



**Telecommunications
Industry
Ombudsman**

**Submission to the Commonwealth
Department of the Treasury:
Consultation on ACCC's regulatory reform
recommendations**

February 2023

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Glossary

ACCAN	Australian Communications Consumer Action Network
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACMA	Australian Communications and Media Authority
Department	The Department of Infrastructure, Transport, Regional Development, Communications and the Arts
DPO	Digital Platforms Ombudsman
EDR	External Dispute Resolution
IDR	Internal Dispute Resolution
OAIC	Office of the Australian Information Commissioner
TCP Code	Telecommunications Consumer Protections Code
TCPSS Act	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)</i>
Telco	Depending on the context, this refers to telecommunication companies, or the telecommunications industry in general.
TIO	Telecommunications Industry Ombudsman

Executive Summary

Thank you for the opportunity to comment on Treasury's follow-up consultation to the regulatory reform recommendations arising from the ACCC's Digital Platform Services Inquiry.

The TIO supports **Recommendation 2** of the ACCC's fifth interim report recommending additional targeted consumer protection measures for digital platforms. The importance of a clear regulatory regime for digital platform services is clear. A new, comprehensive set of rules will greatly improve consumer protections. It will also benefit digital platforms by giving them consistent guidelines and standards and create a solid foundation for improving consumer trust and confidence in the digital platforms.

This submission primarily addresses **Question 10** of Treasury's consultation paper, which asks stakeholders for their views on the proposed external ombuds scheme.

We have supported the proposal for a Digital Platforms Ombudsman scheme since the ACCC's Digital Platform Services Inquiry in 2019. The lack of an independent EDR scheme for digital platforms leaves a significant gap in the consumer protection and regulatory framework for digital platform services.

However, there is no need for a new scheme when the TIO scheme could be readily expanded to include digital platforms, either through a fixed-term trial or as permanent part of our jurisdiction.

Our submission explains why we are best placed to take on the functions of a DPO rather than a newly established body. We have the complaint handling expertise and existing regulatory relationships to adapt and evolve to digital platform complaints. We have outlined the regulatory, governance, and funding options that will enable us to expand our service while continuing to deliver EDR services to telco consumers and members.

I welcome the opportunity to work with Treasury on how the TIO could take on this very important role and bring the benefits of EDR to digital platforms and consumers as soon as possible.



Cynthia Gebert
Telecommunications Industry Ombudsman

1. The TIO is the appropriate body to handle digital platform complaints

Question 10. Is a new independent external ombuds scheme to resolve consumer disputes with platforms warranted? Can any or all of the functions proposed for the new body be performed by an existing body and, if so, which one would be most appropriate?

We agree that there is a need for an independent ombuds scheme to resolve consumer disputes with digital platforms. Ombuds schemes are an efficient and effective way to reduce consumer harm in a complex regulatory environment, and they fill a necessary gap between IDR pathways and an empowered regulator. The number of complaints handled annually by the industry-based ombuds schemes, including the Australian Financial Complaints Authority, the state-based energy and water ombuds schemes as well as the TIO, clearly indicate the important role EDR schemes play in addressing consumer harm in these complex environments. We support the ACCC's recommendation to develop both mandatory standards for IDR pathways and an independent EDR pathway for complaints about digital platforms.

We understand consumers of digital platform services have expressed a strong desire to have their complaints resolved in a clear and approachable way,¹ and we have seen this in our own complaints data. While complaints about digital platform services fall outside of our scheme's jurisdiction,² consumers occasionally contact us for assistance with issues related to their social media accounts and online content.

When we receive enquiries about digital platforms, our options are limited. We typically advise consumers we can only handle complaints about telcos, and we direct these consumers to their local fair-trading bodies or the OAIC. While we have strong relationships with these bodies, a specialist EDR scheme would lead to faster and more consistent outcomes for consumers seeking assistance. A specialist EDR scheme would also support improvement in digital platform services to consumers through data-sharing, systemic issues investigations, and contributions to public policy debates.

A new independent external ombuds scheme would not be required if the TIO was

¹ [ACCCAN's survey of digital platform consumers](#) (November 2021) found 74 percent of respondents wanted it to be easier to make a complaint and 78 percent wanted it to be easier to resolve issues.

² For more information about our jurisdiction, see *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth), s 128 and our [Terms of Reference](#).

empowered to handle digital platform complaints.

Sections 2 and 3 of this submission set out the reasons why we should take on digital platform complaints. Sections 4 and 5 explore how an extension of our jurisdiction could be achieved through appropriate regulatory framework, governance, and funding arrangements.

2. The TIO can perform the function of a digital platforms ombuds scheme

2.1 We have a dispute resolution process that is fair

Arriving at outcomes which have regard to the law, industry guidelines, good practice, and what is fair and reasonable is a fundamental principle that guides our scheme's successful operation. We achieve this through complaint handling processes which ensure consumers and telcos are given procedural fairness, and findings relating to the merits of a complaint are evidence-based. Our Complaint Handling Procedures are published on our website.³

We adopt a referral system of complaint handling. If a consumer's complaint is within our jurisdiction, we refer the complaint to the telco to resolve directly with the consumer within a specified period. If a consumer contacts us following a referral to tell us the provider did not resolve the complaint, we will escalate the matter for conciliation or investigation. If the matter cannot be resolved via conciliation or investigation, we progress to a written recommended outcome where each party is given the opportunity to consider the recommendation. If the recommended outcome is rejected, the complaint is referred to a Dispute Resolution Senior Lead who will issue a preliminary view. If a telco rejects a preliminary view, the Ombudsman will issue a decision. If the consumer accepts the decision, telcos are bound to comply with it.⁴

In FY22, we referred 79,534 complaints to telco providers, and escalated 10,501 to conciliation and investigation. Of the escalated complaints, we issued 286 preliminary views and five decisions.⁵ This data demonstrates the effectiveness of our referral model and further reinforces our ability to achieve conciliated outcomes in a timely manner.

Our Terms of Reference empower us to stop handling a complaint when we consider it reasonable to do so. This includes when a consumer's conduct is unreasonable, when the complaint is not made in good faith, or when we form the view the complaint is best dealt

³ [TIO Complaint Handling Procedures](#).

⁴ See [Appendix B](#) for a flowchart of our process, or [TIO Annual Report 2021-2022](#), page 53.

⁵ [TIO Annual Report 2021-2022](#), page 55.

with by another forum.⁶

To ensure our processes reflect the changing needs and expectations of our stakeholders, we use a comprehensive feedback and improvement framework that drives continuous service improvement. We also have a dedicated Quality and User Experience Specialist who manages complaints about the TIO and reports on ways to improve the consumer experience.

2.2 We respond quickly to market events and developments

Since our scheme was established in 1993, the communications market has experienced rapid developments in technology, regulation, and consumer expectations. The market has seen the introduction of the NBN, a generational transition towards smartphones and other devices, and a convergence of communication and digital platform services. This convergence has seen the peak body for Australian telcos, Communications Alliance, already count Facebook, Google Australia, TikTok, and Twitter among its members.⁷

As the market and the communications industry have evolved, we have adapted to these new contexts. We work closely with members and regulators when new challenges arise, such as the increased telco call centre demand and staff shortages caused by the Covid-19 pandemic,⁸ or the increased demand caused by the recent Optus data breach.⁹ We have demonstrated our responsive and our adaptive capability.

We improve in line with Independent Review recommendations,¹⁰ adapt in response to feedback we receive from our stakeholders, including feedback from our Consumer and Member Panels and fairness surveys, and innovate to ensure that we remain efficient and effective in a changing environment. As an example, during the Terms of Reference modernisation project, we consulted widely on devices and equipment to ensure our jurisdiction reflected contemporary consumer needs and market practices. The same approach would be valuable in a digital platforms context to help refine the DPO's jurisdiction as new services and practices emerge.

⁶ [TIO Terms of Reference](#), clause 2.45.

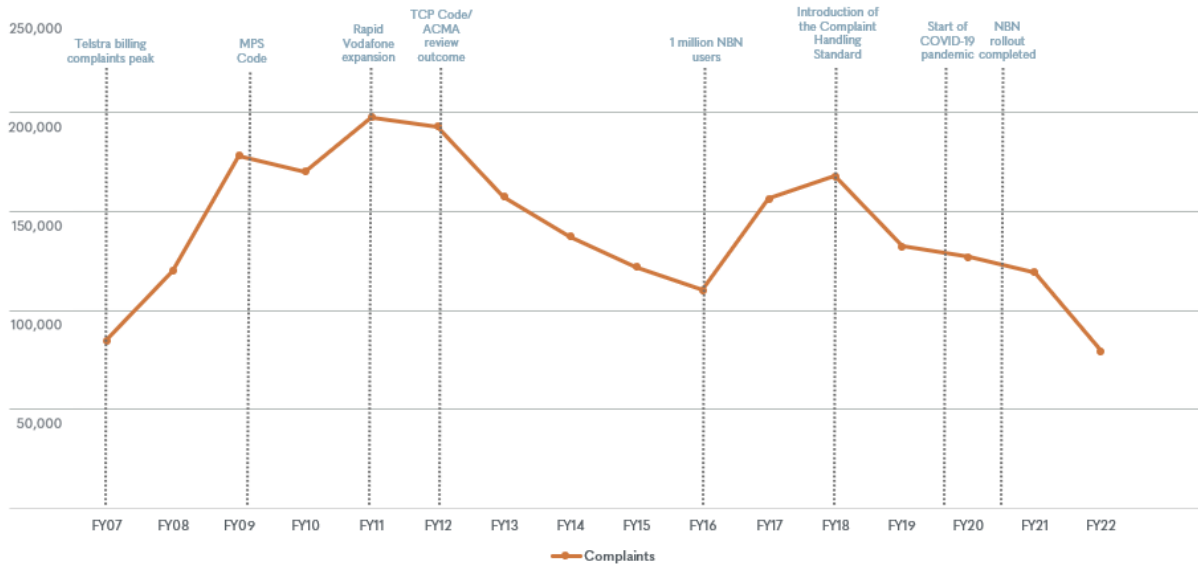
⁷ [Communications Alliance Members](#).

⁸ Systemic Report [Impact of COVID-19 on phone and internet complaints](#) (July 2020).

⁹ See TIO [Statement on the Optus data breach](#).

¹⁰ McBurnie, G., & Williams, J. (2022), [Five-year Independent Review of the Telecommunications Industry Ombudsman](#).

Figure 1: How the TIO has evolved in response to the changing communications and technology landscape



2.3 We have the capacity and capability to handle complaints about digital platforms

We received 79,534 complaints, 25,512 enquiries, and 198,440 total contacts in the last financial year.¹¹ Given the rapidly-changing complaints environment in the telco sector, there have been times where we have had to adapt to handle almost double these volumes. We have the capability and experience to scale up and down to respond to variable demand and demonstrated experience in managing high volumes of complaints. This experience and capability would be beneficial should our jurisdiction be expanded to cover digital platforms.

The complaints we consider cover a wide range of issues and service types, including concerns about:

- **Establishing a service** (including complaints about misleading conduct, unfair contract terms, or delays in connecting a service).
- **Service delivery** (including complaints about network outages, poor service quality, unsuitable equipment, or difficulties with loyalty programs).
- **Customer service** (including complaints about unauthorised disclosures of personal information, business loss, uncontactable members, and no or delayed action from members).

To handle these complaints, we utilise specialised industry knowledge and broader consumer and privacy law experience. We also employ process automation and robotics to assist with efficient handling of complaints and contacts from consumers.

¹¹ [TIO Annual Report 2021-2022](#), pages 55 and 97.

We already hear from consumers who assume we are the appropriate body to respond to complaints about digital platform services. Between 1 July 2021 and 31 January 2023, we received just over 550 enquiries¹² from consumers about digital platforms.¹³ Although the DPO's jurisdiction would need to be settled, consumers have contacted us about the following issues:

- incorrect information being displayed on online platforms
- faulty products sold through e-commerce platforms
- businesses disputing negative reviews or social media comments
- complaints about advertisements
- inappropriate or offensive content
- uncontactable or unresponsive customer service
- potential interferences with privacy
- complaints about scams or unsolicited calls
- difficulties accessing/unlocking accounts
- complaints about bans and blocks on accounts
- complaints about fees and charges, including charges for customer assistance.

These issues are very similar to the issues we currently handle about telcos, especially issues about fees and charges, accounts, consumer guarantees, and privacy related complaints. We would easily be able to handle these issues with digital platforms and help consumers gain a fair and reasonable outcome.

Case Study 1 – A consumer had trouble contacting a digital platform provider when they were locked out of their account

A consumer contacted us about a digital platform. The consumer said they were locked out of their account, which they use to run a business. The consumer explained they experienced difficulties with two-factor authentication and had not received a response from the digital platform. The consumer described their experience as being caught in an endless loop. While this is an issue we could normally consider if it was about a telco provider, digital platform complaints fall outside of our jurisdiction. We directed the consumer towards their local fair trading body for further assistance.

¹² An "Enquiry" is an initial contact from a consumer that does not include a complaint that falls within the jurisdiction of the TIO. See [TIO Annual Report 2021-2022](#), page 91 for a glossary of terms we use to describe matters we handle.

¹³ Note this information was gathered specifically for this report and is not a part of our regular reporting.

Case Study 2 – A consumer said a digital platform provider published their personal information online

A consumer contacted us about a potential breach of privacy from a digital platform provider. They said the digital platform had unintentionally published their personal information online, and they repeatedly asked the platform to remove this information without success. The digital platform told the consumer it did not have to take any action. As we cannot consider complaints about digital platforms, we recommended the consumer to contact the OAIC for further assistance.

Case Study 3 – A business consumer told us they received fake reviews on a digital platform service

A small business owner contacted us about fake reviews hosted on a digital platform service. They said the negative reviews were posted by people who had never been their clients, and the statements in those reviews were directly harming their income. They asked the digital platform to remove these reviews and turned to us when no action had been taken. As this matter was outside of our jurisdiction, we advised the consumer to raise this issue with the OAIC.

Case Study 4 – A business consumer paid for advertising but said the ads were never run

A small business owner contacted us about fees payable to a digital platform. The business owner said they paid to host ads on the platform, but the ads were never run. They attempted to get the ads run or get a refund on the fees paid, but they could not make any progress with the digital platform's complaints team. The business owner asked us for assistance. As we cannot consider complaints about digital platforms, we referred them to a fair-trading body.

2.4 We have the existing expertise to handle digital platform complaints

Our employees bring significant experience from multiple sectors, including from the telecommunications industry. This experience would allow us to begin handling complaints about digital platforms on short notice, at a level that meets or exceeds the benchmarks required of an independent EDR scheme.

Our leaders bring experience from other ombuds schemes, government, health and financial services, private legal practice, and not-for-profits.

Our complaint handling function is structured to effectively receive complaints, assess whether the complaint is in our jurisdiction, make referrals to telcos where it is, or refer to another more appropriate body if the complaint is outside our jurisdiction. To perform this function, we have a call centre and online complaint form system, including the option to nominate a third-party representative, to ensure our process is accessible to all consumers. This initial work is performed by our **Early Resolution Group**.

As noted above, if a referral is unsuccessful then the complaint will be escalated to our **Dispute Resolution Group**. Our Dispute Resolution Group utilises their alternative dispute resolution knowledge to conciliate and investigate complaints and write decisions. Our Dispute Resolution Officers are particularly skilled in understanding technical and legal issues and in working with the parties to find resolutions.

In addition to resolving individual complaints, our expertise in other specialised teams ensures we would be well placed to receive, resolve, and report on digital platform complaints and systemic issues.

- Our **Policy and Regulatory Affairs** team drives industry improvements by undertaking complex systemic investigations and engaging with members on areas of improvement. The team brings a deep understanding of the statutory framework and technical industry codes which govern telco rights and obligations. This includes a thorough understanding of the ACL, which is directly relevant to digital platforms.
- Our **Reporting** team leverages their expert understanding of data collection and analysis to report on insights into complaint issues, market events, and trends.
- Our **Improvement and Projects function** utilises project, innovation, and process improvement knowledge to ensure we are continually improving the efficiency and effectiveness of our processes.

We will draw on this expertise to support the functions of the DPO along with the support of experienced lawyers across multiple teams who could provide regulatory and legal advice and training about issues specific to digital platforms.

Any new knowledge on digital platforms could be acquired quickly through internal and external training, in collaboration with regulators and the government, and would complement the existing expertise within the TIO team. We also run an in-house Graduate Certificate in Dispute Resolution (Industry) through Box Hill Institute which would be updated to include topics related to digital platforms.

2.5 We drive improvement through our systemic issues insights and reporting

Our approach to the public reporting of data and the identification of systemic issues is easily transferrable to digital platforms. Like telco, this approach would be used to promote

improvements in complaint handling in a continuously evolving market.

Our quarterly and annual reports provide unique insights into the telco market, and are highly valued by members, consumer groups, regulators, and government. This public reporting assists with transparency into industry and market practices. For example, the EDR complaint numbers we report to the ACMA are cross-checked against numbers provided by our members, which can provide useful context when analysing how members are reporting on their complaints. This can help better define what should be classified as a 'complaint' in practice.

We also share insights from this data, and consumer stories, in our public policy consultations to ensure the lived experience of consumers is visible to policy makers.

In FY22, we made 22 submissions to policy consultations.¹⁴ Examples of our past submissions include:

- the ACMA's *Telecommunications Service Provider (Customer Identity Verification) Determination*¹⁵
- the Department's 2021 Regional Telecommunications Review,¹⁶ and
- Part C of the Department's Consumer Safeguards Review.¹⁷

Our Terms of Reference¹⁸ enable us to improve our members' systems, policies, and practices through the investigation of systemic issues. We identify these issues through the real-time analysis of complaints and then work closely with our members to resolve these systemic issues.

In FY22, we closed 32 systemic investigations, and members agreed to make improvements in 28 of those investigations – including updating their standard form contracts, redesigning complaint resolution processes, and discontinuing products. Through these investigations, we have observed both a direct reduction in complaints to our office and fairer outcomes for consumer complaints. Our investigations have also shaped member conduct over time, with larger members developing dedicated teams to undertake root cause analysis and work closely with us to resolve the issues identified during investigations.

¹⁴ The TIO's public policy submissions are available at <https://www.tio.com.au/submissions>.

¹⁵ TIO *Submission to the ACMA: Proposal to make the Telecommunication Service Provider (Customer Identity Verification) Determination* (December 2021).

¹⁶ TIO *Submission the 2021 Regional Telecommunications Review* (September 2021).

¹⁷ The TIO's submissions to the Consumer Safeguards Review are available at <https://www.tio.com.au/about-us/consumer-safeguards-review>.

¹⁸ [TIO Terms of Reference](#).

Additionally, we publish reports to raise awareness of widespread issues driving complaints within the telecommunications industry, including:

- Responding to consumers in financial hardship¹⁹
- Helping telco consumers sign up to the right phone and internet products²⁰
- Investigating complaints about essential mobile services.²¹

3. We are an established EDR scheme that is trusted by the public and stakeholders in the industry

3.1 Consumers know and trust us

In March 2020, we established a Consumer Panel to provide us with access to diverse consumer perspectives to inform our work. The Consumer Panel meets three to four times per year and provides us with feedback about the individual and small business consumer experience of phone and internet services and products.

The Consumer Panel consists of 11 panel members who collectively provide a diverse representation of individual and small business consumers, including representatives from:

- Financial Counselling Australia (Co-Chair)
- Australian Communications Consumer Action Network
- Blind Citizens Australia
- Consumer Action Law Centre
- Council of the Ageing Australia (COTA)
- Council of Small Business Organisations (Australia)
- Financial Counsellors Association of WA
- Isolated Children's Parents Association of Australia
- Legal Aid NSW
- National Ethnic Disability Alliance, and
- The Regional Tech Hub.

These organisations and individuals bring valuable insights into consumer experiences from minority groups and those experiencing or living with a vulnerability.

In 2022, we implemented fairness and satisfaction surveys as part of our commitment to

¹⁹ TIO Systemic Report [Responding to consumers in financial hardship](#) (September 2021).

²⁰ TIO Systemic Report [Helping telco consumers sign up to the right phone and internet products](#) (May 2021).

²¹ TIO Systemic Report [Investigating complaints about essential mobile services](#) (July 2022).

achieving fair and reasonable outcomes.²² Recent results show that 87.5 percent of survey respondents are satisfied with our service. We will continue to review these responses to improve our services and adapt to consumer needs.

Our outreach function maximises our profile with consumers and small businesses that need help with resolving phone and internet complaints. We achieve this by identifying and participating in outreach opportunities such as conferences and events to raise awareness of the TIO. Regional and remote, First Nations, and culturally and linguistically diverse communities are a key focus.

We also publish information about our service in 37 different languages (including Auslan).²³

Australia has a diverse community and range of small businesses. Our approach to communications and engagement reflects this, and we attempt to reach new audiences through a variety of different media channels. Social media platforms have become an important channel for us to promote our educational webinars for community groups, organisations, and the general public. We also reach vast audiences through radio, TV, print, and online media channels.

3.2 We provide services to our diverse members outside of complaint handling

We understand that, like the telco industry, the potential members of a DPO scheme will vary greatly in size and composition. Our ability to provide an individualised member experience for current telco members would extend to digital platform members.

At the end of FY22, we had 1,577 members ranging from single-person operations to multinational and listed corporations.

We have a dedicated member portal where members can access reports, invoicing, induction videos, webinars, newsletters, and information about our complaint handling process. These non-casework activities are important to building an informed and collaborative relationship with our members. In turn, this improves industry compliance with regulations, improved complaint handling, and drives better outcomes for consumers. According to our 2022 Independent Review, this process works as “nearly all Members were positive about their overall relationship with the TIO.”²⁴

²² [Fairness and Satisfaction Surveys provide valuable feedback to help improve TIO services.](#)

²³ [The Telecommunications Industry Ombudsman, Languages.](#)

²⁴ McBurnie, G., & Williams, J. (2022), [Five-year Independent Review of the Telecommunications Industry Ombudsman](#), page 81.

3.3 We have strong relationships with our government and regulatory stakeholders

Our existing relationships with multiple regulators (most relevantly the ACMA, the ACCC, and the OAIC) would enable us to quickly expand into the digital platforms space, as would our regular engagement with the Department and Treasury.

We typically refer complaints to the ACMA in situations where a member has failed to comply with obligations of our scheme, such as when they decline to join our scheme or when they have declined to follow a Decision on a complaint.²⁵ Similarly, our Terms of Reference allow us to refer systemic investigations to the ACMA and/or the ACCC in situations where a member has not sufficiently addressed the systemic issue, or where the member's conduct would be relevant to that regulator's compliance and enforcement role. In the last financial year, we referred five systemic investigations to regulators.²⁶

Case study - Referral of Red Telecom to the ACMA for breaches of our scheme

In 2018 and 2019, we received a series of complaints about Red Telecom Pty Ltd (now Limni Enterprises Pty Ltd). While resolving these complaints, the Ombudsman decided it was fair and reasonable for Red Telecom to provide remedies to these consumers. Red Telecom did not comply with these decisions, and so we referred our decisions to the ACMA for compliance and enforcement action.

In 2020, the ACMA received judgment against Red Telecom for non-compliance with seven TIO decisions. The Federal Court ordered Red Telecom to pay compensation to the relevant consumers totalling over \$60,000.²⁷

Case study - Referral of Telstra Corporation to the ACCC for breaches of the ACL

In 2018, we conducted a systemic investigation involving Telstra Corporation's sales conduct at particular stores. We had received several complaints that these stores were engaging in non-compliant sales practices towards First Nations consumers. While Telstra improved its processes during our investigation, we were concerned about this conduct and referred our investigation to the ACCC in 2019.

Following our referral and the referrals of others, the ACCC initiated proceedings against Telstra for breaches of the ACL. In May 2021, the Federal Court ordered Telstra to pay \$50 million in penalties for engaging in unconscionable conduct towards more than 100 First Nations consumers.²⁸

²⁵ [TIO Complaint Handling Procedures](#).

²⁶ [TIO Annual Report 2021-2022](#), page 61.

²⁷ ACMA, [ACMA welcomes significant penalties in Red Telecom Federal Court case | ACMA](#) (July 2022).

²⁸ ACCC, [Telstra to pay \\$50m penalty for unconscionable sales to Indigenous consumers | ACCC](#) (May 2021).

4. The DPO requires legislative backing to be effective

4.1 Membership of the DPO must be mandated via legislation

Our April 2022 submission to the ACCC²⁹ supported a regulatory framework that mandates digital platforms to join the DPO, rather than voluntary membership. This is consistent with the Australian ombuds schemes for energy, water, telco, and finance sectors, which have regulatory backing to ensure participation and compliance with the requirements of the scheme.³⁰ Mandatory membership, and a registration requirement for digital platforms, would ensure the DPO and its regulator can effectively manage membership of the scheme.

A head of power enabling the specification of the ombuds scheme for digital platforms in a subordinate instrument would enable government or a regulator to specify the DPO body either for a pilot period or on an ongoing basis. This approach would provide flexibility to change the DPO body later and could also embed flexibility in relation to jurisdiction and membership eligibility.

The legislative framework for a DPO scheme needs to empower the regulator to enforce compliance with the scheme and Ombudsman decisions. This could be similar to the existing framework for telcos, where the ACMA has the power to enforce compliance with the TIO scheme and Ombudsman decisions. Our current referral and information sharing arrangements with the ACMA and ACCC discussed in section 3 would support this framework.

4.2 The regulatory framework must provide a clear jurisdiction for the DPO

The regulatory framework must provide a clear jurisdiction for the DPO. This includes the types of:

- consumers who will have access to the DPO (such as individuals and small businesses)
- complaints the DPO can resolve (the complaint subject matter)
- remedies a DPO can provide (binding complaint outcomes).

Our 2019 submission to the ACCC's inquiry explores what we believe could be in or out of

²⁹ TIO [Submission to the ACCC's Digital Platform Services Inquiry Discussion Paper: Updating competition and consumer law for digital platform services](#) (April 2022).

²⁶ The *Telecommunications (Consumer Protection and Service Standards) Act 1999* sets out the eligibility requirements for mandatory membership of the TIO. Under the Act, telco carriers and eligible carriage services providers must join the TIO unless they are subject to an exemption.

scope of the DPO's jurisdiction.³¹ The University of Technology Sydney's July 2022 report *Digital Platform Complaint Handling - Options for an external dispute resolution scheme* provides a useful starting point in scoping out the potential jurisdiction of the DPO in relation to user-to-platform transactional complaints.³²

A new legislative framework would need to resolve which body handles complaints about content. This is because the TCPSS Act currently prohibits the TIO from taking complaints about the content of a service,³³ and a subset of content complaints may fall within the jurisdiction of non-EDR bodies such as the eSafety Commissioner.³⁴

Crucially, the ombuds scheme should support a 'no wrong door' approach to complaints, whereby the DPO would not immediately redirect some consumers to the regulators (as this could lead to delays and repetition for the consumer) and would not separate a complaint into separate issues that would be handled by different bodies (for example, separating the service delivery portion of a complaint from the privacy portion).³⁵ For example, we have a warm transfer partnership with Energy and Water Ombudsman (Victoria) to help reduce the repetition of complaints for consumers with financial vulnerabilities.³⁶

5. How our jurisdiction could be extended

5.1 We can take on the DPO functions either through a permanent change to our jurisdiction or a time limited pilot

A TIO pilot, supported by government, regulators, and digital platform members, is an efficient way of gathering data to support the government's decision-making about the ongoing DPO. It would also provide immediate insights and transparency into the digital platforms market. This would give us time to gather and report on these insights before the permanent implementation of the DPO scheme.

Leveraging our current public data and reporting framework (referred to in section 2.5), we would work with government to look at the available data sources we would have access to through our work. This could include the top key consumer issues, consumer detriment,

³¹ TIO [Submission from the Telecommunications Industry Ombudsman to the Treasury's consultation on the final Digital Platforms Inquiry Report](#) (September 2019).

³² University of Technology Sydney, [Digital Platform Complaint Handling - Options for an external dispute resolution scheme](#) (July 2022).

³³ TCPSS Act, s 128(6)(b).

³⁴ See [Online Safety Act 2021 \(Cth\)](#).

³⁵ This is in line with the [OAIC Guidelines for recognising external dispute resolution schemes](#) (September 2013), 1.15 – 1.20.

³⁶ TIO, [New warm transfer initiative making it easier for vulnerable consumers to seek help | The Telecommunications Industry Ombudsman](#) (Aug 2020).

trends, the types of digital platform providers in the market, and the effectiveness of digital platform IDR.

At the pilot's conclusion, data captured during the pilot would be evaluated to determine the best pathway forward for the DPO.

A successful pilot or permanent extension to our jurisdiction requires:

- mandatory membership of the DPO for the duration of the pilot, compliance of which would be enforced by the regulator
- a clear jurisdiction, which would be subject to review at the conclusion of the pilot to ensure it is meeting consumer and digital provider needs
- a new Terms of Reference to cover digital platforms
- funding arrangements to cover cost recovery and prevent cross-subsidisation from telco members
- the ability to refer matters to a regulator for enforcement of Ombudsman decisions.

Irrespective of a pilot or permanent implementation of a new jurisdiction, consequential amendments to the TCPSS Act may be necessary to ensure we can take complaints outside of our current jurisdiction.

5.2 Pilot participation should be mandatory

In section 4.1 we explained that legislatively mandated membership is essential. For the purposes of a pilot, mandatory membership is also necessary. This would ensure clear pathways to enable regulatory information sharing and escalation to regulators.

5.3 We can develop new and leverage existing governance arrangements

A new Terms of Reference for digital platforms would outline the types of complaints we can handle, how we handle them, and our other functions and powers.

The TIO Board comprises nine Directors - three independent directors, three directors with industry experience, and three directors with consumer experience. The Chair is an independent director. Both during and following a pilot, we would need to consider the appropriate composition of the Board, including whether changes are required following a pilot period and in line with any new legislation.

5.4 We can explore funding options based on our current fee structure

While expanding our jurisdiction will allow digital platforms and telco members to benefit from economies of scale, any option to fund a DPO pilot or the establishment of a DPO office on an ongoing basis must avoid cross-subsidisation of DPO activities by telco members.

Pilot funding must cover start-up costs to expand the jurisdiction as well as ongoing costs for the duration of the pilot. These costs may include labour, systems upgrades or changes, consultancies and legal advice, workforce uplift, and strategic communications to promote the scheme.

Our annual budget is approved by the Board and based on the anticipated costs of providing our service. The fee structure consists of a fixed membership fee (payable by all members) and case fees dependent upon numbers of complaints received. Fees per case vary depending on the case type. For example, referrals to providers are subject to a lower fee than cases that require investigation or conciliation.

Funding options for a TIO pilot could include:

Option 1 (preferred option): Funded by government and digital platform providers:

The initial costs to expand and run the scheme mentioned above (effectively a membership fee component), could be **funded by government**. **Digital platform providers** would contribute to the full cost of service by a 'fee per case' charge based upon complaints received against them. We would apply our current methodology for determining variable case fees for the telco sector. This option is more cost effective for government than setting up a new scheme and provides certainty that the pilot will be adequately funded with no cross-subsidisation from the telco sector.

Option 2: Funded by the largest digital platform providers:

Initial membership fee and cost per case (total cost of service) could be **funded by larger digital platform providers**, based on their Australian digital platforms market share.³⁷ This option recognises that the larger providers are likely to make up most of the demand for the new DPO and are financially able to contribute to the scheme. Following the pilot, a revised fee structure would apply to all providers.

Option 3: Funded by all digital platform providers:

All costs of the pilot **fully funded by all digital platform providers** using current TIO funding methodology comprising membership and case fees. Digital platforms would pay a membership fee regardless of case numbers, and a fee per case. Under this option, the fees would be required to cover the abovementioned start-up and running costs of the scheme.

We currently allocate a membership fee to a telco member based upon the telco's

³⁷ The model will need to be explored further and may involve a consideration of sales or asset base.

number of complaint referrals for the previous calendar year (12-month period). To determine the first year of funding for a pilot, we would need a basis for fee allocation and this should be aligned with Option 2 (Australian digital platforms market share or another equitable criteria that also captures small market players).

5.5 We can adapt our organisation structure for the DPO functions

Our organisational structure is provided in **Appendix A**.

As previously stated, we would draw on existing expertise to create a new team of experienced current employees to focus on digital platform complaints. One option is that this team would be overseen by a new position within the TIO reporting directly to the Ombudsman. We would need to assess whether the pilot team could be filled by existing employees without the recruitment of additional employees.

A DPO team within the TIO would:

- be fully funded under the DPO funding structure, preventing cross-subsidisation from telco members
- allow us to continue delivering the same standard of service to telco consumers and members
- ensure both telcos and digital platforms clearly understand who, and how, digital platform complaints are being handled
- provide flexibility to scale up or down DPO operations depending on complaint volumes and complexity.

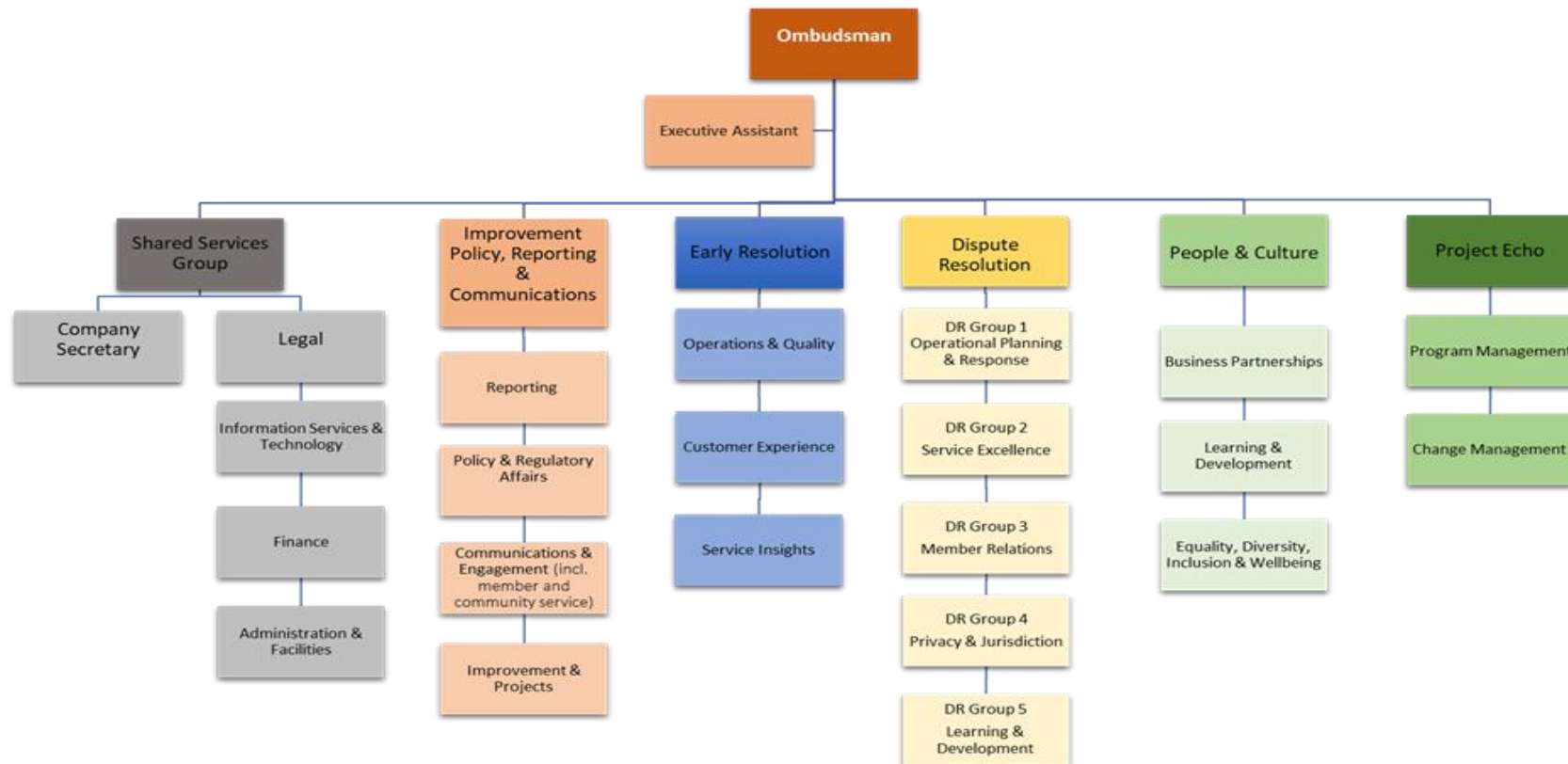
6. A pathway forward

The need for an EDR scheme for digital platforms is clearly established. We believe we are best placed to take on this function efficiently and effectively, either via a pilot or via permanent changes to our ongoing jurisdiction.

We are eager to work with Treasury to further develop the regulatory, governance, and funding options outlined in this submission.

Appendix

A. The TIO's Organisational Structure



B. The TIO's Complaint Handling Process

