



31 March 2011

Mr Garry Croker
Director
Consumer Policy and Privacy
Department of Broadband, Communications and the Digital Economy
GPO Box 2154
Canberra ACT 1780

Dear Mr Crocker

Re: Discussion Paper on the Telecommunications Industry Ombudsman Scheme

Thank you for the opportunity to comment on the Discussion Paper on the Telecommunications Industry Ombudsman (TIO)'s alternative dispute resolution framework.

As an industry based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints. In making this submission, EWOV's comments are based on our experience in dealing with complaints that come to us after they have not been resolved between the customer and their company.

Although EWOV operates in a different industry to the TIO, there are similarities between the energy and water and telecommunication sectors that give rise to the need for comparable independent and impartial dispute resolution services. We believe that the TIO has already in place many excellent practices as an alternative dispute resolution scheme, however we welcome the opportunity to present our views on the issues raised by the discussion paper.

Independence

3.1.1 Does the TIO's governance structure negatively impact on its ability to adopt effective client focused policies?

The current TIO corporate governance situation of having both a council and a board is not best practice. The existing TIO Council and Board structure is likely to be having a negative impact on its impartial role by giving the impression that it is 'industry controlled' and not independent.

Consumer groups in particular may feel that community interests are not taken into account by an industry dominated corporate governance model and lose confidence in the scheme to provide impartial advice to consumers.

3.1.2 Does the TIO governance structure need to change? If so, should a single governance body be adopted with equal industry and consumer representation or would an alternative structure be more appropriate?

Industry-based ombudsman schemes should, and generally do, have a single Board with an independent Chairperson and parity of representation between consumer and industry groups. EWOV strongly recommends that the TIO governance structure should reflect this.

To avoid any conflicts of interest, it is important that the Board does not include industry representatives who hold less senior roles in the company or are involved in any way in the day-to-day complaint handling within their companies. Representatives could be CEOs or non-complaint handling general managers.

EWOV's Board has four industry directors (two electricity, one gas and one water) elected by scheme participants, and four consumer directors nominated by the Essential Services Commission (ESC), plus an independent Chairperson. EWOV's Board is responsible for the business affairs and property of the company — including corporate governance, the setting of budgets, risk management, strategic planning and ensuring the Ombudsman's independence. The role of the Board and the Ombudsman are complementary, with the Ombudsman responsible for the day-to-day operations of the scheme.

3.1.3 Does the TIO's current funding model, where all costs/overheads are recovered from members, need review?

EWOV adopts a 'user pays' principle when billing energy and water company scheme participants. We charge scheme participants directly proportionate to the number of cases we receive for each company. The vast majority of our costs, approximately 95%, are recovered in this way. Only a small amount of our costs are allocated as a fixed fee, the remaining 5%, as an annual membership fee based on the number of customers. We believe that this funding model is equitable as scheme participants are consequently financially responsible for the number of cases each receives.

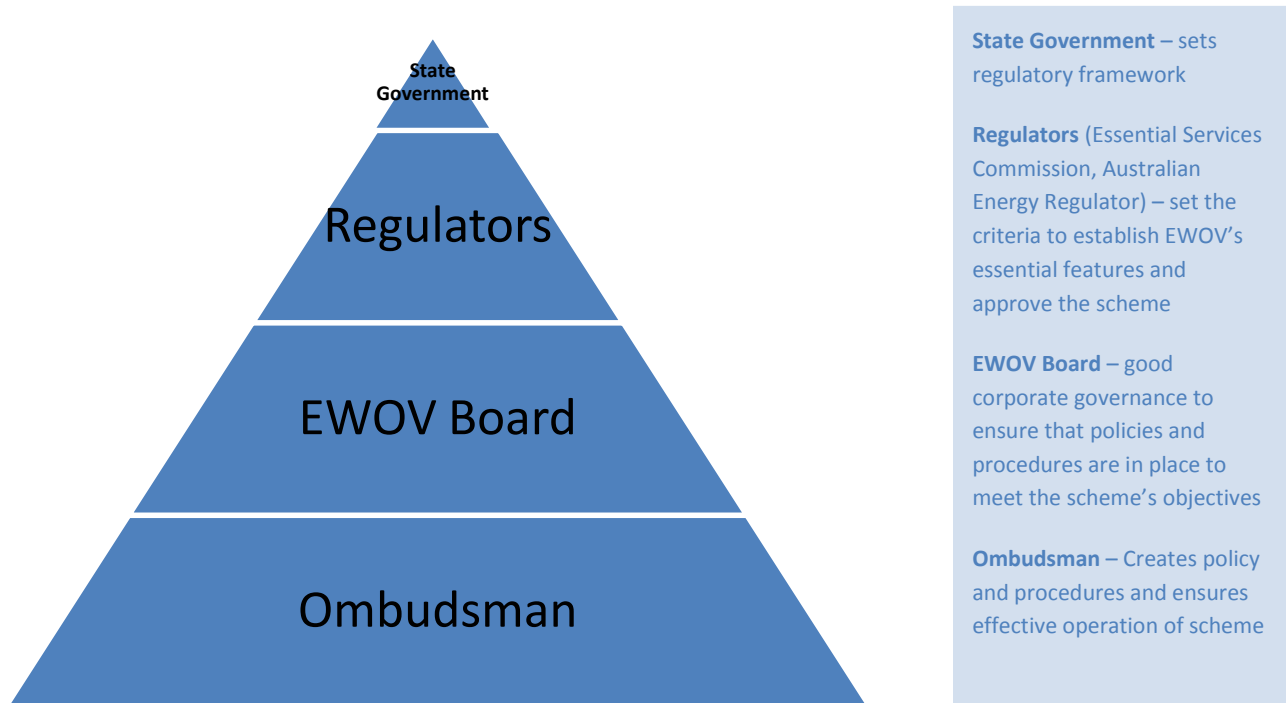
We understand that the current TIO funding model is based on 50% of its costs being covered by fixed fees from its larger scheme members, with only the balance of funds being recovered under 'user pays' principles. As an alternative, EWOV's revenue model is 95% based on the principle of 'user pays', with scheme members contributing financially according to the number cases received by EWOV. With the current TIO model the relatively smaller member's shoulder a smaller financial burden which may not be proportionate to their number of cases, and most of the TIO's operating costs are borne by the larger sized members. This funding model may benefit from review so that there is a fairer allocation of scheme costs across the industry based on 'user pays' principles to a greater degree than that at present.

3.2.1 Is the transparency of the TIO's governance and decision-making process adequate? If not, what is needed to achieve greater transparency?

The TIO's governance and decision-making process is not transparent and, despite reviews, it is likely that disagreements between the Council and Board arise. As outlined above, EWOV believes that the best approach is for the creation of a single overseeing governing body with equal consumer and industry representation and an independent Chairperson. This will ensure greater confidence in the independence of the TIO and its responsibility to consumers.

3.3.1 Should the TIO develop a terms of reference document or operational memorandum for approval by the ACMA as regulator? If so, what matters should be included and how should such a reform be implemented?

This question indicates a possible confusion between the relevant roles and relationships between Regulators, a Board and an Ombudsman. To provide some clarity, we have set out below a diagram to explain how EWOV operates:



EWOV understands that a ‘terms of reference’ document and an ‘operational memorandum’ are two different and distinct types of documents relating to different matters and areas of responsibility. A terms of reference document sets out overriding rules and principles under which a scheme operates and sets out jurisdictional parameters, whereas an operational memorandum is usually designed to establish internal policy and procedures set by the Ombudsman.

The TIO already has a terms of reference document – this is its Constitution. It is interesting to note that EWOV’s Charter is based on the TIO Constitution and EWOV’s Charter has been working very well for over 15 years. Any operational memorandum is the business of the Ombudsman and is a matter for approval by a Board not a Regulator.

3.3.2 Is the TIO's current constitution an appropriate underpinning mechanism?

The TIO’s Constitution is substantively similar to EWOV’s Charter and appears to be an appropriate underpinning mechanism. However, it does request the TIO Council to determine the policy and procedures in administering the scheme, and gives the Council the power to recommend to the Board any change in the Constitution. As discussed above, the governance of the TIO should be channelled through a single Board without the need for a Council. If this recommendation was to be implemented,

the Constitution should clearly state that it is the role of the Board to determine policy and procedures in administering the scheme, which would in turn allow for the implementation of a terms of reference document or operational memorandum.

3.3.3 Would an overhaul of the TIO's current complaint handling procedures effectively achieve the same result as the introduction of a terms of reference document or operational memorandum?

The TIO's complaint handling procedures are the business of the Ombudsman (which may be formalised in an operational memorandum) and not the business of the Regulator. A Board would ensure that appropriate complaint handling policies and processes are in place. Please refer to our comments in 3.3.1 about the distinction between a terms of reference document and an operational memorandum.

3.3.4 What, if any, are the potential positive and/or negative impacts of government involvement in TIO governance?

Alternative dispute resolution schemes, particularly in the private sector, best function by having operational autonomy with a clear and effective regulatory framework set by government but without government intervention. Government should ensure that there exists a robust Regulator with appropriate powers to enforce regulatory compliance. Government involvement should be limited to assistance in development and approval of a scheme's essential features and framework only, without further involvement in corporate governance or operational matters of the scheme.

Accessibility

4.1.1 Do you think the TIO could improve the current levels of awareness of its activities? If so, how?

All ombudsman schemes need to be accessible to the public, and likewise, the public needs awareness of the schemes' availability and role. EWOV notes that the 2006 review referred to in the discussion paper suggests that only a low number of complainants are aware of the TIO through their telecommunications company. EWOV also notes the discussion paper's reference to a 2008 TIO study which found that 65 per cent of consumers were aware of the TIO. Further clarification is required as to whether the awareness was prompted or unprompted in the 2008 study to explain the contrast in results. 65% unprompted awareness would be a good result.

A simple and effective EWOV practice to raise customer awareness that could be adopted by the TIO is the agreement we have with our scheme participants to provide details of our role, including our Freecall telephone number, on one bill per customer each year. Also, in accordance with Clause 28.3 of the *Energy Retail Code* it is a legal requirement that an energy retailer includes EWOV's phone number on all disconnection warning notices.

4.1.2 How can the government assist in raising the awareness of the TIO?

Community awareness of the TIO should be funded by the telecommunications industry via the TIO scheme and not by the taxpayer through government funding. It is the industry which generates complaints and so the industry should pay for the costs of raising awareness of the TIO. The government should focus its efforts on ensuring that there is a robust regulatory framework with effective enforcement powers.

Increasing consumer awareness of alternative dispute resolution services is a continuing need, but it should be coupled with a focus on building consumers' capacity to resolve complaints directly with their company. The TIO is best placed to do this on an ongoing basis. It can continue to raise awareness of its existence and role, but it can also use its experience and resources to educate and empower customers to resolve their complaints directly with their company. This message should be effectively targeted to TIO stakeholders (such as consumer groups and community organisations), which may have clients with specific needs.

4.1.3 Should industry be required to advise customers about the TIO both prior to and at the time they are handling a complaint? If so, when should specific advice be provided about the TIO?

Information about the TIO should be provided to a customer both before and during a company's investigation of a complaint. This should be given verbally to customers by call centre representatives, when writing to a customer in response to their complaint, as a term of the customer's contract, and also outlined on customer bills and on disconnection warning notices.

Clause 28.2 of the *Energy Retail Code* places a legal obligation on an energy retailer to inform a customer of their rights of internal escalation and the right to contact EWOV for assistance:

28.2 Advice on customer's rights

When a retailer responds to a customer's complaint, the retailer must inform the customer:

(a) that the customer has a right to raise the complaint to a higher level within the retailer's management structure; and

(b) if, after raising the complaint to a higher level the customer is still not satisfied with the retailer's response, the customer has a right to refer the complaint to the Energy and Water Ombudsman Victoria or other relevant external dispute resolution body. This information must be given in writing.

As stated in 4.1.1, EWOV also has an agreement with energy and water companies for EWOV information, including our Freecall telephone number, to appear on one bill per customer each year and, by law under Clause 28.3 of the *Energy Retail Code*, on all disconnection warning notices.

As a minimum, customers should have a right of internal escalation within their company and be told of their right to complain to the TIO if they are dissatisfied with the company's response to their complaint. All customers should be made aware of the following:

- how they can make a complaint to the TIO
- that the services of the TIO are free
- arrangements for customers with special needs

4.1.4 Should industry be required to publicly advertise the TIO more widely including advice on bills?

As stated in 4.1.1 and 4.1.3, there is a strong need for telecommunications companies to outline the TIO's services and contact details on their customers' bills and on all disconnection/restriction warning notices. We understand that consumers are often made aware of a potential problem with their service only when they read their bills. Therefore having the details of a dispute resolution scheme on their bills provides them with immediate information about the help that is available, and that their concerns can be fairly and independently investigated.

4.2.1 Is the TIO accessible to all customers including people with disabilities, low income groups, CALD and Indigenous people? If not, where is improvement required?

EWOV is not fully aware of all the initiatives that the TIO is engaged in to increase accessibility for customers with disabilities, low income groups, CALD, and indigenous people. We can therefore not make an informed opinion of improvements that may be needed. As a comparison, EWOV has in place a number of initiatives, including:

- being phone and internet based. We do not require a written confirmation of a customer's complaint – complaints are predominantly received over the phone
- having alternative arrangements for access by customers with special needs, including use of the National Relay Service for those with a hearing or speech impairment, and use of the Telephone Interpreter Service for CALD customers
- simplified, fast-tracked processes for refugees and new migrants who are being referred by community organisations
- offering to call back people who contact us by mobile phone to save them costs
- accepting reverse charge calls from customers whose phone line may have been restricted
- accepting authorised representatives, such as friends, relatives, neighbours or financial counsellors, to manage a complaint on behalf of the customer, after completion of a signed authority to act form
- producing a range of targeted publications (including brochures, posters and fact sheets) all designed to maximise readability, build a customer's capacity to resolve problems themselves, and convey accurate information in a straightforward way
- undertaking regular community visits through the acceptance of invitations from community welfare organisations and Government agencies such as the Consumer Utilities Advocacy Centre and Consumer Affairs Victoria
- engaging in dialogue and providing information about consumer experiences in the sector through participation in regulatory mechanisms such as the Essential Services Commission Customer Consultative Committee

Fairness

5.1.1 Does the TIO dispute resolution scheme provide a satisfactory level of fairness from the complainant's perspective? If not, what is required to improve it?

The only way to assess this is to ask complainants. If the TIO undertakes regular customer satisfaction surveys then it will implement solutions based on the feedback received.

5.1.2 Does the TIO satisfactorily adhere to, and follow, the four key practices for fairness highlighted in the DIST benchmarks?

To EWOV's knowledge the TIO follows the Department of Industry Science and Technology benchmarks of:

- decisions are fair and reasonable and give regard to regulation/laws
- procedural fairness
- provision of information to the decision-maker
- confidentiality

Accountability

6.1.1 How well does the TIO perform in reporting on the DIST list of recommended issues within its different reporting mechanisms (that is, annual report, website, TIO Talks)? Are these mechanisms providing appropriate levels of accountability for the TIO or should there be mandatory requirements about what the TIO should publicly report (for instance, in its annual report)?

The TIO's Annual Report is a thorough and comprehensive document that reports on all areas of the scheme and its relationships with its stakeholders. In reading the DIST list of recommended issues and the TIO 2010 Annual Report, the TIO performs very well. We advise however that it appears that reporting improvements could be made in the following areas:

- the outcome of complaints
- the time taken to resolve complaints
- providing the names of scheme members which do not meet their obligations and provide explanation as to why their obligations were not met

6.1.2 Should any other accountability measures be introduced? For example, more formal reporting to the regulator or public reporting against key performance indicators?

It should be the responsibility of a single TIO Board to hold the scheme accountable to its stakeholders. It is not the role of Regulators. The Board will set and measure the scheme's performance against key performance indicators and seek operational improvements where needed. It is not the Regulator's role, nor would it be good practice, for it to seek formal performance reporting from an industry-based ombudsman scheme.

6.1.3 Should the TIO publicly report members who do not comply with TIO determinations?

The TIO has customer responsibility and stakeholder obligation to public report on its members which do not comply with TIO determinations. This will engender future cooperation with the scheme, help change any deficient member practices, improve best-practice methods across the industry, and lead to improved customer service standards. Consumers will also be better informed when choosing a telecommunications company.

Efficiency

7.1.1 How important is the timely resolution of complaints to the fairness of a dispute resolution scheme?

The timely resolution of complaints is a key component of any high performing dispute resolution scheme. The older a complaint becomes, the more difficult it is to resolve. EWOV maintains key performance indicators around complaint closure rates and timeframes which are set by and reported to our board. Resolution timeframes however, do not necessarily reflect the efficiency of a dispute resolution scheme. Complaints are often protracted by both company and customer delay - poor company responses to a scheme's investigation and lack of customer engagement and participation in their complaint can cause delays. It is important however that a scheme has clear processes in place to ensure the efficient progress of a complaint to resolution, and that any delays are managed effectively so that they are kept to a minimum.

7.1.2 Are stakeholders satisfied with current TIO complaint resolution time frames?

If it does not do so already, the TIO may wish to commission a stakeholder satisfaction survey to explore this issue and act on any findings.

7.1.3 Should TIO investigations have shorter, and binding, time frames?

EWOV does not believe that the timeframes should be either shorter or binding. Resolution closure rates are based on averages – some complaints are quick and easy to resolve, some are naturally more complex and take longer. As highlighted in point 7.1.1, there are several reasons why a complaint may become prolonged. As a consequence, shorter time frames might not be reasonable or realistically achievable particularly as a scheme cannot control the timeliness of consumer involvement. A binding timeframe has the risk of placing a greater emphasis on meeting a resolution closure rate at the expense of an adequate investigation.

EWOV maintains key performance indicators around complaint closure rates and timeframes which are set by and reported to our Board. These include complaint closure timeframes over the course of 28, 60, 90, 180 and 365 days. KPIs are also in place for % calls answered and call abandonment rates amongst others.

7.1.4 Should the TIO be required to report publicly against its internal performance benchmarks about complaint resolution?

The TIO should establish with its Board clear key performance indicators with regard to its internal performance benchmarks, and report regularly to its Board on its ability to meet these. It is the role of the Board to ensure that the organisation is functioning to its peak, and to flag concerns with its Ombudsman that internal improvement is required if key performance indicators are not being met.

7.2.1 Does the TIO adequately assess its own performance in relation to issues of efficiency? Could it improve in this regard?

EWOV does not have any informed knowledge of how the TIO assesses its performance or whether it meets key performance indicators around efficiency. Some usual mechanisms for this assessment include regular reviews of the scheme and annual budgets which include efficiency gains.

7.2.2 Does the TIO have adequate mechanisms available for stakeholders to provide appropriate feedback?

Regular stakeholder surveys and reviews can elicit recommendations, which may include providing better mechanisms for stakeholder feedback.

To ensure its availability to stakeholders, EWOV undertakes regular stakeholder reviews and surveys and holds a two day scheme participant conference every 18 months.

In addition, EWOV has established a Complaint Handling Advisory Committee made up of Scheme Participants, Consumer Representatives, EWOV Management and two independent Alternative Dispute Resolution experts. This Committee meets twice a year to ensure that best practice processes are being applied by EWOV.

7.2.3 Should the TIO become subject to public independent reviews every three or five years?

For a dispute resolution scheme to operate efficiently and to ensure its ability to make ongoing improvements, it should commission reviews by an independent body.

One suggestion is for the new TIO merged Board to conduct independent reviews every three to five years. The review findings would be used to implement better organisational practices and to ensure the incorporation of stakeholder needs. A single Board with equal industry and consumer representation and an independent Chair will make it easier to assess the performance of the TIO against national benchmarks and identify when independent reviews are required.

7.2.4 Should the TIO Constitution incorporate more specific requirements around TIO reviews?

Yes. This will provide the new Board with clear direction on the type of reviews and recommended frequency, but should not be so prescriptive that frequent and unnecessary reviews hamper day-to-day operations.

EWOV's Constitution states:

The Board shall conduct reviews of the Scheme and develop proposals for its continued operation. All reviews shall be conducted in consultation with interested parties, including groups representing customers of electricity, gas or water services and community groups representing public interest issues relevant to electricity, gas or water services.

The TIO Constitution is different. It contains a clause which sets out the Council's duty to advise the Board of the need for review of the scheme, but there is no obligation to review, as outlined below:

9.2 Specifically, the duties of the Council are:

(j) To make recommendations to the Board as to the appropriateness, scope and timing of a review of the TIO scheme.

EWOV has followed a rolling review programme since 2006 to ensure continuous improvement in the effectiveness and appropriateness of EWOV's Charter and Constitution and not wait for a review every three or five years. The one review every few years approach does not enable focused and immediate surveys on an as needs basis. This includes conducting reviews both internally and with expert external assistance where appropriate. Over the past three years, EWOV has undertaken:

- an annual funding levy review
- case handling process review
- annual independent omnibus consumer awareness surveys
- external reviews of EWOV's independence
- a staff remuneration model review
- customer satisfaction surveys
- stakeholder survey

Effectiveness

8.1.1 Should the TIO's jurisdiction be widened?

EWOV supports the view of the 2008 Review of Australia's Consumer Policy Framework conducted by the Productivity Commission for the extending of the role of the TIO to include pay TV services. The TIO should also embody an inclusive jurisdiction towards bundled telecommunications products and services as they become more popular and widely available.

8.1.2 What impacts will the future technological landscape have on the TIO?

Major technological changes are anticipated in the coming years and the TIO should take proactive steps to prepare for the impact of these changes. Communications are becoming more varied and commonplace and there is an increasing number of people who use several types of communications, interfaces and channels. The TIO should be resourced to prepare for the impact of this on the scheme by being across new technological trends, liaising with industry, communicating with government and ACMA, having jurisdiction to cover these changes, and flexibility in its case handling procedures to react well to new challenges.

8.2.1 Is the current compliance and enforcement regime working effectively?

The discussion paper states that the TIO Ombudsman, Mr Simon Cohen, has recently called for stronger ACMA powers to deal with cases of non-compliance. The paper also states that members of the TIO are not always observing the TIO's 'preliminary views', nor complying with TIO binding determinations with the TIO having referred two of its members to ACMA for a range of non-compliance issues. EWOV is surprised that members would decide not to follow 'preliminary views' and binding decisions. This clearly indicates that the current compliance and enforcement regime does not work as it should. The ESC has publically stated that if EWOV's scheme participants don't comply with binding decisions then their operating licence is at risk, as their licence requires participation in an Ombudsman scheme. Failure to abide by a binding decision is a failure of participation, hence a breach of licence. Regulators should have the tools to enforce compliance matters and the willingness to use these tools to take action when needed. EWOV welcomes reform in this area so that TIO members are compelled to following binding decisions and that ACMA has a more visible and robust means of dealing with non-compliant members at the earliest opportunity.

8.3.1 Does the TIO or the ACMA need additional powers? If so, what are they?

The following suggestions outlined in the discussion paper seem appropriate to strengthen the compliance and enforcement regime of the TIO:

- introducing a new industry code or standard
- providing the TIO with public reporting power
- strengthening the compliance mechanisms under the existing TCP Code
- providing the ACMA with the ability to issue infringement notices

8.3.2 Are systemic issues appropriately defined? How can the handling of systemic issues improve?

The discussion paper states that the TIO's Constitution only allows it to consider whether it is 'practical, fair, and efficient' to commence an investigation into a systemic issue. EWOV's approach towards systemic issues is much broader.

Systemic issues can adversely affect large numbers of customers and sometimes on an ongoing basis. Where some customers contact us, we know others don't. By being proactive about reporting any potentially systemic issues we identify, we can work with companies and regulators to bring about redress for those who do not complain (as well as those who do), reduce possible wider impact and minimise complaints. EWOV, like most Ombudsman schemes, has redress powers and the ability to refer to regulators where redress is not possible.

EWOV registers systemic issue cases separate to complaints and employs a Systemic Issues Specialist who solely works on identifying systemic issues and seeking redress for customers. EWOV reports to the ESC on a monthly basis, which includes a regular monthly meeting during which the investigation of systemic issues and customer redress is discussed and information is shared.

Clauses 7.1(m) and 7.2(b) of EWOV's Charter places a duty and responsibility on the Ombudsman to actively identify and report upon systemic issues:

7.1 The Ombudsman is responsible for:

(m) keeping adequate data on complaints or requests for information, both for reporting purposes and to identify the sources of practices giving rise to similar complaints;

7.2 The Ombudsman also has the power:

(b) to make a report to a Participant and to the Essential Services Commission where, in the Ombudsman's opinion, the general electricity policy, water services policy or gas policy or commercial practices of a Participant:

(i) have contributed to a complaint; or

(ii) have been identified as the source of a number of similar complaints; or

(iii) have impeded the investigation or handling of a particular complaint;

In EWOV's case handling procedures we define a systemic issue as:

An issue, problem or change in company policy or practice that affects, or has the potential to affect, a number of customers. The issue may be caused by, but is not limited to, one or more of the following:

- *a system change;*
- *an alteration in performance levels (i.e. quality of supply, access to call centre);*
- *a policy or procedure;*
- *a lack of clear regulatory guidelines;*
- *regulatory non-compliance;*
- *the conduct of an energy or water provider's employee, agent, servant, officer or contractor;*
- *the action of a stakeholder (e.g. legislative or regulatory change leading to misunderstanding or misapplication of the change).*

EWOV believes that the TIO should have a defined responsibility to examine all systemic issues that arise, without that responsibility being limited or fettered by other considerations, and to develop internal processes for early systemic issues identification. The TIO should continue to build its reporting relationship with ACMA so that systemic issues can be investigated as early as possible to minimise negative impacts on consumers.

8.3.3 Should the TIO formally report systemic issues to relevant agencies, including the ACMA, ACCC and the Office of the Australian Information Commissioner (OAIC)? If so, how often and what information should be reported?

The TIO should as a minimum, formally report systemic issues to the relevant regulatory agencies on a quarterly basis. As explained in 8.3.2, EWOV formally reports to the ESC on a monthly basis along with EWOV's Systemic Issues Specialist having day-to-day contact with representatives from the ESC.

As outlined in 8.3.2, EWOV's case handling procedure clearly states what is classified as systemic which is accordingly reported to the ESC. This includes an alteration in performance levels (i.e. quality of supply, access to call centre), a policy or procedure, a lack of clear regulatory guidelines, regulatory non-compliance, the conduct of an energy or water provider's employee, agent, servant, officer or contractor, the action of a stakeholder (e.g. legislative or regulatory change leading to misunderstanding or misapplication of the change).

8.3.4 Should information about systemic issues be made publicly available?

The TIO should make information about systemic issues publicly available, and as stated in 8.3.3, EWOV does this on a regular basis using various communication methods. EWOV publically reports on systemic issues every six months in our 'Resolution' publication and in our Annual Report. We also publish details of systemic issues on our website. In addition to this, EWOV also reports annually on systemic issues directly to the CEOs of each energy and water company and quarterly to the EWOV Board.

8.3.5 Would a rise in TIO fees for level 1 complaints provide greater incentive for industry to improve IDR processes?

Any decision on increasing/decreasing TIO fees for level 1 complaints should be made by the new TIO Board with stakeholder consultation. EWOV supports the principle that scheme members should pay fees proportionate to the number of cases they receive and each case, if not resolved within a set timeframe, should cost more when upgraded to the next case level.

8.3.6 Should the TIO's processes change to promote greater responsibility for industry to resolve complaints? If so, how?

Fundamentally, the responsibility to resolve customer complaints lies with the telecommunications industry itself – subject to those small number of complaints which, usually due to complexity, intrinsically require TIO assistance.

The focus should not be on the TIO's responsibility to resolve complaints, but on the obvious need for the industry to improve its own customer service standards to prevent TIO complaints arising. This should be coupled with powers for the regulators to effectively deal with industry non-compliance.

8.3.7 Should compliance with Australian standards regarding IDR processes become mandatory? If so, should this be a statutory requirement and/or should the ACMA have oversight?

The TIO scheme members should be compelled to abide by Australian standards on complaint handling, rather than in the current situation of 'have regard' to the standards. The Australian Standard sets a benchmark of complaint handling procedures to the benefit of the community and we strongly support a statutory requirement with ACMA regulation.

Clause 28.1 of the *Energy Retail Code* places a legal obligation on energy retailers to handle a complaint in accordance with the relevant Australian Standard on Complaint Handling:

28.1 Complaint handling

A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling. The retailer must include information on its complaint handling processes in the retailer's charter.

This clause is replicated in the new, yet to be enacted, National Electricity Law and National Electricity Rules.

8.3.8 Do existing processes (that is, data-sharing MOUs) between different complaint handling bodies (for example, the ACMA, TIO, and the OAIC) require greater clarity and improvement?

It is for ACMA, TIO, OAIC and other relevant bodies to decide how processes can be improved. However any model of communication must take into account the separation of roles, along with the relationship links, between regulators, a Board and an Ombudsman. As outlined in 3.3.1, delineation of various levels of responsibility must be clearly expressed so as to achieve clarity in processes.

Additionally, it is important that data does not simply stand alone without any analysis of the complaint trends or assessment of what is causing complaints. While a focus on data to report on case trends and issues is important, a 'whole picture' approach should also be taken so that the data does not mask the effect on people or the reality of their issues.

8.3.9 Is the data currently collected and reported by the TIO useful and relevant? If not, what would improve it?

The current data collected and reported by the TIO in its Annual Report is both useful and comprehensive. Please refer to earlier comments made about the TIO Annual Report in 6.1.1.

We trust that our comments are helpful and thank you for the opportunity to make this submission. If you require further information or have any queries, please contact Justin Stokes, Research and Communications Officer on (03) 8672 4272.

9.1.1 Do you have any other comments or issues you would like to raise about the TIO?

Undoubtedly the TIO is an extremely important internal dispute resolution body. The TIO has always been a key industry based customer dispute resolution scheme and has provided a crucial service to hundreds of thousands of Australians since its inception. It cannot be understated how critical it is for the Commonwealth Government to ensure that its ongoing success is not limited by poor corporate

governance, limited jurisdiction or inadequate telco and ISP industry internal dispute resolution practices.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod". The signature is written in black ink on a white background.

Fiona McLeod
Energy and Water Ombudsman (Victoria)