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Melbourne VIC 8007

By email: [StakeholderEngagement@tio.com.au](mailto:StakeholderEngagement@tio.com.au)

Dear Judi

### **Proposed changes to the Telecommunications Industry Ombudsman's Terms of Reference**

Thank you for the opportunity to comment on the TIO's proposed changes to its Terms of Reference.

I warmly welcome the TIO's initiative to revise its Terms of Reference to involve all TIO members in the telecommunications supply chain in the TIO's complaint handling and dispute resolution processes. The initiative is particularly timely and one that is broadly consistent with the suggestions the ACMA made to the independent review of the TIO on 30 June 2017. Given contemporary supply chain issues, there is a clear benefit in the TIO being able to collect information from and make determinations that bind all its members.

#### **Changes to the Terms of Reference**

I note that the change in contemplation is built on a new distinction proposed in the revised Terms of Reference between 'providers' and other TIO 'members'. A 'provider' is a 'member' against which a complaint has been made (clause 2.3). Various obligations are expressed to apply to members, providers or both.

The revised Terms of Reference contemplate a consumer being able to complain about any service supplied, offered or arranged by a TIO 'member' (clause 2.7). It is not clear whether this extends to all TIO members 'upstream' from the consumer or is confined to the entity with which the consumer has a direct service relationship. While the current Terms of Reference are also a little ambiguous on this point, they tend to point to complaints made by consumers against their 'providers' (ie the entities with which consumers have a direct service relationship).

In my view it would be helpful for the revised Terms of Reference to clearly indicate whether and in what circumstances the TIO will handle a consumer's complaint about 'upstream' entities such as carriers and aggregators. It is also my view that these circumstances should be the exception rather than the rule.

In the vast majority of cases, the entity with which a consumer has a direct service relationship will be best placed to identify the cause of and resolve the consumer's complaint (although the assistance of an upstream member may sometimes be required).

Subject to the foregoing, I support the proposed changes to clauses 2.3, 2.4, 2.7, 3.6 and 3.8 as well as new clauses 3.21-3.24. I also query why clauses 5 and 6.3-6.5 in the revised Terms of Reference are expressed to apply only to 'providers' and not to the broader group of 'members'.

### **Possible ancillary changes**

In the event that the Terms of Reference are changed, broadly as proposed, two matters may warrant further consideration.

#### **Costs**

I note that the Terms of Reference do not deal, themselves, with the apportionment of the TIO's complaints handling costs.

It may be that the TIO's current approach to and guidance around allocating its complaints handling costs will need to be reconsidered with a view to ensuring those costs can be fairly apportioned between all members involved in resolving any complaint.

#### **Membership exemptions**

Under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act) it is open to any eligible carriage service provider or carrier to apply to the ACMA for an exemption from the requirement to join the TIO scheme.

The ACMA has granted only 21 exemptions to date.

In considering an application for an exemption from the requirement to join the scheme, the ACMA is required by section 129 of the TCPSS Act to consider:

- the extent to which the eligible carriage service provider or carrier deals with 'residential customers' and 'small business customers' in relation to the supply of carriage services; and
- the potential for complaints under the TIO scheme about the services supplied by the provider.

In other words, if 'non-retail' eligible carriage service providers or carriers apply for an exemption, the ACMA is required to give weight to their 'non-retail' status in the decision. While this non-retail status is not the only factor to which the ACMA can have regard, there may be some tension between section 129 and your objective of ensuring *all* industry players (even those who do not deal directly with residential and small business customers) are amenable to TIO processes and can be required to contribute to resolving complaints.

Accordingly, if the Terms of Reference are modified, the ACMA will raise this tension with the Department.

#### **Further discussion**

Please don't hesitate to contact Peter Sutton on [peter.sutton@acma.gov.au](mailto:peter.sutton@acma.gov.au) or 03 9963 6950 if you wish to discuss our comments.

Yours sincerely



**Richard Bean**  
Acting Chairman