



Telecommunications
Industry
Ombudsman

TIO submission to
Department's
consultation on a
potential CSP
registration or
licensing scheme
December 2023

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1. Introduction from the Ombudsman

Thank you for the opportunity to comment on the Department's consultation on a Carriage Service Provider (CSP) registration or licensing scheme for the telecommunications industry. We continue to support the Department's work in exploring ways to update the telco regulatory framework and ensure it is fit for purpose.

Any type of registration scheme would be a welcome addition to the consumer protection framework to improve transparency and accountability in the telco sector. However, the TIO's position remains that any type of registration scheme should require telcos to confirm they meet minimum requirements alongside providing basic information. This type of registration scheme should be supported by clear consequences if telcos fail to meet minimum requirements and clear parameters for refusing and revoking registration.

A registration scheme where providers give basic information, but do not confirm minimum entry criteria, would provide market visibility to the ACMA, but it is unlikely to sufficiently:

- address the transparency and enforcement issues identified by the Department
- incentivise telcos to ensure they are capable of meeting obligations and community expectations
- ensure only viable telcos with adequate resources and suitable leadership are selling essential services
- mitigate associated consumer harms.

As the independent dispute resolution scheme for the telco industry, we are in a unique position to provide insights into the complaints we receive from consumers and the changes we see in our scheme's membership. We have observed consumer harms that could be avoided or reduced through a registration scheme which requires telcos to confirm they meet minimum criteria and consequences if they don't.

We continue to see systemic issues involving telcos that appear unprepared to deliver essential telco services. Based on our experience, we believe this is because there are no barriers for these providers to enter the telco market. In our June 2023 Systemic Report,¹ we highlighted that a telco registration scheme with minimum entry requirements would help protect consumers from unprepared telcos who are unwilling or unable to devote sufficient resources to understanding and complying with their regulatory obligations.

The telco market has outgrown the policy settings that prioritised competition. The original policy intent of having no barriers to market entry and no registration requirement for providers was designed to open up competition after Telstra's privatisation. However, there is now very healthy competition in a marketplace of nearly 1,700 telco providers.² Communications Alliance, Australian Communications Consumer Action Network (ACCAN), the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA) all agree that the telco sector and consumers would benefit from either a registration or licensing scheme.

¹ TIO, *A time for change – Three years of systemic investigations in review* (June 2023).

² TIO, *Annual Report 2022-23: Transformation through innovation* (October 2023) p46.

Consumers and small businesses tell us they view telecommunications in much the same way as they see other essential utilities and that telco services are crucial for them to participate in everyday life. Stakeholders agree that telco is an essential service and consumer reliance on telecommunications services only increases year by year.³

Despite the essentiality of telco services, there is no requirement on providers to demonstrate they have key telecommunications regulatory knowledge or the ability to follow the rules in the sector. There is also no requirement on providers to confirm if they have suitable leadership, or that they have the organisational, technical, or financial capacity to operate in the market.

Consumers should not be subject to providers who lack the knowledge and ability to deliver an essential service.

Despite declining complaints to the TIO, internal dispute resolution complaint levels are at around one million⁴ and consumer trust in the telco industry is low.⁵ Introducing a registration scheme with minimum entry requirements would go some of the way to rebuilding trust with consumers, knowing their telco has had rigor applied to their right to trade in the Australian communications market.

We look forward to the outcome of this consultation and to continuing to work with the Department to develop a registration or licensing scheme for the telecommunications industry.

2. All CSPs in the telco supply chain should be required to register

We recommend a registration scheme that supports full market visibility and accountability by requiring all telcos operating in the market to register, regardless of their role in the supply chain. This could be achieved through a requirement for all CSPs⁶ to register before supplying carriage services.

The TIO does not support a stand-alone mechanism for the ACMA to ban CSPs from supplying telco services in place of a registration scheme. Without a registration scheme, the ACMA will not have full market visibility and this is a fundamental objective recognised by the TIO and other stakeholders for a refreshed framework.

Requiring all CSPs to register will help to ensure the ACMA has full visibility of the market for the purpose of educating telcos on their obligations and conducting compliance and enforcement activities. The ACMA would not have full visibility of the market if registration were to be limited to the narrower categorisation of eligible CSPs.⁷ This could hinder the ACMA's ability to educate telcos and pursue compliance and enforcement activities.

The TIO does not support exemption criteria being built into a registration scheme. Provided the registration application process is not overly burdensome, as is the case for the model the TIO suggests, it is unnecessary for any CSPs to be exempt.

³ ACMA Chair Nerida O'Loughlin, *Protecting consumers is an essential service – CommsDay Summit Speech* (October 2023); ACCAN CEO Andrew Williams, *CommsDay Forum Speech* (14 June 2023); Communications Alliance, *TIO Report underlines strong telco industry response to COVID-19* (29 July 2020).

⁴ ACMA, *ACMA releases 2022-23 complaint data* (11 October 2023).

⁵ Roy Morgan, *Telecommunications industry overtakes Social Media as the most distrusted industry* (4 April 2023).

⁶ *Telecommunications Act 1997* s 87.

⁷ *Telecommunications (Consumer Protection and Service Standards) Act 1999* s 127.

To simplify registration requirements for carriers, it may be possible to adapt legislation to allow for carriers to apply for a carrier license and registration in the same process.

3. CSPs should provide basic information and confirmations that support minimum capabilities

We support CSPs providing the basic information proposed by the Department as part of the registration process, but we recommend adding to the information CSPs must provide.

We recommend requiring CSPs to agree with simple statements and answer yes or no questions that confirm applicants can satisfy minimum capabilities (capability statements). Requiring capability statements alongside basic information, instead of evidence for assessment by the ACMA, provides a pathway to ensuring telcos meet minimum requirements without creating an unreasonable burden on CSPs.

The TIO is not recommending a process that requires significant evidence assessment, as is the norm in the other essential service sectors who have authorisation and licensing schemes. This is because we understand an authorisation or licensing approach may be overly burdensome on CSPs. However, as pointed out previously,⁸ the telco sector should not be the only essential service sector that does not require market participants to demonstrate that they are equipped and prepared to provide essential services.

There is a need for telcos to confirm more than basic information before selling essential telco services. As we highlighted in our June 2023 systemic investigation report,⁹ we still see systemic issues involving providers that enter the market and are unwilling or unable to devote sufficient resources to understand and comply with their regulatory obligations.

Although telco differs from energy, water, and financial services in many ways, it has become very clear that community expectations of telcos are similar to the expectations of energy, water and financial service providers. Consumers expect that all essential services, including telco services, are delivered reliably by businesses that are setup to be responsive and operate with integrity in line with the rules.

It is possible to strike a balance between the need for a simple registration process and the need for telcos to be prepared and accountable for essential service delivery from the outset. Incorporating capability statements into the registration process aligns with the Department's design considerations for information requirements. Capability statements are a simple way for CSPs to provide information that can disrupt illegal and non-compliant activities such as pheonixing, as well as contribute to keeping CSPs informed about their obligations.

It is the TIO's view that a registration scheme with capability statements will not place an unreasonable burden on CSPs. Other essential service providers, including energy and financial service sectors, must turn their minds to these requirements as part of authorisation and licensing processes.

⁸ Cynthia Gebert, *Rebalancing regulation in an era of distrust* (21 September 2023); TIO, *A time for change – Three years of systemic investigations in review* (June 2023) p21-23; Cynthia Gebert, *Rewriting the rules: Strengthening telco safeguards for the new world* (16 June 2022); TIO, *Submission to Consumer Safeguards Review – Part C: Choice and fairness* (October 2020) p21-26.

⁹ TIO, *A time for change – Three years of systemic investigations in review* (June 2023).

These other essential service sectors still have healthy competition that allows for consumer choice alongside market entry standards. It follows that competition and consumer choice in the telco sector should not be at risk should the less onerous market entry process of a registration scheme that requires capability statements be adopted.

Capability statements can also address other important issues and realise other benefits that requiring basic information alone cannot. For example, requiring telcos to confirm that they have put specific systems and strategies in place could enhance consumer trust and confidence in a sector where trust is at an all-time low. Capability statements could help because they are a way to assure consumers that rigor has been applied to their telcos right to trade.

This approach would also incentivise applicants to take necessary steps or prepare in other ways they may not have if not prompted by the capability statements in the registration process. In turn, capability statements could also contribute to proactively preventing significant consumer harm down the track from unprepared telcos.

4. Capability statements that draw from existing essential service sectors could prevent consumer harms

We recommend the following minimum capabilities from existing essential service sectors be adapted to the telco market and captured by capability statements in the registration process:

- EDR scheme membership
- compliance capability
- organisational and technical capacity
- financial capability
- suitable leadership.

Drawing on minimum capabilities from existing essential service sectors provides an opportunity to integrate existing telco obligations in a more meaningful way. For example, a statement about agreeing to register with CommCom and comply with attestation statement requirements could work well as a capability statement for the minimum requirement of compliance capability.

CSPs should also be put on notice in the registration application that the ACMA may require the CSP to produce evidence to support statements made at the time of registration. CSPs keeping these records could assist the ACMA in its compliance and enforcement activities, and in exercising its discretion to refuse or revoke registration. We elaborate further on this in Part 5.

4.1. CSPs should confirm and agree to EDR scheme membership

We recommend a registration scheme that requires relevant CSPs seeking to enter the market to agree to join and comply with the TIO scheme.

We see complaints from consumers who experience consequences from telcos who are not TIO members or otherwise fail to comply with the TIO scheme. The TIO continues to see telcos that do not understand or are unwilling to:

- comply with the obligation to join the TIO scheme
- pay the TIO membership or complaint fees, or

- comply with TIO complaint processes or decisions.

Requiring capability statements around TIO membership, agreement to pay fees and agreeing to comply with the TIO scheme could help address the issues we see.

4.1.1 We see eligible CSPs that fail to join the TIO scheme

As part of registration, CSPs should be required to confirm they either:

- are not an eligible CSP
- have applied to join, joined or agree to join the TIO scheme within 30 days
- have been granted an exemption by the ACMA or have already applied for an exemption with the ACMA.

If a consumer contacts us to make a complaint about an eligible carriage service provider, we are unable to handle their complaint unless the provider is a member of the TIO scheme. While it is mandatory for all carriers and eligible CSPs to join the TIO scheme, in our experience, telcos are not always aware of this obligation. Telcos that are aware of this obligation also do not always comply with it.

As the Department acknowledges, the TIO often only learns about CSPs who should be members of the TIO scheme, but are not, when a consumer contacts us to complain about the provider. While we do contact these providers about joining the TIO scheme, this process can take time, and we have experienced issues with providers being non-responsive or not agreeing to join.

For example, from April 2022 to date we referred at least 15 providers to the ACMA for failing to join the TIO scheme. In most cases, this was after we had spent considerable time and resources trying to contact the telco to request it join the TIO scheme. In these situations, consumers can be left experiencing ongoing harm without access to EDR services.

Case Study: The TIO could not handle Luke's* complaint while Wilder Finch Telco* delayed joining the TIO scheme

Luke had a landline service with Wilder Finch Telco for his business. Luke had ongoing problems with calls dropping out and at times the service completely stopped working. Luke reported the service issues to Wilder Finch Telco, but Wilder Finch Telco was unable to fix it.

Luke contacted the TIO for help. We were unable to help Luke because Wilder Finch Telco was not a member of the TIO scheme.

At the time Luke contacted us, we had already experienced ongoing issues with Wilder Finch Telco ignoring our requests to join the TIO scheme. About one year earlier, we learned Wilder Finch Telco was supplying telco services to consumers and was not a TIO member. At that time, we contacted Wilder Finch Telco multiple times asking it to join the TIO scheme but Wilder Finch Telco did not apply to become a TIO member. We were left with no option but to refer Wilder Finch Telco to the ACMA for failing to join the TIO scheme.

At the time of Luke's complaint, Wilder Finch Telco had still not applied to become a TIO member. Luke asked if we could provide him a timeframe for when Wilder Finch Telco would become a TIO member so we could assist with his complaint. We told Luke that we could not give an indication of the timing. Luke's business was left using a faulty landline service without access to an independent External Dispute Resolution pathway.

It took Wilder Finch Telco another four months after Luke's complaint to apply to join the TIO scheme. This was around 16 months from the first time we made contact requesting Wilder Finch Telco join the TIO scheme.

**Names of all parties have been changed.*

Case Study: We were unable to help Sarah* because her provider was not a member of the TIO scheme

Sarah's business had telco services with GoFast Telco*. Sarah told us GoFast Telco was planning to stop supplying the business with telco services, so Sarah engaged a new provider. Sarah said GoFast Telco refused to give her new provider the information it needed to complete the transfer.

Sarah contacted the TIO to make a complaint about GoFast Telco. Sarah told us she was concerned that GoFast Telco may disconnect her services before they could be transferred to her new provider. Sarah was worried about losing her business' phone number and the impact it could have on her business if she was stuck without telco services after disconnection.

We were unable to handle Sarah's complaint because GoFast Telco was not a member of the TIO scheme. All we could offer Sarah was some general information about porting processes to help her better understand her situation.

The TIO contacted GoFast Telco and asked it to join the TIO scheme. GoFast Telco told us it would complete the required paperwork to join the TIO scheme within the next month. We told GoFast Telco that if we did not receive its application within this timeframe, we would contact the ACMA. Despite GoFast Telco's assurance, after five weeks GoFast Telco had still not applied to become a TIO member. We referred GoFast Telco's failure to join the TIO scheme to the ACMA.

Eventually GoFast Telco joined the TIO scheme, but in the time this took, Sarah was left in a difficult position as she did not know what may happen to her business' phone number, and without access to an independent External Dispute Resolution scheme.

Even though GoFast Telco became a TIO member, GoFast Telco told us that it disagreed that it was obligated to be member of the TIO scheme.

**Names of all parties have been changed.*

4.1.2 We see TIO members that fail to pay membership or complaint fees

As part of registration, eligible CSPs that are not exempt from TIO scheme membership should be required to agree to pay TIO membership and complaint fees as a condition of registration.

While TIO members are required to pay applicable TIO membership and case fees, we encounter providers who fail to pay. Despite this failure, we continue handling any complaints we receive from the member's consumers. This leads to additional case fees accruing which add to the member's existing debt with us.

Often our only recourse with members who refuse to pay our fees is to pursue a default listing or legal action. While we do not default list every member that has unpaid debts, we default listed 22 members in FY23.

The TIO spends significant time and resources pursuing members for unpaid membership and case fees. We communicate with members who are unaware of their obligation to pay our fees or disagree with this obligation. We also have the option to refer non-payment to the ACMA as it represents non-compliance with the TIO scheme. However, pursuing legal action is often not a feasible option to recover this debt due to the associated time and costs.

The additional costs incurred pursuing these debts increases fees for other members who continue to comply with our scheme and pay their fees. This is because the cost of operating the TIO scheme is recovered through a funding model that consists of annual membership fees and case fees split between all our members.

Where several smaller providers do not pay membership and complaint fees, the debts may appear small separately but together can accumulate to large amounts that keep increasing as time passes with debts continuing to accrue.

Case Study: Dancing Phones* stops paying TIO complaint and membership fees

In 2018, Dancing Phones stopped paying its TIO complaint and membership fees. At that time, Dancing Phones had been a TIO member for many years.

Dancing Phones expressed to us that it did not see the value of being a TIO member. Dancing Phones asked us to explain the benefits the TIO provides to its members. Dancing Phones asked its TIO membership be suspended until this was resolved.

We explained to Dancing Phones that we could not suspend its TIO membership while it was continuing to operate as a telco, and that it could cease membership of TIO if it was no longer trading or if it was granted an exemption by the ACMA. We explained to Dancing Phones that it was obligated to join and comply with the TIO scheme, which included payment of complaint charges and annual membership fees.

Between 2019 and 2020, we tried working with Dancing Phones to resolve these issues. During this time, we continued to handle complaints from Dancing Phones' customers about their telco services. While Dancing Phones did pay some case fees between 2019 and 2021, this did not include all complaint and membership fees.

Ultimately, we were unable to resolve these issues with Dancing Phones, and we subsequently default listed Dancing Phones in relation to its unpaid debt in May 2022. Dancing Phones eventually paid the debt, and we updated its default listing to reflect this.

**Names of all parties have been changed.*

4.1.3 We see members that fail or refuse to comply with TIO complaint processes and decisions

As part of registration, eligible CSPs that are not exempt from TIO scheme membership should be required to agree to comply with the TIO's Terms of Reference, complaint processes and decisions as a condition of TIO membership and registration.

It should be clear that a failure to comply with the TIO scheme could lead to consequences, including penalties and revocation of registration. We expand on grounds for revoking registration further in section 5.2.

We encounter TIO members who are unresponsive to TIO complaints, fail to understand our complaint handling processes, and do not comply with TIO decisions. While the ACMA can pursue non-compliance with a TIO decision in court, this is a costly and time-consuming process.

Requiring CSPs to agree to comply with the TIO scheme at the outset provides an early education opportunity. To assist telcos to be prepared and understand their obligations, TIO membership obligations could be set out in a guideline set by the ACMA. The ACMA's guideline for carrier licensing¹⁰ includes information about TIO obligations and could be adapted for this purpose.

Case Study: We were unable to conciliate or properly investigate Josh's* complaint as Seasons Telco* was unresponsive to our office

Josh made a complaint about his telco, a small provider called Seasons Telco. Josh told us Seasons Telco had disconnected the landline services used by his business and was also responsible for delays transferring the service to his new provider.

Josh's complaint was not resolved after we referred the matter to Seasons Telco, so we progressed the complaint to our Dispute Resolution area for conciliation. By this time, Josh's services were connected and working with his new provider. However, Seasons Telco was continuing to bill Josh for the services. Josh wanted our assistance to get Seasons Telco to close his account and waive the outstanding charges owing on his account, totalling approximately \$2,000.

The TIO contacted Seasons Telco multiple times asking it to respond to Josh's claims and supply us with information to help us investigate the validity of the outstanding charges. We initially spoke to Seasons Telco on the phone, however Seasons Telco was unable to answer our questions on this call and said it needed to check its records. We therefore asked Seasons Telco to email us the information we were requesting.

¹⁰ ACMA, *Carrier licensing guide* (May 2018).

Following this call, Seasons Telco did not provide the information we requested. When we followed up with Seasons Telco about this, it asked for an extension. Despite granting the extension, Seasons Telco still failed to respond to us. We again followed up by phone and email but got no response.

Fortunately, Josh was able to provide us with some information about his services, which helped us assess the validity of charges Seasons Telco claimed he owed. Based on Josh's information, we were able to recommend an outcome for the complaint, which both Josh and Seasons Telco accepted. Seasons Telco's acceptance of our recommendation was the first time we heard back from it since its request for an extension ten weeks earlier.

While we were able to assist Josh and Seasons Telco to reach a resolution for their complaint, we experienced barriers to resolving the complaint due to Seasons Telco's unresponsiveness.

**Names of all parties have been changed.*

Case Study: We were unable to help multiple consumers when Bushphones* became unresponsive

The TIO initially experienced difficulties getting Bushphones to become a TIO member, and we referred Bushphones to the ACMA for failing to join the TIO scheme. Following our referral to the ACMA, Bushphones became a TIO member.

A few months after Bushphones joined the TIO scheme, we received multiple complaints from consumers who said they were unable to contact Bushphones to cancel their service or cancel a direct debit. Consumers said Bushphones did not answer any of their calls or respond to any of their emails. At this time, the TIO was also unable to send complaints to Bushphones as their contact email address had stopped working.

For several weeks the TIO tried contacting Bushphones using all contact options we were aware of, including various phone numbers, email addresses, and postal addresses. We received no response from Bushphones. The phone numbers we tried calling were not in service and the email addresses we used bounced back.

Due to Bushphones' unresponsiveness to both consumers and the TIO, we referred it to the ACMA for potential breaches of the Complaints Handling Standard, the Telecommunications Consumer Protections Code and the TIO's Terms of Reference. As a result of not being able to contact Bushphones, we were unable to assist multiple consumers in the resolution of their complaints.

For example, Jolene* was unable to cancel her service with Bushphone or remove her direct debit to stop further payments. Jolene contacted us for assistance after she was unable to contact Bushphones by phone and email.

We told Jolene we could not help with her complaint as we had not been able to contact Bushphones for a long time and had referred it to the ACMA. We suggested Jolene speak to her bank about stopping her direct debit.

The TIO is still unable to contact Bushphones.

**Names of all parties have been changed.*

4.2. CSPs should confirm they have the ability to comply with their obligations

As part of registration, CSPs should be required to confirm that they:

- are aware of and understand key regulatory obligations as set out in a guideline developed by the ACMA and CommCom attestation requirements
- have a documented compliance strategy, and
- have a documented risk management and urgent communications strategy, including for large-scale outages.¹¹

To assist telcos to be prepared and understand their obligations, compliance capability statements should be supported by a guideline set by the regulator. The ACMA's guideline for carrier licensing¹² could be used as a template. The guideline could also benefit CSPs by including guidance on developing compliance strategies and risk management and urgent communications strategies.

The guideline should be structured to delineate obligations for different supply chain roles, products, and services. For example, the guideline could contain, as a starting point, explanations of the rules cited on the ACMA's *Rules for telco products and services*¹³ webpage to assist retail CSPs.

The TIO sees a range of consumer harms stemming from CSPs that either do not understand their obligations or are unable or unwilling to devote the necessary resources to comply with their obligations. This includes consumers that struggle to resolve complaints with telcos who have poor systems or practices in place and consumers that are unable to get the information they need from their telco.

Case Study: Ringtime* tells us it does not understand the Australian Consumer Law

Joy* signed up with Ringtime to provide telecommunications services for her small business. Since the services were connected, Joy experienced ongoing service quality issues, including the services dropping out for extended periods. As a result of these connectivity issues, Joy's business lost income and experienced reputational damage. Ringtime was unable to fix the

¹¹ Large-scale may mean different things depending on the size of the CSP and their customer base.

¹² ACMA, *Carrier licensing guide* (May 2018).

¹³ ACMA, *Rules for products and services* (accessed 6 December 2023).

issues with Joy's services, and it eventually agreed to cancel the services and waive any termination charges.

Joy made a complaint to our office as she did not agree with the outstanding charges Ringtime claimed she owed, which included charges for the services when they did not work and disputed equipment fees.

Joy's complaint was not resolved after we referred the matter to Ringtime, and the complaint was progressed to our Dispute Resolution area. At conciliation, Ringtime initially did not respond to us or contact Joy. When we eventually spoke to Ringtime, the representative told us they had never dealt with a TIO complaint before and were unsure what to do.

We provided Ringtime with information about the TIO's complaint handling process, how we believed the complaint should be resolved, and the relevant sections of the Australian Consumer Law (ACL) we believed may apply. During these conversations, Ringtime told us it did not understand the ACL.

We continued to work with the parties to explore options for resolution, and eventually the complaint was resolved by Ringtime waiving the disputed charges.

**Names of all parties have been changed.*

Case Study: We referred GoodTimeTalk* to the ACMA twice for possible breaches of various obligations

We referred GoodTimeTalk to the ACMA twice for possible breaches of the Complaints Handling Standard, our schemes Terms of Reference and the Telecommunications Consumer Protections (TCP) Code.

We initially received multiple complaints from small business consumers who said GoodTimeTalk unexpectedly disconnected their landline services and was not answering their calls or emails. During this time, GoodTimeTalk stopped responding to our office, impacting our ability to assist consumers in the resolution of their complaints about service disconnections.

For several months the TIO tried contacting GoodTimeTalk, but it did not respond to our office. We contacted the person that ASIC's company register listed as the director for GoodTimeTalk, and they told us they were not the director of the company.

Sometime later, GoodTimeTalk temporarily restored its main customer service line and resolved several complaints we were handling for small businesses. However, shortly after this GoodTimeTalk's main customer service line was not working again. As we continued to be unable to contact GoodTimeTalk, we referred it to the ACMA.

A few years later, we received more complaints from small business consumers who said GoodTimeTalk unexpectedly disconnected their telco services, and it was not answering their calls or emails. We again experienced issues with GoodTimeTalk not responding to our office.

We tried contacting GoodTimeTalk multiple times to ask it to update its contact information and confirm its trading status, and GoodTimeTalk did not respond to us. As a result, we were unable to assist consumers in the resolution of their complaints and we again referred GoodTimeTalk to the ACMA.

In addition to the ACMA referrals, we also credit default listed GoodTimeTalk as it owed us over \$20,000 for TIO case and membership fees.

**Names of all parties have been changed.*

4.3. CSPs should confirm they have adequate financial resources

As part of registration, CSPs should confirm that they have adequate financial resources or can access adequate financial resources to support their planned business activities and compliance obligations.

An ACMA guideline could supplement this statement, providing an education opportunity for telcos who may not be aware of some of the costs associated with operating a business that they can expect to face, such as TIO membership fees.

The need for telcos to confirm they have adequate financial resources prior to selling essential telco services stems from the consumer harms we see in complaints where telcos have inadequate financial resources. We see consumers:

- left without a service or a way to seek refunds after a telco business folds or sells its customer base to another entity
- who struggle to raise enquiries or complaints due to providers not maintaining adequate staffing levels. While inadequate staffing may be due to multiple factors, it is concerning when providers are unable to maintain adequate staffing levels
- who have their services disconnected, or are threatened with service disconnection, in situations where their telco provider has unpaid debts owing to its wholesaler.

We also see indications from members that they may not be financially equipped to deliver essential telco services. For example, we see members who seek payment extensions from us for small debts relating to TIO case and membership fees.

As outlined in section 4.1.2, the TIO spends significant resources pursuing members for non-payment of membership and case fees. When this occurs with several members, even small amounts can add up to significant financial and time losses for the TIO.

Case Study: Bluebird Internet* ceased its TIO membership after being unable to afford a \$400¹⁴ TIO annual membership fee

When we sent Bluebird Internet the bill for its annual TIO membership fee after it joined our scheme, Bluebird Internet said it was unaware it would be required to pay a membership fee and asked to cease its membership.

Bluebird Internet said it was concerned that the TIO's membership fees could impact small businesses, such as itself, that are operating with limited finances, and that it would be unlikely to make a profit after paying the TIO's bill.

We explained to Bluebird Internet that it is obligated to join the TIO scheme and to pay TIO membership and case fees, and we could only cancel its membership if it is no longer providing telco services.

Bluebird Internet explained it joined the TIO when it was setting up to sell telco services and it had since made the decision to not go ahead with selling these services. Based on the information Bluebird Internet provided to us, we ceased its TIO membership.

**Names of all parties have been changed.*

Case Study: Blue Dog Mobile* was unable to afford TIO membership and case fees

Blue Dog Mobile did not pay its TIO membership or case fees for several years, leading to it accumulating a debt of about \$1,650. After more than three years of Blue Dog Mobile not paying its TIO fees, it contacted us to request a payment arrangement of \$40 per week to pay off its debt. To support its request to make such small weekly payments, Blue Dog Mobile explained it had minimal customers and was planning to sell or shut down its business.

We were unable to reach an agreement with Blue Dog Mobile for a suitable payment plan for the debt it owed. Despite not agreeing on a payment plan, Blue Dog Mobile has made small weekly payments to our office. However, during this time further membership fees were issued to Blue Dog Mobile, which increased its existing debt. Blue Dog Mobile remains a member of the TIO scheme and currently owes us a debt.

**Names of all parties have been changed.*

¹⁴ The TIO's annual membership fee is based on the member's complaint volumes but \$400 is the minimum fee.

4.4. CSPs should confirm they have the necessary organisational and technical capability

As part of registration, CSPs should confirm that they have adequate organisational and technical resources to comply with their obligations under the law and meet anticipated operational needs. CSPs could be required to agree to statements that confirm it has:

- key staff with experience in the telco market and in operating a viable business (or if not, it has a plan on how it intends to bring this experience into the business)
- adequate organisational and technological resources to meet its current and future operational needs
- a documented business plan which covers the organisational and technical resources required for it to perform each of its business activities.

To assist telcos to be prepared and understand the operational and technical capabilities that are required to sell essential telco services, general information about these capabilities could be contained in a registration guideline developed by the ACMA. While ASIC's licensing guide¹⁵ is specific to the provision of financial services, the information provided in relation to applicants about having adequate human and technological resources is fairly general¹⁶ and could be adapted for this purpose.

We see value in capability statements prompting telcos around organisational and technical planning and resourcing. This is because we see consumer harms that stem from unprepared providers or providers with insufficient staff and staff training to meet consumer needs and regulatory obligations.

For example, we see situations where it appears telcos are unprepared and start operating without a plan to deliver reliable telco products and services. We may see spikes in complaints after a telco informs us that they are understaffed or lack the resources to respond to consumers. This may occur where a telco underestimates consumer expectations for customer support.

We also see situations that indicate key telco staff may be underqualified or lack telco market experience and consumers who experience harm as a result, such as when consumers are given incorrect advice or product information.

Case Study: Up&Up Telco* does not have capacity to respond to consumers or the TIO

Gray's* mobile service was unexpectedly disconnected. Gray had used this phone number for the past 15 years and it was very important to him. Gray contacted his provider Up&Up Telco who said it would try to reconnect the service. Gray's service was not reconnected and his further attempts to contact Up&Up Telco were unsuccessful.

Gray sought assistance from us in getting Up&Up Telco to reconnect his phone number. After we referred Gray's complaint to Up&Up Telco, it did not contact Gray and his service remained disconnected, so we progressed Gray's complaint to our Dispute Resolution area. However, the TIO was unable to contact Up&Up Telco despite calling and emailing it several times.

¹⁵ ASIC, *AFS Licencing: Meeting the general obligations – Regulatory Guide 104* (June 2022).

¹⁶ ASIC, *AFS Licencing: Meeting the general obligations – Regulatory Guide 104* (June 2022) p26.

The TIO's Member Services team emailed Up&Up Telco to explain we had experienced issues contacting them over the past few weeks and asked if Up&Up Telco was still trading. Up&Up Telco told us they were still operating but had been extremely busy the last few months with activities unrelated to its telco business. We told Up&Up Telco we had been trying to contact it about Gray's complaint and asked that it respond to the TIO complaint officer handling the matter.

To date, Up&Up Telco has not responded to us or Gray regarding his complaint. This has limited our ability to assist Gray with his service disconnection. We are currently exploring options to assist Gray, including requesting the assistance of another provider to see if it can reconnect his phone number. We don't know if Gray will be able to regain access to his phone number.

**Names of all parties have been changed.*

Case Study: Flying Squirrel Phones* was unprepared when it started delivering essential telco services

Flying Squirrel Phones contacted us to cease its TIO membership shortly after joining the TIO scheme.

Flying Squirrel Phones told us that prior to entering the telco market, it had not anticipated the levels of customer service and support that consumers would expect from it, and it found assisting consumers who experienced problems with their telco services to be a time consuming process.

Combined with other issues, such as the financial viability of its business, Flying Squirrel Phones told us it had cancelled its consumers services and ceased operating as a telco provider.

**Names of all parties have been changed.*

4.5. CSPs should be required to confirm they have suitable leadership

As part of registration, CSPs should be required to confirm suitable leadership through:

- providing the current director(s) name and the names of any other persons that exert control over the business
- answering yes or no to whether the director or any other persons that exert control over the business have been previously disqualified from the management of any corporations

- answering yes or no to whether the director, or any other persons that exert control over the business, have previously failed to have an authorisation, authority or licence granted or had an authorisation, authority or licence revoked in any industry.

Where a CSP answered yes to any of those questions, CSPs could then be prompted in the application to provide further information. The ACMA would have the option to complete a short assessment if the information provided by the applicant gives rise to any concerns about its leadership.

For example, if a director has previously had a licence revoked in any industry, they could be asked to provide further information about this, including the reasons for the revocation. This information could be assessed by the ACMA in deciding whether to approve the telco's application for registration.

Alternatively, the applicant could be asked to complete a suitable leadership template declaration. Some of the Australian Energy Regulator's (AER's) Authorisation Template Declarations about 'Suitability'¹⁷ could be adapted for this purpose. If this approach were adopted, and the applicant did not meet the criteria listed and did not sign the declaration, they could be asked to provide information about this. This information could then be assessed by the regulator when considering their registration application.

While the TIO does not have a role in identifying phoenix activity, we do see complaint and membership activity that suggests phoenix activity continues to be a concern in the telco space. The activity we see leads to confusion at best and complaint resolution or debt recovery barriers at worst.

For example, we see situations where the same person is listed as the director or owner of several telco companies that have a history of non-compliance with TIO scheme obligations. We also encounter problems arising from confusion where customer base sales are associated with companies that share the same director.

Case Study: We had concerns about three companies with the same director

In 2021, we had concerns about three separate companies (Company One, Two and Three*) that had the same director and owner, and concerns about a fourth company that had acquired part of the customer base of one of these companies.

We first became aware of Company One several years ago (2016) when we referred it to the ACMA because we believed it may be operating as a telco provider without having joined the TIO scheme. The ACMA initially directed Company One to join the TIO scheme, before later retracting this direction on the basis that Company One advised it would not be providing telco services to the public. Company One told the ACMA that another company it was associated with (Company Three) would be providing telco services and had since joined the TIO scheme.

¹⁷ AER, [AER Retailer Authorisation – Template declarations](#) (accessed 6 December 2023) p2-3.

A few years later (2018) Company One joined the TIO scheme. During its time as a TIO member, Company One incurred a large debt with the TIO for unpaid membership and case fees. Following this, in 2021 Company One was deregistered as a company.

We continued to receive complaints from consumers about Company One, indicating it may be continuing to operate as a telco provider while deregistered. We made several attempts to clarify with Company One if it was continuing to operate as a telco provider while deregistered, however we found Company One's response to be evasive and unhelpful.

Company Two has never been a TIO member. We had previously referred Company Two to the ACMA twice (2016 and 2020) after we received information from a consumer indicating it may be operating as a carriage service provider. The ACMA's first investigation found Company Two was no longer operating as an eligible carriage service provider, and as of early 2021 the company appeared to have wound up.

Company Three joined the TIO shortly after we referred Company One and Two to the ACMA in 2016 regarding our concerns that they had not joined the TIO scheme. In 2021, Company Three was deregistered, ceased its TIO membership, and had its carrier licence cancelled.

In 2021, we became aware of a fourth company, 'Company Four', had acquired part of Company One's customer base. When a telco customer base is sold, we ask members to provide us information about the sale so we can correctly allocate complaints and case fees. We made multiple attempts to contact Company One and Company Four to seek information about the customer base and the sale, however we found both parties somewhat evasive, and we were unable to obtain a copy of the sales agreement.

**Names of all parties have been changed.*

5. The thresholds for refusing and revoking registration must be sufficiently clear

A registration scheme should have clear thresholds for refusing and/or revoking registration.

Following transitional arrangements, CSPs should be required to annually submit a statement confirming any changes to the information provided at registration (particularly contact information).

We also support the Department's proposals to ensure decisions to refuse or revoke registration are fair and transparent through accessible avenues for internal or external review, and requirements for the ACMA to publish refusal and revocation decisions.

5.1. We support a clear threshold for refusing registration

The threshold for refusing registration should be limited to where:

- a CSP provides insufficient, incorrect, or incomplete information in its registration application, or
- the ACMA is not satisfied that the applicant has suitable leadership.

The TIO supports suitable leadership being the only capability included as a reason to refuse registration because it is the only capability that we have recommended CSPs be required to disclose information about at registration.

It also needs to be clear to CSPs when they can reapply. Where the refusal relates to insufficient information, it may be appropriate for the CSP to reapply immediately. However, where the ACMA is not satisfied that the applicant has suitable leadership, immediately reapplying is unlikely to be appropriate.

5.2. We support a clear threshold for revoking registration

We agree that revoking registration should be a last resort, but we recommend providing the ACMA with discretion to pursue revoking registration in place of other alternatives where it considers appropriate. This discretion can be suitably limited by criteria and the considerations put forward by the Department.

We consider that an adapted version of the AER's deauthorisation considerations could work well in the telco sector for revoking registration. Criteria for when the regulator may consider revoking a telcos registration could include:

- where a telco has materially failed to meet its obligations under applicable rules in the sector and the ACMA has reason to believe it will not be able to meet its obligations in future
- a telco fails to comply with a direction or formal warning given by the ACMA
- a telco stops trading and applies for deregistration
- a telco fails to join the TIO scheme, ceases TIO scheme membership or demonstrates sustained or repeated failure to comply with the TIO scheme.

We consider that a material failure under applicable rules is appropriately limited by the secondary limb that the ACMA would need to also be satisfied the CSP would be unable to meet its obligations in future.

A further limitation on the application of this criterion could be that it only applies in relation to the rules set out by the ACMA in the registration guideline as relating to revocation. This would allow the ACMA to prioritise obligations as appropriate.

We also support any decision to revoke registration using these criteria taking into account the considerations put forward by the Department. The ACMA should take into account the CSPs history of compliance, the potential impact on the CSP's customers, the need to prevent actual or potential harm, and whether alternatives could achieve the same outcome.

It may also be possible to consider safeguards for customers of CSPs that have had their registration revoked during the Department's consultation on better delivery of universal services.¹⁸

¹⁸ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Better delivery of universal services* (30 October 2023).

5.3. The ACMA should have discretion to request further information and set conditions

When the regulator is considering a telco's registration application or considering whether to revoke registration, the ACMA should have discretion to request further information from the telco prior to making a decision and to set conditions.

The ACMA has the discretion to request further information in the context of carrier licensing.¹⁹ We support this discretion being set out in legislation for a registration scheme, but with the following adjustments to ensure the ACMA can use the discretion to aid its enforcement and compliance activities:

- there should not be a 20 business day time limit²⁰ for requesting this information
- the information should be able to be requested whether the CSP is not yet registered or currently registered
- there should be a clear requirement for the CSP to provide the information in the time specified by the ACMA. This would empower the ACMA to use existing enforcement tools to give directions or formal warnings, or take other action, if the CSP failed to provide the information.

For example, the ACMA may use this discretion to consider a registration application where it sees that the suitable leadership capability statements indicate a prior breach or failure by a director, or person otherwise in control of the business, and request further information or evidence.

Looking at a revocation example, the ACMA may be considering revoking registration following a material failure and may wish to view the compliance strategy the CSP confirmed it had in the registration application to assist in deciding the CSP's future ability to comply.

We support the ACMA being able to set conditions on granting registration or deciding not to revoke a CSP's registration. For example, this would allow the ACMA to grant registration subject to incomplete information being rectified, or for registration to become active at a later date subject to the CSP joining the TIO scheme or receiving an exemption from the ACMA.

For deciding not to revoke a CSP's registration, the ACMA may wish to set conditions to address considerations to prevent actual or potential consumer harm by requiring the CSP to remediate consumers affected by a material failure rather than revoking registration because of it.

6. Supporting mechanisms must be put in place to support an effective registration scheme

We recommend a registration scheme that has supporting mechanisms in place to ensure the scheme operates effectively and telcos comply with registration requirements. Supporting mechanisms should include:

- a requirement for the ACMA to maintain a publicly searchable registration list
- prohibitions that incentivise telcos to comply with registration requirements, and
- transitional arrangements to support the introduction of a registration scheme.

¹⁹ *Telecommunications Act 1997* s 55.

²⁰ The carrier licensing discretion is tied to a 20 business day time limit. See *Telecommunications Act 1997* s 55.

6.1. The ACMA should maintain a publicly searchable registration list

The ACMA should maintain a public searchable list of telcos and their registration status, which could include whether a CSP has:

- been registered
- had its registration revoked
- registration pending
- suspended registration
- withdrawn registration.

A publicly available list would keep consumers, industry, and stakeholders like the TIO informed. The ACMA's register of licensed carriers²¹ could be adapted for this purpose.

6.2. Prohibitions should be set to incentivise CSPs to register

We support implementing obligations across the entire telco supply chain to ensure telcos comply with the requirement to register.

This could be achieved through implementing new service provider rules in the *Telecommunications Act 1997* that prohibit:

- CSPs from knowingly providing misleading or false information as part of the registration process
- CSPs from supplying carriage services to the public unless the CSP is registered
- registered eligible CSPs from supplying carriage services to the public or other CSPs unless they are a member of the TIO scheme, have been granted an exemption from TIO scheme membership by the ACMA, or join the TIO scheme within 30 days of registration
- carriers and CSPs from contracting to supply carriage services to other CSPs for resale unless they are satisfied the CSP they are contracting with is registered
- carriers and CSPs from knowingly supplying carriage services to an unregistered²² CSP for resale.

Prohibiting the supply of carriage services to unregistered CSPs incentivises carriers and CSPs to avoid penalties by refusing to contract with unregistered CSPs, which in turn incentivises CSPs to register. This incentive is important as it will assist the ACMA to achieve full market visibility and avoid issues the TIO sees with its own membership.

For example, the TIO only learns about eligible CSPs when the ACMA or a consumer tells us, and CSPs only apply to join once they become aware of the TIO despite their obligation to join. This is unlikely to happen to the ACMA with CSPs required to register if they cannot obtain carriage services without registration.

Any prohibition on supplying carriage services to other CSPs would need to be set out to ensure that the only step required would be to check the ACMA's public registration list immediately prior to agreeing to supply services. Liability should be limited to the point of contracting to ensure

²¹ ACMA, *Register of licensed carriers* (accessed 6 December 2023).

²² Unregistered should capture where a CSP's registration is pending, suspended, revoked or the CSP does not appear on the publicly available register we recommend at all, as this would indicate the CSP has not applied for registration.

carriers and CSPs cannot be penalised for failing to regularly check the public register, as this would be an unreasonable administrative burden.

A rule prohibiting carriers and CSPs from supplying carriage services to other telcos for resale would work best as a legislative prohibition as it would capture all members of the supply chain. While a rule on carriers could be implemented through a carrier license condition, this would not capture all telcos in the supply chain. This is because there are telcos who do not contract directly with carriers but rather with other intermediaries, for example, telco resellers selling to other telco resellers.

This approach takes its cue from Canada's regulatory body, the Canadian Radio-television and Telecommunications Commission (CRTC), who have a similar but more onerous approach than the approach the TIO recommends. The CRTC requires carriers and CSPs to actively monitor and enforce the obligation to register with the CRTC in any documentation that sets prices, terms, and conditions to service contracts.²³ While Canada's framework helps to educate resellers about their registration obligations, the more limited and less onerous approach we recommend could lead to better compliance from telcos.

6.3. Carefully staged transition arrangements will be required

We support transitional arrangements that help streamline the process to introduce a registration scheme into the telco industry. This is important to ensure a fair lead time for industry and to ensure consumers are not negatively affected by any pressure on CSPs.

We acknowledge that the process to register the nearly 1,700 eligible CSPs that are members of the TIO scheme,²⁴ along with other CSPs operating in the telco sector, would be a time consuming and resource intensive project for the ACMA. In addition to ensuring adequate resources are made available to the ACMA, transitional arrangements can ease this burden for both the ACMA and industry. Transitional arrangements could include:

- deeming all existing members of the TIO scheme and those registered with CommCom as automatically registered for a transitional period, and
- prioritising the registration applications for telcos with the largest market share.

Where existing members of the TIO scheme and those registered with CommCom are automatically registered for a transitional period, there could be set timeframes for these telcos to complete the registration application. Different tranches of timeframes could be provided to cater for the ACMA to process registrations in batches, due to the large number of CSPs in the market.

The framework for carrier licencing provides for the deeming of a carrier licence in certain situations²⁵ and could be considered transitional in nature. The provisions that underpin this could be adapted to apply to the deeming of CSPs as registered during a transitional period.

Prioritising the registration of telcos with the largest market share is important to ensure that most consumers can be assured they are receiving telco services from a registered telco.

²³ CRTC, *Telecom Regulatory Policy CRTC 2017-11* (2017) cls 34, 36, 38.

²⁴ TIO, *Annual Report 2022-23: Transformation through innovation* (October 2023) p46.

²⁵ *Telecommunications Act 1997* s 56AA(7).

7. The implementation of a registration scheme provides an opportunity to update related legislative provisions

The introduction of a registration scheme may provide an opportunity to review the provisions of the TCPSS Act relating to joining and complying with the TIO scheme.

For example, if the TIO expels a member for non-payment of fees, is that telco still able to supply services? The obligation to join the TIO scheme is clearly set out in legislation,²⁶ but it is not clear whether an eligible CSP that ceases TIO membership of its own motion or because the TIO expels the member would be in breach of a service provider rule or not. We have recommended a prohibition that could address this gap in section 6.2.

Whether a provider seeking an exemption from joining the TIO scheme is a carrier that is likely to seek to rely on carrier powers and immunities should be a relevant consideration for whether the ACMA grants an exemption from the requirement to join the TIO scheme. This is because carriers who exercise their rights to access land under Schedule 3 of the *Telecommunications Act 1997* should be required to comply with the TIO scheme when they refer a land access objection to the Ombudsman under the Telecommunications Code of Practice 2018.

²⁶ *Telecommunications (Consumer Protection and Service Standards) Act 1999* s 128(1).