

28 June 2019



Ms Gayle Neville-Hill
Company Secretary
Telecommunications Industry Ombudsman (TIO) Limited
email: OptionsPaper@tio.com.au

Dear Ms Neville-Hill

Response to TIO Options Paper: Possible Amendments to Constitution

ACCAN thanks the TIO for the opportunity to contribute to its review of possible amendments to its Constitution in light of recommendations from Consumer Safeguards Review Part A: Complaints Handling and Redress. ACCAN is Australia's peak communications consumer organisation representing individuals, small businesses and not-for-profit groups as consumers of communications products and services.

We welcome amendments to the TIO Constitution that strengthen the consumer voice in Board matters. We also welcome changes that reinforce the independence of the TIO. It is essential that the Board of an external dispute resolution (EDR) scheme is reflective of its broad stakeholder base, without compromising the scheme's independence or integrity. We strongly support the essential criteria an EDR scheme should fulfil according to the Australian and New Zealand Ombudsman Association (ANZOA). We agree with their assertion that an EDR scheme 'must not be—or be able to be perceived as—an advocate for a special interest group, agency or company'.¹

ACCAN wishes to highlight that the measures proposed in this submission are intended to enhance the independence of the TIO Board, rather than secure it. The current governance structure ensures basic principles of independence are taken into account. However, we support changes that would reinforce the TIO's independence even further.

Independence of Directors

Should all of TIO Ltd's Directors be independent of any current employment or engagement by Members?

Potential conflicts of interest that arise from the appointment of Directors who are or have been employed by TIO Members must be managed through the same mechanisms that safeguard all EDR scheme Boards. ACCAN notes that conflicts of interest of TIO Board members are adequately managed through internal governance procedures. However, the Constitution could be amended to

¹ ANZOA 2010, [Essential Criteria For Describing A Body As An Ombudsman](#), p. 2

specify that Directors with industry experience must have no current or previous affiliation with complaints management within service providers to further mitigate any risks associated with this.

We echo the TIO Options paper which highlights the importance of an industry ombudsman scheme that features Directors with deep industry knowledge and experience.² Directors with close ties to industry deliver the insight necessary for a well-functioning EDR scheme, as long as they are equally balanced with Directors with consumer experience. Directors with both industry and consumer experience ensure the scheme enjoys the confidence of both the industry and the consumers; this is essential to the effectiveness of the TIO. Additionally, we recognise that Directors with industry experience have the ability to influence industry culture in a positive way.

ACCAN proposes that the independence of the TIO Board would be improved through changes to the composition of the Board. We support the ‘pure stakeholder model’ proposed by Consumers’ Federation of Australia in their submission to this review. Under this model, independent Director positions are replaced by those with consumer and industry experience respectively.

Currently, the TIO is comprised of:

- The independent Chair
- Three Directors with consumer experience
- Three Directors with industry experience
- Two independent Directors.

We recommend amending the composition to the following:

- The independent Chair
- **Four** directors with consumer experience, one of which is filled by a representative from the peak body for telecommunications consumers (currently ACCAN)
- **Four** directors with industry experience, two nominated by the largest and second largest Members, and two nominated by Members but approved by the Nominations Committee.

A new approach to the composition of the TIO Board is needed to address the changing face of Australian telecommunications. We question whether there is a need to have any additional independent Directors other than the Chairperson of the Board.

ACCAN sees a need for a wider range of stakeholder experiences to be reflected on the TIO Board. The Australian telecommunications sector is diversifying rapidly, along with product offerings and the nature of consumer complaints.³ Raising the level of direct stakeholder engagement will allow more diverse and nuanced insight into the important strategic matters facing the TIO Board. External industry dynamics call for expertise that is **embedded** in the issues facing telecommunications, from small Internet Service Providers (ISPs) or grassroots consumer organisations for example.

² TIO 2019, [Options Paper: Possible Amendments to Constitution](#), p. 5

³ TIO 2019, [Systemic Issues: Sales Practices Driving Consumer Debt](#), p. 3

In addition to having the largest and second largest providers on the TIO Board, we strongly argue that the communications consumer peak body (ACCAN) should also be given a standing position on the Board. This is because it is absolutely vital that the expertise from the supply side can be matched and balanced by equally informed and qualified Directors with telecommunications consumer representative experience. Without this expertise, consumer Directors are at a distinct disadvantage on the Board.

Right for the largest and second largest Members to nominate Directors

Should the right for the largest and second largest Members to each fill a Director role be removed?

The introduction of a fourth industry Director filled by a candidate nominated by Members ensures that a wide breadth of industry voices are present on the TIO Board. We do not see a need to remove the right of the largest and second largest Members to nominate Directors, as long as:

- Additional positions are introduced for Directors with industry and consumer experience, including one position filled by a candidate nominated by ACCAN
- Two of the four industry Director positions are filled by candidates nominated by Members but approved by the Nominations Committee.

ACCAN respects the expertise of Directors with consumer experience who currently sit on the Board, but we note that none have **telecommunications consumer experience**: the Constitution does not require this. Given that industry members are able to nominate candidates to fill Board positions, ACCAN should be given a standing position as well. This would reinforce the Board's independence and effectiveness.

External advertising of vacant Board positions and Composition of the Nominations Committee

Should the TIO Constitution require all vacant director positions be externally advertised?

The TIO Constitution should ensure that all but three Board positions are externally advertised when vacant. The positions that should be exempt from being advertised externally are:

- The two positions filled by candidates nominated by the largest and second largest industry Members
- The position filled by a candidate nominated by ACCAN.

Should the composition of the Nominations Committee, which recommends to the Board individuals for appointment to Board positions, be altered?

We support the replacement of the Nominations Committee with a more independent selection committee. Separation should be strengthened between sitting Directors and the committee that selects nominees for those positions. This separation will improve the independence of the entire Director selection process by reducing the risk of an imbalance of power that favours the candidate preferences of Directors. This imbalance may result in individual Directors nominating candidates they feel are suitable, and then securing their selection, reducing the independent rigor of the selection process.

We recommend the following committee structure:

- The independent Chair
- A representative from the telecommunications consumer peak body (ACCAN)
- A representative from the industry peak body (Communications Alliance)
- A representative from the Australian Communications and Media Authority (ACMA).

This should be the extent of the ACMA's direct involvement in TIO Board matters. Separation between government and EDR schemes should be maintained to ensure the scheme is independent. The ACMA's attendance at TIO Board meetings would reduce the scheme's independence and could be perceived as regulatory intervention in EDR. This could potentially undermine the authority of the TIO and its adherence to the ANZOA principles.

Other feedback

Finally, we are concerned that the process for making changes to the TIO Constitution excludes the voices of consumers. Changes to the Constitution are voted on by Members **only**, meaning that consumers exercise no decision-making power on TIO matters. Consumers make up half of the EDR equation, and decision-making processes must reflect this. One possible solution to rectify this imbalance is that changes to the TIO Constitution are approved by the Minister for Communications, Cyber Safety and the Arts, the ACMA, and ACCAN before being accepted by the Board.

We also recommend the introduction of a two-term limit on those serving as Directors. A concrete term limit is best practice and will promote diversity on the Board.

We thank the TIO for the opportunity to contribute to this review and are happy to engage in further discussion surrounding changes to the TIO Constitution and governance systems. Please contact rebekah.sarkoezy@accan.org.au or call 02 9288 4015 if you wish to discuss this feedback with us.

Yours sincerely

Rebekah Sarkoezy

Policy Officer