# Explanatory Statement for a Special Resolution to be put to the Annual General Meeting of Telecommunications Industry Ombudsman Limited (TIO Limited) on 15 December 2020

This Explanatory Statement is to be read with the notice of Annual General Meeting issued by TIO Limited. It deals with the special resolution which will be put forward for the consideration of members at the Annual General Meeting which will be held as a "virtual AGM" on Tuesday, 15 December 2020 at 1.00p.m. (AEDT) (the **AGM**).

This Explanatory Statement should be read in its entirety. If members are in any doubt as to how they should vote on the resolution, they should seek advice from their professional advisors.

## 1. Background to proposed amendments to the Constitution

The Constitution and TIO Limited's Terms of Reference are the principal documents that govern the operation of TIO Limited and the TIO scheme. The Board and staff of TIO Limited refer to these documents very frequently in executing their roles.

Over the course of time a number of desirable amendments to these documents, particularly the Constitution, have been noted by the Board. These amendments are all relatively minor in nature, but should assist to improve the operation of the TIO scheme and bring the scheme into line with current legal requirements and good practices of governance.

The Board recently passed a special resolution of the Board in support of putting a Special Resolution to a vote of Members at the AGM, to amend the Constitution of TIO Limited as outlined below.

## 2. Brief summary of proposed amendments to the Constitution

The Explanatory Notes contain a detailed summary of the proposed amendments to the Constitution.

As a brief high-level summary, the proposed amendments to the Constitution relate to the following:

- Some now-redundant transitional wording will be deleted.
- Amendments are proposed that will modernise the Constitution by allowing a Member to appoint a proxy electronically, so that the proxy can participate in a General Meeting of TIO Limited on the Member's behalf. The proposed amendments also provide more details of what information a proxy appointment by a Member must contain to be legally valid. Stating these details in the Constitution should assist Members when they appoint proxies.
- Various amendments are proposed for the clauses relating to the appointment of directors. The changes include:
    - Simplifying the drafting by bringing together in one clause the criteria that are the same for appointing each category of director and making the criteria consistent across the different categories of director. Some procedural wording has been moved to the TIO Board Nominations Committee Charter.
    - Amending the qualifying requirements for candidates for Director With Consumer Experience positions. Currently, all Directors With Consumer Experience must have links to community or consumer groups or agencies. The amendment means that a person must have links to consumer groups or agencies, rather than community groups. This will help ensure that candidates have links specifically to consumer bodies, rather than potentially only having links to a community group whose focus is not centrally on consumer interests.

- The term of appointment for a director will be changed from a fixed period of 3 years, to a term specified by the Board of up to 3 years. The change allows the Board flexibility to "stagger" the appointment terms for directors, so that they expire in an ordered spread over a period of time. It also allows flexibility to appoint a director for a shorter term where, for example, an incumbent well-performing director does not wish to serve a further full 3 year term but is willing to serve a further 1 year term to assist to complete a project.

- Wording regarding payment of remuneration to directors has been modernised and put into plainer English. This will not affect the amount of remuneration directors receive. The specific ability for TIO Limited to pay a special honorarium to a director who performs duties outside the ordinary duties of a director will be removed.
- Wording regarding circular resolutions of the Board will be amended to allow a circular resolution to be passed without the assent of directors who are unavailable to consider it (for example due to serious illness) and to allow for a circular resolution to be passed by electronic means, for example by email.
- Wording that allows a director to appoint an alternate or substitute director to act in their place will be deleted. While some directors of TIO Limited in the past have appointed alternate directors, none are appointed currently. The Board considers that it is better governance practice for directors to aim to attend each Board meeting personally.
- Members will be required to treat any Acting Ombudsman as having the same functions and powers as the Ombudsman under all legislation, the Constitution and the TIO Terms of Reference.
- A new role of Acting Deputy Ombudsman will be provided for, although nobody will be appointed to that role in the short term as there is no Deputy Ombudsman at present and no current plan to appoint one. However as the potential exists under the Constitution to appoint a Deputy Ombudsman, it makes sense to allow for the appointment of an Acting Deputy Ombudsman.
- A notice sent by post will be deemed to be received 5 days after posting, rather than 2 days as is currently the case. This better reflects Australia Post's current service levels.
- Various other minor or consequential amendments will be made.

## 3. The effect of the proposed Special Resolution

If the Special Resolution is passed by Members, the Constitution will be amended as shown in the "marked up" version provided to Members, with immediate effect from the time of approval by Members at the AGM.

The Board has already resolved that if the Special Resolution is passed by Members, certain amendments to the TIO Terms of Reference, TIO Board of Directors Charter and TIO Board Nominations Committee Charter as outlined below will take effect.

## 4. Voting on a Special Resolution

A Special Resolution requires a vote in favour of the resolution by at least 75% of the votes cast by Members eligible to vote at the AGM (whether in person or by proxy). As this will be a "virtual AGM" the vote will conducted on a poll rather than by show of hands and votes may be cast before or at the AGM. The Constitution provides that for a Special Resolution to be passed at least 5 Members, including at least one Carrier Member and at least one Carriage Service Provider Member, must vote in favour of the Special Resolution. The Constitution also provides that for this purpose, any two or more Members who are Related Companies (as defined in the Constitution) will count as one Member and if any of those Members is a Carrier Member, those Members will count as a Carrier Member, otherwise those Members will count as a Carriage Service Provider Member.

## 5. Board recommendation

The Board unanimously recommends that Members vote in favour of, and approve, the Special Resolution.

The Board believes the amendments to the Constitution reflect contemporary corporate governance practices and the current operations of TIO Limited. The amendments should provide the Board with additional flexibility in its decision making in relation to the governance of TIO Limited and support, protect and promote Members' interests and the TIO scheme's functions.

The Board recommends that all Members review the proposed amendments to the Constitution, together with this Explanatory Statement and the Explanatory Notes provided to Members in order to understand and fully inform themselves of the proposed changes and effect of the Special Resolution.

## 6. Consequential amendments to other documents

If the Special Resolution is passed:

- The TIO Terms of Reference will be amended to clarify that an Acting Ombudsman has the same functions and powers as the Ombudsman and to reflect the responsibilities of an Acting Deputy Ombudsman.
- The TIO Board of Directors Charter will be amended to reflect the changes being made to the Constitution and to provide that in considering candidates to be appointed to the Board, the Board will consider any gaps in the collective skill-set of the Board. The Board considers it desirable to apply this "skills matrix" lens to the Board recruitment process.
- Amendments will be made to the TIO Board Nominations Committee Charter that are similar to the amendments to the TIO Board of Directors Charter. Certain procedural wording about the process for appointing directors will also be inserted into the TIO Board Nominations Committee Charter, having been removed from the Constitution as a result of the Special Resolution.

  A sentence will also be added in the TIO Board Nominations Committee Charter to state that if the Board asks the Nominations Committee to identify and recommend to the Board a person to act as the Independent Chair, the Board may instruct the Committee to use the same search process as for other categories of director (this would include considering a wide range of candidates and conducting a search process through a medium or media likely to attract a substantial pool of suitably qualified candidates).

The amended documents will be published on the TIO website at www.tio.com.au.

## 7. Queries

If you have any questions or require further information please contact the Company Secretary, Gerard Dell'Oste at company.secretary@tio.com.au.