

**SUBMISSION TO TIO**

**INTRODUCTION**

Optus welcomes the opportunity to provide feedback on the proposed amendments to the TIO’s Terms of Reference (ToR).

We note that the discussion paper states that the timeline for changing the ToR is by 1 January 2025 and that the Board will consider feedback received during this consultation to inform its decision in making any amendments.

Optus has provided comments on the proposed changes to the ToR below. We are generally comfortable with most of the proposed amendments. We do, however, have some concerns around the changes in relation to land access complaints and the TIO’s jurisdiction as well as the definition of consumer which we have outlined below. Regarding land access, we believe the TIO’s role should be limited to handling complaints about non-compliance with the land access powers under Schedule 3 of the Telco Act and the notification and objection process. We do not support extension of the TIO’s jurisdiction to private land access agreements. We also do not support the proposed new 6.2 as we do not believe that inclusion of obligations for members to signpost the TIO are appropriate or needed in the ToR, given this would duplicate rules in the ACMA’s *Complaints Handling Standard (2018)*.

We have also provided feedback on the TIO’s new member guideline on reasonable first contact that is also mentioned in the discussion paper and relevant to the proposed amendments around reasonable opportunity to consider.

**COMMENTS ON PROPOSED AMENDMENTS TO TERMS OF REFERENCE**

<b>Amendment</b>	<b>Optus Feedback</b>
Fair and reasonable	We have no objection to this amendment.
SIP connection complaints	We have no objection to this amendment.
Complaint Handling Standard Complaints  Clause 2.2(k)	While we do not object to this amendment, it is unnecessary as it does not add to the TIO’s current jurisdiction, as noted in the discussion paper.  The TIO can already accept complaints about complaint handling processes as regulated by the ACMA’s <i>Complaint Handling Standard (2018)</i> .
Land access related complaints  Clauses 2.3(c), 2.3(d), 2.38(m), 2.38(n)	As drafted, the amended clauses create further uncertainty and risks broadening the scope of activities that may be captured. We understand the intent of Recommendation 17 relates to carrier conduct in relation to land access activities under statutory powers or a land access agreement.

	<p>However, we do not agree with recommendation 17 to the extent that it would give the TIO jurisdiction over the <i>terms</i> of a land access agreement.</p> <p>In relation to the proposed amendment to 2.3 (d), we do not agree with the inclusion of “or the terms of a land access agreement with an occupier”.</p> <p>Likewise in 2.38 (n) we also do not agree with the inclusion of “or the terms of a land access agreement with an occupier”.</p> <p>While the TIO clearly has a role in resolving disputes about statutory rights and obligations regarding land access, it does not have a role in resolving disputes about contractual rights and obligations which should be resolved according to the dispute process outlined in the relevant contract/land access agreement between the carrier and landowner.</p> <p>We also suggest that in 2.38(m), the use of the term ‘non-compliant’ should only be made in reference to Schedule 3 of the Telco Act or other relevant legislation and regulation.</p> <p>Optus submits that while the TIO can have regard to the regulations and law in its role as an external dispute resolution body, it is not able to determine ‘compliance’ with the relevant regulation or legislation or whether a facility is ‘unsafe’ as per 2.3 (c) Only the ACMA, as regulator, can properly make those determinations.</p> <p>For example, some people argue that all mobile phone base stations are unsafe because they generate EME, even where levels are well below the mandated standard. It is our view that only the ACMA has the relevant expertise and authority to definitively determine the safety or compliance of any facility in accordance with the relevant standards.</p> <p>We are therefore concerned that the proposed drafting at 2.38 (m) could allow for actions (eg. removal) where there is no breach of any applicable law or legislative requirement and also may not relate to Land Access activities under Schedule 3.</p>
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	<p>In relation to 2.38 (m) we understand that TIO processes would usually give a carrier an opportunity to rectify or remediate infrastructure that poses a risk to work health or safety (WHS).</p>
<p>Reasonable opportunity to consider</p>	<p>Optus has participated in the TIO’s consultation on what the TIO will consider to be a reasonable attempt by a consumer to contact a member before raising a complaint with the TIO.</p> <p>We note that Optus has also recently amended our Complaints Handling Policy so that customers understand that they do not require an Optus identifier before contacting the TIO. We appreciate that the TIO will refer consumers back to the relevant member if a reasonable attempt to contact by the customer has not been made.</p> <p>The TIO’s role is to provide an escalation pathway for consumers. Members need to be given a reasonable opportunity to consider the issues raised in any complaint. We note that the TIO has reported that while complaint numbers are continuing to decline, the complaints the TIO is handling are increasingly complex. This makes it critical that members are provided reasonable opportunity to consider the issues and that TIO assists consumers to raise any matters with member organisations in the first instance.</p> <p>The proposed amendment to the definition of complaint is consistent with this approach, provided that, in practice, the TIO continues to allow for members to be provided a reasonable opportunity to consider before accepting a complaint.</p> <p>In most cases, this will mean that the consumer will need to contact the member before raising a TIO complaint, however we accept that that guidance for consumers on a what a reasonable attempt to contact a member is valuable.</p> <p>We have also provided further comment on the TIO’s guideline for members below for</p>

	consideration in developing the public facing guideline.
Occupiers	Optus has no objections to the proposed amendments to 4.2, 4.9 and 5.10 to add 'occupier' and align the TIO's policy and sharing roles with regard to 'occupiers' with 'consumers'.
Members obligation to signpost TIO	<p>Optus does not support this proposed amendment.</p> <p>Substantive rules that do not relate to participation in the TIO scheme do not properly belong in the ToR.</p> <p>The ToR are a memorandum of understanding for the TIO scheme, setting out member obligations for participation in the scheme. The ToR is not a regulatory instrument and should not contain rules that do not directly relate to participation in the scheme.</p> <p>The proposed amendment (6.2) also duplicates rules already contained in the ACMA's Complaints Handling Standard 2018 which is enforceable by the ACMA.</p>
Consumer	<p>Optus notes that the current definition of consumer is appropriate and reasonable, in so far as, the TIO has not provided any evidence to demonstrate a need to change or clarify the definition due to the current definition causing confusion or acting as a barrier for consumers.</p> <p>We also note that the legislation, industry codes and regulation that the TIO generally has reference to in handling complaints also generally include a definition of consumer and therefore provide scope or jurisdiction for the TIO to accept a complaint from a consumer who meets the relevant definition.</p> <p>However, we appreciate that the TIO would like further clarity around the definition of a consumer. We do have several concerns with this proposed amendment:</p> <ul style="list-style-type: none"> <li>• There is no clear definition of a small business or not-for-profit in the ToR, rather the definition of small business refers to a guidance on thresholds.</li> </ul>

	<ul style="list-style-type: none"> <li>• Not-for-profit companies can also be extremely large companies, industry associations or even government agencies. We appreciate that the TIO is not intending to capture larger non-profit companies here, but the definition does not rule such companies as out of scope.</li> <li>• Likewise, small business can cover a range of business size as there are varying definitions of small business in relevant regulation, legislation and determined by government agencies.</li> </ul> <p>From the current guidance, we understand that the TIO’s intention is to only capture genuinely small businesses and/or not-for-profit companies under a \$3,000,000 annual turnover threshold or with up to 20 FTE employees.</p> <p>Optus agrees that the threshold the TIO currently relies on in its guidance is appropriate and reasonable. We support explicitly including this threshold in the ToR for clarity and certainty.</p>
Member	We have no objection to this amendment.
Correct numbering	We have no objection to this amendment.
Correct alphabetical order	We have no objection to this amendment.
Update commencement date	We have no objection to this amendment.

**COMMENTS ON GUIDELINES ON REASONABLE FIRST CONTACT**

Optus is generally comfortable with the new guidelines on reasonable first contact.

We note that these are closely tied to the proposed amendment to 2.20 (see comment above) that clarifies the TIO will handle a complaint when a member has had a reasonable opportunity to consider.

We do, however, have some remaining concerns that the guideline gives the TIO very broad discretion to determine what constitutes a reasonable attempt to contact in any individual case. We also believe that the consumer’s word is potentially given more weight than the member’s records of contact in this determination.

While we understand the need to strike a reasonable balance here, we are of the strong view that the TIO scheme was established to be an independent, external dispute resolution scheme to handle escalated disputes from member organisations. We note that the TIO’s recent annual report noted that complaints it handles are increasingly complex while complaint numbers continue to decline.

While we support the guideline, we reiterate the need to retain the TIO scheme's purpose in handling disputes that the consumer has been unable to satisfactorily resolve by contacting the member organisation in the first instance. We are hopeful that the TIO will continue to exercise sound judgement in determining if a consumer has made a reasonable first contact attempt.

We would also welcome feedback from the TIO if consumers are reporting difficulties or barriers in attempts to contact Optus in the first instance so that we have opportunity to address any issues.