

Modernising the Telecommunications
Industry Ombudsman Terms of
Reference

Legal Aid NSW submission to the
Telecommunications Industry
Ombudsman

21 August 2020

About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited, pro bono legal services and 27 Women's

Domestic Violence Court Advocacy Services.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

Should you require any further information regarding this submission, please contact:

Nerida Walker
Senior Solicitor
Civil Law Division
(02) 9219 5605
nerida.walker@legalaid.nsw.gov.au

Introduction

Legal Aid NSW welcomes the opportunity to contribute to the consultation on modernising the Telecommunications Industry Ombudsman Terms of Reference.

Legal Aid NSW considers that the Telecommunications Industry Ombudsman (TIO) has an essential role as the independent external dispute resolution scheme for consumers and the telecommunications industry, both now and into the future.

4. Proposed changes to jurisdiction and process

New small business definition linked to the Australian Consumer Law

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?

Yes. Legal Aid NSW supports the proposal to link the definition of small business used in the Terms of Reference to that used in the Australian Consumer Law.

Increase in compensation limit

Questions for consultation

Q2 Is \$100,000 an appropriate financial limit for Telecommunications Industry Ombudsman decisions?

Yes. Legal Aid NSW considers that \$100,000 is an appropriate financial limit for TIO decisions. Legal Aid NSW agrees that claims with a value higher than

\$100,000 are more likely to be complex disputes that should more appropriately be dealt with in Court.

Q3 If not, what would be the more appropriate financial limit for Telecommunications Industry Ombudsman decisions and why?

Legal Aid NSW refers to our answer above.

Q4 Should we include a financial limit for non-financial loss compensation? If so, what is an appropriate financial limit?

No. Legal Aid NSW does not consider it is necessary for the TIO to include a financial limit for non-financial loss compensation. If, however, the TIO does impose a limit for non-financial loss compensation they could consider the sum of \$5,000 as an appropriate financial limit. Imposing a limit may provide a degree of certainty and consistency for consumers, occupiers and members. The sum of \$5,000 is the same financial limit as the Australian Financial Complaints Authority; a comparable, national external dispute resolution scheme.

Complaints relating to devices and equipment

Questions for consultation

Q5 Are there any other things the Telecommunications Industry Ombudsman should consider when updating our remit for complaints?

Legal Aid NSW considers that there should be mechanisms to easily and efficiently extend and update the TIO remit in the future; given the pace of advancements and changes in telecommunication products, equipment and devices.

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?

No. Legal Aid NSW considers the proposed drafting of clause 2.2(b) to be sufficiently broad and encompassing. With the constant advancement and

changes in the telecommunications landscape, reference to particular devices or equipment as being included or excluded could unnecessarily and inadvertently limit the scope of the TIO to deal with a complaint.

Introducing joining more than one member to a single complaint

Questions for consultation

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

Legal Aid NSW supports the proposal to be able to join more than one member to a complaint. A potential issue could be that it will take longer to resolve a complaint as there will be more parties involved. This is balanced, however, by the obvious advantage of achieving a comprehensive solution for the consumer if all the relevant parties participate in the complaint. This issue could be addressed by the TIO requiring tight time frames for all parties to supply information to and respond to, requests from the Ombudsman.

Removing legacy arbitration power

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?

Legal Aid NSW casework experience involving the telecommunications sector is of individual clients as consumers of telecommunication devices and services. These clients are overwhelmingly socially and economically disadvantaged; and vulnerable consumers. The most common issues that affect our clients are in relation to the responsible provision of telecommunication products including devices and services; and the members approach to financial hardship assistance to our clients.

Case Study

Daisy, a 20 year old Aboriginal woman in receipt of a Centrelink Carers Pension, attended a large telco retail store with her 16 year old sister, Rose. Daisy showed identification documents but was not asked about her income and was not required to show any evidence of her ability to afford a mobile phone plan. Daisy was just asked if she thought she could afford the offered plan, which had a minimum monthly charge of \$199; and she said “yes”. Daisy does not recall whether the details of the mobile phone plan were explained to her. Daisy was not made aware that there was a contract for the mobile plan, a separate lease contract for the mobile phone device and that the mobile plan came with international data roaming, which she did not want or need. Daisy told the sales representative that the phone was for Rose and Rose chose the plan with the most data. Daisy was not offered any alternative, more affordable, plans. Rose lost the mobile phone a short time later and Daisy is being pursued by the telco provider for over \$5,500.

It would benefit consumers if there was specific reference to the responsible provision of telecommunication products as an area of complaint that the TIO can deal with. Legal Aid NSW proposes that such reference could be included in clause 2.2(j) or as a standalone sub section. This amendment would mirror the reference to a consumer’s financial hardship circumstances at clause 2.2(d).

In addition, Legal Aid NSW proposes including reference to a financial hardship arrangement as one of the range of actions that can be made by a decision of the Telecommunications Industry Ombudsman, as set out at clause 2.33(b).

Finally, Legal Aid NSW proposes including, at clause 1.9, a specific reference to undertaking outreach and awareness raising by the Telecommunication Industry Ombudsman to vulnerable and disadvantaged communities.

5. Improved clarity

Simplifying governance and management

Questions for consultation:

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

Yes. The language in the proposed Terms of Reference is clear and concise. The proposed Terms of Reference are easy to follow and understand; and the separation of the Terms of Reference into 8 Parts is logical and helpful.