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Queen Margaret University  
Queen Margaret University Drive  
Musselburgh EH21 6UU

By email: [TIOreview@amu.ac.uk](mailto:TIOreview@amu.ac.uk)

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Dear Consultants

### **ACMA submission – TIO Independent review 2022**

The Australian Communications and Media Authority (ACMA) welcomes the opportunity to contribute to the independent review of the Telecommunications Industry Ombudsman (TIO).

The ACMA is the primary regulator for communications in Australia, with responsibility for telecommunication consumer safeguards under the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act).

One of our regulatory roles under Part 6 of the TCPSS Act is to enforce compliance with the TIO scheme. The ACMA also administers applications by carriers and carriage service providers (CSPs) for exemption from membership of the scheme.

We also make and enforce rules to safeguard consumers and businesses using telecommunication services.

We consider the TIO scheme is a critical part of the consumer protection framework for the telecommunications sector. It provides consumers and small businesses with an independent dispute resolution facility.

TIO complaint statistics and referrals can be an important source of information for the ACMA about emerging issues and harms and a key informant to our compliance, education and regulatory activities. While our submission highlights the types of data that would help the ACMA more effectively target our regulatory responsibilities, it should not be read as a request of the TIO to change the way it collects its data or change its business practices.

We have focused our comments on the specific issues listed in your consultation paper as set out below:

## **Issue: Revised Terms of Reference (ToR)**

The ACMA supports the TIO's revised terms of reference, particularly the TIO now being able to join more than one of its members to a single complaint. The supply chain in the telecommunications industry is complex. It is possible for a third party—who the consumer may not have knowledge of and is unlikely to have any contractual relationship with—to potentially be responsible for a problem that a consumer is experiencing. The power to join more than one member to a single complaint will promote complaints being resolved more efficiently and effectively for consumers.

## **Issue: Systemic Investigations**

The ACMA considers that early engagement with the relevant regulator(s) about systemic issues would ensure regulators have a timely and enhanced understanding of issues that are affecting consumers.

Currently, the ACMA receives monthly data from the TIO on the number of open systemic matters by broad category. Information on systemic investigations conducted by the TIO is included in its annual report but provides limited details on the nature of the investigations. While useful, further detail would enable us to better enhance our understanding of how broader issues are emerging and evolving and how they might be resolved with regulatory intervention or education.

We intend to work closely with the TIO in 2022-23 to refine information sharing between the two agencies including, where necessary, through the use of our information gathering powers under legislation. We will likely seek more granular information, where it is available, on the nature and scale of the issues that the TIO is investigating.

It would also be useful to understand the recommendations and directions that the TIO provides to industry to assist them to deliver better outcomes for consumers and whether the recommendations have resulted in system improvement.

Separate to the matter of any systemic investigations the TIO conducts, the ACMA is keen to explore whether, from the data the TIO currently receives, the ACMA may be able to receive systemic referrals from the TIO on matters that appear to be of greatest concern to consumers, for example, billing or disconnection matters.

To enable the ACMA to fulfil our regulatory responsibilities and enforce a robust consumer protection framework, prompt referral of information about the failures of telecommunications providers to remediate issues affecting multiple consumers would be appreciated.

## **Issue: Engagement**

### ***Government and regulator engagement***

The ACMA and TIO staff have a long history of working together to discharge our respective functions. This relationship provides a significant benefit to the Australian community as the shared information and insights allow us to better target areas which may be impacting consumers and work more effectively to drive improvements.



The ACMA and TIO have an arrangement for the exchange of information and intelligence, supported by a Memorandum of Understanding (MoU) and the TIO's ToRs.<sup>1</sup> The ACMA holds a regular suite of meetings with the TIO. Meetings are held at the officer/staff level to discuss compliance and enforcement issues. Meetings are also held between the ACMA Chair and TIO Ombudsman with quarterly strategic meetings involving ACMA authority members, the Ombudsman and senior TIO representatives occurring. The Chair of the ACMA also meets annually with the TIO Board and the Chair of the TIO Board in turn meets regularly with the Authority.

We consider these meetings are working well and strike a good balance between engagement at the various levels across the ACMA and TIO. The TIO also provides information about when new members join the TIO scheme, which has allowed the ACMA to reach out to members to educate them about regulatory obligations.

This approach should continue and where possible be enhanced by:

- > sharing referrals in a standard form to allow us to confirm relevant parties and promptly deal with referrals;
- > providing the ACMA with more granular complaint data identifying individual CSP;
- > working with the ACMA to expedite information sharing (as discussed below).

Currently detailed information sharing between the two bodies is often conducted by way of a statutory notice which can be time consuming and complicated. In the past, the TIO was able to provide this information informally which expedited the ACMA's ability to identify and respond to regulatory challenges. While we recognise there are sensitivities involved in sharing personal or an identified CSP's data, we are keen to explore ways to facilitate a less formal and time consuming method of information sharing for detailed data requests.

We suggest that the information sharing arrangements between the TIO and the ACMA as outlined in section 6 the existing MoU between the TIO and the ACMA would allow for such an exchange without the need for statutory notices. It would also be beneficial, ensuring that resources across both entities are utilised effectively without both entities exploring the same issues towards a similar end and reducing red tape.

### **Member and stakeholder engagement and outreach activities**

The TIO moves quickly to encourage new providers to join its scheme and to refer 'membership' non-compliance to the ACMA. It is important that these efforts be maintained.

The TIO may also benefit from liaising with CommCom in relation to educating participants in the telecommunications industry about emerging issues affecting consumers.

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<sup>1</sup> Clause 5.7 of the TIO's ToRs provides that the TIO may share information with regulators to address systemic issues, reduce complaints and contribute to industry improvement.

The TIO offers a unique and valuable perspective as a contributor to the industry code development and review processes. With a broad review of the *Telecommunications Consumer Protections Code* due in 2024, the ACMA is keen to see the TIO continue its active participation in the development of consumer codes.

#### **Issue: Governance and authorising environment**

As submitted in 2017, the ACMA considers that it is imperative that the TIO is able to deal with complaints across the supply chain (including at the wholesale level). Ensuring issues are resolved across the supply chain is important for consumers and that any resolutions or determinations bind the relevant parties.

We understand that the TIO is working to operationalise powers to join multiple parties (wholesalers/providers) to a complaint and support this step to increase the efficiency of complaints handling.

The ACMA notes the rapid changes in service delivery in the telecommunications sector, as well as changing relationships and business practices across the supply chain. It would be beneficial if the TIO could share with the ACMA its observations about the changes occurring in the industry, with a view to assisting the identification of where the root cause of a complaint might lie in the supply chain and the nature of the complaint to inform potential policy or regulatory interventions.

The ACMA is also keen to understand how the TIO expects to handle complaints in circumstances where a consumer may have grounds to lodge a complaint against a CSP that is not their provider, for example, an unauthorised transfer of an NBN service.

The ACMA would also welcome greater clarity around the resolution and reporting of complaints where buy now, pay later or other payment methods are utilised and the handling of joint utility bills (such as telecommunications and energy).

#### **Issue: Land access**

As outlined in the consultation paper, the TIO has jurisdiction to consider objections to telecommunications carriers entering onto land to inspect, install or maintain low impact telecommunications infrastructure.

The ACMA considers that the TIO has explained its role regarding land access complaints clearly on its website. However, the ACMA notes that the TIO could provide more information to stakeholders as to why matters are not within its scope for consideration. The ACMA raises this as sometimes matters are being brought to the ACMA which are not actually within the scope of the land access arrangements, for example, issues concerning contracts.

As we have mentioned earlier, the ACMA holds a regular suite of meetings with the TIO from officer/staff level meetings that relate to compliance and enforcement. As part of those meetings, the ACMA suggests that these forums may be useful to discuss the establishment of a formal consultation process to manage referrals more effectively from the TIO to the ACMA on land access matters contained in Schedule 3 of the *Telecommunications Act 1997*.

## Further discussion

Please do not hesitate to contact either Tanya Farrell on (02) 6219 5154 or [tanya.farrell@acma.gov.au](mailto:tanya.farrell@acma.gov.au) or Sandra Campbell on (03) 9963 6829 or [sandra.campbell@acma.gov.au](mailto:sandra.campbell@acma.gov.au) if you wish to discuss our comments.

Yours sincerely



Cathy Rainsford  
General Manager  
Content and Consumer Division

Phone 02 6219 5500

Email [cathy.rainsford@acma.gov.au](mailto:cathy.rainsford@acma.gov.au)