Rather, it is up to the TIO to form its own judgment based on the available information and on the balance of probability.

### **Does the TIO expect a complainant to prove that a provider breached a code rule?**

As the TIO is an alternative dispute resolution (ADR) body and because the majority of complainants are not aware of industry codes of practice, the complainant bears no onus of proof.

---

*“providing independent, just, informal and speedy resolution of complaints”*

**Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787**

**Website:** [www.tio.com.au](http://www.tio.com.au)  
**Email:** [tio@tio.com.au](mailto:tio@tio.com.au)

**Postal address:**  
PO Box 276  
COLLINS ST WEST VIC 8007

**Street address:**  
Level 3  
595 Collins Street  
MELBOURNE VIC 3000

**Tel freecall\*:** 1800 062 058  
Fax freecall\*: 1800 630 614  
Telephone: (03) 8600 8700  
Fax: (03) 8600 8797

\*calls from mobile phones may incur charges

## **What happens if a provider cannot provide evidence that it has complied with a code rule?**

In situations where a provider is unable to provide substantive evidence of code compliance, the TIO may decide that there was no code breach if all the circumstances of the complaint indicate that there was no breach.

Otherwise, the TIO would generally decide in favour of the complainant where a provider has provided no proof of compliance, because:

- it is our experience that a complainant is more likely to remember the circumstances of a transaction because it is a one-off or infrequent occasion for them, whereas a sales or customer service representative handles very large numbers of such transactions over the course of any given week, and
- a complainant's statement can contain a level of detail that supports their credibility.

## **Does the TIO automatically log a breach if a provider does not respond to a code allegation?**

A common misconception among members is that the TIO will automatically log a code breach when they fail to respond to the code breach query in a response to a Level 3 complaint.

The TIO encourages all members to address each alleged breach specifically. However, when assessing whether or not there has been a breach, we will always look at the circumstances of the complaint as well as any accompanying evidence, such as customer care notes. We follow this process of investigation regardless of whether or not a member responds directly to a possible code breach in its response.

## **The TIO's approach to breaches of clause 9.4.1 of the Telecommunications Consumer Protections (TCP) Code**

Often complainants claim that they asked to speak to a supervisor, but that the service provider representative refused this request. In such cases, the TIO will investigate whether there was a breach of section 9.4.1 of the complaint handling chapter of the TCP Code. In most cases, providers' notes do not support complainants' versions of events, i.e. there is no record of any customer request to speak to a supervisor.

Providers often argue that they have not breached the code because they do not have any record, and that therefore the complainant's request to speak to a supervisor must not have been made. In assessing whether a complaint handling code breach has occurred, the absence of a record of the alleged exchange is not proof that it did not take place. The TIO would take into account:

- the likelihood that a provider representative would note that a customer asked to speak to a supervisor but was subsequently refused, and
- whether the provider is able to show that the complainant had in fact spoken to a supervisor.