

## OVERVIEW OF BOARD AND MEMBER DECISION MAKING

This Fact Sheet explains the respective roles of the **TIO Board of Directors** and **TIO Members** in decision making. To assist in understanding those roles, this Fact Sheet also outlines the key documents underpinning the Telecommunications Industry Ombudsman scheme and how they may be amended.

### Introduction

The TIO scheme is an industry-based customer dispute resolution scheme that adheres to Federal Government issued Benchmarks and Key Practices for industry-based customer dispute resolution.<sup>i</sup>

There are four key non-legislative documents fundamental to understanding decision making at the TIO. Those key non-legislative documents underpinning the TIO scheme are:

1. Constitution of Telecommunications Industry Ombudsman Limited
2. Terms of Reference
3. Complaint Handling Procedures-
4. TIO Board Charter

**Part A** of this Fact Sheet sets out the respective roles of the Board and TIO members in decision making in relation to TIO Limited and the Board itself.

**Part B** of this Fact Sheet provides brief overviews of the Constitution, Terms of Reference, Complaint Handling Procedures and Board Charter.

### A: Decision making by the Board and by TIO Members

Together with applicable laws, the Constitution of TIO Limited sets out the role and responsibilities of the TIO Board of Directors and the powers that TIO Members may exercise in relation to the Company and the Board itself.

The role of the Board in relation to the Ombudsman is dealt with in the Terms of Reference.

In brief, while the Ombudsman is responsible for handling complaints and managing the TIO scheme's day to day operations, the TIO Board has overall responsibility for the business, affairs and property of TIO Limited, sets the goals and overall strategy of the company, sets annual financial budgets and approves the company's statutory accounts.

The Board is responsible for overseeing capital management, funding and cashflows and ensuring sufficient funding for the company to operate the TIO scheme.

The TIO Board is responsible for appointing the Ombudsman and the Company Secretary, as well as external auditors.

The Board also appoints Directors (as recommended by the Nominations Committee) when Board vacancies arise. The Board is responsible for appointing and removing members of the Nominations Committee (other than the Independent Chair).

Appointing the Independent Chair of the Board is also a decision for the Board, after following specific procedures, including informing Federal Ministers before making the appointment.

The Board is responsible for deciding when to convene general meetings of the Members of TIO Limited either of its own volition or as required under legislation. TIO Members with at least 5% of the votes that may be cast at a general meeting may exercise rights under the *Corporations Act 2001 (Cwlth)* to require a general meeting be convened.

General meetings of TIO Limited provide the opportunity for TIO members to vote on specific decisions relating to the company, such as amendments to the Constitution.<sup>ii</sup>

Before the Board puts a proposal to amend the Constitution to a General Meeting, the Board must have passed a Special Resolution to put the proposal to the General Meeting. As noted above, however, in certain circumstances TIO Members may exercise rights under the *Corporations Act 2001 (Cwlth)* to require a general meeting be convened.

## **B: Key non-legislative documents**

### **Constitution of TIO Limited**

#### **About the TIO Constitution**

The Constitution of TIO Limited governs the internal management of TIO Limited. The Constitution is a contract between:

- TIO Limited and each Member
- TIO Limited and each Director
- TIO Limited and the Company Secretary, and
- a Member and each other Member.

The Constitution includes:

- High level principles for Members' contributions to the TIO's costs
- Appointment of directors and related matters
- Making changes to the Constitution
- Voting rights and general meetings

#### **Amending the TIO Constitution**

Changes to the Constitution of TIO Limited must be approved by a special resolution of TIO Members at a general meeting of Members.<sup>iii</sup>

For the special resolution to pass, at least 75% of the votes cast must be in favour.

Before the Board may seek to amend the Constitution at a general meeting, the Board must have resolved by special resolution<sup>iv</sup> to put that proposal to the general meeting of TIO Members.<sup>v</sup>

A special resolution needs at least 21 days' notice to Members.

## Terms of Reference

### About the Terms of Reference

The Terms of Reference explain:

- what the TIO scheme does
- the types of complaints the Ombudsman and staff handle
- how complaints are handled
- rules about complaints
- other functions of the TIO scheme.

TIO Members are bound by the terms of the Terms of Reference.

### Amending the Terms of Reference

The Ombudsman or the Board may propose changes to the Terms of Reference at any time. The Board may make changes by special resolution.<sup>vi</sup>

Every 12 months, however, the Ombudsman must consider whether the financial limits on the Ombudsman's powers should be changed.

Before changing the Terms of Reference, the Board must inform the Federal government ministers in charge of communications and consumer affairs policy about the change and consider any comments they make.

## Complaint Handling Procedures

### About the Complaint Handling Procedures

The Ombudsman has issued the Complaint Handling Procedures to explain how the Terms of Reference are applied in handling complaints.

The Case Handling Procedures explain:

- the TIO scheme accepts complaints from individuals and small business consumers about telecommunications providers who are members of the TIO scheme
- the TIO scheme facilitates the resolution of complaints through its referral process
- the process for handling unresolved complaints
- the dispute resolution process under the TIO scheme.

### Amending the Case Handling Procedures

Before making any change to the Case Handling Procedures, the Ombudsman must discuss the change with the Board and consider any comments the Board makes.<sup>vii</sup>

## Board of Directors' Charter

### About the Board Charter

The Board of Directors oversees the management of the business, affairs and property of TIO Limited in accordance with the Constitution and ToR.

The Board preserves the independence of the Ombudsman, who has day to day responsibility for the management and operation of the TIO scheme.

The TIO Board has a Charter to assist in the exercise of its functions and responsibilities. The provisions in the Board Charter include:

- the Board's purpose and responsibilities
- composition of the Board
- number and frequency of Board meetings and their conduct
- provision of a company secretariat
- establishment of Board Committees
- conduct of Board evaluations and reviews of the Charter itself

### Amending the Board Charter

The Charter is reviewed by the TIO Board annually and may be amended by the Board as and when the Board sees fit.

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- i Commonwealth of Australia, *Benchmarks for Industry-based Customer Dispute Resolution Schemes*, 2015, and *Key Practices for Industry-based Customer Dispute Resolution*, 2015.
  - ii For example, in May 2018 a general meeting of members took place to approve constitutional changes that enabled the Board to adopt a new TIO funding model, following extensive stakeholder engagement.
  - iii See Note ii above.
  - iv See *TIO Constitution*, clause 2.1: A Special Resolution of the Board means a resolution with a majority of at least 75% of such Directors who are entitled to vote at the meeting vote in favour of the resolution.
  - v See *TIO Constitution*, clause 10
  - vi See *TIO Constitution*, clause 2.1 for meaning of Special Resolution of the Board: a resolution with a majority of at least 75% of such Directors who are entitled to vote at the meeting vote in favour of the resolution.
  - vii See *TIO Terms of Reference*, clause 7.3(b)