

Telecommunications Industry Ombudsman (TIO) 2020 Terms of Reference Modernisation

Introduction

Vocus Group Limited (Vocus) is Australia's specialist fibre and network solutions provider. Vocus owns a portfolio of well-recognised brands catering to enterprise, government, wholesale, small business and residential customers across Australia and New Zealand.

Vocus welcomes the opportunity to respond to the TIO's Terms of Reference discussion paper and we look forward to working with the TIO to further enhance customer experience and complaint handling processes.

Background

The stated intent of the TIO's revision to its Terms of Reference is to:

- modify the layout to give prominence to the TIO's various roles - complaint handling, land access, industry improvement and reporting & information sharing
- propose jurisdiction and process changes to future-proof the TIO's remit and ensure the TIO continues to be effective as the telecommunications sector evolves
- improve clarity, certainty & ease of understanding.

Proposed changes to jurisdiction and process

New small business definition linked to the Australian Consumer Law

The TIO has proposed linking its definition of a small business to the definition used for unfair contract terms in the Australian Consumer Law (ACL). The current approach includes small businesses with no more than 20 full-time employees and up to \$3 million annual turnover.

Under the proposed new definition, the TIO would be able to consider complaints from businesses with up to 20 full-time employees, with no restriction on the annual turnover.

TIO question for consultation	Vocus response
<p>Is the proposal to link the small business definition to the ACL the most appropriate test to use, or is there a better definition?</p> <p>What else could we consider when deciding whether a small business consumer is eligible to access our scheme?</p>	<p>Vocus submits the definition of small business should not be amended as proposed in the draft revised Terms of Reference.</p> <p>It is not apparent from the TIO's discussion paper what issue the TIO has encountered with the existing definition of 'small business' and how increasing its scope to hear complaints from "small businesses" with annual turnover of greater than \$3 million will address this issue..</p> <p>The current annual turnover limit is important because it has a general correlation with the service scope and level of telecommunications expenditure by a small business. Given the customisation and scope of complex enterprise services, the TIO is not an appropriate forum to deal with disputes between large corporations or overly complex disputes.</p> <p>The increase in annual turnover will capture a range of customers in Vocus' Enterprise division who are sophisticated customers receiving complex services and business solutions</p>

	<p>tailored to their specific needs and requirements. The relationship with these business customers is not transactional but is a collaborative, ongoing relationship. We submit that it is inappropriate for the TIO’s jurisdiction to be extended to such customers.</p> <p>(We note that Vocus’ small business customer base, marketed under the Commander brand, falls within the existing definition of small business.)</p> <p>Vocus is also concerned that amending the definition of small business as proposed would drive up providers’ costs instead of enabling providers to focus on delivering better customer outcomes.</p>
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Increase in compensation limit

For simplicity, the TIO are proposing to increase the compensation limit for the value of a claim to \$100,000.

The 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.

The TIO also propose to make it explicit that it can award compensation for non-financial loss.

TIO question for consultation	Vocus response
Is \$100,000 an appropriate financial limit for TIO decisions?	<p>Vocus submits that there has been insufficient evidence provided to justify increasing the financial limit for TIO decisions, given that the TIO can already make recommendations up to \$100,000.</p> <p>[C-I-C]</p>
If not, what would be the more appropriate financial limit for TIO decisions, and why?	Vocus submits that the appropriate financial limit is, at the most, the existing limit of \$50,000.
Should we include a financial limit for non-financial loss compensation? If so, what is an appropriate financial limit?	<p>The TIO needs to clearly define what it means by non-financial loss compensation before we can meaningfully consider what would be an appropriate financial limit.</p> <p>An ongoing practical challenge concerning claims for non-financial loss is that these claims, are time-consuming, as the claimed losses are often difficult for consumers to substantiate.</p> <p>Vocus submits that if the TIO includes non-financial loss compensation, this should be limited to a \$300 - 500 monetary limit, be clearly defined, in its terms of reference and fall under the TIO’s existing \$50,000 jurisdictional monetary limit.</p>

Complaints relating to devices and equipment

The TIO proposes to extend its jurisdiction to include complaints about devices and equipment that are offered and supplied by a member.

This change would extend the TIO’s complaints handling remit to cover new smart devices and equipment and also include products provided in non-traditional ways, such as by redemption of customer loyalty points.

TIO question for consultation	Vocus response
<p>Are there any other things the TIO should consider when updating our remit for complaints?</p>	<p>Vocus is concerned that that the TIO's proposals do not address the already existing issue of some consumers engaging in “forum shopping”. For example, consumers have lodged complaints concerning equipment supplied by Vocus Retail entities with both the TIO and <u>AFCA</u>. On occasion this has led to windfall gains for the claimants and/or an ability for parties to avoid their contractual obligations in situations where Vocus is not a party to the contractual relationship in relation to the supply of devices or equipment used in conjunction with its communication services.</p> <p>In the context of complaints concerning equipment or devices that are on a finance contract, Vocus submits that the TIO is not the appropriate forum to consider these complaints and should direct consumers to AFCA. (Practically speaking, this situation would be analogous to how the TIO does not hear a complaint if the consumer has lodged a matter with a court.)</p> <p>In all circumstances where a customer’s complaint concerns equipment that is provided by a third party, and that third party is a member of the TIO scheme, the TIO should raise the complaint against the equipment provider and not the communications service provider. There are numerous examples where complaints have been raised against Vocus Retail entities with respect to equipment, when the relevant Vocus Retail entity has not had any specific involvement in the supply or ongoing management of equipment. In such circumstances, unless there are underlying issues with the supply of telecommunication services, complaints should be directed to the equipment provider as Vocus Retail entities have no influence over the suitability or operability of such equipment.</p> <p>Consumers increasingly use their own devices and connect third party equipment provided by a range of parties in non-traditional ways, and in many circumstances without notifying Vocus Retail entities of their intention to do so. If this occurs and there is no direct association with a member of the TIO scheme in terms of supply or benefit, then it is unreasonable to extend jurisdiction to one or more communications service providers that may be indirectly associated (i.e. by virtue of supplying the underlying telecommunication service).</p> <p>Finally, Vocus submits that the TIO is not the appropriate forum to consider complaints about devices and equipment if</p>

	there is no associated complaint made with respect to the corresponding telecommunication service.
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Introducing joining more than one member to a single complaint

The TIO is proposing to introduce the ability to join members to a single complaint, if it finds this necessary to resolve a complaint.

If the TIO finds 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.

TIO question for consultation	Vocus response
What issues are raised by joining more than one member to a complaint and how can we address these issues?	<p>Issues that arise from joining more than one member to a complaint include:</p> <ul style="list-style-type: none"> • the cost that will be billed to each provider by the TIO • the transparency over how providers will be charged • how the TIO ensure that charges are apportioned fairly <p>Vocus has identified that the TIO have had issues with raising the complaint with the correct provider in a losing and gaining provider scenario. The complaint should be raised against the gaining provider.</p> <p>Vocus submits that that providers should not be required to provide commercial-in-confidence information to the TIO. Alternatively, the TIO should also protect any commercial-in-confidence and proprietary information provided to the TIO in the process of resolving complaints in cases where more than one member is joined to a complaint.</p> <p>Similarly, the TIO needs to ensure reasonable steps are taken to protect our customer’s privacy. The TIO should also seek explicit consent from the consumer before sharing any personal information it has gained from one RSP with another TIO member.</p> <p>The joining of more than one member to a single complaint will likely impact TIO statistics concerning complaints. The TIO must ensure the statistics accurately reflect the parties and issues that are complaint drivers.</p>

Improved clarity

In modernising its Terms of Reference, the TIO has set out to simplify and clarify its jurisdiction, terms and processes.

The key proposed changes are summarised in pages 8 and 9 of the discussion paper and include:

- clarifying complaint handling jurisdiction
- clarifying complaint handling process
- simplifying land access jurisdiction
- giving prominence to industry improvement and information sharing roles
- setting out member obligations
- Simplifying governance and management

TIO question for consultation	Vocus response
<p>Are the <u>proposed Terms of Reference</u> easy to follow and understand?</p>	<p>The proposed Terms of Reference are easy to understand.</p> <p>The TIO could also consider publishing a simplified version of the Terms of Reference or other plain English policy documents to ensure critical information about the complaint process (including what complaints the TIO will hear or not hear) are clearly articulated and accessible for consumers.</p>

Vocus
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