

Telecommunications Industry Ombudsman Ltd

Proposed amendments to TIO Constitution

Explanatory notes

31 August 2022

The Board of TIO Ltd is considering some possible amendments to the TIO Constitution, to be considered at TIO Ltd's Annual General Meeting on Tuesday 15 November 2022.

The notes in the table below explain the reasons for the proposed amendments. The table is a summary and does not discuss some of the minor amendments that are proposed.

Constitution			
Clause	Summary of amendment	Details of amendment	Reason for amendment
2.1	New definition	New definition of Virtual Meeting Technology added.	The new definition of Virtual Meeting Technology relates to wording added to clauses 10 and 11 (see discussion below). The definition reflects the requirements for the use of Virtual Meeting Technology under sections 9 and 249S of the <i>Corporations Act 2001</i> (Cth) ( <b>Corporations Act</b> ).
10(c)	Amendment to allow ability to hold virtual or hybrid General Meetings	The amended clause allows General Meetings to be held either at one or more physical venues, or using Virtual Meeting Technology (or a combination of physical venue/s and Virtual Meeting Technology).	As of 1 April 2022, a company can only hold entirely virtual General Meetings if this is permitted by its Constitution (section 249R of the Corporations Act). The amendment permits General Meetings to be held in a number of different manners, as determined by the Board. This provides flexibility to make use of available technology if desired. TIO Ltd has held General Meetings virtually during the COVID pandemic, demonstrating that it can use the technology successfully.
10(e)	Provision of information relating to use of Virtual Meeting Technology for a General Meeting	The amendments include a requirement for TIO Ltd to provide information on the use of Virtual Meeting Technology in the notice of a General Meeting.	These amendments reflect the requirement in section 249L of the Corporations Act that if Virtual Meeting Technology will be used, Members must be given information on how to use the technology.
11.2	Use of Virtual Meeting Technology	New clause added to clarify how Virtual Meeting Technology will be used. Specifically, the clause: <ul style="list-style-type: none"> <li>provides that Members who attend a General Meeting virtually are counted in the quorum and entitled to participate; and</li> <li>outlines how technical difficulties will be handled.</li> </ul>	This clause is to ensure there is no uncertainty about a Member's entitlement to participate using Virtual Meeting Technology and be counted in the quorum of a General Meeting. If technical difficulties prevent a Member or Members from participating, the clause gives the Independent Chair the flexibility to adjourn the meeting or to continue it if a quorum remains present.

Clause	Summary of amendment	Details of amendment	Reason for amendment
12.7(c)	Amendments to requirements for appointment and re-appointment of Independent Chair	The amendments remove the requirement to consider comments from relevant Federal ministers in the appointment or re-appointment of the Independent Chair. They also clarify that the Federal ministers must be informed about any proposed re-appointment of the Independent Chair.	<p>This clause retains the requirement that the Federal ministers responsible for consumer affairs policy and communications policy must be informed about the proposed appointment of any Independent Chair. These ministers are important stakeholders who have an interest in ensuring the ongoing effectiveness and integrity of the TIO scheme.</p> <p>The amendments remove the requirement for the Board to consider any comments from these ministers before the proposed appointment of the Independent Chair proceeds. This is to avoid a situation where an Independent Chair needs to be appointed, for example because the role has been vacated, but there are difficulties in obtaining timely comments from the ministers, for example because there is a Federal election occurring at the same time.</p> <p>In practice, the Board will of course take into account any comments received from the ministers before proceeding to appoint or re-appoint the Independent Chair.</p> <p>The amendments also remove uncertainty by clarifying that the relevant Federal ministers must be informed about any proposed <u>re</u>-appointment of the Independent Chair, not just an initial appointment.</p>
21	Amendment to allow Members to notify TIO Ltd of their preferred form for receiving certain documents	The amendment requires TIO Limited to take reasonable steps to comply with a Member's request to be sent certain documents (for example, a notice of a General Meeting) in physical form or electronic form.	Clause 21 of the Constitution already gives TIO Ltd the flexibility to give a notice to a Member in hard copy or by email. The amendment reflects new requirements under section 110E of the Corporations Act under which a Member can elect to be sent certain documents, such as a document relating to a meeting of Members, in physical or electronic form.