

# **MEMORANDUM OF UNDERSTANDING**

**Between**

**Australian Communications and Media Authority  
("ACMA")**

**AND**

**Telecommunications Industry Ombudsman Limited  
("TIO")**

**April 2020**

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## 1. BACKGROUND

- 1.1. This Memorandum of Understanding (**MOU**) sets out a framework for cooperation between the ACMA and the TIO (together, the **Parties**) to facilitate liaison, collaboration, assistance and the exchange of information between the Parties, including with respect to systemic issues. A systemic issue has the meaning in the TIO's Terms of Reference (**Systemic Issue**).
- 1.2. Nothing in this MOU affects the obligations of either Party to comply with any order or direction of a court or compliance with their legal obligations.
- 1.3. In addition to matters covered by this MOU, the Parties acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral or multilateral and include the sharing of information, intelligence and any other matters as agreed by the Parties.
- 1.4. The Parties acknowledge that independent of this MOU, a general level of cooperation and communication exists between the Parties (including officer-to-officer contact for day-to-day matters and attendance at common industry and community forums). The Parties agree these are consistent with the intention behind this MOU and should be encouraged.
- 1.5. The Parties agree that neither Party is required to discharge its responsibilities under this MOU in the event of any major or unforeseen demands on their resources.
- 1.6. This MOU does not create legally binding obligations between the Parties.

## 2. PURPOSE

- 2.1. The Parties recognise the need for collaboration and cooperation to discharge their respective telecommunications functions. They agree to work with each other in the exchange of information, the referral of matters (including with respect to Systemic Issues) and to cooperate on compliance, education and enforcement activities within the framework of this MOU as required.
- 2.2. The Parties will, in the spirit of cooperation, afford such assistance to each other as is practicable taking into consideration each Party's level of resources and priorities.
- 2.3. There are no funding arrangements or costs involved in this MOU.

## 3. PARTIES TO THE UNDERSTANDING

### *Australian Communications and Media Authority (ACMA)*

- 3.1. The ACMA is Australia's regulator for telecommunications, broadcasting, radiocommunications and some online activity.
- 3.2. One of the ACMA's regulatory roles is to undertake compliance and enforcement activities with the TIO scheme. This includes:
  - a) declaring exemptions from the requirement to join the TIO scheme;
  - b) directing providers across the supply chain (including carriers, wholesalers, aggregators and retail carriage service providers) to join the TIO scheme; and

- c) enforcing compliance with the TIO scheme.
- 3.3. Along with legislative requirements, including industry standards made by the ACMA, the ACMA can register industry codes to safeguard consumers and businesses using telecommunication services.
- 3.4. The ACMA is responsible for reporting to and advising the Minister on:
- a) matters affecting consumers of telecommunications services; and
  - b) the telecommunications industry.

#### ***Telecommunications Industry Ombudsman (TIO)***

- 3.5. The TIO is the external dispute resolution scheme for the Australian telecommunications industry. The TIO provides a free dispute resolution service for residential consumers, small businesses and not-for-profit organisations that are unable to resolve complaints with their provider. The TIO delivers an external dispute resolution service that is accessible, independent, fair, accountable, efficient and effective.
- 3.6. Providers across the supply chain (including carriers, wholesalers, aggregators, and retail carriage service providers) must be members of the TIO scheme and comply with the scheme unless declared exempt by the ACMA.
- 3.7. The TIO also has jurisdiction to consider land access objections from landowners and occupiers in accordance with the *Telecommunications Act 1997 (Cth)* and relevant subordinate legislation. The TIO can give binding directions to carriers in response to land access objections from landowners or occupiers in relation to carriers accessing their land to inspect, install or maintain certain network infrastructure.
- 3.8. As part of supporting improvements in industry practice and policy, the TIO:
- a) reports on the consumer experience of telecommunications services through complaint data and trends;
  - b) identifies and investigates Systemic Issues, including those that may need to be referred to the ACMA or other regulators for enforcement action; and
  - c) contributes to policy debates.

## **4. LIAISON**

- 4.1. The Parties will attend meetings as follows:
- a) regular meetings between senior leadership at the ACMA and the TIO; and
  - b) other strategic and operational meetings between the Parties as required

The purpose of these meetings is to provide information on issues covered in this MOU as well as any other issues which may be of interest to each Party, for example policy and regulatory developments.

- 4.2. Each Party will ensure that it has a designated liaison officer, known to the other Party, for the purpose of communication and exchange of information between the Parties under this MOU.

- 4.3. At the date of this MOU, liaison officers for the ACMA and the TIO are as listed in a separate document (the ACMA and TIO MOU Liaison Officers Schedule) to be updated regularly by the Parties.
- 4.4. A Party may change its liaison officer(s) by providing written notice to the listed contact officer of the other Party.
- 4.5. The Parties may also identify relevant project officers to facilitate coordination in relation to particular matters.

## 5. NOTIFICATION AND CONSULTATION

- 5.1. Where appropriate, the Parties will consult with each other in relation to arrangements for joint publications and joint contact with stakeholder groups.
- 5.2. Each Party will use its best endeavours to notify the other Party prior to publishing a media release or report on matters of concern or relevance for the other Party or that may lead to a significant increase in consumer, stakeholder or media contact with the other Party.

## 6. INFORMATION & INTELLIGENCE SHARING

- 6.1. Each Party is subject to legal obligations relating to privacy and confidentiality, which govern the collection, use and disclosure of confidential or personal information. Each Party may specify confidentiality conditions for information shared with the other.
- 6.2. The TIO will only provide data to the ACMA in accordance with the TIO's privacy policy. The ACMA will only provide data to the TIO in accordance with the ACMA's privacy policy.
- 6.3. The Parties agree that, unless otherwise required by law, information provided pursuant to the arrangements set out in this MOU will be used only in fulfilment of each Party's responsibilities, and only for any limited purpose that has been specified in writing.
- 6.4. Recognising proactive sharing of information and intelligence between the Parties assists each Party to fulfil its respective functions, the Parties agree to share and exchange information as permitted by law and in accordance with this MOU, including, but not limited to:
  - a) regular reporting of TIO data, including complaint trends and industry non-compliance with codes or legislation by TIO members;
  - b) issues the TIO has identified as being issues that are not satisfactorily captured by industry codes or industry standards within the ACMA's enforcement jurisdiction;
  - c) systemic and emerging issues;
  - d) issues or matters arising with the ACMA's administration of the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*;
  - e) mutual assistance to monitor and enforce compliance with relevant legislation;
  - f) trend analysis and insights into the consumer experience from complaints; and

- g) information to assist the ACMA collect, analyse and publish data on industry performance in complaints handling.

6.5. In addition to proactive information sharing, each Party will endeavour to respond to reasonable requests for information from the other Party. Either Party may direct a written request for information and advice to the other Party's liaison officers, for referral to the appropriate areas of each agency for advice and response.

Requests for information and advice will be considered in the context of:

- a) each Party's legislative obligations, the TIO Constitution and Terms of Reference and this MOU; and
- b) whether it is feasible, having regard to factors such as cost or systems limitation, to provide the information or advice requested.

6.6. Where information is shared by one Party, the receiving Party will advise how this information is to be used and agrees not to publish the information until it has been made publicly available by the Party providing the information.

6.7. Where information is confidential:

- a) the Party providing the information will identify the relevant part of the information that is confidential, and any conditions attached to its disclosure; and
- b) the receiving Party will comply with any confidentiality conditions and will only use and disclose that information to the extent permitted by law.

6.8. Each Party acknowledges that disclosure of information provided pursuant to this MOU may be required, authorised or permitted by law.

6.9. Where the receiving Party is required by law to disclose information provided pursuant to this MOU, the receiving Party will notify the Party that provided the information prior to disclosure unless legal requirements or other circumstances make such notification impermissible.

6.10. The ACMA may use its statutory powers to compel the production of documents from the TIO on specific investigations or matters as necessary.

## **7. AVOIDING DUPLICATION**

7.1. In the interests of avoiding duplication of effort and ensuring consistency of advice and complaint resolution outcomes, the TIO and the ACMA agree:

- a) the ACMA will direct consumers to the TIO in relation to matters which, in the view of the ACMA, fall within the TIO's jurisdiction;
- b) where the ACMA has commenced an investigation into a matter referred by the TIO, the TIO will use its best endeavours to assist the ACMA to collate material to assist the ACMA in its investigation, subject to legal constraints;
- c) where the ACMA has received a referral from the TIO, the ACMA will, subject to any conflicting legal obligation or confidentiality considerations, provide the TIO with updates relating to the referral when appropriate; and
- d) recognising that both Parties have statutory and regulatory obligations that mean it may not always be appropriate to discuss the details of its activities,

both Parties may provide an overview of matters that may be of interest to the other in performing its functions.

## **8. ENFORCING MEMBERSHIP OF THE TIO SCHEME**

- 8.1. Ensuring comprehensive TIO membership is critical to the telecommunications industry and consumers.
- 8.2. The issue of enforcement of membership of the TIO scheme will be discussed regularly between the contacts of each Party.
- 8.3. Where a new carrier licence is granted, the ACMA will send information to this carrier about their obligations under the TIO scheme, other legal obligations of telecommunications industry participants, and relevant timeframes of which it should be aware.
- 8.4. The ACMA will notify the TIO of the receipt of any application from a provider for an exemption from joining the scheme within a timeframe agreed between the Parties .
- 8.5. Where the TIO requests that a provider join the scheme:
  - a) the TIO will notify the ACMA of this request and the time period within which the TIO requested the provider join the TIO scheme;
  - b) the ACMA will send information to this provider about their obligations under the TIO scheme and other legal obligations of telecommunications industry participants, and ACMA's enforcement timeframes of which it should be aware; and
  - c) where a provider fails to join the TIO scheme within the time period requested by the TIO, the TIO will refer the provider to the ACMA.

The above steps will be completed within timeframes agreed between the Parties.

- 8.6. Where the TIO refers a matter under clause 8.5(c) to the ACMA:
  - a) the TIO will provide to the ACMA the latest information known to the TIO about the name of the provider and its contact details; and
  - b) the ACMA will provide confirmation of receipt of the referral and the assigned ACMA officer's contact details to the TIO.

The above steps will be completed within timeframes agreed between the Parties.

- 8.7. The ACMA will proactively liaise with the TIO about the membership status of newly licensed carriers, and notify the TIO of:
  - a) the granting of a new carrier licence;
  - b) the withdrawal or cancellation of an existing carrier licence;
  - c) the outcome of the ACMA's reconciliation of the carrier licence list with the ASIC register; and
  - d) any other material changes that could impact on the TIO's membership.

- 8.8. Where the ACMA becomes aware of a failure by a provider (including a carrier, wholesaler, aggregator or retail carriage service provider) to become a member of the TIO scheme and that provider is required by law to join the TIO scheme, the ACMA may:
- a) direct the provider to become a member of the TIO scheme; and
  - b) notify the TIO of the provider's failure to become a member of the TIO scheme.

The above steps will be completed within timeframes agreed between the Parties.

## **9. ENFORCING COMPLIANCE WITH THE TIO SCHEME**

- 9.1. This section applies to a failure by a TIO member to comply with the TIO scheme, such as:
- a) failure to comply with a TIO decision or determination;
  - b) failure to respond to a request by the TIO to supply information, or to assist in resolving complaints; or
  - c) failure to pay fees incurred by the TIO member in accordance with the TIO's Constitution and Terms of Reference.
- 9.2. Where a TIO member has failed or is failing to comply with the TIO scheme, the TIO may refer that TIO member to the ACMA.
- 9.3. The issue of non-compliance with the TIO scheme is to be a standing agenda item in the meetings held between the Parties under clause 4.1(b). Notifications by the TIO to the ACMA about non-compliance with the TIO scheme can be made at any time and are not to be restricted to this meeting.
- 9.4. The TIO will provide information to the ACMA to support requests for enforcement action. This may include:
- a) name of the entity;
  - b) ABN/ACN;
  - c) contact details;
  - d) summary of the matter, attaching any relevant documentation; and
  - e) copy of any relevant TIO decision, determination, or request.
- 9.5. Where the ACMA is advised of non-compliance by a TIO member with the TIO scheme, the ACMA may investigate and notify the TIO of the progress of the referral (including any correspondence between the ACMA and the entity that the ACMA believes to be appropriate to provide to the TIO) within timeframes agreed between the Parties.

## **10. COLLABORATION ON TIO SYSTEMIC ISSUES INVESTIGATIONS**

- 10.1. The Parties will work together to identify and address Systemic Issues in the telecommunications industry.

10.2. Notifications or referrals by the TIO to the ACMA about Systemic Issues can be made at any time but should be timely in relation to the issues occurring.

10.3. Where the TIO becomes aware of:

- a) a potential Systemic Issue in relation to one or more of its members; or
- b) a potential issue or activity in relation to one or more of its members which the TIO believes to be causing consumer detriment and to be within the ACMA's responsibilities,

it may notify or refer to the ACMA its concerns in relation to such an issue or activity. The ACMA will decide in its absolute discretion whether to investigate any referred issue or activity, and will notify the TIO of the decision within timeframes agreed between the Parties.

10.4. When deciding whether to refer a Systemic Issue to the ACMA, the TIO will take into account the following considerations:

- a) non-cooperation by a TIO member with a TIO investigation into a potential Systemic Issue, including failure to:
  - i. comply with a request for information within a reasonable time;
  - ii. implement an agreed resolution to the Systemic Issue within a reasonable time;
  - iii. action a recommendation by the Ombudsman on the Systemic Issue within a reasonable time,
- b) the Systemic Issue is unlikely to be resolved with the provider; and
- c) whether the conduct is more appropriate for the ACMA to investigate using its regulatory powers.

10.5. Where the TIO refers a Systemic Issue to the ACMA, the TIO will normally notify any TIO member that has been named in the Systemic Issue.

10.6. Where the ACMA receives a referral from the TIO about a Systemic Issue, the ACMA will respond to the TIO within timeframes agreed between the Parties as to how it will deal with that referral.

10.7. Where the ACMA decides to investigate a Systemic Issue referred by the TIO, the TIO agrees, subject to any privacy or confidentiality considerations relating to individual complaints, to provide any relevant information to the ACMA about the matter referred. The TIO will use its best endeavours to assist the ACMA in collating evidence required for the ACMA's investigation, including information in clause 9.4, where relevant.

10.8. The Parties agree to collaborate to ensure that each organisation is separately and jointly working to identify and address Systemic Issues. This involves:

- a) sharing information with each other on environmental scanning and complaint data review activities to identify potential Systemic Issues;

- b) referral by the TIO of potential Systemic Issues to the ACMA to complete an investigation where appropriate;
- c) enforcement action by the ACMA if a TIO member does not cooperate with a TIO investigation into a potential Systemic Issue and the ACMA considers the conduct warrants enforcement action; and
- d) sharing information on upcoming publications on Systemic Issues.

## **11. ILLEGAL PHOENIXING**

- 11.1. The Parties will work together and with other government agencies to identify and address illegal phoenixing activity in the telecommunications industry.
- 11.2. Illegal phoenixing activity is when a new company is created to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes, creditors and employee entitlements.
- 11.3. Notifications by either Party to the other Party about illegal phoenixing can be made at any time. The TIO may also notify the ACMA of illegal phoenixing activity (or suspected illegal phoenixing activity) as part of a Systemic Issue notification under clause 10.

## **12. RESOLUTION OF DIFFERENCES**

- 12.1. The Parties will use reasonable endeavours to resolve any differences arising out of the interpretation of this MOU by consultation.

## **13. VARIATION**

- 13.1. This MOU may be varied at any time with the mutual written consent of each Party.

## **14. COMMENCEMENT AND REVIEW**

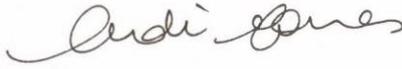
- 14.1. This MOU will commence from the date it is signed by both Parties and remain in place until it is terminated by either Party in accordance with clause 15.
- 14.2. The Parties will review the operation and effectiveness of this MOU every two years, or as agreed by the Parties.

## **15. TERMINATION**

- 15.1. A Party may terminate this MOU by giving 25 working days written notice to the other Party. The Parties may also terminate this MOU upon their mutual written consent.
- 15.2. In the event that a Party gives notice of termination, this MOU shall continue to have effect with respect to all referrals and/or information sharing which occurred during its term until the expiration of the notice period in clause 15.1.

**SIGNATURES**

Signed for and on behalf of  
Telecommunications Industry  
Ombudsman Limited:



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Ombudsman

Date of signature: 22 April 2020

Signed for and on behalf of the  
Australian Communications  
and Media Authority:



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Chair

Date of signature: ..... 23 April 2020