



Telecommunications
Industry
Ombudsman

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PART 1: INTRODUCTION TO THE TELECOMMUNICATIONS INDUSTRY OMBUDSMAN SCHEME

- 1.1 We provide an independent external dispute resolution service for the telecommunications industry as set out in **Part 2** of these Terms of Reference.
- 1.2 We also exercise jurisdiction, powers and functions as may be conferred by or under any legislation, instrument, regulation or code. This includes dealing with land access objections as set out in **Part 3** of these Terms of Reference.
- 1.3 We have a role in supporting improvements in industry practice and policy. As part of this role, we:
 - (a) identify and investigate systemic issues, including those that may need to be referred to **regulators** for enforcement action;
 - (b) contribute to policy formulation and debate; and
 - (c) report on the **consumer** experience of **telecommunications services** through **complaint** data and trends.This role is set out in **Part 4** and **Part 5** of these Terms of Reference.
- 1.4 In exercising our powers, we will consider what is fair and reasonable in the circumstances having regard to the law, relevant industry codes, guidelines and good practice.
- 1.5 Our service is free of charge for **consumers** and **occupiers** who access the Telecommunications Industry Ombudsman scheme.
- 1.6 Our **members** have a range of obligations to comply with our scheme, as set out in **Part 6** of these Terms of Reference.
- 1.7 We operate as an independent not-for-profit company authorised by legislation and governed by a **Board**. Management of our scheme is outlined in **Part 7** of these Terms of Reference.
- 1.8 We deliver a service that is accessible, independent, fair, accountable, efficient and effective, in accordance with:
 - (a) telecommunications legislation; and
 - (b) the **Government Benchmarks for Dispute Resolution**.
- 1.9 We undertake regular outreach activities to promote broad accessibility and awareness of our service.
- 1.10 These Terms of Reference apply from 1 January 2021.

PART 2: OUR COMPLAINT HANDLING ROLE

Our complaint handling jurisdiction

Complaints we handle

- 2.1 We can handle **complaints** made by **consumers** and **occupiers** about **members** of our scheme.
- 2.2 We can handle **complaints** from **consumers**, including about:
- (a) **telecommunications services** that a **member** offers or supplies to the **consumer**;
 - (b) a problem with equipment or a device sold by a **member**, whether together with, or separately from, a **telecommunications service**;
 - (c) services related to telecommunications or equipment, such as repair, maintenance and technical support;
 - (d) bill or debt claimed against the **consumer** and related **credit management action** or the **member's** response to the **consumer's** financial hardship circumstances;
 - (e) fault, failure or delay in the supply of a **telecommunications service**;
 - (f) loss of a phone number or email;
 - (g) breach of privacy;
 - (h) operator services;
 - (i) directory listings other than business directories; and
 - (j) failure to comply with a relevant code or guideline.
- 2.3 We can handle **complaints** from **occupiers**, including about:
- (a) **property damage** on an **occupier's** land, including disputes over liability for costs associated with repairing, restoring or replacing property;
 - (b) bill or debt claimed by a **member** against an **occupier**; and
 - (c) unsafe or non-compliant **carrier** infrastructure on the **occupier's** land.
- 2.4 We can handle any other **complaint** where agreed to by us and the parties to the **complaint**.

Complaints we do not handle

- 2.5 We will not handle **complaints** if we are prohibited from doing so under legislation¹, including **complaints** about:
- (a) setting of pricing; and
 - (b) the content of a content service.
- 2.6 We will not handle a **complaint** where either party has commenced proceedings in a court or tribunal.

¹ *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth), sub-section 128(6).

- 2.7 We will not handle a **complaint** if we decide it is more appropriately dealt with by another body or in another forum, including an agency or another dispute resolution service.
- 2.8 The value of compensation we award cannot exceed \$100,000, and we may refuse to handle the **complaint** where we estimate the value of the claim is likely to exceed this amount. The total value is calculated as the combined amount of all claims raised by the **consumer** or **occupier** arising from an event or same set of circumstances.
- 2.9 We may stop handling a **complaint** under clauses 2.38-2.40.

Time limits for bringing a complaint to us

- 2.10 We can accept a **complaint** if the **consumer** or **occupier** complains to us within two years of first discovering the issue or problem.
- 2.11 If a **consumer** or **occupier** complains to us later than two years after discovering the issue or problem, we may still accept the **complaint** if it is within six years of discovering the issue or problem. In deciding whether to accept the **complaint**, we will consider the reason for the delay, when the **consumer** or **occupier** should reasonably have first discovered the issue or problem, and any impact the delay might have on the **member**.
- 2.12 We will not handle the **complaint** if a **consumer** or **occupier** complains to us more than six years after they first discovered or should reasonably have discovered the issue or problem.

How consumers and occupiers can make a complaint to us

- 2.13 **Consumers** and **occupiers** can complain to us in writing or by speaking with us.
- 2.14 A representative may make a **complaint** on behalf of a **consumer** or **occupier**. We may require the **consumer** or **occupier** to confirm they have authorised this representative. We may decide to stop dealing with an authorised representative if we believe the representative has a conflict of interest or is acting inappropriately or unreasonably.
- 2.15 Where we consider it appropriate, we may require a **consumer** or **occupier** to put their **complaint** in writing or only contact us through a representative.
- 2.16 A **consumer** or **occupier** may withdraw their **complaint** at any time.

How we handle complaints

- 2.17 We will only consider a **complaint** after the **member** has had a reasonable opportunity to consider the issues. If we receive a **complaint** before the matter has been raised with a **member**, we may assist the **consumer** or **occupier** to raise the **complaint** with the **member**.
- 2.18 When we receive a **complaint in our jurisdiction**, we will promptly tell the **member** about it.
- 2.19 To assist in resolving a **complaint**, we may request information or action from a **member** other than the **member** about which the **complaint** has been made.
- 2.20 We may join more than one **member** as a relevant party to a **complaint**. This may be in situations where their involvement is needed to resolve the **complaint**.

- 2.21 We may investigate and request information from parties, and help the parties to the **complaint** reach a resolution. Our published complaint handling procedures set out how we will do this.
- 2.22 We may issue a **temporary ruling** under clauses 2.28-2.30.
- 2.23 We may make a **recommendation** about how the parties can resolve the **complaint**. A **recommendation** is not binding on the **member**.
- 2.24 Where a **complaint** is unresolved, we may make a **decision** under clauses 2.31-2.37.
- 2.25 Where we make a **recommendation**, **temporary ruling** or **decision**, we will provide the parties to the **complaint** with our reasons.
- 2.26 When we consider it fair and reasonable to do so, we may hold a **member** responsible for the acts or omissions of another person, including a third party provider, related company, agent, dealer, contractor, employee or authorised representative.
- 2.27 If the conduct of a **member's** representative is unreasonable, we may require the **member** to appoint an alternative contact for some or all of the **complaints** we handle about that **member**, or we may request the **member** communicate with us in writing.

We may issue a temporary ruling

- 2.28 We may issue a temporary ruling about a **member's** actions while we are handling a **complaint**. A temporary ruling is binding on the **member**.
- 2.29 A **temporary ruling** may require a **member** to do or to not do certain things, including:
 - (a) lift a restriction on a service;
 - (b) reconnect a service;
 - (c) remove a default listing;
 - (d) buy back a debt;
 - (e) stop legal action; and
 - (f) stop **credit management** action.
- 2.30 A **temporary ruling** can be in place for up to 90 days. If we decide to extend a **temporary ruling**, each extension may be for no longer than a further 90 days.

We may make a decision

- 2.31 Where a **complaint** is unresolved, we may make a **decision** about how the **complaint** should be resolved.
- 2.32 When we make a **decision**, we will inform the parties to the **complaint**.
- 2.33 A **decision** may require a **member** to take a range of actions, including:
 - (a) refund or pay money to a **consumer** or **occupier**;
 - (b) waive all or part of a bill;
 - (c) pay compensation for financial loss resulting from no **telecommunications service** or a poor quality **telecommunications service**, privacy breach, or **property damage**;
 - (d) pay compensation for non-financial loss;

- (e) pay compensation to reimburse the **consumer** or **occupier** for the expense of having to deal with the situation or **complaint**;
- (f) provide a **telecommunications service** or resolve a service problem;
- (g) repair or replace equipment or a device offered or supplied by the **member**;
- (h) correct, add or remove an entry in a directory or record, including a credit report;
- (i) provide specific operator services; and
- (j) repair or replace damaged property.

When a decision becomes binding

- 2.34 If a **consumer** or **occupier** accepts our **decision**, the **decision** becomes binding on the **member**, who must implement the **decision**.
- 2.35 The **consumer** or **occupier** must tell us if they accept our **decision** within the timeframe we specify, otherwise we may decide to close the **complaint**. We will only reopen the complaint in exceptional circumstances.
- 2.36 A **consumer** or **occupier** is not bound by a **decision**, however if they accept the **decision** they must:
 - (a) accept the resolution set out in the **decision** in full and final settlement of the **complaint**; and
 - (b) not take any further action against the **member** about the **complaint**.
- 2.37 If the **consumer** or **occupier** does not accept the **decision**, it is not binding on the **member**, and the **consumer** or **occupier** is free to take further action in an alternative forum, such as a court.

We may stop handling a complaint in certain circumstances

- 2.38 We will stop handling a **complaint** at any time if:
 - (a) we form the view that it is outside our jurisdiction;
 - (b) the **consumer** or **occupier** withdraws the **complaint**; or
 - (c) the **consumer** or **occupier** initiates a claim in a court or tribunal or lodges a **complaint** with another body while we are considering the same matter.
- 2.39 We may decide to stop handling a **complaint** when we consider it is reasonable to do so, such as when:
 - (a) the **consumer** or **occupier** dies;
 - (b) the **member** ceases to trade;
 - (c) the parties to the **complaint** have agreed to a resolution that fully resolves the issues in dispute;
 - (d) the **consumer's** or **occupier's** conduct is unreasonable;
 - (e) the **complaint** is not made in good faith;
 - (f) the **consumer** or **occupier** does not respond to our request for information or for documents relevant to handling the **complaint**;

- (g) the value of the **consumer's** or **occupier's** claim for compensation exceeds \$100,000;
or
- (h) the **complaint** is more appropriately dealt with by another body or in another forum.

2.40 We will only recommence handling **complaints** we have stopped handling in exceptional circumstances.

PART 3: OUR LAND ACCESS ROLE

- 3.1 We have a statutory role in dealing with and giving directions on objections to land access activities proposed by **carriers** under Schedule 3 of the *Telecommunications Act 1997* (Cth).
- 3.2 These activities include the installation of low-impact facilities, land inspections and facility maintenance.
- 3.3 We may only deal with objections made and referred in accordance with the relevant code made by the Minister.²
- 3.4 We may exercise discretion to defer dealing with a matter.
- 3.5 Our published guidelines explain how we investigate the land access objections referred to us, including information we may seek to determine the objection.

² *Telecommunications Act 1997*(Cth), schedule 3, sub-clause 15(1).

PART 4: OUR INDUSTRY IMPROVEMENT ROLE

Our systemic issues role

- 4.1 We support improvements in industry practice by identifying and investigating systemic issues.
- 4.2 A systemic issue is one that has or is likely to have a negative effect on a number of **consumers**, including about:
 - (a) **members'** systems, policies, processes or practices;
 - (b) repeated non-compliance by a **member** with the law, regulatory requirements or good industry practice; and
 - (c) widespread issues driving **complaints**, which may arise from general industry practices, gaps in **consumer** awareness or the broader regulatory and telecommunications operating landscape.

How we handle systemic issues

- 4.3 We can identify and investigate a systemic issue with or without a **complaint**.
- 4.4 If we decide to investigate a systemic issue about a specific **member**, we:
 - (a) will inform that **member**; and
 - (b) may request information or documents from that **member** at any time.
- 4.5 We may wait until we have finalised a systemic issue investigation before handling any **complaints** connected to the issue.
- 4.6 As part of handling and investigating a systemic issue, we may:
 - (a) require a **member** to share investigation findings, including any underlying causes and trends;
 - (b) suggest or discuss improvement and remedial actions a **member** should take;
 - (c) ask the **member** to commit to timeframes set out for any agreed actions; and
 - (d) ask the **member** to internally escalate the systemic issue to a more senior level.
- 4.7 We may publish the description of systemic issues we have handled and include the name of the relevant **members**.
- 4.8 We may publish guidelines on how we handle systemic issues.

We can make a systemic issue recommendation

- 4.9 We can recommend:
 - (a) a **member** do or refrain from doing anything necessary to address a systemic issue; and
 - (b) the telecommunications industry (or a segment of the industry) make improvements that deliver better outcomes to **consumers** and **occupiers**.
- 4.10 We may publish our systemic issue recommendations, including the name of the relevant **member**.

Our policy contribution role

4.11 We can contribute to public policy by:

- (a) influencing policy formulation and public debate on issues which impact consumers, members or the broader regulatory and operating landscape;
- (b) making submissions to legislative inquiries, policy development and other regulatory reform processes; and
- (c) publishing and sharing:
 - i. **complaint** statistics and trends analysis;
 - ii. case studies or scenarios and insights from **complaints** and systemic issues; and
 - iii. information about our scheme.

PART 5: OUR REPORTING AND INFORMATION SHARING ROLES

Public reporting

- 5.1 We may publicly report on a range of matters to increase awareness and understanding of our scheme and improve **member** and industry practices.
- 5.2 We may publish reports about our activities and issues that relate to our scheme and the telecommunications industry. Reports may include a **decision**, temporary ruling, **recommendation**, or a systemic issue we have handled. We may include the details of **complaints**, names of **members** (but not **consumers** or **occupiers**), and the reasons for our view.
- 5.3 Our reports may include:
 - (a) **complaint** statistics and trends analysis;
 - (b) case studies or scenarios and insights from **complaints** and systemic issues; and
 - (c) information about our scheme.
- 5.4 We may publish the name of a **provider** if they fail to comply with the obligation to become a **member**.
- 5.5 We may publish the name of a **member** who does not comply with our scheme, and how they do not comply.

How we work with regulators

- 5.6 We can tell a **regulator** about the conduct of a **member** (or anyone who should be a **member**) when that conduct may be relevant to the **regulator's** compliance and enforcement role.
- 5.7 We may share information with **regulators** to address systemic issues, reduce **complaints** and contribute to industry improvement.

Sharing information to promote good practice

- 5.8 We may share information with **regulators**, government bodies, **members** and community and industry groups for the purposes of promoting good practice and improving the telecommunications industry.

Sharing information about our scheme

- 5.9 We may publish information that increases **consumer** and **provider** awareness and understanding of our jurisdiction, and our likely approach to handling certain types of **complaints**.

PART 6: MEMBER OBLIGATIONS

- 6.1 This Part sets out **member** obligations under these Terms of Reference. If a **member** fails to comply with these obligations, we may refer the **member's** failure to a relevant **regulator**.

Complying with our processes

Cooperating with investigations and processes

- 6.2 **Members** must cooperate with and respond to our investigations and processes within the timeframes we specify.

Responding to requests for information or documents

- 6.3 When we request information or documents under **Parts 2, 3 or 4** of these Terms of Reference, or about membership of the scheme, the **member** must provide the information or document within the timeframe we specify. Where a **member** is unable to meet a timeframe, the **member** must contact us before the timeframe passes to request an extension and provide reasons for the request. We will only grant an extension of time where we consider it is reasonable to do so.

Implementing the agreed resolution to the complaint

- 6.4 Where the parties to the **complaint** agree to a resolution, the **member** the **complaint** is about, and any **member** joined to the **complaint**, must implement the resolution within the timeframe agreed with us or with the **consumer** or **occupier**.

Compliance with temporary rulings and decisions

- 6.5 **Members** must comply with a temporary ruling made by us under clauses 2.28-2.30.
- 6.6 **Members** must comply with a **decision** if the **consumer** or **occupier** accepts the **decision**, as set out in clauses 2.31-2.37.

Legal action

Refraining from taking legal action while we are handling the complaint

- 6.7 Once we tell a **member** about a **complaint**, the **member** must not take legal action about the **complaint** in a court, tribunal or alternative dispute resolution forum unless:
- (a) we have told the **member** we are no longer handling the **complaint**;
 - (b) we agree that we did not deal with the **complaint** within a reasonable time;
 - (c) legal action is likely to prevent significant:
 - (i) risk of physical injury; or
 - (ii) damage or interference to equipment or infrastructure;
 - (d) the action is to decide:
 - (i) whether these Terms of Reference allow us to handle the **complaint**; and
 - (ii) the meaning of any part of these Terms of Reference.

Test case issues

- 6.8 A **member** may start a test case (including against a **consumer** or **occupier**), or seek advice from another person or body (for example, a **regulator**) to resolve an issue where:
- (a) the **member** thinks the **complaint** involves an important legal or policy issue or a novel point of law; or
 - (b) the issue has the potential to significantly impact the **member's** business.
- 6.9 The following rules apply to test cases initiated by the **member**:
- (a) a **member** may only start a test case about an issue referred to in clause 6.8. A **member** must not take the action complained about by a **consumer** or **occupier** until this issue is resolved;
 - (b) if the **member** starts a test case against the **consumer** or **occupier** it must pay the **consumer's** or **occupier's** reasonable legal costs and expenses, including for any appeal points raised by the **member**, **consumer** or **occupier**. The **member** must pay those costs as they arise rather than waiting until the end of the legal action;
 - (c) before starting a test case, a **member** must provide us with notice that:
 - (i) identifies the issue and the potential consequences;
 - (ii) specifies in which forum the test case will be started;
 - (iii) names any person or body the **member** intends to seek advice from;
 - (iv) specifies a timeframe for the **member** to start the test case or seek advice. This timeframe must be 90 days or less;
 - (v) states that the **member** will pay the **consumer's** or **occupier's** reasonable legal costs and expenses; and
 - (d) the **member** may not give us notice if we have already decided the resolution of the **complaint**.
- 6.10 If a **member** complies with these rules we will not handle the **complaint** until the specific important issue is determined by a court or body.
- 6.11 If a **member** does not comply with these rules or if we think a delay in handling the **complaint** is likely to prevent a fair outcome or cause unreasonable difficulties for the **consumer** or **occupier**, we may handle the **complaint** before the specific important issue is resolved.

PART 7: MANAGEMENT OF THE TELECOMMUNICATIONS INDUSTRY OMBUDSMAN SCHEME

How our scheme operates

- 7.1 The organisation that operates our scheme is called Telecommunications Industry Ombudsman Limited which is a public company limited by guarantee.
- 7.2 The organisation is governed by a **Board** and managed by an **Ombudsman**. This **Part** explains their responsibilities.

The Board's responsibilities

- 7.3 The powers and duties of the **Board** are described in the **Constitution**. The responsibilities of the **Board** include:
- (a) setting and monitoring the strategic direction of the organisation;
 - (b) monitoring the operational and financial position and performance of the organisation;
 - (d) assuring the principal risks faced by the organisation are identified and overseeing that appropriate control and monitoring systems are in place to manage the impact of these risks;
 - (e) appointing and, where appropriate, removing the **Ombudsman** (or **Acting Ombudsman**);
 - (f) maintaining the **Ombudsman's** independence in the management and operation of the scheme.

The Ombudsman's responsibilities

- 7.4 In accordance with legislation and the **Constitution**, the Ombudsman is responsible for handling **complaints**, exercising jurisdiction, powers and functions as may be conferred by any legislation, instrument, regulation or code (including considering and determining land access objections), investigating systemic issues, contributing to policy formulation and debate, and reporting on **complaint** data and trends;
- 7.5 The **Ombudsman** is also responsible for the management of our scheme and the organisation's day to day operations, including:
- (a) developing and implementing plans, budgets and strategies;
 - (b) identifying and managing operational and corporate risks for the organisation;
 - (c) managing the organisation, its finances, people and resources;
 - (d) developing operational policies and procedures, including procedures for handling complaints.
- 7.6 If there is an **Acting Ombudsman**, the **Acting Ombudsman** will have the same powers, functions and responsibilities as the **Ombudsman**, to the extent allowed by law and the **Constitution**.

The Ombudsman can delegate responsibilities

- 7.7 Subject to clauses 7.7 and 7.8, the **Ombudsman** may delegate responsibility to employees including any responsibility under a law, industry code or industry standard unless the law, industry code or industry standard prevents delegation of the responsibility.
- 7.8 The **Ombudsman** may not delegate **decisions** or temporary rulings except as set out in clause 7.9. **The Ombudsman may not delegate** the Ombudsman's statutory power to give directions about land access.
- 7.9 The **Ombudsman** (or **Acting Ombudsman**) can delegate to certain employees (who have been approved by the **Board** as authorised decision-makers), authority to make:
- (a) temporary rulings; and
 - (b) **decisions** where the outcome is no more than \$5,000.

Changing these Terms of Reference

- 7.10 The **Ombudsman** and the **Board** can suggest a change to these Terms of Reference at any time.
- 7.11 Authority to amend the Terms of Reference rests with the **Board**. The Federal government ministers in charge of communications and consumer affairs policy will be informed of the changes. The **Board** will consider any feedback received before finalising any amendment.
- 7.12 These Terms of Reference can only be amended by a special resolution of the **Board**.
- 7.13 Every 12 months the Ombudsman will consider whether the financial limits on the Ombudsman's power should be changed and may recommend changes to the **Board**.

PART 8: INTERPRETATION AND DEFINITIONS

Interpretation

- 8.1 Without limitation, other documents referred to do not form part of these Terms of Reference.
- 8.2 Where there is a reference to 'including' this means 'including and not limited to'.

Definitions

Acting Ombudsman	An Acting Telecommunications Industry Ombudsman appointed under clause 15.2 of the Constitution .
Board	The Board of Directors with overall governance responsibility for the business, affairs and property of Telecommunications Industry Ombudsman Limited, as appointed under the Constitution .
Carrier	A holder of a carrier licence granted under section 56 of the <i>Telecommunications Act 1997</i> (Cth).
Consumer	A residential, small business or not-for-profit customer (or former customer) who is or was: <ul style="list-style-type: none">(a) the account holder or end user of a telecommunications service; or(b) a person or company who a member claims is or was its customer.
Complaint	A matter that is raised with us that remains unresolved after being raised by a consumer or occupier with a member .
Constitution	The <i>Constitution of the Telecommunications Industry Ombudsman Ltd ACN 057 634 787</i> .
Credit management action	Action by a member taken as a result of a consumer's or occupier's failure to pay account charges or fees, including: <ul style="list-style-type: none">(a) any communication aimed at collecting disputed charges from a consumer;(b) debiting or attempting to debit an amount from a credit card or bank account;

	<p>(c) suspending, restricting or disconnecting a consumer's service;</p> <p>(d) reporting or threatening to report information to a credit bureau; and</p> <p>(e) threatening or initiating legal proceedings.</p>
Decision	A decision by the Ombudsman or authorised decision-maker as to the outcome of a complaint and any direction to a member to resolve the complaint .
Government Benchmarks for Dispute Resolution	The <i>Benchmarks for Industry-based Customer Dispute Resolution</i> , which provide standards for industry-based dispute resolution in Australia and New Zealand.
Member	Any person or entity who has membership of Telecommunications Industry Ombudsman Limited, including carriers and providers who have an ongoing obligation to comply with these Terms of Reference despite having ceased to be members.
Ombudsman	The Telecommunications Industry Ombudsman as appointed under clause 15.1 of the Constitution of the Telecommunications Industry Ombudsman Limited.
Occupier	A person who occupies or owns a property.
Property damage	<p>Property damage includes damage to:</p> <p>(a) the member's property; or</p> <p>(b) the occupier's property.</p>
Provider	<p>A person or entity involved in the supply of telecommunications services who:</p> <p>(a) has a customer relationship and telecommunications service contract with a consumer; or</p> <p>(b) is a wholesaler or any other intermediary in the telecommunications supply chain.</p>
Recommendation	A proposed course of action suggested by us in order to facilitate the resolution of a complaint .
Regulator	A body that regulates the telecommunications industry and/or the supply of telecommunications goods and services, including the

	Australian Communications and Media Authority, the Australian Competition and Consumer Commission, and the Office of Australian Information Commissioner.
Small business or not-for-profit	The consumer or occupier who operates a small business or not-for-profit that has the maximum number of full time employees a small business may have to be eligible for protection against unfair contract terms in the Australian Consumer Law.
Telecommunications service	<p>A service that provides voice or data connectivity, including bundled and other telecommunications related services, but not including the triple zero (000) emergency service.</p> <p>A telecommunications service includes a fixed-line telephone, mobile or internet service.</p>