



Telecommunications  
Industry  
Ombudsman

## Discussion Paper

# Modernising the Telecommunications Industry Ombudsman Terms of Reference July 2020

## Contents

---

1.	Context and background.....	3
2.	Revised layout.....	4
3.	What has not changed.....	5
4.	Proposed changes to jurisdiction and process.....	5
	New small business definition linked to the Australian Consumer Law.....	5
	Increase in compensation limit .....	6
	Complaints relating to devices and equipment .....	6
	Introducing joining more than one member to a single complaint.....	7
5.	Improved clarity .....	7
	Clarifying complaint handling jurisdiction .....	8
	Clarifying our complaint handling process.....	8
	Simplifying land access jurisdiction .....	8
	Giving prominence to our industry improvement and information sharing roles.....	8
	Setting out member obligations.....	9
	Simplifying governance and management .....	9
	Removing legacy arbitration power.....	7
6.	How to make a submission .....	9

---

## 1. Context and background

---

The Telecommunications Industry Ombudsman is the independent external dispute resolution scheme serving Australian consumers and the telecommunications industry. Our purpose is to provide fair, independent and accessible dispute resolution services and improve outcomes for consumers and members of our scheme. We recognise that the Telecommunication Industry Ombudsman needs to play its part in maintaining public trust in the telecommunications sector. As clearly revealed in the Royal Commission into misconduct in the banking and financial services industry, we will only maintain trust and respect if our scheme meets community expectations.

Our Terms of Reference set out our various roles, our jurisdiction, how we handle complaints and the obligations on members. The Terms of Reference provide the foundation of these matters, sitting within a broader framework of supporting policies and procedures.

The Terms of Reference have evolved since the scheme was established in 1993. While adjustments have been made regularly to keep the scheme current, the last wholesale revision occurred in 2014. This review gives us the opportunity to consider changes in telecommunications services and community expectations, as well as best practice thinking on external dispute resolution services.

Some important context for the review includes:

- the transformation of the telecommunications sector, including the growth of interconnected and smart devices
- government policy and reform processes, such as Part A of the Consumer Safeguards Review
- the Ramsay Review into external dispute resolution and complaints framework in the financial sector
- the Government's Benchmarks for Industry-Based Customer Dispute Resolution.<sup>1</sup>

In recent years, our scheme has been widely endorsed by reviews as well as consumer surveys. These have shown that in general, our scheme meets the best practice standards for external dispute resolution expressed in the Benchmarks and the Ramsay Review.

The intent of this revision is to:

- modify the layout to give prominence to our various roles
- propose jurisdiction and process changes to future-proof our remit and ensure we continue to be effective as the telecommunications sector evolves
- improve clarity, certainty, and ease of understanding.

This Discussion Paper explains the changes proposed to the Terms of Reference and poses some key questions for stakeholder feedback. This feedback will help us to ensure this important document works for consumers and members and meets community expectations.

---

<sup>1</sup> See: <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution>, supported by Key Practices: <https://treasury.gov.au/publication/key-practices-for-industry-based-customer-dispute-resolution>.

## 2. Revised layout

---

We have modified the layout of the proposed Terms of Reference to set out the roles and operation of our scheme more clearly.

**Part 1** provides an overview of the Telecommunications Industry Ombudsman scheme.

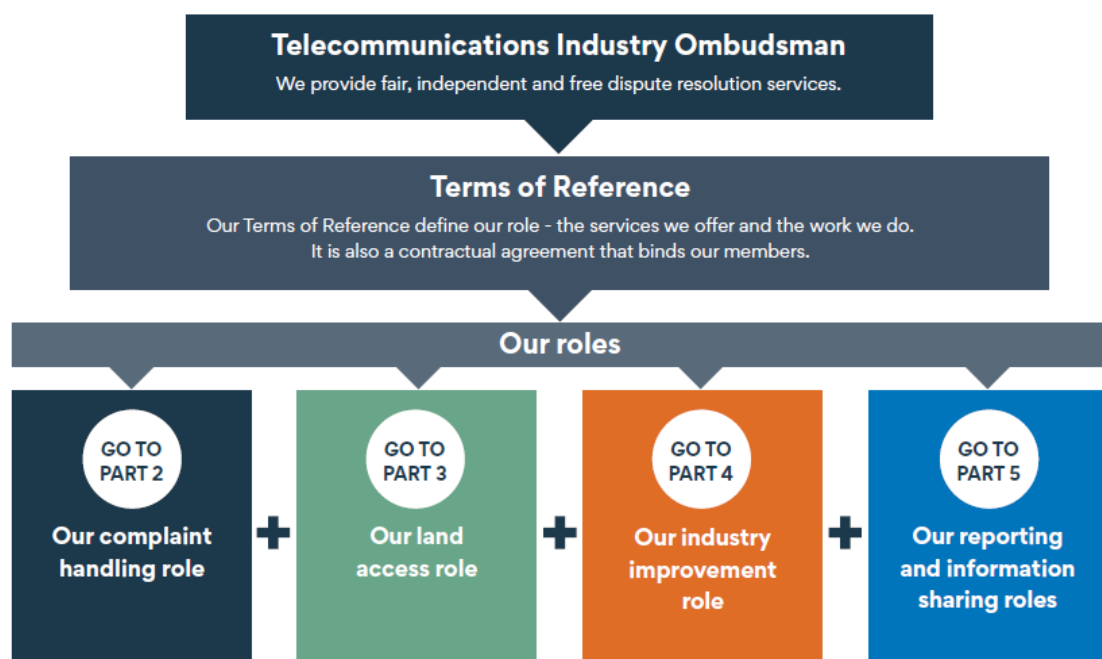
**Parts 2 – 5** clearly set out our roles (see diagram below):

- complaint handling role (**Part 2**)
- land access role (**Part 3**)
- industry improvement role (**Part 4**)
- reporting and information sharing roles (**Part 5**).

**Part 6** sets out member obligations. This Part has been added to clearly set out the complaint handling obligations of members of the scheme.

**Part 7** outlines the role of the Board and the Ombudsman.

**Part 8** contains interpretations and definitions. Definitions in the italicised notes in the current Terms of Reference are now contained in this Part.



### 3. What has not changed

---

The proposed Terms of Reference maintain their purpose of setting out the framework of our scheme. They still introduce what our scheme does and how it is managed, the complaints we can and cannot handle, how we handle complaints, what is expected from members of the scheme, and how we share and publish information.

The restructure and modernised language aim to make it easier to understand what our roles are and provide a clearer view of how we carry out these roles. However, many areas remain the same in substance, such as:

- time limits for making a complaint to us
- when we can make a binding decision
- when we can hold a provider accountable for an agent's actions
- our power to award compensation
- information we can publish.

### 4. Proposed changes to jurisdiction and process

---

The telecommunications sector is evolving at a rapid rate. For example, we are seeing innovative customer solutions such as modems and service plans that can switch between technology to enable a seamless service, supply of new smart devices and offers of redeemable customer loyalty points. We are also seeing devices and equipment being sold both as a bundle and separately from the telecommunications service.

The proposed changes to jurisdiction and process are designed to allow us to remain an effective and accessible end-to-end complaint resolution service and to keep pace with the evolution of consumer protections and the telecommunications sector. This will ensure we continue to meet the effectiveness Benchmark for industry-based dispute resolution which requires us to be able to handle the vast majority of complaints in the sector. The changes include a new definition of small business, increased compensation limit, and extend our ability to accept complaints relating to devices and equipment.

#### New small business definition linked to the Australian Consumer Law

External dispute resolution schemes are generally set up to deal with complaints from consumers and small businesses. This reflects the view that it is not appropriate for the scheme's resources to be unreasonably diverted by dealing with disputes between large corporations or those that are unreasonably complex.

There are numerous definitions of small business used in various policy and regulatory settings. Our current approach includes small businesses with no more than 20 full time employees and up to \$3 million annual turnover.

To future-proof our Terms of Reference, we propose to link our definition of a small business to the definition used for unfair contract terms protections in the Australian Consumer Law. Under the new definition (**proposed new Part 8**), the scheme would be able to consider complaints from businesses with up to 20 full time employees, with no restriction on the annual turnover.

As noted in Treasury's most recent unfair contract term protections consultation paper, small businesses with up to 20 employees represent the vast majority of Australian small businesses. Treasury is currently reviewing the small businesses definition for unfair contract term protections.

Our proposed definition will automatically adjust as the definition adopted by the Australian Consumer Law changes.

#### Questions for consultation:

- Q1 Is the proposal to link the small business definition to the Australian Consumer Law the most appropriate test to use, or is there a better definition? What else should we consider when deciding whether a small business consumer is eligible to access our scheme?

### Increase in compensation limit

We are proposing to increase the compensation limit for the value of a claim to \$100,000. Our current Terms of Reference allow the Ombudsman to decide a resolution of up to \$50,000 and make a recommendation of up to \$100,000.

For simplicity, our proposed approach removes the \$50,000 sub-limit in favour of a single \$100,000 cap on the total amount the Ombudsman can decide as a financial resolution. **Proposed Clause 2.8** in the revised Terms of Reference says we cannot award compensation exceeding this amount, and we may refuse to handle complaints where the claim is likely to exceed this amount. This is because in higher value claims, the issues in dispute are likely to be more complex, and more appropriately dealt with by a court.

We have also made it explicit that we can award compensation for non-financial loss (**proposed Clause 2.33(d)**).

#### Questions for consultation:

- Q2 Is \$100,000 an appropriate financial limit for Telecommunications Industry Ombudsman decisions?
- Q3 If not, what would be the more appropriate financial limit for Telecommunications Industry Ombudsman decisions and why?
- Q4 Should we include a financial limit for non-financial loss compensation? If so, what is an appropriate financial limit?

### Complaints relating to devices and equipment

We are proposing to extend our jurisdiction to include complaints about devices and equipment that are offered and supplied by a member (**proposed clause 2.2(b)**).

This would extend our complaints handling remit to cover new smart devices and equipment such as smart farming equipment, drones, smart home controls, smart fridges, and other products. This could also include products provided in non-traditional ways, such as by redemption of customer loyalty points.

This will allow us to continue to satisfy the effectiveness Benchmark for industry-based dispute resolution by 'having an appropriate and comprehensive jurisdiction'. The Key Practices supporting the Benchmark require us to have sufficient powers to deal with 'the vast majority of complaints in the relevant industry or service area and the whole of each such complaint'. The proposed extension will allow us to do this.

**Questions for consultation:**

- Q5 Are there any other things the Telecommunications Industry Ombudsman should consider when updating our remit for complaints?
- Q6 Are there any particular devices and equipment that should be explicitly excluded from or included in the Telecommunications Industry Ombudsman's remit? If yes, what are these and why?

## Introducing joining more than one member to a single complaint

We are proposing to introduce the ability to join members to a single complaint, if we find this is necessary to resolve a complaint (**proposed clause 2.20**).

In 2017, we revised our Terms of Reference to enable us to request information and cooperation from members who are not party to a complaint if this would assist in resolving a complaint. This has given us the ability to work in a collaborative way with carriers and providers to resolve complaints more effectively and quickly for consumers. This will be retained in the revised Terms of Reference (**proposed clause 2.19**).

As regulation evolves, we are likely to need to call on stronger powers to involve more than one member in a complaint. An example is the recently introduced statutory infrastructure provider (SIP) legislation, which mandates SIPs to connect and provide a minimum standard of service. As the SIP regime evolves, our proposed Terms of Reference would allow us to resolve these complaints either directly or by joining NBN or other SIPs to the complaint.

We are aware that joining a member could have implications on how we charge complaint fees. We are not supportive of charging fees based on fault. To simplify the process, if we find it necessary to join more than one member to a complaint, the most practical approach may be to charge both members a case handling fee.

**Questions for consultation:**

- Q7 What issues are raised by joining more than one member to a complaint and how can we address these issues?

## Removing legacy arbitration power

We propose to remove the arbitration power in our current Terms of Reference. The current Terms of Reference allow the Ombudsman to arbitrate complaints if the consumer and provider agree (**Clause 3.19 of the Current Terms of Reference**). This is a legacy clause that has not been used since 1994. The arbitration power is a quasi-judicial process and binds a consumer to accept the decision before it is made. This means consumers would lose their ordinary rights to go to court if they do not agree with our decision.

The arbitration power is for complaints outside our jurisdiction and its removal does not affect our ability to resolve complaints under our general complaint handling processes. The proposed Terms



of Reference already allow us to take on complaints outside our jurisdiction if the member and consumer agree (**proposed Clause 2.4**).

#### Questions for consultation:

- Q8 Looking at the Terms of Reference as a whole, are there other changes we should consider to ensure our scheme continues to meet community expectations for best practice external dispute resolution in the telecommunications sector?

## 5. Improved clarity

In modernising our Terms of Reference, we set out to simplify and clarify our jurisdiction, terms, and processes. The key proposed changes are set out below.

### Clarifying complaint handling jurisdiction

We have made clear what complaints we handle (**proposed clauses 2.1-2.4**), and those we do not handle (**proposed clauses 2.5-2.9**), what the time limits are for bringing a complaint (**proposed clauses 2.10-2.12**) and when we may stop handling a complaint (**proposed clauses 2.38-2.40**).

We have clarified that both consumers and occupiers of property can complain to our scheme in certain circumstances. This makes it clear that occupiers who have property damage complaints can complain to us even if they do not have a contract with the provider or carrier involved.

### Clarifying our complaint handling process

We have provided a clear outline of how we handle complaints (**proposed clauses 2.17-2.37**), including a focus on supporting parties to come to an agreed resolution (**proposed clause 2.21**) and making recommendations about how to resolve the complaint (**proposed clause 2.23**). We have also clarified clauses relating to our temporary rulings and binding decisions (**proposed clauses 2.28-2.33**). More detailed complaint handling information remain in the Ombudsman's Complaint Handling Procedures.

### Simplifying land access jurisdiction

We have simplified the section on land access (**proposed Part 3**) to show this role is primarily a legislative role and is separate from our complaint handling role.

### Giving prominence to our industry improvement and information sharing roles

We have clarified that industry improvement is a key part of our role (**proposed Part 4**). This includes our work in identifying and investigating systemic issues and our policy contributions. Part of our industry improvement role is proactively shaping the policy debate, as well as responding to changes in industry behaviour and the telecommunications landscape.

We have clarified when we may name members in publishing information, including on systemic issues (**proposed Clauses 4.7 and 4.10**). Under the current Terms of Reference, it is clear we can publish the name of a member when we publish complaint recommendations, decisions or information about a member not complying with our scheme (**current Clauses 3.10, 3.18, 6.2**). We



are retaining this in the proposed Terms of Reference and adding clarity about this also applying to our systemics work.

We have also set out more clearly our reporting and information sharing roles (**proposed Part 5**).

## Setting out member obligations

**Proposed new Part 6** outlines the complaint handling obligations of Telecommunications Industry Ombudsman members. This includes responding to our requests for information and documents, cooperating with investigations, providing reasonable assistance to resolve a complaint, and other general obligations, such as refraining from taking legal action while the Telecommunications Industry Ombudsman is handling the complaint.

## Simplifying governance and management

We have simplified clauses on the management of the scheme (**proposed Part 7**) to make clear the roles of the Ombudsman and our governing Board of Directors. We have also simplified the Ombudsman's decision-making delegation.

### Questions for consultation:

Q9 Are the proposed Terms of Reference easy to follow and understand?

## 6. How to make a submission

---

Interested stakeholders are invited to make a written submission to this consultation. Written submissions will be made publicly available on our website unless clearly marked as confidential.

Submissions can be emailed to [PublicConsultation@tio.com.au](mailto:PublicConsultation@tio.com.au).

Submissions close at 5pm on Friday 28 August 2020.

**Our timeline for change:** we plan to have a revised Terms of Reference in place by 1 January 2021.