



27 August 2020

Telecommunications Industry Ombudsman
Attn: Public Consultation

By Email: publicconsultation@tio.com.au

Dear Ombudsman,

IoTAA Submission re: Discussion Paper, Modernising the Telecommunications Industry Ombudsman Terms of Reference

Thank you for the opportunity for Internet of Things Alliance Australia (**IoTAA**) to submit feedback to the Discussion Paper on Modernizing the Telecommunications Industry Ombudsman Terms of Reference (Discussion Paper).

The IoTAA is the peak Australian IoT industry. We represent the IoT eco-system from device manufacturers, to carriage service providers and IoT service providers across multiple industry sectors including transport, smart cities, food and agribusiness, health and energy.

IoTAA welcomes consultation by the TIO and acknowledges the good work of TIO in bringing down complaints in the telecommunications sector.

Our feedback comprises three elements:

1. Comments on the TIO mission and remit
2. Evidence provided in support of the proposed change in remit of the TIO
3. On the Issues raised for comment

In summary; The Discussion paper fails to make a convincing case for expanding the remit of the TIO. The existing focus on disputes associated with the delivery of carriage services and/or related to access to land by use of statutory powers has a reasonable justification in principle and should remain in place.

The proposed expansion in remit risks creating a new duplicative overlay of complaints regulation which would not apply to suppliers outside the TIO Scheme, would duplicate existing complaint resolution mechanisms and be therefore would be uniquely burdensome to TIO members. The proposed regulation as a result also risks stifling innovation through unnecessary duplication and confusion to IOT solution providers.

We would welcome the opportunity to discuss aspects of the proposed modernisation of the TIOs ToR specifically where the modernisation relates to connected devices/IoT as we have much subject matter expertise we can bring to inform the conversation.

Frank Zeichner, frank.zeichner@iot.org.au 0408 233 762; Patrick Fair, Patrick@PatrickFair.com

Yours sincerely,

A handwritten signature in black ink, appearing to read "Frank Zeichner". The signature is written in a cursive style with a large initial 'F'.

Frank Zeichner

Chief Executive Officer
IoT Alliance Australia

www.iot.org.au

IoTAA Submission re: ACMA draft Internet of Things in Media and Communications consultation paper

1. Comment on the TIO mission and remit

The amended Terms of Reference proposes that TIO deal with member disputes outside the scope of its Objectives.

We also note that companies are only required to be members of the TIO if they provide a standard telephone service, public mobile service and/or carriage service that enable end users to connect to the internet.

The IoTAA notes that the TIO would appear unable to take on the new classes of dispute proposed in the draft Terms of Reference without significant amendment to the TIO Constitution.

The relevant articles are highlighted below.

Carriers and carriage service providers are required to join the TIO membership by the PART 6 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 which requires that an entity must be a member of the TIO if it is a carriage service provider who supplies:

- (i) a standard telephone service, where any of the customers are residential customers or small business customers; or
- (ii) a public mobile telecommunications service; or
- (iii) a carriage service that enables end-users to access the internet; or
- (iv) a carriage service intermediary who arranges for the supply of a service referred to in subparagraph (a) (i), (ii) or (iii).

The TIO Constitution states Objects of the TIO as:

- (a) to receive, investigate, make decisions relating to, give direction relating to and facilitate the resolution of:
 - (i) complaints as to **the provision or supply (or failure to provide or supply) a Carriage service** by a member, other than complaints in relation to the general communications policy or commercial practices of such a member;
 - (ii) complaints from owners or occupiers of land in respect of which a holder of a Carrier Licence under the Act has exercised its **statutory powers as a Carrier, where the Carrier** is a Member, other than complaints in relation to the policy or commercial decision of a Carrier to exercised its statutory rights as a Carrier in relation to that particular land; and

(iii) such other complaints as may **by agreement** with the complainant be referred to the Ombudsman and by a Member; and

(b) to exercise such jurisdiction, powers and functions as may be conferred by or under any legislation or instrument.

(our highlights)

Under the current TIO model:

- current members (carriage and Carriage service providers) are only a subset of IoT service providers and in many/most cases are not responsible for provision of either the IoT devices or their corresponding applications; and
- that IoT Service providers, are not defined. These are precisely the entities which are responsible for supply of IoT devices, applications and services. There are other jurisdictions that would overlap with these providers e.g. energy, water authorities.

2. Evidence provided in support of the proposed change in remit of the TIO

The feedback below is with respect to the evidence provided in the Discussion Paper in support of the expanded remit of the TIO.

Under the heading Context and Background, the Discussion Paper refers to "some important context for the review" and lists:

- 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 Ramsey review into external dispute resolution complaints framework in the financial sector and the government's benchmarks for industry-based customer dispute resolution

Part 4 of the Discussion paper also mentions important matters that give context to the proposed expansion of the TIO's remit. For example, the paper observes;

"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 that Telecommunications service."

The need for a new Terms of Reference is further explained in the second paragraph of Part 4 which says;

"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 these. The changes include a new definition of small business, and increased compensation limit and extend our ability to accept complaints relating to devices and equipment."

We observe that these statements do not in themselves provide strong case for change based on need or improved outcomes. The Discussion Paper does not contain any information regarding complaints coming to the TIO that it is unable to handle under its current remit. The Discussion Paper does not mention any evidence of changes to the telecommunications sector giving rise to a new class of complaints. It is not explained how innovative customer solutions such as modems and service plans that can switch between technology would not be covered by the existing terms of reference or why the supply of smart devices and/or offers of customer loyalty points relating to the supply of carriage services would not be covered under the existing remit.

The section relating to increase in compensation limit does not contain any information regarding the spread of compensation awarded and/or why the existing limit is adequate.

We note the median value of financial outcomes awarded by the TIO according to its latest annual report is \$405¹.

We also wish to express our concern at the potential chilling effect the expansion of the TIO's remit may have on innovation through unnecessarily increasing the risk to IoT solution providers. The prospect of the TIO awarding compensation (up to \$100,000) in addition to TIO members being subject to the ACCC and state-based consumer bodies could stifle innovation amongst TIO members.

The IoTAA would like to see a demonstrated evidence-based need for any expansion of the remit of the TIO.

¹ TIO 2018-19 Annual Report. p.21.
<https://www.tio.com.au/sites/default/files/2019-09/TIO%20Annual%20Report%202018-19.pdf>

3. Issues for Comment

Our general comments regarding the questions contained in the Discussion Paper are premised on the observation that Australian Consumer Law, state-based consumer Tribunal's and the courts provide well established mechanisms for the enforcement of the rights and responsibilities of Australian businesses. The alternative dispute resolution scheme managed by the TIO represents a unique addition to the conventional legal framework necessary because of the combined impact of two factors:

- the major players in the telecommunications industry are large businesses,
- the standard telephone service, mobile services and public access to the internet are fundamental to the Australian economy the daily life of ordinary Australians including to ensure health and safety.

Where a product and service does not involve the supply of a carriage service or the unique statutory power to access land for the purpose of installing a carriage service or maintaining it, the rationale for maintaining a unique industry dispute resolution scheme does not exist.

Having regard to this observation and the observations made in the earlier part of this response we respond to each question in the discussion paper as follows:

Question 1- *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?*

We support clarification of the definition of small business. The existing TIO guideline leaves a substantial grey area regarding the meaning of small business. However, we suggest the appropriate definition to use would be of "consumer" as it appears in section 3 of the Australian Consumer Law. This definition includes the concept of small business and it is also the definition used in also used in the TCP Code and the ACMA's consumer experience instruments, including the Complaints Handling Standard. Use of this definition would bring the TIO into alignment with the test generally in use.

Question 2 – *Is \$100,000 and appropriate financial limit for telecommunications industry ombudsman decisions?*

As mentioned in part two of our response above, the discussion paper does not contain any information regarding when or why a limit of \$100,000 would be appropriate. The IOTAA would like to understand the evidence supporting the need for this increase in jurisdiction before expressing support for any such change.

Question 3- *If not what would be the more appropriate financial limit for telecommunications industry ombudsman decisions and why*

See response above.

Question 4- *Should we include a financial limit for non-financial loss compensation? If so, what is an appropriate financial limit?*

A limit on non-financial loss compensation which is no greater than the limit for financial loss compensation is appropriate.

Question 5- *Are there any other things the telecommunications industry ombudsman should consider when updating our remit for complaints?*

The IoTAA does not accept the premise of this question. The question is posited on the premise ("are there any other things...") that the updating of the reading expressed in the proposed modernised terms of reference is reasonable, appropriate, and therefore would be supported. There is no question regarding whether the changes proposed should be supported.

On reviewing the draft Terms of Reference, we have identified several highly material amendments that are not mentioned in the discussion paper, and might easily have been overlooked and which we do not support.

Each of the following amendments is significant and would properly have been specifically identified in the discussion paper as a material change and supported with reasoned arguments and supporting evidence:

- 1) Clause 2.1 would give the TIO jurisdiction to handle any complaint made about a member of the scheme. As mentioned in paragraph 1 above the objects of the TIO limited to accepting certain classes of complaint. It cannot accept any complaint about a member of the scheme unless it relates to a telecommunications service, statutory powers in relation to land exercised by carrier or the relevant member has agreed.
- 2) Clause 2.2 (a) expands the jurisdiction of the TIO to cover problems with equipment or a device whether sold with a telecommunications service.
- 3) Clause 2.2(b) expands the remit of the TIO to cover disputes over services "separately from" a telecommunications service or equipment which could include an over the top service such as an IoT service from an IoT service provider.
- 4) Clause 2.2(d) expands the TIO remit to cover credit management and financial hardship complaints.

These proposed expansions in remit would mean that members of the TIO are subject to complaint handling by the TIO in addition to being subject to the ACCC and state based consumer bodies when they sell equipment or devices related or unrelated to telecommunications without carriage. This seems confusing and inappropriate. The members of the TIO should be able to compete in the supply of products and services that do not involve carriage services on an equal footing with other suppliers within the economy. The ACCC already provides guidance on mobile device protections under the ACL.

- 5) Clause 2.2 a expands the TIO's coverage to include a breach of privacy.

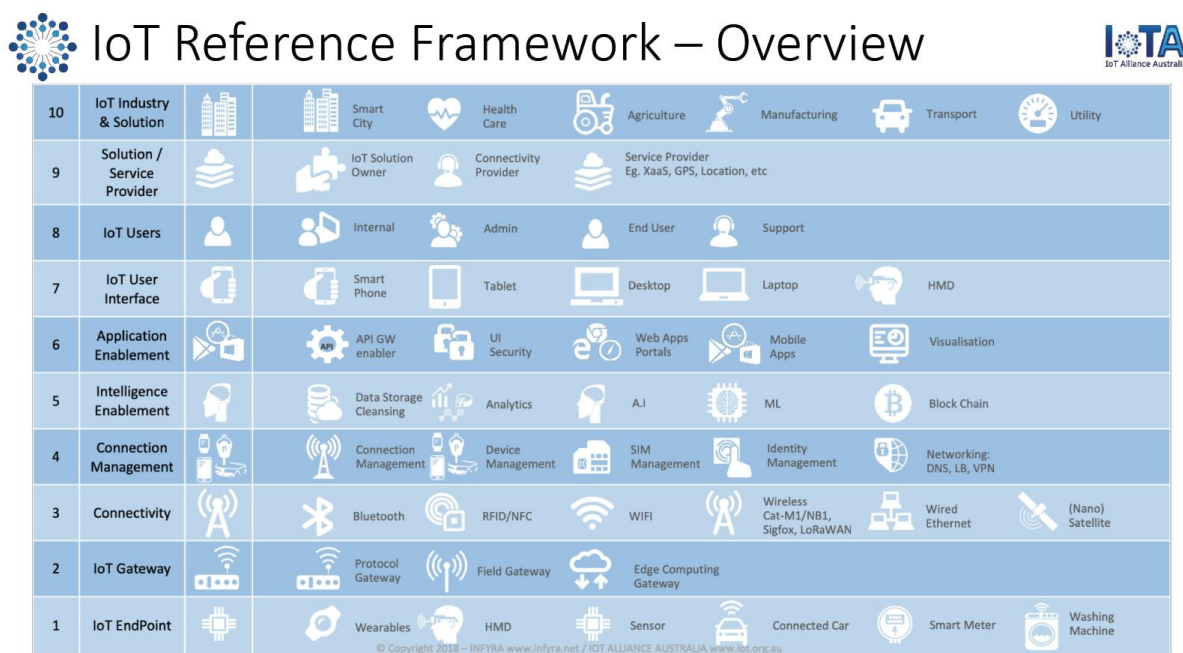
This duplicates the complaints handling regime in the Office of the Australian Information Commissioner. It would not only create a duplicate scheme for the handling of privacy complaints against TIO members but would also create a unique additional burden on carriers and carriage service providers that does not apply to other privacy regulated bodies

- 6) Clause 2.17 of the terms of reference expands the TIO's ability to deal with a complaint "after the member has had a reasonable opportunity to consider the issues".

This represents a significant expansion of the TIO's remit in that under the current terms of reference a complaint can only be considered after the complaint has been made to the provider

Question 6: - Are there any particular devices and equipment that should be explicitly excluded from or included in the telecommunications industry ombudsman's re-met? If yes, what are these and why?

The following diagram is the IoTAA taxonomy prepared by the IoTAA:



As you can see the industry comprising the Internet of things comprises a complex layered arrangement of devices and services built on carriage.

In our opinion it would be inappropriate for the TIO to attempt coverage of these different and complex suppliers. The TIO coverage of such suppliers would also in part duplicate the existing framework. In our view no change needs to be made to ensure that any carrier or carriage service provider delivering connectivity pursuant to an IoT service will be covered by the TIO.

Question 7- What issues are raised by joining more than one member to a complaint and how can we address these issues?

We support the changes proposed in the terms of reference relating to joining one or more member to a single complaint.

Question 8- *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 or best practice external dispute resolution in the telecommunications sector?*

No comment

Question 9- *Are the proposed capital T terms of R reference easy to follow and understand*

Yes.

4. Summary

The Discussion paper fails to make a convincing case for expanding the remit of the TIO. The existing focus on disputes associated with the delivery of carriage services and/or related to access to land by use of statutory powers has a reasonable justification in principle and should remain in place. The proposed expansion in remit risks creating a new duplicative overlay of complaints regulation which would not apply to suppliers outside the TIO Scheme, would duplicate existing complaint resolution mechanisms and be therefore would be uniquely burdensome to TIO members.

About IoT Alliance Australia, (IoTAA)

IoTAA is the peak industry body representing IoT in Australia. Over 500 participating organisations and 1000 individual participants are working to accelerate the adoption of IoT across the Australian economy and society.

IoTAA's purpose is creating and developing sectoral IoT advancement and alignment with key sectors, including through Government Industry Growth Centre activities, Infrastructure Australia, state governments and key sectoral bodies with an initial focus on water and energy resource management, food and agribusiness, transport and smart cities.

IoTAA's Terms of Reference

- Providing an IoT strategy and policy recommendations with focus sectors to align with government and industry priority areas.
- Engage and collaborate with key stakeholders including major sector aligned growth centres, industry associations, major government influencers
- Align IoT solutions to meet the needs of industry and consumers
- Create more IoT awareness, engagement and education for consumers, markets, and governments.
- Apply the learnings of global best practice sector initiatives such as the US Smart Cities IoT initiative.

IoTAA's work-program spans 12 work-streams which focus on industry vertical sectors and key IoT enablers. They are:

Sectoral Focus

1. Smart Cities
2. Food and Agribusiness
3. Water
4. Energy
5. Transport
6. Manufacturing
7. Health

IoT Enablers

1. Collaboration
2. Data Use, Availability and Privacy
3. Cyber security and Network Resilience
4. Platforms and Interoperability
5. IoT Start-ups

For more details, please visit our website www.iot.org.au