

# Telecommunications Industry Ombudsman

## Response to the recommendations of the Consumer Safeguards Review Part A

December 2018

Set out below is the Telecommunications Industry Ombudsman’s (TIO’s) response to the recommendations of [Part A of the Government’s Consumer Safeguards Review](#). The TIO welcomes the opportunity to work with the Department of Communications and the Arts to assess the costs and benefits of the recommendations of the Review, including implementation considerations. This work will be conducted over the next 12 months.

	Response	Constitutional/Legal/Governance changes needed	Timeframe for consideration
<b>Strengthened TIO scheme - Process</b>			
1.1 <i>External referral</i> —The TIO should direct consumers who have not lodged a complaint with their provider (or who have not given their provider an opportunity to resolve the complaint) to make contact with (or re-contact) their provider immediately. The provider is then responsible for resolving the matter in line with the timeframes set out in the ACMA Complaints-Handling Standard. This process will offer a faster path of resolution for the consumer, underscored by clear regulatory protections. Such contacts should be recorded by the TIO as an “external referral” and not be categorised as a TIO complaint (as the provider has not yet had the opportunity to resolve the matter).	The TIO’s current process has a strong focus on accessibility. Our data and research shows that the majority of consumers who come to us do so after multiple failed attempts at resolving the complaint with their provider. However, a small proportion of consumer contacts result in an Enquiry Referrals (not currently reported as a complaint), which supports vulnerable consumers and those who are unable to navigate the provider’s complaint handling processes. We are pleased that this intent is retained in the Department’s ‘internal referral’ process.	No change required.	12 months
1.2 <i>Internal referral</i> —In the event that the consumer has made reasonable attempts to contact their provider, but has been unable to connect or speak to the provider, the TIO should	We caution against changing the current process until there is widespread compliance with recently introduced ACMA Complaint Handling Standard. In its initial consultation with consumer organisations, we have	No change required.	

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<p>contact the provider on a consumer’s behalf and request the provider to make contact with the consumer. The TIO should record this transaction as an “internal referral”, track this request and obtain confirmation from the provider that contact with the consumer has been made successfully.</p> <p>The TIO should report to the ACMA systemic occurrences of a provider being difficult to contact by consumers and/or being unresponsive to TIO requests.</p>	<p>heard significant concerns about making changes to the way the TIO receives and refers complaints, and to changing our current terminology.</p> <p>We agree to reporting to the ACMA systemic occurrences of providers being difficult or unresponsive.</p>		
<p>1.3 <i>Acceptance of complaint</i>—The TIO should accept a matter as a potential complaint if the consumer has genuinely been unable to obtain a resolution to their complaint from their provider or if the consumer is dissatisfied with the provider’s proposed resolution. In doing so, the TIO should undertake an initial merits review and assess how the complaint has been handled by the provider and the appropriateness of any proposed resolutions offered. As part of this assessment, the TIO should determine whether the consumer should be advised to accept the proposed resolution(s) or if the TIO will formally accept the complaint. Further detail of the recommended reforms of the TIO’s processes is contained in <a href="#">Appendix B</a>.</p>	<p>The Ombudsman is carefully considering the proposal to introduce a ‘merits review’ early in the TIO’s complaint handling process. We understand that this proposal did not arise from consumer safeguards concerns, but from concerns raised by some providers that the TIO accepts complaints where providers believe the consumer has already been offered a reasonable solution. We further understand from the Department that the recommendation was not intended to introduce a ‘merit review’ as the concept is applied in Administrative Law, but would rather involve an explanation of the options and reasonable prospects the consumer could expect should they seek to pursue the complaint through the TIO. We understand this step is not intended to prevent the consumer from pursuing the complaint with the TIO if they wish to.</p> <p>The Ombudsman has raised initial concerns with the Department about the costs/benefits of introducing this</p>	<p>Potentially changes to Part 3 of our Terms of Reference (How we handle complaints), and the Complaint Handling Rules.</p> <p>Possible impact on the funding model as it would need to take into account the additional work and expertise required to introduce a merits review so early in the process. Implications on the calculation of the membership fee would need to be considered.</p>	12 months

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	additional component of early stage complaint handling and the risks to independence of being perceived to be advising consumers. The Ombudsman is working with the Department to find the appropriate way to implement the intent of this recommendation.		
<b>Strengthened TIO scheme - Governance</b>			
1.4 <i>Representation</i> —The TIO Board should be an independent, skills based Board comprising Directors with a mix of relevant domain experience from all stakeholder sectors and the requisite collective professional skills to govern the company. The Board should include equal numbers of Directors with consumer skills and industry skills for balance, as well as independent Directors and an Independent Chair.	<p>It is important to ensure the Board continues to have a balanced mix of Directors with both consumer and industry experience, as well as maintaining the necessary expertise so that the TIO continues to be an effective and respected external dispute resolution body for the Australian telecommunications sector. As outlined in our Submission to the Consumer Safeguards Review Part A, the TIO’s current governance structure supports the independence of the Ombudsman in handling complaints and making determinations.</p> <p>In 2014, the independence of the TIO’s governance was enhanced by moving to a unitary model under which the former TIO Council ceased to exist and TIO Limited was governed by one Board of directors. A phased transition over three years has resulted in the TIO Board comprising equal numbers of Independent Directors (one of whom is required to be the Chair), Directors with Consumer Experience and Directors with Industry Experience. The stakeholder Board model is considered a strength of the Australian external dispute resolution model.</p>	<p>No change required.</p> <p>Changes to the Constitution would be required, e.g cl 2.1 (Definitions) and cl 12 (Directors and Management of TIO Limited). Member vote would be required to change the Constitution.</p>	12 months

Telecommunications Industry Ombudsman Response  
to the recommendations of the Consumer Safeguards Review Part A - Dec 2018

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The current requirement for two of the three Directors with industry experience to be nominated by the two largest industry participants should be removed. To remove conflicts of interest (perceived or otherwise), no Director should be in the current employ of or be engaged by any telecommunications provider.	The Board had already commenced reviewing the Constitution of the Telecommunications Industry Ombudsman Limited (TIO Limited). The Board will add the recommendations on governance from the Part A Report to its considerations, including the role of members and appointment of Directors that does not preference particular members. The Board will consult with members and consumer groups and ensure that any governance changes are transparent and take into account good governance principles.		
1.5 <i>Nomination and selection processes</i> —Vacant Director positions should be externally advertised and preferred candidates selected by a selection committee chaired by the Independent Chair and comprising a representative of the ACMA, a person with industry skills and a person with consumer skills nominated by the Board. With the exception of the independent Chair, all members of the selection committee should be independent of the TIO Board. The Board should remain responsible for appointing a person to act as Director from preferred candidates nominated by the selection committee.	<p>The Constitution of TIO Limited sets out the process for appointing new Directors. The Board maintains a Skills Matrix and before commencing a recruitment process, conducts a skills assessment and gap analysis to inform the recruitment process.</p> <p>The selection process already involves a person representing consumers and one representing providers. The major change here is to substitute an ACMA representative in place of two board members. The ACMA may have a conflict in taking on this role.</p> <p>The Board will consider the suggested Selection Committee to shortlist candidates and consult with stakeholders before deciding to put a proposal for change to the selection process.</p>	Changes to the Constitution would be required, e.g cl 2.1 (Definitions) and cl 12 (Directors and Management of TIO Limited). Member vote would be required to change the Constitution.	12 months
1.6 <i>ACMA observer</i> —The ACMA should have observer status at TIO Board meetings, to ensure	The Board and the Ombudsman have a good working relationship with the ACMA and will extend an offer to	No change required.	Immediate

Telecommunications Industry Ombudsman Response  
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transparency of operations and give the Board access to regulatory expertise if needed.	the ACMA to regularly brief the Board on regulatory matters. The ACMA will need to assess whether regular attendance compromises its independence.		
<i>1.7 Transparency of decision making</i> —There should be clarity and public transparency about which decisions are made by the Board and which decisions are made by the membership.	The TIO will make an information sheet available on its website explaining the respective roles of the Board and members in TIO decision making and actively inform stakeholders of the distinct roles of the Board and the members of the scheme.	No change required.	Immediate
<p><i>1.8 Ownership considerations</i>—Subject to the above Board arrangements being in place, the TIO Board should consider transferring the ownership of TIO Limited to the Directors of the Board. Under these arrangements, the TIO Directors would become the ‘Members’ of TIO Ltd. Ownership of the scheme would then reflect the diversity of the Board and the scheme’s stakeholders, and strengthen Directors’ personal responsibility for actions resulting from Board decisions.</p> <p><i>1.9 Compliance with TIO Scheme</i>—If recommendation 1.8 is implemented, to ensure industry participants continue to be bound by the rules of the TIO Scheme, participants should be required to enter into a new Participant Agreement with the TIO, replacing the existing "Member" arrangement.</p>	<p>The role of TIO Limited as the operator of the TIO scheme is enshrined in legislation and is consistent with modern EDR schemes such as the newly constituted AFCA. The Board would need to carefully examine evidence of the benefit to be gained from altering the TIO’s legal structure. As noted in our Submission, although wholly funded by industry fees and charges, it is not correct to say the TIO is ‘owned by industry’. The reasons for this include:</p> <ul style="list-style-type: none"> <li>• the TIO is a not for profit company limited by guarantee, having members rather than shareholders</li> <li>• members of TIO Limited participate in the TIO scheme and contribute to the TIO’s operational costs and other funding requirements as may be determined by the Board, but do not direct the scheme</li> <li>• members do not receive payments or profits (for example, by way of dividends)</li> <li>• if the company is wound up: <ul style="list-style-type: none"> <li>- current members (and those whose membership ceased in the prior year) must each contribute up</li> </ul> </li> </ul>	<p>Amendment to legislation would likely be required as the CPSS Act currently provides that the scheme is to be operated by TIO Limited. The legislation would need to compel participants to enter into agreements with the TIO or to deem such arrangements to exist between participants and TIO Limited.</p> <p>Changes to the Constitution would be required. Member vote would be required to change the Constitution.</p> <p>Changes to the funding model would be required, in</p>	6 months

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	<p>to \$100 to pay outstanding debts and liabilities etc of TIO Limited</p> <ul style="list-style-type: none"> <li>- members have no claim over any assets and have no entitlements, with any property left over after payment of debts and liabilities etc to be given to another not-for-profit established for community service purposes</li> <li>• membership is compulsory and is required by legislation</li> <li>• failure to comply with the requirements of the scheme can result in regulatory enforcement action by the ACMA.</li> </ul> <p>Changes to the Constitution of TIO Limited must be approved by a special resolution of members of the company.</p> <p>The Board will consult with stakeholders on the proposed change to members and evaluate this in conjunction with the Department.</p>	<p>particular the ability of the TIO to charge a membership fee.</p>	
<p>1.10 <i>Authorisation to operate</i>—The Government should consider instituting an Authorisation process for the operation of the TIO scheme. The Authorisation would be granted by the relevant Minister for a period of time (e.g. up to five years) and administered by the ACMA. The Authorisation may be renewed or withdrawn at the reasonable discretion of the ACMA, taking into account the performance of the scheme and after consulting with the Commonwealth Ministers responsible for</p>	<p>This recommendation is directed to the Government.</p> <p>TIO Limited is currently authorised through legislation to operate the scheme. Alternative mechanisms for authorisation exist and have been used as a once off process to commence schemes such as the recently constituted AFCA. We understand that there was a particular need for authorisation in that instance due to the need to bring together three schemes into one.</p>	<p>Legislative change is required.</p>	<p>12 months</p>

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Communications and Consumer Affairs policy, and subject to relevant regulatory obligations.	<p>We are not aware of any other scheme that has a time limited authorisation, and suggest that this could give rise to unintended consequences such as the reduction in certainty and disruption to service during changeover and bidding process.</p> <p>As outlined in our Submission, certainty is one of the key strengths of the current scheme. We note that legislation already requires a five yearly independent review, including public consultation, to be conducted, with a copy of the report of the review to be provided to the Minister and published on the TIO’s website. Such a review of the TIO occurred in 2017.</p> <p>The appointment and removal of the external dispute resolution provider by government may be seen as conflicting with its role as the owner of the NBN.</p>		
<b>Strengthened TIO scheme - Stakeholder engagement</b>			
<p>1.11 <i>Broad sector engagement</i>—The TIO should enhance its stakeholder engagement and be more proactive, open and consultative with stakeholders. Its engagement should be focused on the joint sharing and resolving of issues identified in the sector rather than routine liaison.</p> <p>1.12 <i>Relationship with regulator</i>—TIO should proactively identify systemic issues impacting consumers and refer these to the ACMA, within</p>	<p>The TIO is implementing a stakeholder engagement plan that aligns well with the Government’s recommendations in this area. The Board and the Ombudsman are committed to strengthening the relationships with key stakeholders, including members, industry and consumer bodies, the Department and regulators.</p> <p>The Board welcomes the Government’s support of the TIO’s leadership in dispute resolution. As outlined in our Submission, the TIO supports improvements in internal</p>	No change required.	6 months

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<p>two weeks of identification. The sharing of information and referral of matters relating to non-compliance, particularly suspected regulatory breaches, systemic issues and emerging issues, is of critical importance to the overall robustness of the consumer protection framework. The TIO is an integral component of these processes and needs to continue to work in close partnership with other agencies to proactively address issues as they arise.</p> <p>1.13 <i>Advisory forums</i>—Consumer and Industry advisory forums should be established and held regularly to assist the TIO in its decision making and consultation with stakeholders. The forums should be used to consult, communicate and discuss any prospective changes to TIO or industry process.</p> <p>1.14 <i>Leadership in dispute resolution</i>—The TIO should identify and champion best practice dispute resolution by industry and facilitate actions and activities that will help industry participants to continually improve their processes and customer service.</p>	<p>dispute resolution (IDR) by providers, and has a range of initiatives in place to encourage good IDR, including offering provider training, feedback to members about their IDR, investigation of systemic issues and small member forums. We are continually improving the way in which we support these improvements.</p> <p>The Ombudsman is working with consumer representatives to establish the consumer panel recommended in the 2017 Independent Review. The TIO will review and enhance the current member forums.</p> <p>Agree.</p>		
<b>Collaborating with ACMA on data collection, analysis and reporting</b>			
<p>4.1 <i>Data to be provided by industry</i>—Industry participants across the supply chain and the EDR Scheme should have appropriate internal links and leadership to support the effective capture of IDR</p>	<p>The TIO has a good working relationship with the ACMA and is working to increase collaboration in relation to data exchange, systemic issues and the enforcement of our decisions.</p>	No change required.	6 months



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<p>complaint data and root cause analysis of complaint issues. Analysis of this data should form a feedback loop to help drive better industry performance, through pinpointing and eliminating the causes of otherwise avoidable complaints.</p> <p><i>4.2 Parameters for data provision</i>—The ACMA should provide a clear set of definitions of the data that it will collect and associated requirements, and maintain the data dictionary for this purpose. Data should include both information about the complaint and its root cause, as well as information about how the complaint was handled and resolved.</p> <p><i>4.3 Timing for data provision</i>—Data should be provided monthly to the ACMA, or at such other interval reasonably requested by the ACMA, in a format and medium specified by the ACMA.</p> <p><i>4.4 Data integrity and consistency</i>—The ACMA may audit providers’ data collection and data vetting processes to ensure integrity and consistency of the data.</p>	<p>The TIO would seek to be consulted on any data requirements that the ACMA proposed for TIO data.</p> <p>The TIO already provides monthly data to the ACMA in the ACMA’s preferred format, and will continue to cooperate with the ACMA.</p> <p>This recommendation is directed at the ACMA</p>		
<p><i>4.5 Systemic issues</i>—Systemic and other issues arising from the analysis of the complaint data should be communicated to the relevant industry participant(s), industry body and/or regulator, to facilitate the appropriate resolution to address the issues identified.</p>	<p>The TIO will continue to work closely with the ACMA, members, and other stakeholders on systemic issues.</p>	<p>No change required.</p>	<p>Immediate</p>

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<p>4.6 <i>Publication</i>—The ACMA will analyse and publicly report the complaint information received on a regular basis, ideally monthly and no less than quarterly. The reporting should clearly identify industry participants who have lower complaint levels, as well as those which are effective in handling complaints.</p> <p>4.7 <i>ACMA's ability to publish data</i>—The Government should implement measures to ensure the ACMA is not hindered in its ability to publish data on individual providers' performance in complaints handling.</p>	These recommendations are directed at the ACMA	Not applicable.	Not applicable.