

2 September 2024

## TIO Public Consultations

by email: [PublicConsultation@tio.com.au](mailto:PublicConsultation@tio.com.au)

Dear Sir/Madam,

### RE: Proposed changes to the TIO Terms of Reference (ToR), 2024

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

This response is structured around the key headings in the ToR, with proposed changes shown in red, as per the draft ToR.

#### Part 1: Introduction

CA has no concerns or comments about the minor changes proposed in this section.

#### Part 2: Our complaint handling role: Our complaint handling jurisdiction

##### 2.2. We can handle complaints from consumers, including about:

...(b) a problem with telecommunications equipment supplied by a member, or with a member's network infrastructure, that affects the consumer's access to a telecommunications service supplied or offered by a member (including but not limited to a SIP complaint)

...(k) the complaint handling practices of members.

CA has no specific comments about the amendment proposed for 2.2(b) or (k), noting that the TIO is already handling complaints relating to both of these issues.

2.38 A decision may require a member to do or not do, or cease doing an act, including:

(l) connection of a property ~~premises~~ to a qualifying telecommunications network.

To ensure consistency with the underlying legislation, the TIO ToR should use the term 'premises', not 'property', in relation to SIP complaints. Additionally, any remedy requiring connection of a property must be in regard to a member's obligations as SIP under Part 19 of the Telecommunications Act.

The amended clause would read:

(l) connection of a premises to a qualifying telecommunications network, having regard to the member's obligations under Part 19 of the Telecommunications Act 1997 and associated instruments.

It must be clear that the TIO's jurisdiction in relation to the connection of a property is limited to directing the SIP, where that SIP is acting in their capacity as SIP. (I.e. it is not within the TIO's jurisdiction to direct non-SIPs to connect a property; or to direct a member that is a SIP on issues outside of their capacity as SIP. (See also [Interpretations and Definitions.](#))

**Other changes in part 2:** non-compliance; terms of access; removal of equipment; land access agreements.

CA is aware that AMTA had made detailed comments about the proposed changes to 2.3(c), 2.38(m), 2.3(d) and 2.38(n). We share those concerns and support the position articulated by AMTA.

### **Parts 3-5:**

No specific comments on the minor amendments proposed.

### **Part 6: Member obligations**

**6.2. Without limiting members' legal obligations, members must take reasonable steps to inform consumers and occupiers about the availability of the member's complaint handling service and TIO's free, external dispute resolution service for complaints.**

CA questions the need to include this requirement (or other substantive rules and obligations) within the ToR itself, particularly with the inclusion of the subjective phrase 'reasonable steps', when the requirements to advise consumers about their options for external dispute resolution, including the TIO, are clearly articulated in the Complaints Handling Standard (CHS).

Further, we question the implied suggestion that this is necessary because TIO members are not meeting their CHS obligations to inform consumers about the TIO – a view apparently formed on the basis of a survey that 'shows less than 25% of consumers who lodged complaints with the TIO say their provider informed them about TIO'.

CA is unclear from where this figure is derived (the reference to a newsletter article is unhelpful and only lead to a TIO media release about falling complaint numbers) but assumes (based on comments at a recent TIO seminar) that the referenced figure is based on a screening question that all consumers answer when contacting the TIO, which asks consumers if they recall their provider advising them about the TIO. Implying that CSPs were not meeting their obligations to inform consumers of their right to use the TIO's services based on such as survey is problematic for a number of reasons, including that (a) it relies on consumer recall and (b) many consumers contact the TIO without having first contacted their provider (ergo, they could not have been signposted to the TIO by the provider).

We therefore suggest that this draft clause be removed. Or, at the very least, that specific guidance is developed in consultation with industry on the interpretation of 'reasonable steps.'

### **Part 8: Interpretations and definitions**

**Consumer.** A person or company ~~(residential, who is a small business or not-for-profit customer company) (or a prospective or former customer)~~ who:

- (a) is, was or intended to be the account holder, purchaser, or end user of a telecommunications service or telecommunications equipment; or
- (b) is a person or company who a member claims is or was its customer.

The discussion paper does not explain the rationale behind the proposed change to the definition of 'consumer'.

CA does not object to minor amendments, as the definition of 'consumer' is arguably not well articulated in the current ToR.

We suggest, however, that:

(1) for clarity, small business or not for profit' is defined within the ToR, rather than in an accompanying guidance note. That is, small business or not-for-profit means an organisation with up to \$3,000,000 annual turnover and no more than 20 full-time employees, noting that the TIO will take into account if employees are permanent, casual, and if employment is seasonal or voluntary.

(2) part (a) of the definition is amended to make it clearer, and to ensure the key points lost by removing reference to 'residential' consumer are retained; i.e. that the services were primarily obtained for personal, household, or domestic use.

**SIP Complaint.** A complaint about connection of a property to a **qualifying telecommunications network** by a **member** who is a **statutory infrastructure provider** so that a carriage service provider can provide **qualifying carriage services**.

Suggested amendment:

**SIP Complaint:** A complaint about connection of a **premises** to a qualifying telecommunications network by a member **in their capacity as the** statutory infrastructure provider **for the premises** so that a carriage service provider can provide qualifying carriage services.

Please do not hesitate to contact either Christiane Gillespie-Jones, Acting CEO, or me, with any questions, or to discuss further.

Yours sincerely,

Peppi Wilson  
Senior Manager, Policy and Regulation

### About Communications Alliance

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.