

# TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

## CONSTITUTION

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# TELECOMMUNICATIONS INDUSTRY OMBUDSMAN CONSTITUTION

## A: INTRODUCTION

### 1 THE TIO SCHEME

- 1.1 The Telecommunications (Consumer Protection and Service Standards) Act 1999 (“the Act”) contains the following requirements, (these requirements were previously stated in The Telecommunications Act 1997):
- (a) Each carrier and each eligible carriage service provider must, in association with other carriers and other eligible carriage service providers, enter into a scheme providing for a Telecommunications Industry Ombudsman.
  - (b) The scheme is to be known as the *Telecommunications Industry Ombudsman scheme*.
  - (c) The scheme must provide for the Telecommunications Industry Ombudsman to:
    - (i) investigate; and
    - (ii) make determinations relating to; and
    - (iii) give directions relating to;complaints about carriage services by end-users of those services.
- 1.2 (a) The Act also provides for the TIO (with his or her consent) to issue an evidentiary certificate stating that a carriage service provider has contravened a “Customer Service Guarantee” performance standard and setting out particulars of the contravention.
- (b) In addition, The Telecommunications Act 1997 provides that the TIO (with his or her consent) may have functions and powers conferred on him or her by industry codes and industry standards.
- 1.3 The Telecommunications Industry Ombudsman (“TIO”) scheme has been established by means of a company limited by guarantee, the **Telecommunications Industry Ombudsman Limited**. The Memorandum and Articles of Association of the company establish:
- a Board of Directors, composed primarily of directors appointed by the members and vested with traditional corporate governance responsibilities;
  - a Council, composed of an equal representation of member representatives and of consumer interests, chaired by an independent Chairman, and with responsibility for:
    - complaint-handling and policy issues;
    - maintaining the independence of the TIO; and
    - acting as an intermediary between the TIO and the Board; and

- a Telecommunications Industry Ombudsman vested with authority under this TIO Constitution to
  - receive, investigate and facilitate the resolution of complaints; and
  - exercise such other powers and functions as may be conferred by statute.

An Acting Telecommunications Industry Ombudsman (“Acting TIO”) and a Deputy Telecommunications Industry Ombudsman (“Deputy TIO”) are also provided for.

## **2 MEMBERS**

- 2.1 All carriers and eligible carriage service providers, are required to be members of the TIO scheme.
- 2.2 Membership of the TIO scheme is open to all carriers and carriage service providers (subject to the Articles of Association of the Telecommunications Industry Ombudsman Limited).
- 2.3 A carrier or carriage service provider becomes a member of the TIO Scheme by becoming a member of the Telecommunications Industry Ombudsman Limited.
- 2.4 The TIO shall (as required by the Act) maintain a Register of the names of the members of the TIO scheme and ensure that the Register is open for inspection, at all reasonable times, by members of the public. In allowing a person to inspect the Register, the TIO shall first provide to the person a statement of the limitations imposed by the Corporations Act 2001 (Cth) on the use to which the information contained in the Register may be put.

## **2A PRINCIPLES**

- 2A.1 The TIO Scheme is committed to the Principles of Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness as set out in the Benchmarks for Industry Based Customer Dispute Resolution Schemes (Department of Industry Science and Tourism, August 1997).
- 2A.2 In exercising the TIO’s functions and jurisdiction and in developing procedures for the resolution of complaints, the TIO shall have regard to the benchmarks as well as to the law, good industry practice and what is fair and reasonable in all the circumstances.

## **B: TELECOMMUNICATIONS INDUSTRY OMBUDSMAN**

### **3 FUNCTIONS OF THE TIO**

#### **3.1 The functions of the TIO are:**

- (1) to investigate, make determinations relating to, and give directions relating to, complaints about
  - a. carriage services; and
  - b. billing by members for the supply of content services provided by means of a carriage service.  
by end-users of those services.
- (2) to exercise any functions conferred on the TIO by an industry code or industry standard in relation to any member of the Telecommunications Industry Ombudsman Limited including in the case of an industry code where the member has undertaken to comply with it or, if the code has been registered by the Australian Communications and Media Authority, has been directed by the Australian Communications and Media Authority to comply with the Code; and
- (3) to exercise any other functions conferred on the TIO under any legislation, including for example the power to issue a written certificate stating that a specified carriage service provider has contravened a “Customer Service Guarantee” standard set by the Australian Communications and Media Authority and setting out particulars of the contravention, or the power to approve guidelines for the interception of telecommunications by a carrier;
- (4) to investigate, make determinations relating to, and give directions relating to, complaints by owners or occupiers of land:
  - (i) in respect of which a carrier has exercised its statutory powers, other than complaints in relation to the policy or commercial decision of a carrier to exercise its statutory rights in relation to that particular land; or
  - (ii) arising from the use of the land by a carrier, under a contract between that carrier and the owner or occupier of that land.

By way of example, the TIO’s functions include to receive, to investigate and to facilitate the resolution of:

- (a) complaints about billing, or the manner of charging, for the supply of carriage services;
  - (b) complaints as to the provision or supply of (or the failure to provide or supply) carriage services by a member, other than complaints in relation to the general telecommunications policy or commercial practices of a member;
  - (c) such other complaints as may, by agreement with the complainant, be referred to the TIO by a member.
- #### **3.2**
- (a) Complaints may be made to the TIO by end-users of carriage services and by persons directly affected by the provision or supply of (or the failure to provide or supply) such services by scheme members.
  - (b) Complaints may not be made by an intermediate user of a carriage service except where the complaint relates to a carriage service provided or supplied for the complainant’s own use.
  - (c) Complaints may be made to the TIO on behalf of a complainant by an authorised representative of the complainant.

- (d) The focus of the TIO scheme is on individual complaints which may be oral or in writing.
- (e) A complaint must have arisen from events which became known to the complainant less than two (2) years prior to the complaint. However, the TIO has a discretion in relation to a complaint which has arisen from events which became known to the complainant between two (2) and six (6) years prior to the complaint.

3.3 The TIO may investigate, make determinations relating to and give directions relating to a complaint about all or any part of a "bundle" of products and services that includes carriage services and equipment, where one or more elements of that bundle are provided by a non-member and another one or more elements are provided by a member.

Notwithstanding paragraph 4.3(a), under this paragraph 3.3 the TIO may handle complaints involving customer premises equipment where matters relating to the equipment (e.g. a defect in or failure to supply the equipment) affect the supply of carriage services. The complaint will be handled as a complaint against the member and the member may be deemed by the TIO, where the TIO considers it fair and reasonable to do so, to be responsible not only for its own acts and omissions but also for any relevant acts or omissions of the non-member related to the provision of the bundle or any element of the bundle.

In considering whether the member ought be responsible for the acts or omissions of the non-member, the TIO must take into account matters including the following (where known by the TIO):

- (a) whether the non-member is a related entity of the member within the meaning of the Corporations Act 2001 (Cth);
- (b) whether the non-member has a contract, arrangement or understanding with the member which the TIO considers relevant to the subject matter of the complaint;
- (c) whether the member was aware, or ought reasonably have been aware, that its carriage services were being promoted as part of a bundle, either generally or in the specific circumstances of the complaint;
- (d) the extent to which the bundle including carriage services was marketed or described (either before, during or after any part of it was supplied) as relating to the carriage services; and
- (e) whether, in the TIO's opinion, the member has complied with paragraph 5.1(c) and otherwise provided all requested information relevant to the complaint.

#### **4 JURISDICTION OF THE TIO**

4.1 For further guidance, the functions of the TIO include, but are not limited to, investigating and facilitating the resolution of complaints as to the following:

- the standard telephone service;
- the provision of access to the Internet or another public electronic communications network (including complaints relating to billing for such a service);
- public mobile telecommunications services;

- operator services;
- directory assistance;
- fault reporting and repair and maintenance services;
- printed and electronic white pages;
- billing not in accordance with a tariff or terms and conditions which are, under Part 23 of The Telecommunications Act 1997, applicable;
- failure to supply a good or service in accordance with a tariff or terms and conditions which are, under Part 23 of The Telecommunications Act 1997, applicable;
- any:
  - (i) interference with the privacy of an individual in terms of non-compliance with (as applicable) the Information Privacy Principles, the National Privacy Principles or any approved privacy code binding on the relevant member, under the **Privacy Act** 1988 (Cth); or
  - (ii) breach of any industry specific privacy standards which may apply from time to time;
- an end-user, or an intended end-user, of a carriage service being unable to access that carriage service as a result of a failure to supply or a defect in any mobile phone handset, or other equipment designed to facilitate access to a carriage service, where that handset or other equipment is, or is to be, supplied by a member who supplies or has agreed to supply the carriage service, a related entity of such a member, or an entity which has a contractual relationship with such a member or with a related entity of such a member under which that other entity solicits, or received applications for, persons to become end-users of the carriage service; and
- the recovery of debts owed or allegedly owed by customers whether by members, their agents or factors.

4.2 Also for guidance, the functions of the TIO in relation to complaints from owners or occupiers of land include, but are not limited to, investigating and facilitating the resolution of complaints as to the following:

- failure by a carrier to give notice of its intention to exercise its statutory rights;
- failure to take all reasonable steps to cause as little detriment, inconvenience and damage as reasonably practicable, in accordance with any applicable statutory or contractual requirement; and
- inadequate compensation where compensation is required by any applicable statute or contract to be paid.

4.3 The functions of the TIO do not extend to complaints relating to:

- (a) the provision or supply of customer premises equipment, other than the non-switching handset that terminates the standard telephone service and auxiliary goods supplied under a tariff or in accordance with terms and conditions applicable under Part 23 of The Telecommunications Act 1997;

- (b) cabling beyond the network termination point, other than cabling from the network termination point to the first telephone and, in the case of residential carriage services, cabling to other extensions of that service within the residential premises;
- (c) business directories, including but not limited to "Yellow Pages";
- (d) commercial activities which do not include the provision of carriage services;
- (e) the setting of tariffs;
- (f) the 000 emergency service;
- (g) Universal Service Obligation policy matters;
- (h) matters of telecommunications policy;
- (i) matters which may involve anti-competitive behaviour or restrictive practices potentially in breach of the **Trade Practices Act 1974**;
- (j) matters which are specifically under consideration by the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or any court or tribunal, or which have been considered by any of those bodies previously;
- (k) the content of a content service (as defined in The Telecommunications Act 1997); and
- (l) an alleged breach of an industry code or industry standard by a member of the Telecommunications Industry Ombudsman Limited, where the complaint is made by a member of the Telecommunications Industry Ombudsman Limited or another industry participant.

## **5 PROCEDURES OF THE TIO**

5.1 The TIO, in handling complaints, must pursue the objective of "fair, just, economical, informal and expeditious" resolution. In consultation with the Council, the TIO is responsible for developing procedures which best achieve this objective. However, these procedures must include the following:

- (a) The TIO on receiving a complaint, will verify with the complainant whether the complainant has given the member concerned an opportunity to consider the complaint;
- (b) The TIO may investigate the complaint in detail only after the TIO has verified with the complainant that the complainant has given the member concerned an opportunity to consider the complaint, and after the member has been notified that the TIO intends to investigate the complaint in detail;
- (c) Within the time reasonably specified by the TIO (which shall be no more than twenty-eight (28) days after receiving notification that the TIO intends investigating a complainant in detail), the member concerned shall (except to the extent the TIO may defer or waive this requirement upon the member informing the TIO that it has not in fact had an opportunity to consider the complaint because the complainant had not raised the complaint with the member) provide to the TIO all information and documentation relevant to the complaint other than the confidential information of a third party, who despite the reasonable efforts of the member, has refused to consent to disclosure of that information to the TIO;
- (d) With respect to all information concerning or relating to a complaint, the TIO must act in accordance with the **Privacy Act 1988 (Cth)**; and

- (e) In complying with any subpoena, the TIO must notify the person who has provided the information which is the subject of the subpoena so that the person concerned is afforded the opportunity to appear in court to oppose production of the documents or the giving of evidence, as appropriate.

## **5A SYSTEMIC PROBLEM INVESTIGATIONS**

**5A.1** ‘Systemic Problem’ means a problem with or the failure of a system, process or practice of a member that causes detriment (that is not trivial) to a significant number or a class of end-users of a carriage service and which arises from a complaint that is within the jurisdiction of the TIO by virtue of another provision of the TIO Constitution.

**5A.2** In deciding whether to investigate a potential Systemic Problem the TIO shall have regard to whether such an investigation would be ‘practical, fair, efficient and effective’. In consultation with the Council, the TIO is responsible for developing procedures which achieve those objectives. Such procedures must include the following:

- (a) The TIO may not commence an investigation of a potential Systemic Problem more than twelve (12) months after receipt of the complaint out of which the potential Systemic Problem arises.
- (b) Where the TIO is of the opinion that a complaint may raise a Systemic Problem, the TIO shall:
  - (i) notify the relevant member of the complaint and of the TIO’s opinion;
  - (ii) describe the nature of the potential Systemic Problem; and
  - (iii) invite the member to make submissions as to whether the complaint raises a Systemic Problem.
- (c) A member may only make a submission in accordance with sub-clause (b) (iii), within twenty-eight (28) days of the date of receipt of the notice by the member.
- (d) The TIO may decide, having regard to any submission from the member in accordance with sub-clause (c), or, in the absence of any such submission, to:
  - (i) investigate the complaint as raising a potential Systemic Problem; or
  - (ii) continue to investigate the complaint in accordance with clause 5.1 (as a complaint not raising a Systemic Problem); or
  - (iii) take no further action in relation to the complaint.
- (e) Where the TIO decides to investigate a complaint as a potential Systemic Problem, the TIO shall notify the member of that decision and of the reasons for that decision. The TIO may then investigate the complaint as a potential Systemic Problem.
- (f) After receiving a notification under sub-clause (e), the member shall provide to the TIO any additional information and documentation relevant to the investigation and resolution of the potential Systemic Problem, other than the confidential information of a third party who, despite the reasonable efforts of the member, has refused consent to disclosure of that information to the TIO. These documents and this information must be provided within the timeframe reasonably specified by the TIO.



**5A.3** If the TIO is investigating a complaint as a potential Systemic Problem, or attempting to resolve a complaint which the TIO has concluded raises a Systemic Problem, the TIO may defer the investigation of any other complaint (a “**deferred complaint**”) which relates to the same actual or potential Systemic Problem where the TIO:

- (i) has notified the member of the complaint, and
- (ii) notifies the complainant and the member of the deferral.

**5A.4** (a) Where after completion of an investigation of a potential System Problem, the TIO concludes that a Systemic Problem exists, the TIO shall notify the relevant member of:

- (i) that conclusion and of the reasons for that conclusion; and
- (ii) a recommended resolution of the Systemic Problem.

(b) Where after the completion of an investigation of a potential Systemic Problem the TIO concludes that a Systemic Problem does not exist, the TIO shall inform the relevant member of that conclusion and of the reasons for that conclusion.

(c) Where a member receives a notification under sub-clause (a), the member shall consult with the TIO about the TIO’s conclusion and recommended resolution.

(d) Where the TIO and the member agree on a resolution, the member shall implement that resolution in the manner, and within the period, agreed.

(e) Any recommended resolution under sub-clause (a) or resolution under sub-clause (d) may be applicable to:

- (i) the complaint which has been investigated;
- (ii) a complaint deferred under clause 5A.3; and/or
- (iii) other customers;

and may involve the same or different actions or outcomes for different complainants or customers.

(f) Where:

- (i) a resolution is not agreed; or
- (ii) a member fails to implement a resolution agreed under sub-clause (d); or
- (iii) the TIO concludes that a Systemic Problem does not exist;

the TIO shall resolve the complaint giving rise to the potential Systemic Problem and any complaints deferred clause 5A.3, in accordance with clauses 5.1 and 6.1.

**5A.5** Where a resolution is not agreed or a member fails to implement a resolution agreed under subclause 4(d), the TIO may refer the matter to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or such other statutory authority or industry body as the TIO considers appropriate. Where the TIO refers a matter under this sub-clause the TIO must notify the member.

**5A.6** Clause 5.1 applies in relation to a complaint even if the complaint involves an actual or potential Systemic Problem.

## **6 POWERS OF THE TIO**

### **6.1 Binding Decisions**

After completion of an investigation and in the absence of a conciliated settlement of a complaint, the TIO shall resolve a complaint:

- (a) (i) by making a determination that the member the subject of investigation pay compensation to a complainant,
- (ii) by directing a member to provide a carriage service,
- (iii) by directing a member not impose or amend a charge in relation to a service,
- (iv) by directing a member to provide specified operator services,
- (v) by directing a member to include or omit an entry in any electronic or printed directory,
- (vi) by directing a member to supply goods or services the subject of the complaint or undertake any necessary corrective or other work to resolve the complaint,
- (vii) by directing a member to make an appropriate correction, deletion or addition to a record,
- (viii) by directing a member to attach to a record a statement provided by the complainant of a correction, deletion or addition sought by the complainant, and/or
- (ix) by directing a member to do, not to do, or to cease doing, an act,

provided that the total of such determinations or directions, and any interim directions under paragraph 6.1A, in relation to an individual complaint are not to exceed in value \$50,000; or

- (b) by dismissing the complaint.

All decisions by the TIO under paragraph 6.1 shall be automatically binding upon members. However, the complainant may elect whether or not to accept the decision of the TIO within twenty one (21) days of the TIO's decision. If the complainant accepts the decision of the TIO, the complainant shall fully release the member from all claims, actions etc in relation to the complaint. In the event that the complainant does not accept the decision of the TIO, the complainant may pursue his or her remedies in any other forum the complainant may choose and the member is then fully released from the TIO's decision.

## **6.1A Interim Directions - Credit Management**

- (a) At any time prior to the resolution of a complaint, where the TIO has requested a member to suspend credit management activity and the member has continued such activity, the TIO may make interim directions directing the member to do, not to do, or to cease doing, any act that relates to credit management. For example, such interim directions might include directing a member:
  - (i) to restore the supply of a service that has been disconnected or suspended for credit management reasons;
  - (ii) to remove any default listing the member has taken steps to record; or
  - (iii) to otherwise cease pursuing (or not to pursue) its usual credit management processes.
- (b) All interim directions under this paragraph 6.1A shall be automatically binding on members:
  - (i) until the end of the period specified by the TIO in the interim directions;
  - (ii) until the interim directions are withdrawn or varied by the TIO or the TIO formally closes the complaint (for example when a complaint is settled by conciliation, withdrawn by the complainant, or resolved by the TIO under paragraph 6.1); or
  - (iii) until 90 days following the date the TIO makes the interim directions, whichever occurs sooner.
- (c) Before making any interim direction, the TIO must consider the appropriateness of the interim direction given that any final resolution of the complaint may or may not favour the complainant.
- (d) If the TIO considers it appropriate, with effect from the time interim directions cease to bind a member (e.g. because 90 days has elapsed since the making of the interim directions), the TIO may issue further interim directions to the relevant member under paragraph 6.1A(a) in the same or different terms.

## **6.2 Recommendations**

After completion of an investigation and the unsuccessful conciliation of a complaint, the TIO may also make recommendations to a member in relation to any or all of those matters identified in paragraph 6.1 up to the total value of \$100,000 and a member shall be obliged to consider whether or not to give effect to any such recommendation provided that a decision not to give effect to any such recommendation shall not be the subject of further complaint to the TIO from a complainant.

## **6.3 Reasons**

The TIO shall provide only such written reasons as give effect to any decision or recommendation under paragraph 6.1, interim direction under paragraph 6.1A, or recommendation under paragraph 6.2.

## **6.4 Arbitration**

Where a complaint involves a total amount in excess of \$100,000, if the complainant and the member agree, the TIO may, if he or she so agrees, exercise arbitration powers in respect of the complaint.

## **6.5 Evidentiary Certificates - Customer Service Guarantee**

At any time during or following the investigation of a complaint, and notwithstanding anything else contained in this Constitution, the TIO may in his or her discretion (and if empowered to do so under the Act) issue a written certificate stating that a specified carriage service provider (as the term 'carriage service provider' is defined in The Telecommunications Act 1997) has contravened a "Customer Service Guarantee" standard set by the Australian Communications and Media Authority and setting out particulars of the contravention.

## **6.6 Discretion not to Investigate**

The TIO has the discretionary power to decline to investigate a complaint or to decline to investigate a complaint further if in the opinion of the TIO:

- (a) the complaint is frivolous or vexatious or was not made in good faith;
- (b) the complainant does not have a sufficient interest in the subject matter of the complaint;
- (c) an investigation, or further investigation, is not warranted; or
- (d) the complainant has refused to pay any or all undisputed charges, or such amount of charges as, in the opinion of the Ombudsman, is reasonable.

The TIO may also decline to investigate a complaint, or decline to investigate a complaint further, where, under paragraph 6.7(b) for example, the complaint is more conveniently or effectively dealt with by the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the courts or any other body.

## **6.7 Referral of Complaints**

- (a) At any time before a binding decision (other than any interim direction) is made by the TIO, a member may notify the TIO:
  - (i) that the member considers that a complaint has given rise to:
    - an issue of importance to the member's business, or
    - an issue involving an important or novel point of policy or law; and
  - (ii) that within ninety (90) days the participant or the complainant:
    - will be seeking advice from the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or another person or body, or
    - will be instituting legal proceedings; and
  - (iii) that, in the case of legal proceedings instituted by a member, the member will:
    - pay the complainant's costs and disbursements (to be taxed, if not agreed, on a solicitor and own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced

by the member (except by way of respondent's notice, cross appeal or other similar procedure), and

- make interim payments on account of such costs if and to the extent that it appears reasonable to the member to do so; and
- (iv) that the member will not take the action on which the complaint is founded pending resolution of the wider issue.

On receipt of such notice, the TIO shall not proceed with the complaint unless:

- (i) the TIO forms the opinion that any delay would jeopardise a fair resolution of the complaint or would cause unreasonable hardship to the complainant; or
  - (ii) the member, or the complainant, fails to seek advice from the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or another person or body or to institute legal proceedings within the time specified in the notice.
- (b) Where, at any time after receipt of a complaint, the TIO:
- (i) forms the opinion that the complaint could have been made by the complainant to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or another body; and
  - (ii) forms the opinion that the complaint could be more conveniently or effectively dealt with by the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or such other body; and
  - (iii) obtains the consent of the complainant to refer the complaint to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or such other body;

the TIO may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be.

If the TIO so decides, the TIO must:

- (i) refer the complaint to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or such other body as appropriate;
- (ii) give written notice to the complainant and the member stating that the complaint has been so referred; and
- (iii) give to the Australian Communications and Media Authority, the Australian Competition and Consumer Commission or such other body all information or documents that relate to the complaint and that are in the TIO's possession or under the TIO's control.

## **6.8 Restriction on Members Commencing Proceedings**

Subject to paragraph 6.7(a), between the time when member is notified of a complaint to the TIO and the time when that complaint is settled, withdrawn or resolved or otherwise ceases being handled by the TIO, the member complained against must not commence proceedings in any court, tribunal or alternative dispute resolution forum in relation to the subject matter of the complaint. However, the following exceptions apply:

- (a) If the TIO does not handle the complaint within a reasonable period of time, the member may give written notice to the TIO that if the complaint is not settled, withdrawn or resolved (or the TIO does not otherwise cease handling it) within 60 days of the date the TIO received the notice, the member intends to commence such proceedings. If the complaint is not settled, withdrawn or resolved (or the TIO does not otherwise cease handling it) within that period, the member may commence such proceedings and must promptly notify the TIO of the commencement of the proceedings.
- (b) The member may commence such proceedings (including, interlocutory proceedings) where necessary in order to prevent any ongoing, or imminent and significant risk of, physical injury to persons or damage to or interference with equipment or infrastructure.
- (c) The member may commence court proceedings in which the principal issue is whether the TIO has jurisdiction to handle the complaint or the interpretation of the TIO Constitution.

This paragraph 6.8 does not prevent the member reporting a matter to any public agency responsible for the conduct of criminal investigations, enquiries or prosecutions (e.g. a police force) or becoming involved in criminal investigations, enquiries or prosecutions instigated by such an agency.

## **7 OTHER POWERS AND RESPONSIBILITIES OF THE TIO**

7.1 The TIO is responsible for:

- (a) the overall performance of the TIO scheme including, but not limited to, meeting such objectives as are determined by the Council from time to time;
- (b) managing the day to day operations of the TIO scheme, including but not limited to, the appointment and termination of employment of staff;
- (c) attending, in a non-voting capacity, meetings of the Council at the invitation of the Council;
- (d) liaising with other industry bodies, the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and other relevant government authorities and, in consultation with the Council, developing working procedures with these bodies where appropriate;
- (e) in consultation with the Council, developing procedures for the fair, just, economical, informal and expeditious handling of complaints;
- (f) in consultation with the Council, promoting the TIO scheme and its complaint-handling procedures;
- (g) making recommendations to the Council on the TIO Constitution;
- (h) in consultation with the Council, preparing financial budgets and business plans and any subsequent amendments thereto;
- (i) submitting proposed financial budgets and business plans and any subsequent amendments thereto to the Council for referral to the Board with recommendations and/or comments as the Council thinks fit;
- (j) controlling and monitoring expenditure within the agreed budget and for providing regular reports to the Council and the Board on expenditure;

- (k) preparing the annual report of the TIO;
- (l) at the TIO's discretion, making ad hoc confidential reports to members and the Council;
- (m) at the TIO's discretion, making general observations about the operation of the TIO scheme in any public forum;
- (n) acting as an interface with the public for the receipt and referral of complaints;
- (o) keeping adequate data on complaints or requests for information, both for reporting purposes and to identify the sources of practices giving rise to similar complaints;
- (p) ensuring that an accurate up-to-date list of all members of the Telecommunications Industry Ombudsman Limited is readily available to the public at all reasonable times (and that when that list is inspected by a member of the public, that person is first informed of the limitations imposed by the Corporations Act 2001 (Cth) on the use to which the information contained in the list may be put); and
- (q) the nomination to the Council of the Deputy TIO.

7.2 The TIO also has the power:

- (a) to delegate such of the TIO's functions as may be convenient for the efficient day-to-day operation of the TIO scheme, other than the power:
  - (i) to make binding decisions under paragraph 6.1 or interim directions under paragraph 6.1A,
  - (ii) to make recommendations under paragraph 6.2,
  - (iii) to provide written reasons under paragraph 6.3; and
  - (iv) to exercise arbitration powers under paragraph 6.4,

which powers may only be delegated to a person occupying the position of Deputy TIO, and other than any power which is referred to in paragraph 3.1(2) or (3) and which is specified by the relevant industry code or industry standard, or under the relevant legislation, as not being delegable; and
- (b) to make a report to a member where, in the TIO's opinion, the general telecommunications policy or commercial practices of a member:
  - (i) have contributed to a complaint;
  - (ii) have been identified as the source of a number of similar complaints;
  - (iii) have impeded the investigation or handling of a particular complaint; or
  - (iv) operate in such a manner that the TIO considers that the policy or practice should be referred to the Australian Communications and Media Authority.
- (c) to publish the TIO's Determinations, Directions (including interim directions) and Recommendations provided that the anonymity of the complainant and the TIO Member is preserved.

7.3 In exercising the powers of determination, direction (including interim direction) or recommendation under paragraphs 6.1, 6.1A or 6.2, the TIO shall not make a determination, direction or recommendation which, when given effect, would involve a member contravening any law of the Commonwealth or of a State or Territory.

## **8 BUDGETS**

It is the function of the Board to:

- (a) set global limits for funding; and
- (b) approve budgets and any additional expenditure not provided for in the current budget.

In deciding whether or not to approve any proposed budget, the Board shall be entitled to consider:

- (i) the ongoing financial stability or viability of TIO Limited; but
- (ii) otherwise shall only be concerned to ensure that the particular budget comes, or is likely to come, within the global limits it has set.

The Board shall not otherwise take into consideration the business decisions of the TIO or Council (as the case may be) in determining how those funds should be allocated within any particular budget. Nothing shall preclude the Board from seeking or receiving information about the budget and expenditures, both past and projected, to assist the Board in setting funding limits appropriate to the operation of the TIO scheme.

Because the TIO has responsibility for managing the day-to-day operations of the TIO scheme, the TIO is responsible for the preparation of financial budgets and business plans and any subsequent amendments, in consultation with the Council. The TIO must submit proposed budgets, plans and/or amendments to the Council. The TIO is responsible for controlling and monitoring expenditure within the agreed budget and for providing regular reports to the Council and the Board on expenditure.

The Council must consider the proposed budget plans and/or amendments submitted by the TIO. The Council must then refer these to the Board with such comments and/or recommendations as the Council thinks fit.



## **C: THE COUNCIL**

### **9 ROLE AND RESPONSIBILITIES OF THE COUNCIL**

9.1 The primary responsibilities of the Council are the oversight of the TIO scheme and maintenance of the independence of the Ombudsman. The Council is to act as an intermediary between the TIO and the Board. The Council's role is complementary to that of the TIO. While the TIO will have responsibility for the day to day operation of the scheme, it is the function of the Council to provide advice to the TIO on policy and procedural matters.

Council members are selected for their knowledge of consumer interests and customer service issues within the context of the telecommunications industry. These resources will assist the Council in fulfilling its role of providing policy and procedural advice to the TIO.

9.2 Specifically, the duties of the Council are:

- (a) To recommend to the Board a person to be appointed as the TIO. Similarly the Council may recommend to the Board the termination of the appointment of the TIO.
- (b) To make recommendations, if it thinks fit, to the Board concerning the appointment and termination of an Acting TIO and a Deputy TIO.
- (c) Within the framework of the TIO Constitution, to determine policies and practices relating to the administration of the TIO scheme.
- (d) To monitor the TIO Constitution and, from time to time, recommend to the Board amendments to the TIO Constitution as the Council thinks fit.
- (e) To receive and consider recommendations from the TIO for amendments to the TIO Constitution.
- (f) To provide advice to the TIO on the allocation of resources within the framework of global resources approved by the Board.
- (g) To receive and consider financial budgets and business plans (and any subsequent amendments thereto) prepared by the TIO.
- (h) To refer the financial budgets, plans or amendments to the Board and to comment and/or make recommendations to the Board as the Council thinks fit.
- (i) Within twelve (12) months of commencement of operation of the TIO scheme, and within every twelve (12) months thereafter, to review the financial limits on the determinative and recommendatory powers of the TIO as referred to in paragraphs 6.1 and 6.2.
- (j) To make recommendations to the Board as to the appropriateness, scope and timing of a review of the TIO scheme.
- (k) To provide advice to the TIO on the promotion of the TIO scheme and the preparation of the Annual Report.

## **10 RELATIONSHIP BETWEEN THE COUNCIL AND THE TIO**

The Council acts as intermediary between the TIO and the Board and in this way ensures the independence of the TIO. The Council has prime responsibility for policy matter and oversight of the TIO scheme's operation. The TIO has responsibility for the day to day operation of the TIO scheme and the resolution of individual complaints. These roles are complementary and, as a general rule, the TIO would attend Council meetings as an observer.

## **11 RELATIONSHIP BETWEEN THE COUNCIL AND THE BOARD**

- 11.1 The Board is responsible for the formal administration of the Company, the Telecommunications Ombudsman Limited, and exercises final authority in relation to the financial affairs of the Company. These matters are most appropriately exercised by Directors. Responsibility for complaint handling, policy matters and the day to day administration of the TIO scheme rests with the Council and the TIO, and not the Board.
- 11.2 From time to time, the efficacy of the TIO Constitution will need to be reviewed. It is the role of the Council, in consultation with the TIO, to prepare recommendations for amendments of the TIO Constitution. Final authority for approval of amendments to the TIO Constitution rests with the Board after consultation with the Federal ministers responsible for communications and consumer affairs policy.
- 11.3 It is the responsibility of the Board to guarantee sufficient funding for the operation of the TIO scheme. Appropriate funding will be established in accordance with the principles set out in clause 8 (Budgets). It is the joint responsibility of the Council and the TIO to ensure the TIO scheme is operated efficiently within the global limits for funding set by the Board.