

**COMMUNICATIONS  
ALLIANCE LTD**



**TIO Independent Five-Year Review**  
COMMUNICATIONS ALLIANCE SUBMISSION  
May 2022

## CONTENTS

<b>INTRODUCTION</b>	<b>2</b>
<b>GENERAL COMMENTS</b>	<b>3</b>
<b>INDUSTRY BENCHMARKS</b>	<b>3</b>
<b>Benchmark 1: Accessibility</b>	<b>3</b>
Principle	3
Key practices	3
Awareness/ Promotion, Access and Cost [to complainants]	3
Staff Assistance, Use, Acceptance by Office, Non-adversarial Approach, Legal	8
<b>Benchmark 2: Independence</b>	<b>10</b>
Principle	10
Key practices	10
The Decision-maker, Staff, Overseeing Entity, Transparency	10
Funding	11
Terms of Reference	11
<b>Benchmark 3: Fairness</b>	<b>13</b>
Principle	13
Key practices	13
Final Determinations, Procedural Fairness, Provision of Information	13
Confidentiality and Review of Decisions and Determinations	13
<b>Benchmark 4: Accountability</b>	<b>14</b>
Principle	14
Key practices	14
Procedures, Final Determinations, Responding to Complainants and Participating Organisations, Annual Report	14
Systemics	14
<b>Benchmark 5: Efficiency</b>	<b>18</b>
Principle	18
Key practices	18
Appropriate Process or Forum	18
Timeliness, Tracking, Monitoring, Professionalism.	19
Overall	19
<b>Benchmark 6: Effectiveness</b>	<b>20</b>
Principle	20
Key practices	20
Coverage, systemic problems, office performance, internal dispute, compliance and periodic independent review	20
<b>OTHER ISSUES</b>	<b>20</b>
<b>Member and stakeholder engagement and outreach activities</b>	<b>20</b>
<b>Land access</b>	<b>21</b>

## INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the Telecommunication Industry Ombudsman's (TIO) independent five-year review, conducted by Margaret University, Edinburgh.

### **About Communications Alliance**

Communications Alliance is the primary telecommunications 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, 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>.

## General comments

Communication Alliance recognises the important role that the Telecommunications Industry Ombudsman (TIO) plays in providing an independent dispute resolution service for the telecommunications industry and its consumer and small-business customers in Australia. We enjoy good working relationships with the office and appreciate the general willingness of staff to discuss issues and attempt to consider various viewpoints in a competitive, complex and continually evolving space that is subject to a complicated and ever-changing co-regulatory regime, with an increasingly diverse set of stakeholders.

This five-year review provides an important opportunity for all parties to step back and consider what is working well and to identify areas for improvement.

This submission is structured in alignment with the discussion paper, with further breakdown of comments in alignment with the Government's [Key Practices for Industry-based Customer Dispute Resolution](#).

We would be happy to provide clarifications or further information on request.

## Industry Benchmarks

### Benchmark 1: Accessibility

#### Principle

The office makes itself readily available to customers by promoting knowledge of its services, being easy to use and having no cost barriers.

#### Key practices

*[Awareness/ Promotion, Access and Cost \[to complainants\]](#)  
(Practices 1.1 to 1.15)*

Communications Alliance believes that the TIO effectively ensures that consumers of telecommunications products are aware of its services and the fact they are provided at no cost to the complainant. It has reasonably clear information available on its website which explain at a **high-level** the type of issue that the TIO can handle and how the process works. It also makes use of social media channels, and it generally does a good job in promoting the TIO's services in consumer information forums, including in regional and remote areas.

The scheme's members - telecommunications companies ('telcos') – contribute to this awareness-raising, and clear information about the telcos' obligations to make consumers aware of the TIO's services is included in appropriate telecommunication Codes of Practice, including the [Industry Code C628:2019 Telecommunication Protections Code](#).

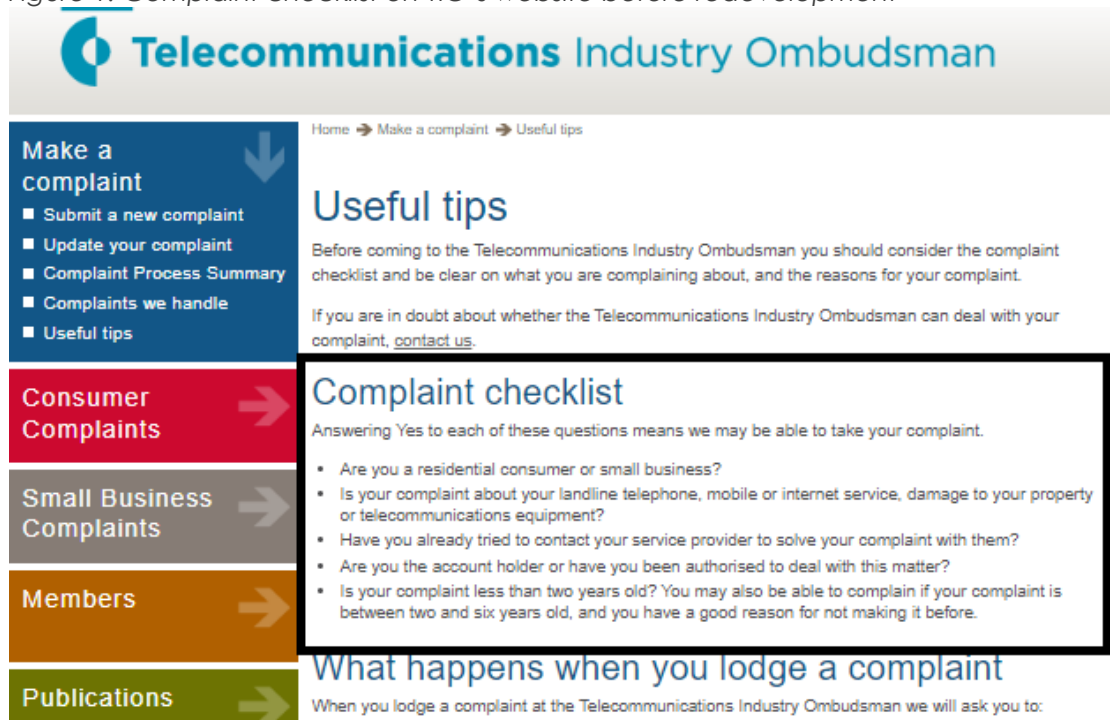
Communications Alliance suggests, however, that there is scope to improve both consumers' and industry's experiences – and increase the TIO's efficiencies – by the provision of more detailed, easily accessible information on the TIO's website and in other forums about the rights and obligations of all parties, and the full scope – and limits to - the TIO's role and jurisdiction.

One area where we see particular scope for improvement relates to managing the obligation for consumers to attempt to resolve a complaint directly with their provider *before* contacting the TIO<sup>1</sup>.

The TIO has acknowledged over a long period that many complaints are accepted by it in circumstances where the would-be complainant cannot provide any evidence of having contacted, or having attempted to contact, their service provider.

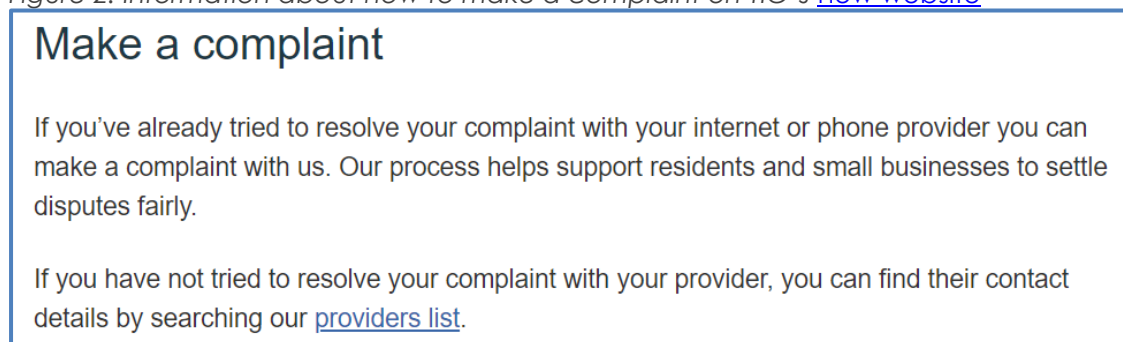
Before it redeveloped its website in late 2019/early 2020, the TIO included a 'complaints checklist' that provided clear information for complainants about the steps they must take before contacting the TIO's office (Figure 1).

Figure 1: Complaint checklist on TIO's website before redevelopment



The TIO's redeveloped website does not present this information nearly as clearly; the 'make a complaint' information does not clearly explain that the consumer must try to contact their provider, before taking other steps (Figure 2).

Figure 2: Information about how to make a complaint on TIO's [new website](#)



<sup>1</sup> TIO's Terms of Reference, clause 2.20: 'We will only consider a complaint after the member has had a reasonable opportunity to consider the issues.'

The fact that the 'no chance to consider' reclassification complaint number has remained high over a number of years suggests that the issue requires more than a simple change of messaging on the TIO website and other media. However, we suggest that an essential first step in addressing this issue is for the TIO to review its communications to potential complainants to ensure that sufficient emphasis is placed on the need for customers to try to resolve the issue with their service provider, before seeking alternative dispute resolution.

We note that the Electricity and Water Ombudsman, Victoria (EWOV) has equivalent information very clearly presented on its website (Figure 3), as does the South Australian Energy and Water Ombudsman (EWOSA), with the latter also providing clear information on how to approach the initial conversation with the supplier (Figure 4). The TIO may consider adopting a similar approach to its messaging.

Figure 3: Clear information on the EWOV [website](#)

**Our complaints process**

Most complaints are resolved within 28 days. Simple disputes can be resolved more quickly, while more complex issues can take a bit longer.

- 1 Contact your company**  
You must try to resolve your complaint with your company first, or attempt to contact them, before coming to us.
- 2 Bring the complaint to us**  
If you've contacted your company and can't resolve the issue, we'll usually refer the complaint to a senior person at your company and ask them to contact you about the complaint.
- 3 We investigate your complaint**  
If your company can't resolve the complaint, let us know and we can investigate.
- 4 You get an outcome**  
We help you and the company reach a resolution or we'll decide on a fair and reasonable outcome to your complaint.

Figure 4: Clear step-by-step information on the [EWOSA website](#)

**Step 1: Contact your supplier**

If you have an issue about your energy or water supply, the first step is to contact your supplier directly and give them the chance to resolve it with you.

We cannot become involved if you have not given the supplier the opportunity to respond. They need to be aware of your complaint before we contact them. And in many cases the complaint can be dealt with in this way.

You can find the contact details for your supplier(s) [here](#).

If you do contact us first and we refer you to your supplier, we still record your contact in our system.

**Before calling your supplier**

Take time to get all relevant documentation together. At the very least you will need to have

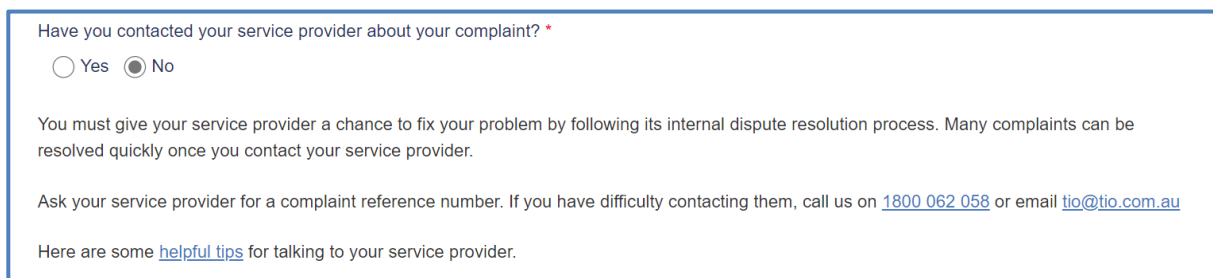
- your account/customer number
- the National Metering Identifier or NMI (electricity), Meter Installation Reference Number or MIRN (gas)

Communications Alliance suggests that the issue could be even better addressed through the introduction of a requirement for complainants to provide a complaint reference to the TIO on first contact. In addition to providing evidence that complainants have attempted to resolve the issue with their provider before contacting the TIO, this would make it easier for the TIO and all parties with an interest in a complaint to quickly identify individual complainants and their issues.

The necessary groundwork for introducing such a system is already in place, as the [Telecommunications \(Consumer Complaints Handling\) Industry Standard 2018](#) includes the requirement for 'a unique reference number or such other measure that will ensure the carriage service provider can subsequently identify the complaint and subject matter' (Part 5, Clause 20 (1) (b) ).

Additionally, the TIO's online form – which notably provides clear and succinct advice on the need for the complainant to first contact their service provider in the first place – also encourages complainants to obtain a complaint reference number from their provider (Figure 5). However, there is no proof of contact required by the TIO, or mechanism to record the reference number.

*Figure 5: TIO online form showing clear instruction to would-be complainants about the need to contact their provider in the first instance*



Have you contacted your service provider about your complaint? \*

Yes  No

You must give your service provider a chance to fix your problem by following its internal dispute resolution process. Many complaints can be resolved quickly once you contact your service provider.

Ask your service provider for a complaint reference number. If you have difficulty contacting them, call us on [1800 062 058](tel:1800062058) or email [tio@tio.com.au](mailto:tio@tio.com.au)

Here are some [helpful tips](#) for talking to your service provider.

Communications Alliance acknowledges that it is critical that that the introduction of a requirement to provide such a reference number would not provide a barrier to consumers contacting the TIO. However, we believe that this can be easily avoided with a simple option included to indicate that the complainant has tried – and failed – to get hold of their provider.

Significantly, this is exactly the approach taken by the Australian government's own ombudsman, the [Commonwealth Ombudsman](#), as well as other ombudsman such as the [Airline Customer Advocate](#) (ACA) and the [Australian Financial Complaints Authority](#) (AFCA).

Responsible for overseeing not only numerous government agencies, but also private health insurance and others, the Commonwealth Ombudsman:

- a) makes it very clear on that website that individuals must have attempted to directly resolve the issue with the organisation in question before contacting the ombudsman,
- b) asks for proof of contact by way of a reference number (Figure 6), and
- c) provides a clear pathway for individuals to submit a complaint without first lodging a complaint with the provider (Figure 7).

Figure 6: Commonwealth Ombudsman – requirement to provide reference number

Name of the organisation or provider your complaint is about \*

Meditest

Have you lodged a complaint with the complaint handling area of the organisation or provider you are dissatisfied with? \*

No  Yes

Complaint Reference Number and date lodged (if applicable) ✕

Provide any complaint reference number the organisation or provider you are complaining about has to identify your complaint, and the date you lodged your complaint with the organisation or provider. Do NOT provide your tax file number (TFN) or any confidential numbers.

Figure 7: Commonwealth Ombudsman – accommodating cases without a reference number

Have you lodged a complaint with the complaint handling area of the organisation or provider you are dissatisfied with? \*

No  Yes

**Contact the organisation or provider involved before you submit this form**

We usually do not investigate a complaint until it has been raised with the organisation or provider involved. This gives the organisation or provider an opportunity to solve the matter first.

If this does not resolve your complaint, you are welcome to contact us again with the response provided to you.

Do you believe there are special reasons for you to submit a complaint to us without first lodging a complaint with the organisation or provider you are dissatisfied with? \*

No  Yes

Explain the reasons you have not lodged a complaint with the organisation or provider you are dissatisfied with (300 character limit)

In addition to ensuring an avenue for complainants with a good reason for not having attempted to resolve the issue directly with their provider, Communications Alliance suggests that the qualitative data collected in the free-text box would be useful for both industry members and the regulator as they seek to further improve their complaints management processes.

We note that EWOV asks complainants to provide information about their contact efforts, as illustrated at Figure 8. The quantitative data collected by this approach could also enable efforts to continuous improvement.

We would be pleased to work with the TIO to consider this issue further.

Figure 8: Extract from the EWOV's complaint form

\* How many times have you contacted your energy or water company about this issue?

0

1

2

3-5

More than 5

Unable to get hold of

In relation to more the TIO providing more detailed guidance more generally, Communications Alliance acknowledges the work being done to develop guidance on issues associated with the new Terms of Reference, including attempts to more clearly articulate issues that will (and will not) be taken into account when considering complaints about devices.



Communications Alliance provided comments on the draft guidance on complaints about devices, raising concerns that the guidance did not provide the required clarity about the TIO's scope and jurisdiction in this area (see our [submission](#) for details). The final guidance has not yet been published, so we cannot comment on whether our concerns have been addressed. However, we understand that the intention is for the TIO to include case studies as they become available and that the TIO also intends to update/amend the documents as required, which is commendable.

Finally, we acknowledge the guides and case studies provided on the [website](#), but would like to encourage the TIO to consider how easy it is for website users to find detailed information on issues. While we understand that the revised website aims to simplify information – which is positive – the result is that some information that was previously outlined in position statements, on one page (accessible through 'one click'), is now spread out on numerous pages (requiring three-plus clicks)<sup>2</sup>. Other information is, however, is still available through 'one click' for example, information about complaints about [infrastructure and property](#).

*Staff Assistance, Use, Acceptance by Office, Non-adversarial Approach, Legal  
(Practices 1.16 to 1.29)*

Practice 1.16 requires that 'The office's staff have the ability to handle complaints and are provided with adequate training in complaints handling.' and practice 1.19 that "The office's processes are simple to understand and easy to use.'

Communications Alliance does not have visibility of TIO's staff training practices, nor its processes. However, as with all organisations, we suggest that there is room for improvement in both areas. For example, as examples cited earlier illustrate, it would appear that complaints are not always handled in accordance with the TIO's Terms of Reference or other published material on the issues. A review of the TIO's processes and focus on frontline staff training could be beneficial.

Practices 1.22 and 1.23 require that "The office assesses complaints received for timely and appropriate action: for referral to an alternative avenue for justice, or a regulator; for liaison where there may be an overlap in jurisdiction with another dispute resolution office; or for acceptance as a case by the office." and "The office follows a defined and transparent process for excluding potentially vexatious or frivolous complaints to ensure appropriate use of the office's resources and minimise the risk of unreasonable cost increases."

There are not obvious, publicly available performance metrics available to enable easy evaluation of these issues. However, Communications Alliance's members report agreed complaint reclassification rates of around 8-9 percent, or even higher, over the last 5 or so years. That is, 8-9 percent of complaints accepted by the TIO and passed on to individual providers are reclassified after the provider challenges the classification. Reasons for reclassification include:

- cases that are accepted without any effort to confirm whether the complainant has attempted to resolve the issue directly with their provider,
- cases referred that have already been resolved,
- cases accepted about issues that are outside of the TIO's jurisdiction – issues that clearly should not have been accepted by the Office and instead should have been referred on to an "alternative avenue for justice, or regulator", and
- cases allocated to the wrong TIO member.

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<sup>2</sup> for example, to find information on billing now requires three clicks - [one](#), [two](#), [three](#). Previously, the information was provided in a [position statement](#), through one click.

There will, of course, always be some re-classifications – there's always a degree of human error and/or opacity in relation to the nature of the complaint. But the fact that senior TIO managers generally readily accept that mistakes have been made suggests that these are not complicated issues, and that better processes and training would reduce the volume of incorrectly classified or accepted complaints. In addition, we are aware that in the first quarter of 2022, a very high proportion of some members' reclassification complaints related to cases that are outside of the TIO's jurisdiction – cases that should not have been accepted.

The importance of ensuring that staff are well trained and that processes are very clearly defined will only increase over time as the market continues to evolve and offer ever-more diverse products and services (energy, streaming, etc), many of which will not be within the TIO's jurisdiction.

Specifically in relation to cases accepted about issues outside of the TIO's jurisdiction, the TIO may again look to the design of its online complaint form (and equivalent frontline staff process /script). A simple addition of questions about the complaint in question could effectively filter out a high number of 'out of jurisdiction' complaints, particularly in relation to bundled services.

In addition, we cannot see evidence that the root causes of the classification errors are regularly explored, meaning that the issue persists. This is costly and inefficient. Efficiency is further discussed in our response to the questions about Benchmark 5.

In relation to frivolous or vexatious claims, Communications Alliance believes that the TIO office's systems and processes would benefit from review to ensure that such claims are more reliably excluded at the 'first gate'. One barrier to this is that currently, members report that TIO staff do not engage at all with members during the initial (level 1) investigation process. The first-line staff appear unwilling to seek advice or clarification, even where a provider has asked for adjudication. This is a particular problem when the claim relates to a technical issue, when the TIO's specialist team *could* provide useful advice to colleagues dealing with complicated and unfamiliar technical concepts, if they were asked. This leads to some cases unnecessarily dragging on, unable to be resolved until the complaint is escalated, at which point the industry member is able to explain the issue and get a second or independent assessment.

As an additional point, Communications Alliance suggests that once such cases are resolved, the TIO consider whether it could develop a guide to help inform similar cases in the future. This would increase certainty and efficiencies for all parties.

## Benchmark 2: Independence

### Principle

To ensure that the processes and decisions of the office are objective and unbiased and are seen to be objective and unbiased.

### Key practices

#### The Decision-maker, Staff, Overseeing Entity, Transparency (Practices 2.1 to 2.9)

Communications Alliance has no concerns about any perceived or actual conflicts of interest of the decision-maker (the Ombudsman), and we believe that the Board, as the overseeing entity, appropriately fulfils its obligation to take account of both consumer and industry interests and needs.

Communications Alliance does have some concerns about the perceived impartiality of the some of the TIO's media and its case-handling process on occasions, however.

For example, the screenshot at Figure 9 shows a recent TIO social media post (Facebook).

Communications Alliance has no problem with the TIO educating consumers but suggests that this post's should focus not on compensation, but rather on resolving issues and the root causes of complaints.

We note that this kind of post appears to be a recent phenomenon; a quick analysis of the TIO's Facebook posts over the last year shows that they are generally educational, informative and balanced (see Figure 10) – although we note that, in line with our earlier comments, consumers' obligation to attempt to resolve issues with their telco in the first instance, is not clear.

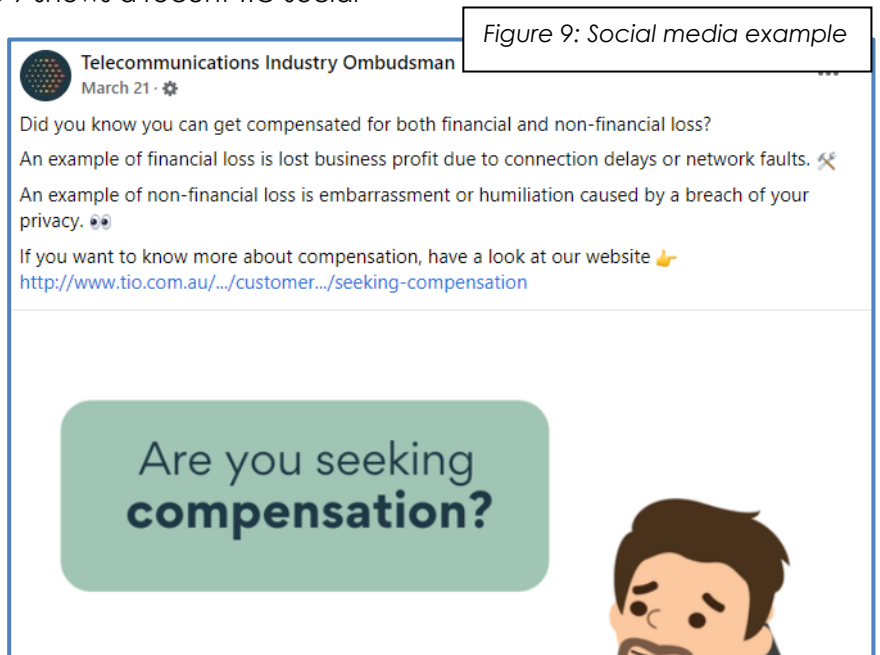
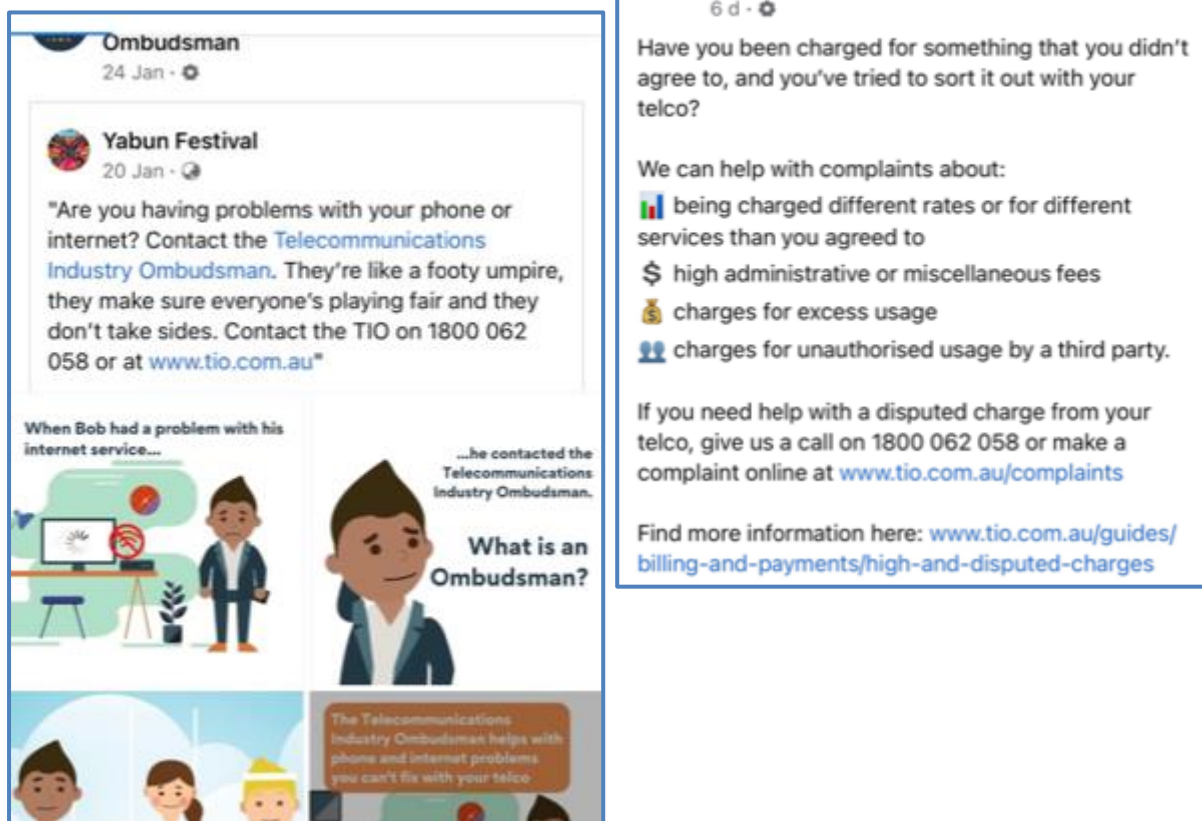


Figure 10: Further social media examples



### Funding

(Practice 2.11)

Communications Alliance has concerns about the time taken by the TIO to manage some cases. Although this could be a symptom of inadequate funding, we believe that overall funding is not the issue, but rather efficiency, priorities and staff assignment (i.e. which teams/projects they are assigned to), as complaint numbers have been dropping while TIO costs have increased. This is further examined against Benchmark 5.

### Terms of Reference

(Practices 2.12 and to 2.13)

Practice 2.12 requires that "Changes to jurisdiction of the office are made in consultation with relevant stakeholders...", and the discussion paper specifically invites feedback on the new Terms of Reference (ToR), including the implementation of the revised financial limit and the new power to award compensation for non-financial loss".

Communications Alliance has raised many concerns with the TIO about its ToR revisions, and the associated consultation processes, both as part of the consultation process before changes were made, and subsequently.

As detailed in our [2020 submission](#), there were many substantial changes to the ToR, yet a number of the changes were not mentioned in the consultation paper. We raised concerns that this oversight may have resulted in the TIO and its Board not receiving full and accurate input on the proposed changes.

Further, there appeared to be a disconnect on occasions between verbal advice provided by the TIO and its subsequent actions. Communications Alliance believes that there was genuine intention at the staff level to take all feedback into account, so some of the disconnect may simply have reflected the volume and breadth of input that the TIO was attempting to consider.

Other issues raised in our 2020 submission that we still hold concerns about include:

- The TIO's expanded jurisdiction/remit, particularly in relation to devices. As already noted, the TIO is in the process of drafting guidance on this issue. It is not yet published, but we are concerned as to whether it will, in its final form, clearly enough define what the TIO will, and will not, consider. We are also concerned about overlaps in jurisdiction between the TIO and other schemes or regulatory bodies, and our members have already reported cases of customers lodging complaints with more than one party. For example, some consumers with complaints relating to equipment or devices that are on a finance contract have lodged complaints with the TIO after already having lodged a complaint with the Australian Financial Complaints Authority (AFCA).
- Regarding the increase in the compensation limit, Communications Alliance does not believe that \$100,000 is an appropriate financial limit for TIO decisions, and it is not in line with 6.2 of the [Government's Benchmark Key Practices](#), which states that "The scope of the office (including the decision-maker's powers) is sufficient to deal with...complaints involving monetary amounts up to a specified maximum that is consistent with the nature, extent and value of customer transactions in the relevant industry."
- Compensation for non-financial loss. We do not believe that non-financial loss compensation is appropriate. Not only are the issues complex, with claimed losses difficult for consumers to substantiate, but they appropriately require provision of evidence by the customer that the TIO does not typically request, creating an unnecessary burden of proof which is challenging for all parties involved. We believe these issues are best left to the courts or bodies with enhanced quasi-judicial capabilities. Additionally, we have ongoing concerns with the lack of consistency in decisions by different levels of officers at the TIO. Adding the subjectivity of non-financial loss would raise serious risk for the TIO in light of those concerns. It is too early to judge how fairly and consistently the TIO is managing such claims, but we are concerned that the TIO's published guidance on the issue is not specific enough to provide the necessary guidance, and note that the tag 'non-financial compensation' is now in the top 5 complaint categories referred by the TIO.
- The TIO's approach to systemic complaints – discussed more under Benchmark 4.

For further details about our concerns in these areas, please refer to our [2020 submission](#).

## **Benchmark 3: Fairness**

### **Principle**

The procedures and decision-making of the office are fair and seen to be fair.

### **Key practices**

#### *Final Determinations, Procedural Fairness, Provision of Information (Practices 3.1 to 3.10)*

The TIO clearly articulates its vision to be fair and transparent. Communications Alliance respects this and believes that the outcome for all parties is reasonable in the majority of cases.

There are some concerns, however. For example, as the following comment from one of our members illustrates, there is some pressure for telcos to compensate complainants when it is not justified:

*“Often, Dispute Resolution Officers will hint or suggest that we should offer a ‘pity credit’ to close the case off.”*

We also have concerns that providers disputing a consumer complaint are asked to provide considerable evidence to substantiate their case, yet the complainant appears to be asked for very little evidence to substantiate their case.

Finally, members report that TIO case managers will often want to have the complaint resolved without them having to go through the lengthy process of writing up a written recommendation, creating delays and increasing the pressure to offer ‘pity credits’.

#### *Confidentiality and Review of Decisions and Determinations (Practices 3.11 to 3.13)*

Communications Alliance has no concerns about the TIO’s handling of information. Staff are professional and appropriately maintain confidentiality.

We would, however, like to see more evidence that ‘The office establishes a process to review decisions and determinations for consistency and compliance, such as selective sampling and auditing of cases’ (practice 3.13), as members report that the handling of cases at the conciliation stage in particular, can be very subjective.

A further issue of fairness relates to the TIO’s decision in mid-2018 to remove the right of a provider to challenge a reclassification decision more than once. Receipt of a request to reclassify a complaint can be the first time the TIO has investigated whether its consideration of a complaint was appropriate. This means that, where there is an error in the reclassification or charge dispute process, there is no formal mechanism to have this error addressed. This can result in members having to pay for matters that should not have been assigned to them, either because there is no connection to the complaint, the matter is out of jurisdiction, or the complainant did not follow the correct process before escalating the complaint to the TIO.

## **Benchmark 4: Accountability**

### **Principle**

The office publicly accounts for its operations by publishing its final determinations and information about complaints and reporting any systemic problems to its participating organisations, policy agencies and regulators.

### **Key practices**

*Procedures, Final Determinations, Responding to Complainants and Participating Organisations, Annual Report*

*(Practices 4.1 to 4.5)*

Practice 4.2 requires that: The office makes available written reports of final determinations and the reasons for the decision to participating organisations and any interested bodies, including: a) educating participating organisations and the community; and b) demonstrating consistency and fairness in decision-making.

The TIO publishes written reports relating specifically to systemic investigations, including “provider tips” and “consumer tips”, and publishes information on determinations. The former are arguably a more useful educational tool than the latter, which are listed simply by date order.

As mentioned earlier, Communications Alliance has concerns about the high number of complaint reclassifications – creating a substantial workload for both providers and the TIO. In addition to the resourcing costs, there is potential for these errors to create more serious, reputational damage, as quarterly published complaint numbers may include a relatively large number of complaints that are later reclassified (and therefore should not have been included in published data). This has caused particular concern this year and is an issue that Communications Alliance is currently raising directly with the TIO.

Although Communications Alliance understands the TIO Annual Report includes corrected data (so will not match the published quarterly data), this is of little comfort to the Providers who receive negative media coverage on the basis of the quarterly data. Further, as noted earlier, it would not appear that the TIO has prioritised work to consider how these classification errors could be reduced. Given the TIO’s expanded jurisdiction and our concerns about what the lack of clarity on exactly what the TIO will or will not consider, we would expect reclassification requests to increase. We therefore suggest that this issue be prioritised.

### *Systemics*

The issues paper specifically asks for feedback on the TIO’s identification of systemic issues for investigation, its conduct in running investigations, and its ability to use findings to contribute to system improvement.

Communicators Alliance acknowledges that systemic investigations can lead to improved industry practice and lasting, beneficial change. However, over the last few years, the burden of the information requests has increased substantially, with more requests, for ever-more complex and detailed information, and requests including complaints that had reasonable explanations, have already been resolved and should not have been the subject of formal information requests, and covering areas already the subject of information requests from the ACMA.

The ‘conversion rate’ of information requests to meaningful identification and action targeting systemic issues is low, we believe, reached unsustainable and unreasonable levels,

with the regulatory burden of responding to systemic requests now outweighing benefits gained.

Further comments about the problems experienced are outlined below, followed by some proposals about how the identified issues might be addressed.

### **Identification of systemic issues**

The TIO's new ToR and accompanying guidelines about its approach to systemic investigations are very broad and do not necessarily relate to complaints. The TIO's ToR states that:

"A systemic issue is one that has **or is likely to have** a negative effect on a number of consumers or a particular type of consumer" (emphasis added)

The guidelines note that the TIO will identify "possible systemic issues through a range of methods, including through:

- handling complaints
- analysing complaint trends, or
- **receiving other information that may suggest a systemic issue, including information from members, consumer groups, the media or regulators** (emphasis added).

This does not appear to be consistent with best practice guidance, which is clearly focusses on complaints, and requires that there 'many' of them. The definition included under Benchmark 4: Accountability, says:

"Systemic problems can refer to issues or trends arising either out of many complaints about one participating organisation or out of many complaints (which are essentially similar) about more than one participating organisation."

As noted earlier, we believe that the TIO's change of focus has led to an unsustainable number of information requests, without commensurate consumer benefit:

*"We received a systemic investigation notice over some 60 cases raised over an 18-month period, that really feels like a stretch."*

*"Last year, we noted a significant increase in systemic investigations year-on-year. Whilst this may have partially related to a temporary higher share of complaints, the increase in investigations far exceeded our proportion of complaints. We addressed this with the TIO directly, outlining the operational difficulties this presented. Whilst the TIO were unable to commit to reduced Systemic Investigation activity, we observed a decrease for several months post this meeting. This may indicate the TIO accepted our feedback and recognised the operational pressures that multiple simultaneous investigations posed on a finite workforce."*

Members report receiving systemic investigation requests as a result of only one complaint, even when that one complaint is 18 months' old. While we acknowledge that an old complaint could be relevant to investigations in certain circumstances, we suggest that those circumstances would need to include evidence that the underlying issue is ongoing. If no further complaints have been received about the issue in the preceding 18 months, it would appear that the issue was a one-off, or has been resolved. No attempt appears to be made to check these facts before a formal notice is issued.



In addition, process and communication issues add to the burden. For example, members report that the TIO does not appear to take detailed notes at the referral stage and does not accept any provider notes about those referrals. This means that tags created by the initial information may be wrong, creating uncertainty about whether referrals subsequently included in systemic investigations are relevant. Further, poor internal TIO communication has resulted in issues being considered as systemic when they have another explanation and had already been dealt with, as the following example illustrates:

*“We informed the TIO (Member Section) that we would be doing a debt sale for [RSP], advised them how many accounts were affected and warned them that they may see an increase in complaints as a result. When complaints increased as a result of the sale, as predicted, we received a systemic notice from the TIO. On questioning, the systemic team officer advised that they had not received any information from the TIO members' team about the sale. In the end, they closed the debt sale part saying that the number of complaints in proportion to the number of accounts sold was very low – something they would have seen if the members' team had communicated with the systemics team.”*

### **Conduct and timeliness of investigations**

Communications Alliance members report that at times, it can feel like a systemic investigation notice is more a request for providers to educate the TIO on various processes, or that it a 'fishing process' to attempt to find problems. Further, providers report that systemic investigations focus on questioning internal processes and procedures, instead of focusing on the outcomes – the actual impacts on consumers and complaints.

This focus seems inappropriate. Communications Alliance suggest that the TIO should not be focused on or at all involved in providers' commercial or operational decisions, but rather whether providers are delivering appropriate outcomes for consumers.

We also suggest that the TIO should be more inclined to engage in discussion with providers in the first instance, rather than launch too early into a systemic investigation. Questions such as 'how does this process work?' or a discussion about whether an observed uptick in complaint numbers could be related to a change in internal processes that has already been noted and addressed, would likely filter out issues that would not result in full systemic investigations will not lead to improved consumer outcomes and, thereby reducing the amount of time and effort currently devoted to systemics. Answering questions in meetings – informally – can often require fewer resources from providers than formal written questions.

On the issue of timeliness of investigations, Communications Alliance notes that TIO members are expected to provide a full comprehensive response to the TIO within strict timeframes – though we do acknowledge that the TIO displays flexibility when extensions are requested for valid reasons. However, the TIO can take many months to review information provided and provide any feedback or updates on the issues in question. While some of the TIO's timeframes may be related to the TIO monitoring the issues – checking that remediation actions taken have resulted in complaint volume reductions – we would appreciate better communication and transparency about the process. Our members would also like to see closure notices being included as a standard part of the systemics process, as some providers report having very old systemic notices still active in their systems. We suggest that this could be a shared responsibility between individual providers and the TIO.

### **Regulatory overlap**

The TIO should not be launching a systemic investigation on an issue when the same issue is already being dealt with by an industry regulator.

For example, Communications Alliance and its members have invested significant time and effort over the last year to work with the ACMA (and to a lesser extent the ACCC) on issues relating to SIM-swaps and scams and frauds more broadly. The TIO launching a duplicative process – including requesting more information and taking up additional resources – was unhelpful, impeding the objectives of all involved, rather than assisting.

The information requested by the TIO for a financial hardship systemic was similarly problematic from a resourcing and outcomes perspective, with providers having spent significant time gathering and providing data to the ACMA on the same topic.

We note that the ACMA and ACCC can request data from the TIO to help them consider issues and suggest that it would be more appropriate and efficient for the TIO to provide the existing data it holds about complaints about a specific topic to the regulators on request, rather than duplicating process and significantly increasing providers' workload.

We further suggest that, rather than the TIO unilaterally initiating systemic investigations on the basis of media reports or consumer group concerns, with no or little evidence of associated complaints received by the TIO, such issues should be handled by the regulators (ACMA and ACCC), with the TIO returning its focus to complaints-related systemic investigations. If the regulator considers that TIO data would be helpful in their consideration of the concerns raised, there are MOUs in place to facilitate such requests. We also suggest that the TIO should respond with data that it already holds, rather than requesting a raft of new information that may not be relevant at that point of the investigation but will require considerable resources to collect, review and provide to the TIO. Should the investigating regulator decide that the issue in question warrants further information, that regulator can request direct information from providers.

### **Proposals on a way forward**

In addition to the points already noted, we suggest that the TIO should consider the burden on members when requesting information, including ensuring that the TIO is coordinating internally on systemic investigations and considering the impact of the potential systemic issue against the burden of an information request. We also suggest that the TIO consider limiting the number of systemics in any given year. With careful consideration of which issues should be investigated as systemic issues, we believe that there would be no detriment to consumer outcomes. It would also be in accordance with government policy to avoid unnecessary/excessive regulatory burden, particularly in an environment of strong downward trends in complaint numbers.

We also suggest that the TIO more routinely consider the benefit of consumer education, in line with its guidance that: *Where the possible systemic issue is primarily driven by a lack of consumer awareness, we may raise awareness about it.*

Finally, Communications Alliance invites the TIO to consider an offer of training sessions conducted by its industry members on issues recognised as problematic. This might include, for example, how to differentiate between an NBN service and other telco when allocating complaints. Or training on technical issues.

Communications Alliance would be happy to facilitate further discussion on this suggestion.

## **Benchmark 5: Efficiency**

### **Principle**

The office operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance and provides value for money.

### **Key practices**

#### **Appropriate Process or Forum**

*(Practices 5.1 to 5.6)*

Earlier parts of this submission highlighted a number of concerns relating to the TIO's front-line handling issues, including consumers not routinely being advised that they must attempt to resolve the issues directly with their telco in the first instance, and concerns about how regulatory overlap will be managed, particularly in relation to potential forum shopping in relation to complaints about devices. We are aware that the TIO has a Memorandum of Understanding with the ACMA, TIO and ACCC, but are unclear as to whether the TIO has the processes and systems in place to ensure there is not double-handling or overlap between it and the State and Territory Fair Trading bodies.

Another concern is that it would seem that the TIO does not have process or systems in place to filter cases on receipt to exclude cases that are clearly not relevant, or frivolous. No attempt appears to be made to check the potential merits of the case until a conciliation is underway and a recommended outcome is produced. For example, one of Communications Alliance's members advised:

*"We've had cases referred through where consumers are advising they're seeking reimbursement for AirBnB. Another customer tried to claim at least a month of rent for a new business location."*

This is not helpful. In addition to the cost imposts, it leads to poor relationships; complainants who have invested considerable time and effort into a case they believe has merit, with expectations of an outcome in their favour, will clearly feel animosity towards both the TIO and their provider when they are subsequently advised that they have no case.

It would be much more efficient, cost effective and helpful to all parties if there were processes in place to ensure that cases that clearly will not succeed are identified and rejected early.

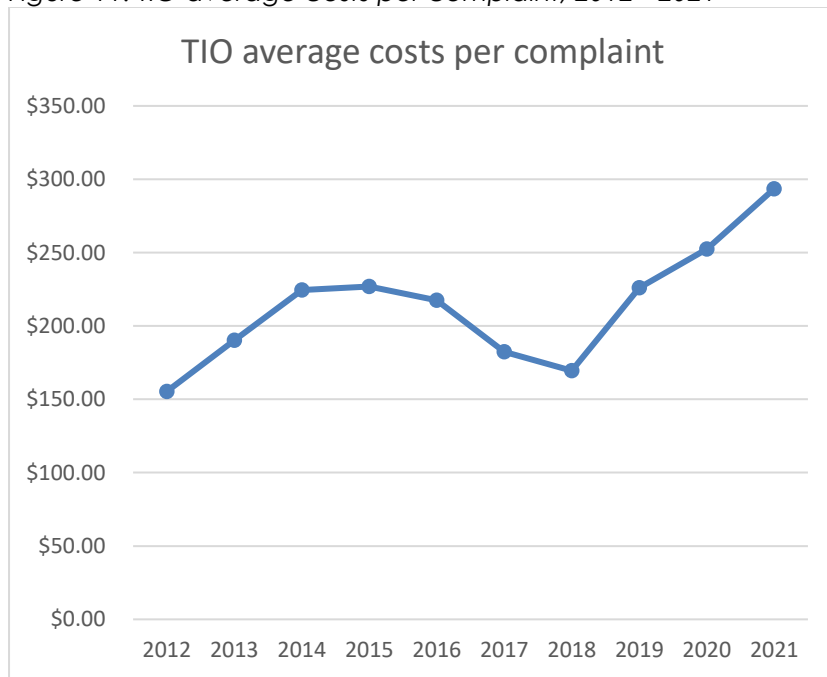
*Timeliness, Tracking, Monitoring, Professionalism.*  
(Practices 5.7 to 5.17)

The TIO is sometimes slow to investigate and make decisions on cases. Communications Alliance members report that decisions on recommended outcome on adjudication can take months. The problem is often exacerbated by the TIO not responding in a timely fashion to industry members' requests for further information on issues under investigation. This leads to the telco's own timeframes increasing, raising expenses incurred. Problems are further exacerbated where referral quality is poor. That is, where the information being provided by the TIO to its members about a complaint is not of sufficient detail or quality to allow the Provider to efficiently respond. This would appear to be a staff training issue.

*Overall*

The overall number of complaints has dropped consistently over the last few years, with the number of complaints received by the TIO decreasing by 38 percent over the past decade<sup>3</sup>. Total operating costs over the same period have increased by 16 percent. This means that the average cost per complaint has increased quite substantially over time, particularly in the last 3 years, as illustrated in Figure 11.

Figure 11: TIO average costs per complaint, 2012 - 2021



While we recognise that the TIO has fixed operating costs to cover and there are other factors in play, such as inflation, it would also be reasonable to assume that some of the observed increases are attributable to issues raised within this submission, including double handling as a result of reduced quality information about rights and obligations and an increased number of systemic investigation requests.

Communications Alliance would welcome increased transparency about costs, to include clear performance metrics on the number of reclassifications required (discussed earlier), and other relevant data (which could be as part of a continuous improvement program), as well as increased transparency about costs for individual complaints.

<sup>3</sup> source: TIO Annual Reports, 2012 - 2021

For example, conciliation cost is determined by the time the TIO spends on a complaint. However, there is no tangible way for a TIO Member to quantify the TIO's effort/cost. Members advise that they often receive simple conciliations that should be able to be closed quickly. However, because the TIO Case Officer takes an excessive amount of time to resolve them, the billed conciliation cost is higher than it should be. Further, in many of these cases, the TIO officer will often not return the Provider's emails or calls, adding to case length.

Communications Alliance suggests that TIO Members should be able to independently assess and verify that the conciliation charge aligns with the complexity and time spent on the case. We further suggest that TIO Members are provided mechanisms to provide feedback on the TIO's performance and conduct, with oversight provided by an independent resource or body.

A further concern with costs relates to the TIO's practice of sending a survey to the complainant 14 days post-referral to ask if their complaint has been resolved. If they advise that it has not, the TIO automatically escalates to conciliation. This approach appears unreasonable, as it provides no opportunity for independent assessment of the consumer's report that their case has not been resolved. We would support the TIO conducting random surveys of complainants and members to provide feedback on their experience in working with the TIO, but we do not believe it is necessary or helpful to proactively seek out opportunities to conciliate, with the resultant costs and increase in complaint numbers.

## **Benchmark 6: Effectiveness**

### **Principle**

The office is effective by having an appropriate and comprehensive jurisdiction and periodic independent reviews of its performance.

### **Key practices**

*Coverage, systemic problems, office performance, internal dispute, compliance and periodic independent review*

*(Practices 6.1 to 6.16)*

Communications Alliance believes that the TIO has sufficient power and scope to deal with the vast majority of complaints in the industry, and that the general community has confidence in the office.

As stated earlier, we have concerns about the scope of coverage and overlap, particularly with the new Terms of Reference, and we have concerns with the office's efficiency, some staff training and flexibility (particularly in relation to seeking help to deal with technical issues). From a consumer's perspective, however, we would think that the TIO is broadly doing a good job and would like to acknowledge the work of the members' team, and of the key TIO staff who are always willing to discuss issues with Communications Alliance.

## **Other issues**

### **Member and stakeholder engagement and outreach activities**

Communications Alliance and its members find the TIO staff generally professional, approachable, and willing to discuss issues. We acknowledge the effort that the office has gone to since the last review to improve stakeholder engagement. In particular, members

have comments that the TIO's Member Services team are responsive and helpful in resolving issues when approached.

We suggest, however, that there may be benefit in the TIO running a collaborative forum for members, allowing them to consider and discuss process issues as a group, in collaboration with the TIO. This could include a focus on best practice and effective complaints resolution.

### **Land access**

Communications Alliance recognises that the TIO's role as a mediator in this space is difficult and complicated, with parties dealing with grey areas of the law and issues taking a long time to resolve. We also appreciate that the TIO is not a court of law, so its decisions on land access issues do not set a precedent – which is a problem when all parties would appreciate clarity to guide their expectations and operations.

We note the very recent update to the publication on [Guidelines on Land Access Jurisdiction](#) (14 April 2022) and acknowledge the TIO's ongoing work to try to provide more certainty about its handling of land access-related issues.



Published by:  
**COMMUNICATIONS  
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