



Telecommunications  
Industry  
Ombudsman

Discussion paper:  
Proposed amendments to  
Terms of Reference  
August 2024

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## Background

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The Terms of Reference (ToR) establishes the TIO Scheme's functions and powers to handle complaints and sets out TIO's and members' obligations to each other.

The current version of the ToR commenced on 1 January 2022, following a wholesale revision and extensive stakeholder consultation, which included a new structure, clearer language, and in some regards, increasing the scope of TIO's jurisdiction (e.g. introducing the ability to award compensation for non-financial for any complaint, rather than only where a privacy breach has occurred).

In August 2022, the final report on the 2022 Independent Review of the TIO conducted by Queen Margaret University was released. The Independent Review recognised TIO's role and success in improving consumer outcomes in the industry and the continuing high level of support for TIO from stakeholders. The Independent Review also provided valuable feedback on steps to improve TIO's performance. In October 2022, TIO published its Response to Recommendations from the Independent Review and, consistent with its commitment to improve its performance, changes are underway.

On 16 May 2024, the Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures Act) 2024 was passed by Federal Parliament. The new legislation inserts new subsections 128(5A) and (5B) into the Telecommunications Consumer Protection and Service Standards Act 1999 providing for the TIO to have power to handle statutory infrastructure provider connection complaints (SIP connection complaints).

## Summary of proposed amendments

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The proposed amended ToR is available [here](#).

The proposed amendments seek to clarify TIO's function and role in delivering a fair and accessible communications market for Australia and is not intended to be another wholesale revision at this time. The proposed changes fall into three categories:

1. Amendments to respond to the recent legislative change clarifying TIO may handle SIP connection complaints.
2. Amendments proposed in response to certain recommendations from the 2022 Independent Review, being:

- **Recommendation 2** *The TIO should work with Members to agree a common approach by which members signpost complainants to the TIO and this should be reflected in the TIO's Constitution or Terms of Reference'*

- **Recommendation 12** *The TIO should remove reclassifications from all complaints except where the complaint is about the wrong member or is found to be out of jurisdiction.*
- **Recommendation 17** *The TIO should amend its Terms of Reference to make clear that it can investigate complaints about a carrier's behaviour when a carrier wishes to access land under an agreement, or under the carrier's statutory powers to inspect land, maintain facilities, or install low impact facilities.*

3. Minor changes proposed to correct drafting issues we have identified from the previous ToR revision.

TIO's work on the 2022 Independent Review recommendations is continuing. If required, further amendments related to other Independent Review recommendations may be proposed in future but are outside the scope of this current consultation.

	What will change and why
Fair and reasonable	<ul style="list-style-type: none"> <li>• Clarifying that we <i>will do what we</i> consider is fair and reasonable when exercising powers (clause 1.4).</li> </ul> <p>This wording better reflects our current approach.</p>
SIP connection complaints	<ul style="list-style-type: none"> <li>• Clarifying our jurisdiction and powers to handle SIP connection complaints following new subsections 128(5A) and (5B) of the <i>Telecommunications Consumer Protection and Service Standards Act 1999</i> (TCPSS Act) making clear TIO may handle these complaints (see clause 2.2(b) and clause 2.38(l)).</li> <li>• Incidental changes to definitions to give effect to TIO's jurisdiction and power to handle SIP Complaints (including 'qualifying telecommunications network', 'SIP complaint', 'Statutory Infrastructure Provider', 'Qualifying carriage services').</li> </ul> <p>While we consider the TIO Scheme already has power to handle SIP connection complaints<sup>1</sup> under the ToR, these proposed amendments clarify the TIO Scheme's function and powers using language consistent with the TCPSS Act.</p>
Complaint Handling Standard Complaints	<ul style="list-style-type: none"> <li>• Clearer articulation of our jurisdiction to handle complaints about a member's complaint handling process (new clause 2.2(k)).</li> </ul> <p>The TIO Scheme already has the power to handle complaints about how members handle complaints. The 2022 Independent Review<sup>2</sup> identifies an opportunity to clarify our function and ensure we can handle complaints in line with the definition for</p>

<sup>1</sup> See clause 2.2(b) of the Terms of Reference.

<sup>2</sup> Page 30 of 2022 Independent Review.

	What will change and why
	‘complaints’ in the Complaint Handling Standard. <sup>3</sup> This amendment gives effect to the commentary around Recommendation 2.
Land access related Complaints	<ul style="list-style-type: none"> <li>• Clearer articulation of our jurisdiction and powers to handle land access related complaints (see clauses 2.3(c) and (d), and clauses 2.38(m) and (n)).</li> </ul> <p>The 2022 Independent Review identified an opportunity to confirm and clarify the TIO Scheme’s function and power to handle complaints about carriers’ access or use (or proposed access or use) of land. This amendment gives effect to Recommendation 17.</p> <p>Note, this jurisdiction is separate to the Ombudsman’s jurisdiction to handle land access objections under the <i>Telecommunications Code of Practice 2021</i>.</p>
Reasonable opportunity to consider	<ul style="list-style-type: none"> <li>• We have consulted TIO’s Consumer Panel on what it considers a reasonable attempt to contact a member to be.</li> <li>• We have consulted with members on a member guideline explaining TIO’s position on the reasonable steps a consumer should take before TIO will refer a complaint to a member to develop internal and external consistency in approach.</li> <li>• We found TIO Consumer Panel and members’ feedback to be valuable and finalised and shared the member guideline with members on 18 July 2024 and plan to publish the public facing guideline in mid-September 2024. The draft public guideline will be shared with key stakeholders before it is finalised.</li> <li>• For clarity and completeness, we propose amending clause 2.20 to clarify TIO will handle complaints when a member has had a reasonable opportunity to consider the matter.</li> <li>• We propose updating the definition for ‘complaint’ also (for consistency).</li> </ul> <p>These amendments are consistent with Independent Review Recommendation 12. The guideline supports TIO’s accessibility and fairness work – removing barriers to access our service, connecting consumers/members faster, collecting more information to inform member’s internal dispute resolution processes – these amendments to the ToR address any remaining uncertainty.</p>
Occupiers	<ul style="list-style-type: none"> <li>• Clarifying our public policy, systemic issues, and information sharing roles extend to concerns about land access and property damage issues by referring to issues that affect “occupiers” as well as “consumers” (clauses 4.2, 4.9, 5.10).</li> </ul>

<sup>3</sup> Section 5 definition of ‘complaint’, which includes, a complaint about the ‘complaint handling process itself’.

	What will change and why
	This brings our public, policy, systemic issues and information sharing roles into line with our power to handle occupier's complaints (as well as consumer's complaints).
Members obligation to signpost TIO	<ul style="list-style-type: none"> <li>Requiring members to take reasonable steps to inform consumers and occupiers about the member's complaint handling service and TIO's free, external dispute resolution service for unresolved complaints (clause 6.2).</li> </ul> <p>TIO Members have obligations under the Complaint Handling Standard to signpost the option of TIO's free complaint service. Despite this, recent consumer survey results show less than 25% of consumers who lodged complaints with TIO say their provider informed them about TIO.<sup>4</sup></p> <p>The 2022 Independent Review explains the importance of signposting for accessibility and identifies other external dispute resolution schemes having the obligation to signpost in their charter (e.g. EWON). This amendment addresses Independent Review Recommendation 2.</p>
Consumer	<ul style="list-style-type: none"> <li>Remove 'customer' and include hyperlink for 'small business and not for profit' guideline on website rather than just referring to the website.</li> </ul> <p>Use of 'customer' and 'consumer' in the definition for 'consumer' has sometimes caused confusion. Removing the reference to customer' addresses the confusion and brings consistency with language in the TCPSS Act. Including a hyperlink to our guidance on 'small business and not for profit' brings clarity and reflects our current approach.</p>
Member	<ul style="list-style-type: none"> <li>Include 'statutory infrastructure provider' to the definition.</li> </ul> <p>This ensures all 'statutory infrastructure providers' are included as members as not all are carriers (see section 360A of the Telecommunications Act 1997).</p>
Correct numbering	<ul style="list-style-type: none"> <li>Amend clause 7.3 to remove duplicate paragraph numbering.</li> </ul>
Correct alphabetical order	<ul style="list-style-type: none"> <li>Correct alphabetical order of definitions.</li> </ul>
Update commencement date	<ul style="list-style-type: none"> <li>Amend clause 1.11 to reflect updated commencement date (as well as cover page and header).</li> </ul>

<sup>4</sup> As published in Member News on 26 July, 14 September, and 15 November 2023.

## Questions for consultation

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As set out above, we are consulting on proposed changes intended to clarify TIO's function and role in limited ways. While we are open to general feedback on the ToR via ordinary channels,<sup>5</sup> in this consultation, we seek your feedback in response to the following questions via the submission process outlined below:

1. Do the proposed changes successfully clarify TIO's power to handle SIP connection complaints following the recent legislative changes? If not, what other ToR amendments should be made to achieve this purpose?
2. Do the proposed changes support the TIO implementing recommendations 2, 12 and 17 of the 2022 Independent Review of the TIO? If not, what other ToR amendments should be made to address these recommendations?
3. Do the proposed changes adequately correct drafting issues in the current ToR?

## How to make a submission

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Stakeholders are invited to make a written submission to this consultation. Written submissions will be made publicly available on our website unless clearly marked as confidential.

Submissions can be emailed to [PublicConsultation@tio.com.au](mailto:PublicConsultation@tio.com.au).

Submissions close at 5 pm on 30 August 2024.

Our timeline for change: we plan to have the amended Terms of Reference in place by 1 January 2025.

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<sup>5</sup> Ordinary channels are: for members, contacting Member Services; for TIO Consumer Panel members, through Consumer Panel meetings; and for any individual or any organisation, through [Compliments and Complaints about the Telecommunications Industry Ombudsman - TIO](#).