

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

INDEPENDENT REVIEW

ISSUES PAPER

May 2017

The Telecommunications Industry Ombudsman (TIO) is undergoing an independent review – as required by its legislation¹ – and interested stakeholders are invited to assist the Review team with submissions.

Melbourne-based consultancy **cameron. ralph. khoury** (CRK) has been engaged to conduct the review. Over the past 16 years, CRK has conducted some 20 independent reviews of external complaints handling schemes in Australia, New Zealand, Canada and internationally spanning industries including financial services, energy and water, public transport, legal services and internet administration.

1. Scope of our Review

We have been asked to examine the authorising environment and dispute resolution processes of the TIO to consider whether changes to current processes are necessary to deliver effective dispute resolution in a high volume and volatile complaint demand environment.

The TIO has specified that the review is to make findings and recommendations relating to:

- the effectiveness of the TIO's complaint resolution processes, systems and resources;
- the effectiveness of the TIO's approach to systemic issues in improving telecommunications provider practices;

¹ TIO is required by section 133A of Telecommunications (Consumer Protection and Services Standards) Act 1999 to cause a review of the TIO to be conducted by end August 2017. The review must be conducted by a person or body who is independent of the Ombudsman and the telecommunications industry. The review must include public consultation and consultation with the Ombudsman and ACMA. The review report must be provided to the Minister and published on the TIO's website.



- the adequacy of the TIO's authorising environment (including the legislative framework and the TIO's Constitution and Terms of Reference) and how this impacts on the independence of the TIO and its effectiveness in resolving disputes between consumers and telecommunications providers;
- the effectiveness of the TIO's engagement with government, regulators, consumers, industry and other stakeholders.

Our scope does not include the TIO's funding model. This is already under review by the TIO in consultation with its members.

2. Context for the Review

The TIO was established nearly 25 years ago as a point of escalation for complaints that consumers and small businesses are unable to resolve with telecommunications service providers (consumers include customers and others affected by a telecommunication service, including as an owner or occupier of land).

The TIO is a company limited by guarantee. Telecommunication service providers are required by legislation to be a member of the TIO and to comply with decisions of the Ombudsman. As at 30 June 2016, there were 1,599 telecommunication service providers that were registered as members. Reflecting the dynamism of the industry, this number included 204 companies that had joined in the previous year. 144 telecommunication service providers left the industry and so terminated their membership during the same year.

The TIO receives enquiries and complaints about mobile, internet and landline services. After experiencing significantly declining numbers of complaints in the 5 years to 30 June 2016, the TIO is now experiencing a strong increase in complaint numbers. In the 6 months to 31 December 2016, the TIO received nearly 66,000 new complaints – a 34% increase from the same 6 month period in the preceding year. Since that time, complaint numbers have continued to increase.

The TIO uses a range of dispute resolution techniques to resolve complaints. The vast majority of complaints are resolved by the TIO referring the complaint to the service provider. Approximately 10% of complaints return to the TIO and most are resolved through conciliation (which can include a TIO assessment that no further action by the TIO is appropriate). A small number of complaints progress through to investigation, which can result in a binding decision being made by the Ombudsman. (As shown in the TIO's 2016 Annual Report, a somewhat different pathway applies for land access objections.)

In carrying out its responsibilities, the TIO is expected to be accessible, independent, fair, accountable, efficient and effective (see section 128(10) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and Benchmarks for Industry-based Customer Dispute Resolution Schemes, Australian Government, The Treasury, 4 March 2015).



3. Issues

Below, we set out some initial areas for enquiry of stakeholders. This is intended to assist stakeholder thinking, but not to limit the scope of submissions or matters raised in relation to the TIO.

a) TIO's role and powers

We would welcome views as to strengths, gaps or weaknesses in the TIO's authorising environment.

The Telecommunications Act 1997 requires the TIO to be consulted about changes to industry codes. It also enables an industry code or standard to confer functions or powers on the TIO if the TIO so consents. Views about this framework and how it works in practice are invited.

The TIO's Terms of Reference aim to be accessible by being succinct and in plain English. As a result, they do not explain how the scheme works in as much detail as do other Ombudsman schemes (eg. which complaints the TIO will or will not take on, when the TIO will refuse to consider a complaint, etc) – some of this detail is found instead in separate TIO published policy. Comments about this issue would be welcomed.

b) Volatility of the TIO's workload

Although the TIO consults with telecommunications providers about complaint trends, we understand that this did not predict the increase in TIO complaint numbers experienced over the last 12 months.

To address the increased work load, the TIO introduced some interim process changes, pending the recruitment of more staff. That recruitment has now occurred and we are advised that the backlog of complaints that built up last year has now been overcome.

Volatility in complaint numbers is inevitable. Lead indicators as to trends (where these exist) can help an Ombudsman scheme to prepare for and respond quickly where change occurs. We would welcome comments about what more can be done to improve forecasting of complaint numbers and the TIO's readiness for changes in these.

c) Effectiveness of the TIO's complaint resolution

We would welcome views about the TIO's complaint resolution process and any suggestions for improvements.

Here we note that that the parties to a complaint have a shared interest in the complaint being fairly resolved in a timely manner. To achieve this, the TIO needs to exercise judgement about what information is needed and what steps should be taken in order to assess the merits of the complaint – judgement that requires balancing of efficiency and thoroughness considerations and the adoption of a procedural fairness approach that recognises the need for quick, informal processes and outcomes. The TIO must be neutral and yet recognise that there may be an asymmetry in the knowledge, skills and resources of the consumer and the telecommunication service provider. Achieving the 'right' balance requires judgement and fine tuning.

Is the TIO achieving an appropriate balance in your view? Examples would assist us.



We understand that the TIO has experimented with its approach to early resolution, including by triaging (prioritising) complaints and at times sending complaints in “batches” to a telecommunication service provider. In your experience has this been effective?

The TIO’s 2016 Annual Report noted the increase in number of complex technical complaints. The TIO has told us that processes currently used for these types of complaints include multi-party conciliation and case call-over. Again we would welcome experience in relation to this and any other ideas for effective resolution of complex technical complaints.

d) Systemic issues

Ombudsman schemes are expected to identify and address systemic issues (generally defined as issues that may affect multiple customers), as a way of reducing the instance of future complaints. The TIO’s 2016 Annual Report stated that 47 potentially systemic issues had been identified during that year of which about a quarter had been investigated.

We would welcome views about the TIO’s work in this area and any suggestions for improvement.

e) Member services

TIO members include small, specialist telecommunication service providers with infrequent complaints and little familiarity with the TIO’s complaints handling process, as well as very large telecommunication service providers with large numbers of complaints.

The TIO must provide useful information to this range of members about the TIO complaints handling process and about progress of their complaints – in a cost efficient way. We understand that, in response to feedback, the TIO has been working to reduce overhead costs. The TIO has told us that members’ case queries are now dealt with by dispute resolution staff in an effort to provide better information to members. Comments are welcome.

f) Stakeholder engagement

We are aware that the TIO has been separately consulting with its members as to how the TIO can best engage with them. We will use those insights in our review.

In addition to members, the TIO engages with regulators, industry bodies and consumer bodies. The TIO also contributes to legislative reform and policy debate relevant to the TIO’s work. Views about this engagement would also be welcome.

4. Submissions

Submissions are requested by 23rd June. If in writing, they may be made publicly available on TIO’s website unless confidentiality is requested in the submission. They need not be formal or lengthy.

Please forward written submissions in electronic form to:

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cameron. ralph. khoury
Email: debra@crkhoury.com.au
Tel: 0408 523850



Alternatively you may telephone the Reviewers to discuss any issues that you would like to raise.

We will also be directly engaging with government representatives, consumer representatives and a sample of industry stakeholders.

5. Review timetable

The key timetable milestones are set out below:

30 June	Completion of analysis of processes, file reviews and stakeholder submissions
14 July	Completion of stakeholder interviews
29 August	Report provided to the Ombudsman