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Ms Judi Jones
Telecommunications Industry Ombudsman
PO Box 276
Collins Street West VIC 8007

By email: PublicConsultation@tio.com.au

Dear Ms Jones

Thank you for the opportunity to comment on the *Modernising the Telecommunications Industry Ombudsman Terms of Reference* consultation.

Access to effective redress and complaints resolution processes in the communications sector is critical for consumers and small businesses. Telecommunications services form a fundamental part of the daily lives of many Australian consumers, used to meet some of their varied communication, business, education, entertainment, health and/or safety needs. It is essential that the remit and jurisdiction of the TIO evolve as to ensure that its critical services are available across the range of consumer needs.

Consequently, the ACCC welcomes the TIO's modernisation of its terms of reference to fit the evolving telecommunications environment. We consider that ensuring the TORs are fit-for-purpose will enable the TIO to continue to deliver the high standard independent dispute resolution service it provides Australian consumers.

While supportive in general of the changes to the TIO's remit and clarification of its roles, we have comments on two of the proposals.

Definition of small business

As the discussion notes, external dispute resolution schemes are generally set up to deal with complaints with consumers and small businesses. The TIO's currently deals with businesses with no more than 20 full-time employees and up to \$3 million annual turnover.

While there are numerous definitions of small business used in various regulation, we consider the TIO's proposal to link its definition to the Australian Consumer Law's unfair contract terms protections is sound. Other definitions for consumers, such as those based on annual spend by the business as defined in the Australian Consumer Law, may not be suitable as some small businesses with complex telecommunications needs will exceed this annual spend but still may not have sufficient resources for complaint handling outside of the TIO scheme.

We consider that the proposed definition therefore strikes a reasonable balance and reflects the needs of businesses that seek the TIO's services.

While we note that the Department of the Treasury is currently reviewing the small business definition for unfair contract term provisions, the TIO is proposing that its definition will automatically adjust to any changes to the Australian Consumer Law.

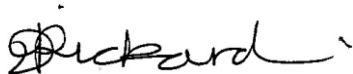
Extending jurisdiction to include complaints about devices and equipment that are offered and supplied by a member

Currently, if a consumer purchases a device from a telecommunications provider under contract and has an issue with it, the TIO has jurisdiction over complaints relating to that device. However, if a consumer purchases a device outright or receives a device under a customer loyalty scheme from a telecommunications provider, the TIO does not have jurisdiction. Under these circumstances, we understand that the consumer is likely to be referred to State or Territory consumer affairs agencies.

We consider that the extension of jurisdiction under these circumstances is warranted and likely to result in better outcomes for consumers. It appears to be a common-sense approach to ensure that all devices and equipment provided by the provider are captured under the one dispute scheme. It is also consistent with the general principle that the entity with the primary relationship with the consumer should be the contact point for the consumer if any issue arises, or the consumer wishes to make a complaint.

If you would like to discuss any of these matters further, please contact Clare O'Reilly at clare.o'reilly@accc.gov.au or on (02) 9230 3859.

Yours sincerely



Delia Rickard
Deputy Chair