

Proposed changes to the Telecommunications Industry Ombudsman's Terms of Reference

Consultation Paper

23 August 2017

1 Purpose of this consultation paper

This consultation paper explains the proposed changes to the TIO's Terms of Reference and the reasons for the changes.

Changes to the TIO's Terms of Reference may be proposed to the Board at any time. Before making the change, the Board must inform the Federal Government minister and consider any comments. Any decision by the Board to change the Terms of Reference must be made by a special resolution of the Board.

In the interests of transparency, the TIO is inviting comment on these changes. Submissions can be made until Monday 11 September 2017 by emailing StakeholderEngagement@tio.com.au.

2 Background

The TIO is proposing to amend its Terms of Reference to address the increasing complexity of the telecommunications supply chain arising from the rollout of the national broadband network. This complexity has given rise to a number of unique challenges in resolving complaints between consumers and telecommunications retail service providers (RSPs).

Since its inception, the TIO's focus has been on resolving complaints from consumers about services provided under contractual arrangements with RSPs. This has allowed the TIO to resolve the majority of complaints quickly and effectively. However, the TIO is seeing a growing number of complaints whose resolution requires the involvement of carriers and aggregators in the supply chain.

The *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSA Act) already requires carriers and intermediaries to be members of the TIO scheme. The TIO is proposing to strengthen its Terms of Reference to reflect the legislation, and to make it clear that the TIO will require all industry players involved in a TIO complaint to contribute to its resolution.

These changes are an important part of the TIO's strategy of strengthening our ability to resolve consumer complaints.

3 Proposed changes

The TIO is proposing to amend the Terms of Reference to:

- reflect the legislative requirement for carriers and intermediaries in the supply of telecommunications services (such as aggregators) to belong to the TIO
- strengthen the obligation on members to provide information requested by the TIO in order to resolve a complaint
- strengthen the obligation on members to cooperate with TIO decisions.

3.1 Clarifying TIO membership

The TIO's members are primarily service providers that have a retail relationship with consumers. The TCPSS Act, however, requires all carriers and intermediaries to be members of the TIO scheme.

Unless exempted by the ACMA, the TCPSS Act requires carriers and eligible carriage service providers to join the TIO scheme. An "eligible carriage service provider" includes those who supply telecommunications services to the public and intermediaries who arrange for the supply of such services (TCPSS Act, s 127). Together with s 88 of the *Telecommunications Act 1997*, the TCPSS Act means the TIO scheme should include all carriers, retail service providers, aggregators and intermediaries as these are "eligible carriage service providers".

The TIO considers it is time to call on this broader membership to help in the resolution of complaints. There is an increase in complaint complexity and greater difficulty resolving complaints due to the involvement of multiple players in the supply chain. The proposed changes to the Terms of Reference will assist the TIO to be more effective in resolving complex complaints by requiring all players in the supply chain to provide information and cooperate to address the consumer detriment.

3.1.1 Proposal:

The TIO proposes to:

- Amend clause 2.3 to clarify that members may be suppliers of telecommunications services, including retail and wholesale suppliers and carriage service intermediaries that arrange for the supply of telecommunications services.
- Amend clause 2.7 to clarify that the TIO can handle complaints about any member of the TIO scheme under its legislation.

These amendments make it clear that "TIO member" applies to any member of the scheme, while 'provider' is used to refer to a TIO member in respect of which a complaint is made.

3.1.2 Proposed wording (changes indicated in bold):

2.3 We can only handle a complaint against a member of the TIO scheme (**called a TIO member**). **In these Terms of Reference, a TIO member in respect of which a complaint is made is called a provider.**

Explanatory note: Providers are suppliers of telecommunications services (including retail and wholesale suppliers and carriage service intermediaries that arrange for the supply of telecommunications services), telecommunications carriers or other businesses that are members of the TIO scheme.

2.7 We handle the following types of complaints:

(a) a consumer's complaint about any type of telecommunications service supplied or offered by a **TIO member, or the supply of which is arranged by a TIO member**, where the consumer is an end-user of the telecommunications service or is directly affected by the telecommunications service

(b) a consumer's complaint about a problem with telecommunications equipment supplied by a **TIO member**, or with a **TIO member's** network infrastructure, that affects the consumer's access to a telecommunications service supplied or offered by a **TIO member**.

3.2 Requesting information

The TIO is proposing to amend the Terms of Reference to make it clear that the TIO can request any member relevant to the supply of the telecommunications service in question (including carriers and intermediaries) to provide information to assist in resolving the complaint.

A significant barrier to complaint resolution is difficulty in obtaining information from all parties involved in the supply of telecommunications services to a consumer. Information is needed from carriers and aggregators to better understand the blocks to resolving the complaint, to confirm or test the response of the retail service provider, and to encourage co-operation between parties in the supply chain.

The current Terms of Reference have a clause requiring the provision of information. However the clause could be read as only requiring the RSP against which the consumer has raised the complaint to provide information.

This change to the Terms of Reference builds on the TIO's recent work with carriers and intermediaries to improve communication and information flow in complex complaints. The change will provide clarity about the TIO's processes relating to information and will assist in the effective and speedy resolution of complex complaints.

3.2.1 Proposal:

The TIO proposes to:

- Amend clause 3.6 to clarify that the TIO can seek information from any member of the TIO scheme about a complaint.

3.2.2 Proposed wording (changes indicated in bold):

3.6 We can, **at any time**, tell the provider **or any other TIO member** to send us any information or documents they have that are relevant to the complaint. **Such parties** must give the information and documents to us.

*Explanatory note: **We may tell the provider or any other TIO member to send us information or documents if we consider that they may have information or documents relevant to the complaint. If we direct the provider or any other TIO member to provide information or documents, we will tell them how long they have to give us the information and documents. We will be reasonable in setting this deadline but it will not be more than 28 days.***

*If a provider **or other TIO member** has information or documents that are relevant to the complaint but which contain someone else's confidential information, we still want to see the information and documents. **Such party** does not have to give us the information and documents if they cannot get permission from the other person, but they must make reasonable efforts to get permission.*

3.3 Cooperating with TIO decisions

The TIO is proposing to amend its Terms of Reference to require members other than the RSP against whom the complaint is made to cooperate with the TIO's decisions and recommendations. This would be in the situation that the TIO considers that the other member needs to take action to resolve a complaint.

To resolve some complex complaints, action is needed by parties other than the RSP against which the consumer has raised the complaint. In some cases RSPs are not able to ensure other parties take appropriate action. This can leave the consumer without services or with inadequate services for unacceptably long periods of time.

3.3.1 Proposal:

The TIO proposes to:

- Insert new clause 3.21 to clarify that, if necessary, the TIO may require members other than the member against which a complaint is lodged to assist in resolving a complaint.
- For consistency and clarity, amend clause 3.8 to refer to another TIO member if the new clause applies to that member.
- Insert clauses 3.22-3.24 to ensure that if another member is required to assist with a TIO complaint, that member has appropriate rights and duties under the Terms of Reference.

3.3.2 Proposed wording (changes indicated in bold):

3.8 If we finish our investigation and the consumer and the provider have not agreed how to resolve the complaint we will either:

(a) dismiss the complaint;

or

(b) decide the resolution of the complaint and tell the provider **(and another TIO member if clause 3.21 applies to that TIO member)** the actions they must take or not take.

When we decide the resolution of a complaint, we can also recommend that the **provider (or another TIO member if clause 3.21 applies to that TIO member)** take or not take further actions.

3.21 If, at any time, we form the view that a TIO member other than the provider may be required to take or not take actions to resolve or assist in resolving a complaint, we will promptly notify the TIO member of the complaint. We may tell a TIO member that has been notified of a complaint to take or not take actions to resolve or assist in resolving the complaint, or recommend that such TIO member take or not take such actions.

Explanatory note: If, at any time, we form the view that a TIO member other than the provider may be required to take or not take actions to resolve or assist in resolving the complaint, without limiting clause 3.22:

- *we will promptly tell the TIO member about the complaint*
- *tell them if we intend to investigate the complaint;*
- *tell them what we expect them to do to help resolve the complaint;*
- *tell them if we dismiss, or decide or make a recommendation regarding the resolution of, the complaint; and*
- *if our decision or recommendation relating to the complaint requires them to take or not take actions, give them written reasons.*

3.22 If we tell a TIO member other than the provider about a complaint, clauses 3.9 to 3.19 of these Terms of Reference will apply in respect of the TIO member as if a reference to the provider in those clauses is a reference to the TIO member, as well as or instead of the provider.

3.23 We may tell a TIO member other than the provider to take or not take actions to assist in implementing a temporary ruling made under clause 4.1 of these Terms of Reference. If we tell such TIO member to take or not take such actions, clauses 4.2 to 4.5 of these Terms of Reference will apply in respect of the TIO member as if a reference to the provider in those clauses is a reference to the TIO member, as well as or instead of the provider.

3.24 Once we tell a TIO member other than the provider about a complaint, clauses 4.6 to 4.8 will apply in respect of the TIO member as if a reference to the provider in those clauses is a reference to the TIO member, as well as or instead of the provider.