

Telecommunications Industry Ombudsman

Response to the recommendations of the Consumer Safeguards Review Part A

Six Month Update

June 2019

	Update
Strengthened TIO scheme - Process	
<p>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).</p>	<p>Based on discussions with the Department, industry and consumer organisations, the TIO’s existing referral processes support good complaint resolution.</p> <p>The TIO has maintained its strong focus on accessibility by continuing to direct Enquiry Referrals on behalf of consumers who are unable to navigate a provider’s complaint handling processes. This represents a small number of consumer contacts, and we are continuing our practice of not recording these referrals as complaints.</p> <p>The Department has agreed with us that the suggested changes to terminology or winding back of early referral processes would be premature at this stage.</p> <p>As compliance with the ACMA’s new Complaint Handling Standard becomes more comprehensive, the TIO will reassess its referral processes.</p>
<p>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 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>This referral type is the same as the TIO’s existing process of Enquiry Referral (not currently reported as a complaint), which supports vulnerable consumers and those who are unable to navigate the provider’s complaint handling processes.</p>

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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.	We have referred a number systemic occurrences to the ACMA of a provider being difficult to contact by consumers and/or being unresponsive to TIO requests. We are reviewing our systems to determine the best way to operationalise tracking and systemic reporting to the ACMA of complaints that involve providers being difficult or unresponsive.
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 Appendix B.	<p>Following detailed discussions about the costs/benefits of introducing an additional merit component in the early stage of the TIO’s complaint handling process, and the risks to independence of being perceived to be advising consumers. the Department is satisfied that our current process includes a merits review after a complaint is not resolved at the referral stage.</p> <p>The TIO’s process focuses on making a merits assessment of the offer as early as possible in the process.</p> <p>We have strengthened our triage processes to ensure that issues and offers are taken into consideration in determining how to progress a complaint.</p>
Strengthened TIO scheme - Governance	
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>As noted in our initial response, the TIO’s governance structure supports the independence of the Ombudsman in handling complaints and making determinations.</p> <p>The TIO Board comprises equal numbers of Independent Directors (one of whom is required to be the Chair), Directors with Consumer Experience and Directors with Industry Experience. The Directors are appointed using a skills matrix.</p>

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<p>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.</p>	<p>To further strengthen the TIO's independence, the TIO Board is seeking consumer and industry stakeholder responses to an Options Paper on possible amendments to the Constitution of TIO Limited relating to representation.</p> <p>Stakeholders are asked to comment on:</p> <ul style="list-style-type: none"> • whether all of TIO Limited's directors be independent of any current employment or engagement by TIO members; and • whether the right for the largest and second largest members to each fill a director role should be removed.
<p><i>1.5 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>	<p>TIO Limited's Director selection process already involves a person representing consumers and one representing providers. The major change recommended is to substitute an ACMA representative in place of two board members. Our initial response noted that the ACMA may have a conflict in taking on this role.</p> <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>To further strengthen the TIO's independence, the TIO Board is seeking consumer and industry stakeholder responses to an Options Paper on possible amendments to the Constitution of TIO Limited relating to the nomination and selection of Directors.</p> <p>Stakeholders are asked to comment on:</p> <ul style="list-style-type: none"> • whether the TIO Constitution should require all vacant director positions to be externally advertised; and • whether the composition of the Nominations Committee, which recommends to the Board individuals for appointment to Board positions, be altered.

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1.6 <i>ACMA observer</i> —The ACMA should have observer status at TIO Board meetings, to ensure transparency of operations and give the Board access to regulatory expertise if needed.	The TIO Board values the expertise of the ACMA and has established a standing invitation for the ACMA to discuss strategic regulatory topics at Board meetings. The ACMA Chair attended the last Board meeting.
1.7 <i>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 has published an information sheet explaining the respective roles of the Board and members in TIO decision making.
<p>1.8 <i>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>1.9 <i>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 model of the TIO scheme is enshrined in legislation and is consistent with modern EDR schemes, such as the newly constituted AFCA.</p> <p>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’.</p> <p>The reasons for this include:</p> <ul style="list-style-type: none"> • the TIO is a not for profit company limited by guarantee, having members rather than shareholders • 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 • members do not receive payments or profits (for example, by way of dividends) • if the company is wound up: <ul style="list-style-type: none"> - current members (and those whose membership ceased in the prior year) must each contribute up to \$100 to pay any outstanding debts and liabilities etc of TIO Limited - 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 • membership is compulsory and is required by legislation • failure to comply with the requirements of the scheme can result in regulatory enforcement action by the ACMA.

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	The TIO is currently consulting on governance changes designed to enhance its independence, as outlined above.
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 Communications and Consumer Affairs policy, and subject to relevant regulatory obligations.	<p>This recommendation is directed to the Government.</p> <p>As noted in our initial response, 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>As discussed with the Department, 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>We have suggested continuing the current ongoing authorisation (as is the case for other external dispute resolution schemes).</p>
Strengthened TIO scheme - Stakeholder engagement	
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>The TIO has appointed a new Chief Strategy, Engagement & Development Officer, who is implementing a new stakeholder engagement plan. The new plan will ensure thorough and active engagement with the TIO's key external stakeholders.</p> <p>The new plan will strengthen the accessibility of our service for residential consumers, small businesses and charities. This includes strengthening our website accessibility, collaboration with referral agencies, attendance at seminars and conferences, clear and accessible online information, and outreach activities. We will continue to research and monitor awareness and understanding of our service amongst consumer groups, as well as their expectations of our service. For example,</p>

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<p>1.12 <i>Relationship with regulator</i>—TIO should proactively identify systemic issues impacting consumers and refer these to the ACMA, within 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</p>	<p>in the past couple of years we have partnered with two state based referral agencies to conduct further research about their work with consumers and on telco complaints.</p> <p>To ensure a strong and up-to-date understanding of consumer issues, the Ombudsman continues to have regular contact with ACCAN, key referral agencies and small business associations, as well as relevant government agencies such as Small Business Commissioners, and the Small Business and Family Enterprise Ombudsman.</p> <p>The TIO has been continuously improving how we conduct systemic matters. These improvements allowed us to achieve 30 positive systemic outcomes in FY2018 and refer 18 systemic issues to regulators since July 2018. We also launched two series of publications (Systemic Insights and Systemic Spotlights) to raise awareness of systemic issues affecting consumers and drive industry improvement. So far in 2019, we have published a Systemic Insight on <i>Sales Practices Driving Consumer Debt</i> and a Systemic Spotlight on <i>Reducing Fraudsters' Theft of Mobile Numbers</i>. The publications have allowed us to raise awareness and participate more widely in stakeholder discussions on these important systemic issues.</p> <p>The Ombudsman and senior staff continue regular meetings with regulatory and government stakeholders, including staff from the ACMA, ACCC and Department. Liaison with the ACMA and ACCC focuses strongly on sharing information about systemic and emerging issues, and strengthening the referral pathway for systemic issues and non-compliance to the ACMA and the ACCC. The TIO has MOUs with each of those agencies, which are currently being renegotiated.</p>

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<p>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>The Ombudsman will consult with peak consumer bodies on the draft terms of reference for a consumer panel in August.</p> <p>The TIO has strong engagement from its members. The attendance rate for our Member Forums continues to increase, as does engagement with our members' newsletter. Our newly introduced Member Training Webinars provide an additional cost effective way for the TIO to communicate with industry. Member Training Webinars have also had high member participation rates.</p> <p>The TIO identifies and champions best practice dispute resolution by working to better engage and further educate industry.</p> <p>The TIO has introduced a workshop program series into its Member Forums called "Let's Talk!". The first workshop program explored the value of conciliation conferences at the TIO and was presented by Senior Dispute Resolution staff members. The "Let's Talk!" workshop program series is now part of the TIO's Member Training Webinars.</p> <p>The TIO is also updating its Member Portal to include an event and training calendar, membership guide sections and access to Member Training Webinars and other training videos.</p>

Collaborating with ACMA on data collection, analysis and reporting	
<p>4.1 Data to be provided by industry—Industry participants across the supply chain and the EDR Scheme should have appropriate internal links and leadership to support the effective capture of IDR 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>The TIO has a good working relationship with the ACMA. We already collaborate with the ACMA on data collection, analysis and reporting and provide monthly data to the ACMA.</p>
<p>4.2 Parameters for data provision—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>We are in continuing discussions as the ACMA develops its new internal dispute resolution reporting under the Record Keeping Rules and Complaint Handling Standard. As we move to quarterly reporting for the Financial Year 2020, we are keen to maintain consistency of terminology and alignment of release timing with the ACMA, as far as possible.</p>
<p>4.3 Timing for data provision—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>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>4.4 Data integrity and consistency—The ACMA may audit providers’ data collection and data vetting processes to ensure integrity and consistency of the data.</p>	<p>This recommendation is directed at the ACMA</p>
<p>4.5 Systemic issues—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. Our systemic publications highlight emerging issues and concerns, and support improvements to industry practices.</p>

<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>	<p>These recommendations are directed at the ACMA.</p>
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