



CHARTER

TIO Board Nominations Committee

Date: 19 September 2023

TIO Board Nominations Committee Charter

Introduction

This Charter has been adopted by the Board of Directors of Telecommunications Industry Ombudsman Limited (**TIO Limited** or **Company**) to assist the TIO Board Nominations Committee in the exercise of the Committee's functions and responsibilities.

The principles and policies set out in this Charter are in addition to and are not intended to change or interpret any laws or the application of the company constitution of TIO Limited (**TIO Constitution**).

1. Purpose

- (1) The role of the TIO Board Nominations Committee is to identify and recommend to the Board persons to fill vacant Board positions in accordance with the TIO Constitution.¹
- (2) The Committee may also undertake any other activities consistent with this Charter that the Board considers appropriate.
- (3) The Committee is not a policy making body.

2. Responsibilities

- (1) The Committee's responsibilities include:
 - (a) Determining the process for recruitment for the following positions:
 - (i) Independent Director with commercial governance experience.
 - (ii) Independent Director with not-for-profit governance experience.
 - (iii) Directors With Consumer Experience.
 - (iv) Directors With Industry Experience.
 - (b) If considered appropriate, recommending to the Board the engagement of independent consultants to support the selection process.
 - (c) Following the instructions of the Board, including applying duty statements and selection criteria for vacant Board positions, with respect to any recruitment process undertaken for the Company.
 - (d) Interviewing and recommending to the Board suitable candidates for any vacant Board positions referred to in clause 2(1)(a).
 - (e) Other responsibilities as set out in clause 12.2 of the TIO Constitution, including, if requested by the Board, to identify and recommend to the Board a person to act as the Independent Chair.
- (2) The responsibilities of Committee members who are Directors of TIO Limited are in addition to those of a Director of the Board of TIO Limited.
- (3) In performing its responsibilities the Committee acts at all times:

¹ For ease of reference an extract of the relevant provisions of the TIO Constitution is attached to this Charter.

- (a) In the best interests of TIO Limited as a whole, irrespective of individual members' personal, professional, commercial or other interests, loyalties or affiliations.
 - (b) In accordance with the duties and obligations imposed by the TIO Constitution and by law.
 - (c) In a manner that is consistent with this Charter and with the overall business objectives and the Role, Vision and Values of TIO Limited.
- (4) In recommending to the Board suitable candidates for any vacant Board position, the Committee must take the points below into account:
- (a) It is the intention of the Board, as expressed in the TIO Board of Directors Charter, that collectively Directors will bring the skills, expertise, and experience to enable the Company to understand the needs of consumers, the telecommunications industry and effective dispute resolution. This intention is consistent with the adoption in the TIO Constitution of a governance model in which the Board reflects the make-up of the industry, the experience of consumers accessing telecommunications and knowledge of (or ability to acquire knowledge of) dispute resolution issues.
 - (b) The skills that the Board collectively requires include the skills necessary to meet the Board's responsibilities as outlined in the TIO Terms of Reference. These skills include skills relating to strategy setting, financial management and risk management. In accordance with the TIO Constitution, all appointments of Directors by the Board are to be based on merit and on criteria including the specific criteria stated in the constitution². Subject to those requirements, in considering candidates to be appointed to the Board, the Board will also consider any gaps in the collective skill-set of the Board.
 - (c) The TIO scheme is an industry ombudsman scheme which means it features a direct relationship between the Company and the industry which it serves. In appointing Directors With Industry Experience, expertise in the telecommunications industry and the capacity and willingness to consult with key stakeholders of the scheme are among the specified criteria³. The Board has stated in the TIO Board of Directors Charter its intention that the application of the appointment criteria will mean that between them Directors With Industry Experience will have backgrounds which recognise:
 - (i) the make-up of the industry and that the pattern of complaints to the TIO scheme invariably reflects that a large majority of telecommunications retail end consumers obtain services from a small number of large Members; and
 - (ii) the large number of smaller providers with diverse business models and service offerings.

² See TIO Constitution, clauses 12.3-12.7

³ See TIO Constitution, clause 12.5(b)

- (d) For all Board positions other than the Independent Chair, the Committee must consider a wide range of candidates and conduct a search process including through a medium or media likely to attract a substantial pool of suitably qualified candidates. If the Board asks the Committee to identify and recommend to the Board a person to act as the Independent Chair, the Board may instruct the Committee as to whether to take the same approach in relation to the Independent Chair position.
- (e) The Committee will invite Consumer Groups (as defined in the TIO Constitution) to make nominations for any vacant Director With Consumer Experience position (however the successful candidate does not necessarily have to come from the Consumer Groups invited by the Committee to make nominations).
- (f) The Committee will invite Members to make nominations for any vacant Director With Industry Experience position (however the successful candidate does not necessarily have to come from the Members invited by the Committee to make nominations).

3. Composition

- (1) The Committee comprises the Independent Chair and the following people appointed to the Nominations Committee by the Board:
 - (a) One Director With Consumer Experience.
 - (b) One Director With Industry Experience.
 - (c) One person nominated by a peak group representing users of telecommunications services or public interest issues relevant to telecommunications services.
 - (d) One person nominated by a peak group representing the telecommunications industry.
- (2) The Independent Chair of the Board is the Chair of the Committee.
- (3) Members of the Committee, other than the Independent Chair of the Board of TIO Limited, are appointed and replaced by the Board at the Board's discretion.
- (4) If the Committee is considering a Board position for which a Committee member is or may be a candidate for appointment or re-appointment:
 - (b) The Board will appoint a different Director to replace that Committee member in relation to any consideration by the Committee of that Board position.
 - (c) If the Independent Chair is replaced in this way, the Board will select an Independent Director to replace the Independent Chair and that person will act in the role of Chair of the Committee in relation to any consideration by the Committee of that Board position.
- (5) The Board may make an appointment to the Committee conditional on the Committee member executing an enforceable undertaking (in the form required by the Board) to fulfil the roles and responsibilities of a member of the Committee.

4. Meetings

- (1) The Committee schedules its meetings to ensure timely appointments to vacancies on the Board, with as many meetings as the Chair of the Committee decides are required in order to fulfil its duties.
- (2) A quorum consists of a majority of members.
- (3) Decision making:
 - (a) Subject to clauses 4(3)(b) and 4(3)(d), in accordance with the TIO Constitution (clause 14.5), questions arising at any meeting will be determined by a majority of votes of the Committee members present and, in the event of an equality of votes, the Chair of the Committee will not have a second or casting vote, and the motion will be lost.
 - (b) The Committee's recommendation of a candidate to fill a vacant Board position must be unanimous except where a unanimous recommendation cannot be reached after thirty days of deliberation in which case the two Independent Directors will temporarily sit on the Committee for the purpose of reaching a recommendation supported by at least five out of the seven members of that extended Committee.
 - (c) Where the Committee still cannot reach a recommendation of a candidate to fill a vacant Board position after a further thirty days of deliberation then clause 4(3)(d) applies.
 - (d) If the decision making process described in this Charter does not result in the Committee making a recommendation, or for any reason cannot be followed (including where the Committee cannot be constituted in accordance with clause 3, or where the position of one or more of the Independent Directors is vacant at the relevant time so that clause 4(3)(b) cannot be implemented) then the Board will determine the best way to proceed in order to appoint a person to the vacant Board position (and a person may be appointed to the vacant Board position in that way). Without limiting the Board's ability to determine the best way to proceed, the Board may decide to itself take over the role of the Committee in order to fill the relevant Board position with any such appointment to the Board to be by Special Resolution of the Board (the Independent Chair, if participating in the relevant Board proceedings, being entitled to exercise a casting vote if required).
- (4) Key matters discussed at each Committee meeting are to be ordinarily reported by the Chair of the Committee to the Board at the next Board meeting.
- (5) Meetings of the Committee may be held face-to-face or through any technological means by which members of the Committee can participate in a discussion.
- (6) The Ombudsman and other parties may be invited to attend meetings of the Committee at the Committee's discretion.

5. Secretariat

- (1) The Company Secretary or such other person approved by the Committee Chair is Secretary to the Committee.
- (2) The Committee Secretary is responsible for providing efficient corporate governance related support and assistance to the Committee by ensuring all relevant business is put to the Committee and the decisions of the Committee are recorded and implemented.

6. Authority

- (1) The Committee has authority to investigate matters that fall within its Charter.
- (2) The Committee may:
 - (i) with the approval of the Board, obtain outside legal or other independent professional advice, and
 - (ii) invite to its meetings such third parties with experience and expertise relevant to its deliberations,as it considers desirable.
- (3) The Committee may make recommendations to the Board on all matters within its Charter.

7. Committee Charter

- (1) The Charter must be reviewed at least annually by the Committee or Board to provide assurance that it remains consistent with the Board's objectives and responsibilities.
- (2) The Committee may recommend to the Board such amendments to this Charter as the Committee considers appropriate from time to time.
- (3) The Board may make such amendments to this Charter as the Board considers appropriate from time to time.
- (4) The Committee Charter is to be made available by the Company Secretary, upon request, to all members of the Board, the TIO Executive Team and, as appropriate, other interested parties.
- (5) This Charter is to be published on the website of TIO Limited.

This Charter is dated 19 September 2023 and supersedes any Charter or terms of reference previously in force.

EXTRACT
CONSTITUTION OF TIO LIMITED

Clauses 12.2 – 12.8 (inclusive)

12.2 Nominations Committee and Appointment of Directors

- (a) The Board may, in accordance with this **clause 12.2**, appoint a person to fill any vacant Board position.
- (b) Any decision by the Board to appoint a person to act as a Director must be passed by a Special Resolution of the Board.
- (c) The Board will establish a Nominations Committee with membership as determined by the Board from time to time. The Board may appoint or remove the members of the Nominations Committee as the Board considers appropriate from time to time, however the Independent Chair will always be a member of the Nominations Committee (except where the Independent Chair has or may be perceived to have a conflict of interest in relation to specific business of the Nominations Committee).
- (d) The Nominations Committee will identify and recommend to the Board persons to act as Directors, as and when any vacancies on the Board arise or are anticipated.
- (e) Except in the circumstances described in **clause 12.2(g)** or in the charter of the Nominations Committee, the Board must only appoint a person to act as a Director if that person has been recommended by the Nominations Committee.
- (f) When the Board receives a recommendation from the Nominations Committee the Board may accept or reject that recommendation in its discretion. If the Board rejects the recommendation the Board will instruct the Nominations Committee to identify and recommend another person to be appointed to fill that Board position, in accordance with the charter of the Nominations Committee.
- (g) Subject to **clause 12.2(b)** but notwithstanding anything else in this **clause 12.2**, the Board will in all cases determine the best way to appoint a person to the role of the Independent Chair (and a person may be appointed to the role of the Independent Chair in that way). Without limiting the Board's ability to determine the best way to make the appointment, the Board may decide (but is not required) to ask the Nominations Committee to identify and recommend to the Board a person to act as the Independent Chair. However, the Board does not require a recommendation from the Nominations Committee in order to appoint a person to act as the Independent Chair.
- (h) The Board will provide the Nominations Committee with a charter and any other instructions the Board may wish to give, all of which must be consistent with the terms of this Constitution and must be complied with by the Nominations Committee. In circumstances where the charter of the Nominations Committee provides for the Board to take over the role of the Nominations Committee because the decision making process described in the charter does not result in the Nominations Committee making a recommendation, or because that process cannot be followed, the Charter may provide for the Independent Chair to have a casting vote.

12.3 Common Appointment Criteria for Directors

The appointment of each Director will be based on merit, based on criteria including the candidate's:

- (a) expertise in corporate governance;
- (b) ability to provide effective input on policy and jurisdiction issues for TIO Ltd;
- (c) ability to uphold the independence of the Ombudsman;
- (d) capacity and willingness to consult with key stakeholders of the Scheme;
- (e) knowledge of, or ability to acquire knowledge of, telecommunications issues; and
- (f) knowledge of, or ability to acquire knowledge of, dispute resolution issues.

(the **Common Appointment Criteria**), and any additional criteria set out in **clauses 12.4 to 12.7** inclusive.

12.4 Directors With Consumer Experience

- (a) Directors With Consumer Experience will be appointed from individuals with links to:
 - (i) consumer groups representing users of telecommunications services, including individual users and small business users; or
 - (ii) consumer groups or agencies representing public interest issues relevant to telecommunications services.
- (b) In nominating Directors With Consumer Experience for appointment by the Board, the Nominations Committee and the Board will observe the following principles:
 - (i) All appointments will be based on criteria including the Common Appointment Criteria and the candidates' expertise in consumer affairs.
 - (ii) Directors With Consumer Experience must in the opinion of the Board be independent of the telecommunications industry and government.

12.5 Directors With Industry Experience

- (a) Directors With Industry Experience will (except in the circumstances described in the charter of the Nominations Committee) be appointed from persons with telecommunications industry experience, identified and recommended by the Nominations Committee.
- (b) In nominating Directors With Industry Experience for appointment by the Board, the Nominations Committee and the Board will observe the principle that all appointments will be based on criteria including the Common Appointment Criteria and the candidates' expertise in the telecommunications industry.

12.6 Independent Directors

Two Independent Directors will be appointed in accordance with the following principles:

- (a) All appointments will be based on criteria including the Common Appointment Criteria.
- (b) Independent Directors must be independent of Consumer Groups, the telecommunications industry, government and other organisations and bodies such that they are not likely to have any substantive conflict of interest in fulfilling their roles as directors of TIO Limited.
- (c) One of the Independent Directors must have not for profit governance experience. The other Independent Director must have commercial governance experience.

12.7 Independent Chair

An Independent Chair will be appointed in accordance with the following principles:

- (a) Any appointment will be based on criteria including the Common Appointment Criteria and the candidates' ability to command the respect of stakeholders and the Board.
- (b) The Independent Chair must be independent of Consumer Groups, the telecommunications industry, government and other organisations and bodies such that he or she is not likely to have any substantive conflict of interest in fulfilling his or her role as a director of TIO Limited.
- (c) Before appointing the Independent Chair, the Board must inform the Federal ministers responsible for consumer affairs policy and communications policy about the proposed appointment and consider any comments they make.

12.8 Record Keeping and Transparency of Process

In relation to the appointment of each Director the nomination and appointment process must be:

- (a) documented and records kept of how decisions have been made; and
- (b) transparent, accountable and cost effective.