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To: Telecommunications Industry Ombudsman

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

**RE: Proposed amendments to the TIO Terms of Reference**

The Internet Association of Australia Ltd (**IAA**) thanks the Telecommunications Industry Ombudsman (**TIO**) for the opportunity to respond to the consultation on the proposed amendments to the TIO's Terms of Reference (**ToR**).

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers (**ISPs**), many of whom are NBN retail service providers (**RSPs**) and are subject to the TIO Scheme. IAA itself is a licensed carrier and also a member of the TIO though our services are primarily provided on a wholesale basis due to the nature of our business being the supply of peering services. This response is therefore primarily in representation of our members, as well as the public good of the Internet and broader telecommunications sector.

In general, we welcome the review of the ToR to ensure that it reflects up to date and accurate functions and responsibilities of the TIO, and any changes to legislation affecting the telecommunications sector. However, we are concerned that some of these proposed amendments are not aligned with existing legislation. We do not believe that the role of the TIO is to introduce new obligations that go beyond what is stipulated by government or regulatory bodies. As of late, we have been concerned about the growing divide between the expectations and understanding held by consumers, land owners and/or occupiers, industry and regulators in relation to the standards of telecommunications service provision, and ancillary matters such as complaints handling. Thus, we are eager to ensure that the proposed changes to the TIO's ToR will not further widen this gap.

Ultimately, we strongly support and recognise the importance of the TIO and as with any thriving sector, understand the need for an impartial ombudsman. To that end, we are keen to work with the TIO, consumers, industry and other stakeholders to ensure that the ToR is fit for purpose and will better serve the telecommunications sector.

## OUR RESPONSE

- 1. Do the proposed changes successfully clarify the TIO's power to handle SIP connection complaints following the recent legislative changes? If not, what other ToR amendments should be made to achieve this purpose?**

In general, we support the ToR clarifying the TIO's power to handle complaints regarding SIP connections. However, we urge the TIO to make further amendments to the ToR to clarify the complaints handling process for complaints from consumers about an issue with an underlying carrier's network (such as that provided by a SIP). Currently, carriage service providers are held responsible for issues outside of their control. This is an unfair and ineffective approach as, in most cases, there is no way for the carriage service provider to provide a resolution. Given the TIO's powers to handle SIP connection complaints, there should be processes in place to ensure that complaints are being dealt with at the appropriate level.

The relationship between a RSP and underlying wholesale provider, and their respective responsibilities and control over telecommunications networks can be complex and difficult for consumers to understand. Thus, we believe that this is exactly the type of situation where the TIO is required to mediate between consumers and RSPs, and help the parties come to a common understanding, while identifying the correct party required to resolve the issue.

We believe this could be addressed under the section 'How we handle complaints' of Part 2 of the ToR. This section should make clear that the TIO will work with RSPs to determine the nature of the issue. Where the issue lies with an underlying carrier's telecommunications network, such as that of a SIP, and the RSP has no reasonable means to rectify the issue, then that RSP will not be held responsible for the complaint. In that situation, therefore, the RSP will also not be subject to paying the associated complaint fees to the TIO. It may also be relevant to address this role of the TIO under the section 'We may stop handling a complaint in certain circumstances' of Part 2 of the ToR which could clarify that in some instances, it may be reasonable for the TIO to stop handling a complaint against a RSP where the issue is outside of the RSP's control. We also see a case where it may be dealt with under Part 4 of the ToR.

**2. Do the proposed changes support the TIO implementing recommendations 2, 12 and 17 of the 2022 Independent Review of the TIO? If not, what other ToR amendments should be made to address these recommendations?**

Our members have raised concerns about the below amendments to the ToR, which we believe do not support the recommendation 17 or is best suited in the circumstances.

In relation to clauses 2.3(d) and 2.38(m), it is not sufficiently clear as to what 'non-compliance' and 'non-compliant' means. It would be helpful if it was made clear that this specifically refers to compliance with the land access processes set under the relevant legislation.

Furthermore, we do not agree with the proposed drafting of clause 6.2 to the extent it refers to 'occupiers'. It is not a requirement under any of the relevant legislation or regulation that a telecommunications provider's complaints handling policy relate to land access processes. We believe that the inclusion of 'occupiers' in this clause would in effect, create a new obligation for telecommunications providers that goes beyond what is provided in legislation. We also note the existence of the *Telecommunications Code of Practice 2021* (**Code of Practice**) which makes multiple references<sup>1</sup> to a document issued by the TIO in respect of arrangements to object to land entry activity.<sup>2</sup> The Code of Practice and Land Access Guideline thus sufficiently set out the rules relating to land access arrangements, including requirements for notifications and objections, and the TIO's

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<sup>1</sup> See ss 2.25(2), 4.25(2), 6.25(2), and 6.33(4) of the Code of Practice.

<sup>2</sup> We understand the TIO has issued 'Guidelines on Land Access' (**Land Access Guidelines**) for this purpose.

role during these processes. We believe that including ‘occupiers’ in relation to a telecommunications provider’s complaints handling policy and processes will only unnecessarily raise confusion for both the provider and occupier.

### **3. Do the proposed changes adequately correct drafting issues in the current ToR?**

In general, we support the consolidation of the use of ‘consumer’ and ‘customer’ in the ToR to improve clarity. However, we do not agree with the proposed definition for ‘consumer’. We note that the guidance information provided on the TIO’s webpage about ‘small business or not-for-profit’ companies is vague and ambiguous and does not align with the definitions used in legislation specific to the telecommunications sector. This also makes it confusing for both industry and consumers and can have the adverse effect of further widening the gap between standards set by legislation versus expectations of consumers. Thus, we recommend the adoption of language and definition used in the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* to improve clarity and cohesion between legislation and the TIO’s processes.

We also take this opportunity to note that in Part 8 of the ToR, some of the terms under the ‘Definitions’ section are out of alphabetical order; namely ‘Consumer’, ‘Ombudsman’ and ‘Qualifying carriage services’.

## **CONCLUSION**

Once again, IAA appreciates the opportunity to contribute to the proposed amendment to the TIO’s ToR. We reiterate our commitment to working with the TIO and other stakeholders to ensure the development of a ToR that will clearly set out the TIO’s function and powers which in turn, can greatly contribute to improved relations and outcomes within the telecommunications sector.

## **ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA**

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning seven states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand. IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark  
Chief Executive Officer  
Internet Association of Australia