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Telecommunications Industry Ombudsman

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**RE: TIO Member Guide – Reasonable steps to inform consumers and occupiers of IDR and EDR**

The Internet Association of Australia Ltd (**IAA**) thanks the Telecommunications Industry Ombudsman (**TIO**) for the opportunity to respond to its consultation on its proposed ‘Member Guidance - Reasonable steps to inform consumers and occupiers of IDR and EDR’ (**Member Guidance**).

IAA is a member-based association representing Australia’s Internet community. Our membership is largely comprised of small to medium sized Internet service providers and retail service providers, many of which would be members of the TIO Scheme. IAA itself is also a member of the TIO Scheme, though our business is primarily in wholesale service as a provider of peering services.

Firstly, we appreciate the TIO’s efforts in developing guidance material to assist industry better understand the new requirements under the TIO’s revised Terms of Reference (**ToR**), as well as the TIO’s continued engagement with industry to ensure productive outcomes for the telecommunications sector. In general, we believe there should be clear communication between providers and their customers and occupiers about the complaints processes and methods available, including the provider’s internal dispute resolution (**IDR**) processes, as well as the external dispute resolution (**EDR**) provided by the TIO.

However, we are concerned that the proposed Member Guidance seems to encourage consumers and occupiers to seek EDR prior to the conclusion of the IDR process. From the outset, IAA and our members agree that where a provider’s complaints handling processes have failed a consumer, it is essential the consumer has avenues for recourse, and these should be readily accessible. However, the overall complaints handling legislative and regulatory framework in the telecommunications sector, should encourage and facilitate a healthy relationship between consumers and their telecommunications providers, including in complaint scenarios. Indeed, as recognised in the Member Guidance, this relationship should be one of “confidence and trust”. We agree with the TIO’s view that this is the shared responsibility of all stakeholders. To that end, the Member Guidance should reflect the sector’s overarching complaints handling processes framework wherein the EDR process exists to serve as a last-resort alternative where there has been a failure in the IDR process.

In addition, we believe that the TIO's expectations in regard to the IDR and EDR process should be harmonised with the complaints handling process framework set out by the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* (the **Standard**) as much as possible. The Member Guidance should in turn reflect this harmonisation. We note that the dual framework of the Standard, and the complaints handling requirements under the TIO Scheme is likely to cause confusion for many telecommunications providers. In particular, there is a disproportionate burden placed on smaller entities that do not have large regulatory teams (if any) to unpack the complex regulatory landscape of the telecommunications sector, given the overlapping compliance obligations under the various legislative materials and industry schemes. Thus, any additional expectation established under TIO Scheme should be as closely aligned to the Standard and other regulatory instruments as possible.

## OUR RESPONSE

### 'REASONABLE STEPS' OBLIGATIONS

Again, we again express our appreciation for the development of the Member Guidance to assist providers in meeting their obligations under the TIO Scheme. However, to that end, we believe it would be helpful if this Member Guidance could clarify and expand on the relationship between the Standard, the TIO Scheme and the 'reasonable steps' expectations set out in the Member Guidance.

For example, paragraphs A.1 to A.4 of the Australian Privacy Principles Guidelines<sup>1</sup> by the Office of the Australian Information Commissioner (**OAIC**) clearly set out the purpose and legislative authority (or lack thereof) of the Guidelines. This includes an explanation that though the guidelines themselves are not legally binding, they set out what are mandatory requirements as per Australian privacy law, as well as matters that may be considered by the OAIC in determining what is expected of an entity.

Thus, we would appreciate if, similarly, the Member Guidance could explicitly set out what is required under the Standard: the fact that failure to meet these obligations can result in enforcement action taken by the ACMA, as well as the consequences under the TIO Scheme for failure to meet the 'reasonable steps'. We acknowledge that this has been partly addressed under the section 'Obligations to take reasonable steps to advise consumers and occupiers of IDR and EDR'. However, we believe an expansion of this section to include the above listed information would be further helpful.

Furthermore, we iterate the disproportionate regulatory burden experienced by smaller industry players. It would therefore be very much appreciated if the Member Guidance could serve as an extensive guide on a provider's obligations in respect of the holistic complaints handling framework, by setting out all the requirements under the Standard, in accordance with the TIO Scheme, as well as any other relevant regulatory instrument such as the *C628: Telecommunications Consumer Protections Code (TCP Code)*.

For example in the section for Stage 2, 'Published complaints handling process', it would be helpful for the Member Guide to list all the requirements under the Standard regarding a provider's written Complaints Handling Process, and then provide further information about what the TIO expects to

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<sup>1</sup> [Australian Privacy Principles Guidelines](#).

be ‘reasonable steps’. This would make it easier for entities in their compliance efforts and save them from having to refer to multiple pieces of legislation, regulatory material and other resources such as the ToR.

## STAGE 2: PUBLISHED COMPLAINTS HANDLING PROCESS

### Key information to be included

- *Clarification on what types of contacts or issues will be treated as a complaint (for example, if a consumer makes a simple request for information and does not express dissatisfaction or unhappiness, this will not be considered a complaint.).*

We are concerned that the above paragraph, and the provided example does not clearly set out what the TIO expects as the sort of contact, or expression of a problem, from a consumer or occupier should be treated as a complaint.

As has been previously expressed in our response to the TIO’s consultation on implementing changes to reclassification held in 2024, there is already a gap in understanding between industry, regulators, and consumers about what should be considered a ‘complaint’. However, importantly, the Standard defines a ‘complaint’ as an “*expression of dissatisfaction made to a carriage service provider by a consumer in relation to its telecommunications products or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected by the consumer.*”

In order to ensure clarity and adherence with the framework established by the Standard, the Member Guidance should also clearly set out what is expected of a provider when identifying a ‘complaint’ by reference to the definition provided in the Standard. We also note that the ACMA provides further information and examples on what should be considered a complaint, and what should not be considered a complaint on its website.<sup>2</sup> The Member Guidance should refer providers to this information, as well as expand upon this to state what the TIO will consider reasonable for the purposes of its own scheme.

Furthermore, given that the Standard does not deal with complaints made by an occupier for the purposes of a land access dispute and the inclusion of ‘occupier’ as part of the complaints handling process is a new development under the revised ToR, the Member Guidance should be clearer in what should be considered a ‘complaint’ for these sorts of circumstances. We note that in many cases, occupiers resist a land access request from a telecommunications provider regardless of whether the provider has complied with the requirements of the *Telecommunications Code of Practice 2021* (the **Code**). As a result, communications between an occupier and provider will often involve language that demonstrates dissatisfaction. In such cases, it would be unfair to record and deal with such contact as a complaint, unless there are genuine reasons for the occupier’s disgruntlement, such as the provider’s failure to notify in accordance with the Code.

Indeed, we note that the TIO provides ‘Guidelines on Land Access’ (**Land Access Guidelines**) which helpfully highlights grounds for a valid objection, and the TIO’s dispute resolution processes in

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<sup>2</sup> <https://www.acma.gov.au/how-telcos-must-handle-complaints>.

relation to land access disputes. It would be helpful if the Member Guidance would refer providers to the Land Access Guidelines, and expand on what should be considered a complaint for the purposes of interactions or feedback from an occupier to ensure harmonisation with land access processes under the Code and the TIO's handling of land access disputes.

- *Clear information on the points in time during or following IDR that a consumer or occupier can choose to contact the TIO to access EDR.*

We are concerned that the above paragraph seems to encourage consumers to seek recourse via the TIO prior to the conclusion of the IDR process, and would result in consumers engaging with the IDR in a tokenistic manner. We understand that in some cases, it may be appropriate to seek further dispute resolution via the TIO prior to IDR processes being exhausted. However, we consider this to be in limited circumstances where an IDR process has been inefficient or ineffective due to the faults of the provider, such as its failure to comply with its obligations under the Standard. Again, we consider the EDR in general, should serve as a last resort dispute resolution process, and that all stakeholders involved, including the provider and consumer should act in good faith to initially resolve disputes via IDR before engaging in EDR processes. It is therefore important that the Member Guide also reflects this.

### **Accessibility and availability of the provider's complaints handling process**

- *Publish a link to the complaint handling process that is accessible from any webpage with the member's contact details that the member reasonable controls.*

We interpret this requirement to mean the following:

- *Publish a link to the complaint handling process on every webpage with the member's contact details that the member reasonably controls.*

Although we generally agree that the complaints handling process should be easily accessible, we consider the above requirement to provide a link to the complaint handling process and contact details from **any (every) webpage** unnecessary and goes far beyond the requirements set out under the Standard. We especially note that that the Standard and TCP Code already sets out the various locations where information about the provider's complaints handling process should be included such as the critical information summary.

3. *Making available, on request, a printed copy of your published complaint process.*

In general, we agree that a printed copy of a provider's complaints handling process should be made available to a requesting customer. However, we believe this requires further consideration in terms of its practical implications. For example, we assume that providing a printed copy of the complaints handling process will be effected in one of two ways:

- providing a printed copy via post; or
- requesting the customer to visit a physical store (if the provider operates physical stores) for a copy.

We note that not all providers, especially smaller entities, solely operate online and so will only be able to provide a physical copy by post. In such cases, there will be administrative costs associated

with providing such physical copies. Therefore, we believe that this paragraph requires further consideration as to whether a provider should be allowed to impose a charge for this process, provided that the charge is not excessive.

Provision should also be made to ensure this is not open to abuse, such as where a vexatious customer repeatedly requests printed copies. The process should also be flexible enough such that providers do not incur penalties where genuine postal delays and losses occur.

### STAGE 3: AT THE POINT OF A MEMBER RECEIVING A COMPLAINT

In general, we support the TIO's intention to ensure that the staff of telecommunications providers are able to efficiently identify and resolve customer complaints. However, we reiterate the importance of the Member Guidance reflecting the overarching goal of complaints handling within the sector; for complaints to be resolved in an efficient and effective manner via the provider's complaints handling processes, with the TIO's EDR available as a recourse where IDR has failed.

To that end, we are concerned that the following paragraph under reasonable step (2) suggests that the TIO should be considered as one of the primary methods of complaint handling.

- *Use the knowledge and awareness to provide early and appropriate complaint handling to customers through raising awareness of the TIO.*

We believe this should be amended as below:

- *Use the knowledge and awareness to provide ~~early and~~ appropriate complaint handling to customers through raising awareness of the TIO as recourse in the case that the customer is not satisfied that their complaint has been resolved by the provider's own complaint handling processes.*

Furthermore, we are concerned that the following paragraph (4) is vague and broad, and therefore inappropriate.

4. *All member staff can easily classify, manage, **resolve** and identify complaints in line with the Complaints Handling Standard.*

This seems to suggest that every single employee should be able to resolve any conceivable complaint, which we do not consider appropriate. Not all member staff are customer facing nor will all customer facing staff be able to resolve every complaint for various reasons such as their positions and departmental functions or the complexity of the issue itself. We assume that the intent of this paragraph is to ensure that all staff refer customers to the provider's IDR channel so that the complaint is duly resolved. The Member Guide should be careful so as not to set an expectation that the first point of contact for a customer should be able to resolve **any and all** complaints, and rather that customer complaints should be appropriately dealt with, including escalation where necessary.

### STAGE 4: COMPLETION OR CLOSURE OF A COMPLAINT

We agree that it is very important to clearly signpost alternative options for EDR when a complaint is being closed, however we do not consider it to be the role of members to 'explain the TIO's EDR

services’, rather that is the role of the TIO. *Explanation* would imply a deep level of description of the TIO’s own internal processes that members would not necessarily be able to accurately reflect and would potentially be time consuming and further irritating to a dissatisfied customer. A better term would be ‘referring’ rather than ‘explaining’, so that the item reads:

1. *At the time of verbally informing a consumer or occupier that a complaint is being closed, by referring them to the TIO’s EDR services and given [sic] details of the TIO’s website and telephone number.*

We also consider the following paragraph excessive and are concerned that again, it seems to encourage consumers and/or occupiers to approach the TIO prior to the conclusion of an IDR process, or to only engage in an IDR in a tokenistic manner.

3. *Reference to the TIO is included in all complaint handling correspondence sent to a consumer or occupier and verbally advised if the complaint is being handled over the phone or in person.*

Given the existence of paragraph (2) sets out the obligation to reference and give details of the TIO that confirms the completion or closure of a complaint, this above paragraph (3) should reflect the same process of verbally providing details of the TIO and the option to contact the TIO following the completion or closure of a complaint being handled over the phone or in person.

We propose that items 1 – 3 in the list of ‘Steps a member can take’ be simplified and reduced to the following:

1. *At the time of informing a consumer or occupier that a complaint is being closed, by referring them to the TIO’s EDR services and giving details of the TIO’s website and telephone number.*
2. *This referral should be made verbally where the complaint is handled in person or over the phone; and in writing where the complaint is handled in writing.*

## CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the Member Guidance and we reiterate our appreciation for the TIO, more generally as well as for its engagement with industry in the development of the guidance. We sincerely look forward to continue working with the TIO, consumer bodies, industry and other stakeholders to ensure the improvement of complaints handling processes in the telecommunications industry to ensure trust and confidence in the 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 six 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,

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Internet Association of Australia