23 November 2020

Dear Member,

Notice of Annual General Meeting

I am pleased to invite you to the 2020 Annual General Meeting of Telecommunications Industry Ombudsman Limited (the Company).

This year's meeting will be held as a virtual meeting due to the implications of COVID-19. Details are:

Time:	1:00pm AEDT
Date:	Tuesday 15 December 2020

Please refer to the Virtual Meeting Online Guide for instructions on how to participate in the meeting. The following documents are provided:

1. Minutes of the 2019 Annual General Meeting held on 12 November 2019

Members are asked to consider and, if thought fit, to pass the following ordinary resolution:

Resolution 1: *To accept the Minutes of the 2019 Annual General Meeting held on 12 November 2019*

2. Financial Report for the year ended 30 June 2020 which includes the Directors' Report, Financial Statements and Auditor's Report

Members are asked to consider and, if thought fit, to pass the following ordinary resolution:

Resolution 2: *To accept the Financial Report for the year ended 30 June 2020 which includes the Directors' Report, Financial Statements and Auditor's Report.*

3. Amendments to the Constitution of the Company

Members are asked to consider and, if thought fit, to pass the following resolution as a special resolution:

Resolution 3: *The members of the Company resolve by special resolution to amend the Constitution of the Company in accordance with the amendments to the Constitution shown in the attached "marked up" version of the Constitution, effective immediately upon this special resolution being passed.*

4. **Explanatory Statement and Explanatory Notes for proposed amendments to the Constitution**

5. **"Marked up" version of the Constitution**

   This shows the amendments proposed to be implemented by the special resolution above.

6. **A proxy form for completion and return if you wish to nominate a proxy to vote on your behalf.**

I look forward to your participation.

Yours faithfully

Gerard Dell'Oste
Company Secretary

MINUTES

OF THE 2019 ANNUAL GENERAL MEETING OF TELECOMMUNICATIONS INDUSTRY OMBUDSMAN LIMITED (ACN 057 634 787)

Date Held: Tuesday 12 November 2019 at 10:30am

Held At: The Savoy Hotel on Little Collins – Collins Room
Level 1
630 Little Collins Street
Melbourne VIC 3000

Present:

	Michael Lavarch AO	Chair
	Judi Jones	Ombudsman
	Gerard Dell'Oste	Company Secretary
	Sue Walker	Minute Taker

Authorised Representatives in Attendance:

	Alexander Osborne	Vodafone Hutchison Australia
	Justin Tsuei	Telstra Corporation Limited
	Michelle Lim	Express Virtual Meetings Pty Ltd
	Michelle Lim	InterNex Australia Pty Ltd
	Michelle Lim	My Net Fone Australia Pty Ltd
	Michelle Lim	Pennytel Australia Pty Ltd
	Michelle Lim	Symbio Networks Pty Ltd
	Michelle Lim	Telcoinabox Operations Pty Limited
	Eric Erickson	Aussie Broadband Pty Ltd
	Gary Smith	Optus ADSL Pty Limited
	Gary Smith	Optus Fixed Infrastructure Pty Ltd
	Gary Smith	Optus Internet Pty Limited
	Gary Smith	Optus Mobile Pty Limited
	Gary Smith	Optus Networks Pty Ltd
	Gary Smith	Optus Satellite Network Pty Limited
	Gary Smith	Optus Satellite Pty Limited
	Gary Smith	Virgin Mobile (Australia) Pty Limited

Directors in Attendance:

	Geoff Nicholson	Independent Director (Commercial Governance)
	John Lindsay	Director with Industry Experience
	Catriona Lowe	Director with Consumer Experience
	Gordon Renouf	Director with Consumer Experience

Auditors in Attendance:

	Ryan Hansen	Deloitte Touche Tohmatsu
	Nicholas Howard	Deloitte Touche Tohmatsu

Apologies:

	Paul Harrison	Director with Consumer Experience
	Andrew Sheridan	Director with Industry Experience
	Jane van Beelen	Director with Industry Experience

Observers in Attendance:

	David Smith	Gadens
	Sarah Carnovale	TIO Limited
	Lucy Andrews	TIO Limited

The meeting commenced at 10:30am.

1. WELCOME AND APOLOGIES

Welcome

The Chair welcomed Members, Directors, the External Auditors, Legal Counsel, and TIO staff to the meeting and outlined proceedings.

The Chair acknowledged the Traditional Owners of the land on which the meeting was being held, the Wurundjeri People of the Kulin Nation and paid respect to their Elders, past and present and Aboriginal Elders of other communities.

Apologies

Apologies were received from TIO Directors Dr Paul Harrison, Mr Andrew Sheridan, and Ms Jane van Beelen.

Quorum

The Chair confirmed a quorum was present.

Notice of Meeting

The Chair noted that the Notice of the Meeting had been circulated to all TIO members on 17 October 2019 which met the requirements of the TIO Constitution and applicable Corporations law.

Agenda

The Chair noted the following three items of business for consideration at the meeting:

- Minutes of the 2018 Annual General Meeting held on 13 November 2018;
- Financial Report for the year ended 30 June 2019, together with the Directors' Report and Auditor's Report; and
- Proposed amendments to the Constitution of TIO Limited.

Chair's Report

The Chair provided an update on key activities for the TIO during the 2018/19 financial year, highlighting the following key items.

2018/2019 had been a successful year for the organisation, however, management of resources to meet the dramatic fluctuations in demand for service remained a challenge.

A decrease of approximately 21% in complaint numbers was experienced over the previous financial year, resulting in a total of 134,000 complaints being received by the TIO.

This was a stark contrast to previous years where increasing demand had been experienced, particularly during commencement of the nbn rollout when a double-digit increase in demand had occurred.

Maintaining a core skill base and ensuring the cost base was correct for resourcing and being able to meet this demand, were key challenges for the business.

The TIO also experienced a shift in the make-up of complaints with small business complaints increasing from 12% in 2017/18 to 14% in 2018/19.

Another emerging trend was the increasing complexity of matters being handled by the TIO.

For the first time, the number of complaints dealing with internet services exceeded complaints in relation to mobile communications and reflected trends in the sector as a whole.

The Australian Competition and Consumer Commission (ACCC) completed its inquiry into digital platforms which included several recommendations welcomed by the TIO. In particular, the establishment of an independent ombudsman for this sector and ACCC's suggestion that TIO may be the appropriate platform to extend its dispute resolution services to digital platforms.

The TIO Board was happy to explore the potential of taking on this new role, however, was cognisant that the organisation not be distracted from its core business of telecommunications and any costs associated with this new service were not to be borne by the existing members.

Finally, there was much effort put into working through and implementing the recommendations flowing from the Consumer Safeguards Review. Part of this process was reflected in the proposed changes to the Constitution which members were being asked to consider.

2. MINUTES

The Chair proposed that the minutes of the 2018 Annual General Meeting held on 13 November 2018 be received.

Mr Gary Smith seconded the motion.

The motion was unanimously carried.

3. FINANCIAL REPORT FOR THE YEAR ENDED 30 JUNE 2019 INCLUDING THE DIRETORS' REPORT, FINANCIAL STATEMENTS AND AUDITOR'S REPORT

The Chair introduced the Financial Report of TIO Limited for the year ended 30 June 2019, together with the Directors' Report and Auditor's Report in respect to those financial statements. It was noted that the reports had been circulated to members with the Notice of Meeting on 17 October 2019.

Further, the Chair highlighted the attendance at the meeting of the TIO's External Auditors, who were available to respond to any member questions.

The result for the 2019 financial year was a surplus of $1.9 million, a significant increase from the 2018 financial year surplus of $211,000.

The Chair reported that for the current 2019/20 financial year, the organisation had budgeted for a deficit of $1.2 million which reflected the significant decrease in complaint numbers during 2018/19.

Going forward, the Board has in front of it a substantial technology refresh program requiring a period of reasonable capital expenditure and drawing on the accumulated reserves for funding.

The new funding model, which came into effect in the 2018/19 financial year, had been operating well and the Board will be undertaking a post implement review.

The Chair invited questions on the financial reports, Directors' Report, and Auditor's Report.

There were no questions.

The Chair proposed that the annual financial statements of TIO Limited for the year ended 30 June 2019, together with the reports of the Directors and Auditors be received.

Mr Justin Tsuei seconded the motion.

The motion was unanimously carried.

Management of Company

The Chair opened the meeting to members to ask questions of the Directors or to comment on the management of the Company.

There were no questions or comments.

4. AMENDMENTS TO THE CONSTITUTION OF THE COMPANY

Members of the TIO Limited were invited to consider and, if thought fit, to pass the following resolution as a special resolution:

> *The members of the Company resolve by special resolution to amend the Constitution of the Company in accordance with the amendments to the Constitution shown in the attached "marked up" version of the Constitution, effective immediately upon this special resolution being passed.*

The Chair reported on the background to the proposed changes, noting that, as a result of the Consumer Safeguards Review, the Board had been asked to consider some matters around the governance of the scheme. In particular, the make-up of Board membership and whether Directors on the Board should have any current engagement with any member.

Consultation with members and stakeholders indicated no particular appetite for a change in this respect and it was seen as sensible to have a direct relationship to the telecommunications industry. As a result, the three categories of Directors would remain unchanged.

There was, however, appetite to see a change to the mandated requirement for two of the three positions for Industry Directors being reserved for the two largest members.

The views expressed through consultation with Telstra and Optus were that the scheme had reached maturity and it was now appropriate to move away from this composition model.

It was acknowledged that the majority of complaints coming into the TIO related to larger members, however, the industry was incredibly diverse and it was important to ensure a balance of views from across the industry was represented on the Board.

The Explanatory Statement, Explanatory Notes, and marked-up Constitution circulated to members also outlined the changes to the respective Board Charters to guide the process to be followed by the Board when selecting and appointing new Directors.

The Chair invited questions from members.

No questions or comments were received.

The Chair called on the Company Secretary to explain the formal procedural requirements for consideration of, and voting on, the proposed special resolution.

The Company Secretary noted that four proxies had been received; three of which were held by the Chair - one being an abstention; and one proxy being held by Ms Judi Jones.

In terms of the voting requirements to pass the special resolution, by virtue of clause 11.4 of the TIO Constitution and Section 9 of the Corporations Act, there were three discrete requirements for the special resolution to be passed:

- Firstly, at least five members must vote in favour of the special resolution. By virtue of clause 11.4 of the TIO Constitution, the votes of TIO members that were related companies of other TIO members would be counted as a vote from one member.
- The second requirement was that at least one carrier member and one carriage service provider member must vote in favour of the special resolution.

  For the purposes of this vote, if a carriage service provider was related to another TIO member that was a carrier member, the vote from that carriage service provider member shall be deemed to be from a carrier member.
- The third requirement was that at least 75% of the votes cast were in favour of the special resolution.

In terms of the voting procedure, by virtue of clause 11.5 of the TIO Constitution voting was initially by show of hands on a one member, one vote basis.

Any member or proxy was entitled to call for a poll before or on the declaration of the result of the show of hands. If a poll was called for, a short interval would be allowed for voting forms to be distributed and completed and for votes to be counted. On a poll, each member would have a number of votes equal to their contribution in whole dollars to the TIO's operating costs in the immediately preceding financial year.

The Company Secretary handed back to the Chair to conduct the vote.

The Chair put the special resolution to the members and called for a vote on a show of hands.

Result

The Company Secretary informed the meeting that:

- Taking into consideration the requirements of clause 11.4 of the TIO constitution which deemed votes by TIO members that were related companies of other TIO members to be from one member, a total of eight members voted in favour of the resolution. Therefore, the requirement in clause 11.4 of the TIO Constitution that at least five members vote in favour of the special resolution had been satisfied.
- Of the eight members that voted in favour of the resolution, six were carrier members and two were carriage service provider members. Therefore, the requirement in clause 11.4 of the TIO Constitution that at least one carrier member and at least one carriage service provider member vote in favour of the resolution had been satisfied.
- Of the eight members entitled to vote, all voted (on a show of hands), in favour of the resolution. This satisfied the requirement in Section 9 of the Corporations Act that at least 75% of the votes cast are in favour of the special resolution.
- Accordingly, all applicable voting requirements of the TIO's Constitution and the Corporations Act to pass the special resolution had been satisfied.

The Chair declared that the special resolution was unanimously passed.

There being no other business, the Chair thanked all for their attendance and the meeting closed at 10:58am.

Confirmed: ____ Date: _______________________

Michael Lavarch AO, Chair of the Board of Directors

Telecommunications Industry Ombudsman Limited

ABN 46 057 634 787

Financial Report
For the year ended 30 June 2020

Level 14
717 Bourke Street
Docklands, Victoria 3008

Level 14
717 Bourke Street
Docklands, Victoria 3008

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN LIMITED
ABN 46 057 634 787

TABLE OF CONTENTS

DIRECTORS' REPORT

Your Directors present their report of Telecommunications Industry Ombudsman Limited (**TIO**) for the year ended 30 June 2020.

TIO is a company limited by guarantee and funded by its members. It was incorporated in Australia in 1993 under the *Corporations Act 2001* to investigate, resolve, make determinations and give directions relating to complaints by residential and small business consumers of telecommunications services.

The principal place of business is Level 14, 717 Bourke Street, Docklands, Victoria 3008.

OBJECTIVES, STRATEGY AND PRINCIPAL ACTIVITIES

TIO is a company limited by guarantee whose objects, briefly stated, are

(a) to operate the TIO scheme; and

(b) to appoint an Ombudsman with power to receive, investigate, make decisions relating to and facilitate the resolution of complaints by residential and small business consumers of telecommunications services.

TIO's purpose is to provide a fair, independent and accessible dispute resolution service for consumers and the telecommunications industry that complies with the Benchmarks for Industry Based Customer Dispute Resolution. Achieving TIO's purpose will contribute to enhanced community confidence in the telecommunications industry.

The scope of dispute resolution services includes:

(a) dealing with individual and systemic complaints;

(b) promoting fair and effective resolution of complaints; and

(c) providing information and analysis to community, government and members.

During the year, the principal activity of TIO was investigating and resolving telecommunications complaints from residential and small business consumers of telecommunications services. The principal activity directly discharges the stated objects of TIO.

New strategy

The company has adopted a new three-year strategy, designed to deliver on the purpose of providing fair, independent, and accessible dispute resolution services and improve outcomes for consumers and members. Over the next three years, the company will be focusing on five strategic goals: working with members to reduce complaints and improve practices, leveraging the power of our people to strengthen capability and performance, creating a great consumer and member experience, expanding services with innovative solutions and technology, and using data and insights to influence policy and shape public debate.

Role of the Board

The Board of Directors oversees the management of the business, affairs and property of TIO in accordance with the Company Constitution and the Terms of Reference.

The Board preserves the independence of the Ombudsman, who has day to day responsibility for the management and operation of the TIO scheme.

Responsibilities of the Board

The Board's responsibilities are set out in the Terms of Reference.

Key functions of the Board include:

(a) overseeing the management of the business, affairs and property of TIO;

(b) monitoring the overall performance and results of TIO and TIO scheme;

(c) setting goals and the overall strategy for TIO and TIO scheme;

(d) in relation to TIO's finances:

  (i) overseeing the establishment of a budget that allows for the achievement of the functions above.
  (ii) overseeing the Ombudsman's management of spending;
  (iii) overseeing TIO's capital management, funding and cash flows, including ensuring sufficient funding for the TIO scheme; and
  (iv) setting financial delegations;

(e) overseeing TIO's systems for risk management, auditing and legal compliance;

(f) appointing and terminating the appointment of the Ombudsman;

(g) making certain policies and procedures for TIO and the TIO scheme; and

(h) maintaining the Ombudsman's independence.

The Board has a charter to assist in the exercise of its functions and responsibilities. A copy of the Board Charter is published on the TIO website.

The Board also has committees to assist in discharging its functions. Details of the committees appear later in this report.

Appointment of Directors

The Company Constitution provides for a Board of nine Directors. The terms of Directors are staggered so that there is an orderly expiry of terms. Following the retirement of the previous Independent Chair, Ms Patricia Faulkner AO, in July 2019, the Board appointed The Hon. Michael Lavarch AO as Independent Chair. In November 2019, the Board appointed Ms Julie Hamblin as an Independent Director with Not-For-Profit Governance Experience to fill the vacancy created by Mr Lavarch.

During the year Ms Catriona Lowe, Director with Consumer Experience, resigned from the Board and Mr John Lindsay's term came to an end. In accordance with the Company Constitution, the Nominations Committee undertook a recruitment process and made recommendations to the Board. In February 2020, the Board reappointed Mr John Lindsay as a Director with Industry Experience and Ms Catherine Wolthuizen as a Director with Consumer Experience.

Newly appointed Directors receive an induction pack which includes the Company Constitution and Terms of Reference, Board and Committee Charters and other information to assist Directors in carrying out their duties.

New Directors are also provided with an induction consisting of one-on-one meetings with the Ombudsman, Executive Director Shared Services & CFO and the Company Secretary, and the Senior Leadership Team.

DIRECTORS' REPORT

Board Composition

The composition of the TIO Board is set out in the Company Constitution and is currently: three Independent Directors, one of whom is also the Independent Chair, three Directors with Consumer Experience and three Directors with Industry Experience.

With the approval of the Board, any Director may appoint an alternate Director from time to time.

Director	Experience	Responsibility
Professor The Hon. Michael Lavarch AO, LLB	Mr Lavarch has held senior roles in government, including serving as Australia's Attorney-General (1993-1996). He has also held the roles of Secretary-General of the Law Council of Australia and Commissioner for the Australian Skills Quality Authority. He is an Emeritus Professor of Law at the Queensland University of Technology, Chief Adjudicator on the Alcohol Beverages Advertising Code adjudication panel, and Chair of Way Forward Debt Solutions. He is Co-Chair of the Queensland Treaty Consultation Panel and a director of the Catholic Professional Standards Limited. In 2012, Mr Lavarch was appointed an Officer of the Order of Australia for distinguished service to law, education and human rights.	Independent Chair (from 15 July 2019) Independent Director with Not-For-Profit Governance Experience (from 26 February 2017 to 14 July 2019)
Paul J Harrison *PhD, GAICD, MAM*	Dr Harrison is the Unit Chair and Senior Lecturer of Marketing and Consumer Behaviour (MBA), Deakin University, and Deputy Director of Deakin Business School's MBA Program. He is also Visiting Professor of Marketing and Governance, Università Cattolica del Sacro Cuore, Milan. Dr Harrison is also a member of the Consumer Advisory Committee of Consumer Affairs Victoria and an Advisory Board Member for The Nourish Network. Dr Harrison researches and writes in the fields of consumer behaviour, behavioural economics, and consumer policy, and his work is published widely, both nationally and internationally.	Director with Consumer Experience (from 26 February 2014)
John Lindsay *GAICD, MACS*	Mr Lindsay is a company director and consultant. He is a director of Jtwo Solutions Pty Ltd, helping enterprise and government shift IT to the cloud, UltraServe Pty Ltd, hosting enterprise ecommerce in the cloud, Redflow Ltd, designing and building an innovative electrical energy storage battery and Uniti Group Ltd, a national ISP based in Adelaide. John is also a member of the SA Government InfrastructureSA COVID-19 Digital Sector Recovery Sub-Committee. Mr Lindsay has over 20 years' experience building and managing ISPs including Chariot, Internode and iiNet Ltd. He is also a graduate member of the Australian Institute of Company Directors.	Director with Industry Experience (from 26 February 2017)

DIRECTORS' REPORT

Director	Experience	Responsibility
Geoff J Nicholson *BEc, MBA, FCA, GAICD, CSEP*	Mr Nicholson is a Director of United Energy Distribution Holdings Limited and Athletics Australia Limited. He is Trustee of the R E Ross Trust and Chair of its fully owned subsidiary Hillview Quarries Pty Ltd. He is a consultant to Bourne Digital Pty Ltd and Endeavour Energy, New South Wales, as well as being a member of Endeavour Energy's Audit and Risk Committee. Mr Nicholson's former positions include the Chairman of Hanover Welfare Services, non-executive director of Sensis, the KAZ Computing Group and Marchment Hill Consulting Pty Ltd, Chief Financial Officer at AusNet Services and executive director, Finance at Telstra Corporation Limited. He was also Foxtel's first Chief Financial Officer.	Independent Director with Commercial Governance Experience (from 26 February 2016)
Gordon P Renouf *BA, LLB*	Mr Renouf is Chair of the Australian Securities and Investments Commission's Consumer Advisory Panel, Deputy Chair of the Consumers' Federation of Australia and of Justice Connect. He is also CEO of Good On You Pty Ltd, and a member of the Banking Code Compliance and Monitoring Committee. He has been a consumer advocate for more than 30 years working at CHOICE, the North Australian Aboriginal Legal Service and several community legal centres.	Director with Consumer Experience (from 26 February 2015)
Jane van Beelen *BEc, LLB, Grad Dip (Legal Practice), GAICD*	Ms van Beelen is Compliance & Regulatory Affairs Executive, Telstra Corporation Limited, having worked in Regulatory Affairs for over 20 years.	Director with Industry Experience (from 26 February 2019)
Andrew Sheridan *CA, MA (Hons)*	Mr Sheridan is the Vice President of Regulatory & Public Affairs for Optus with responsibility for managing Optus' relationship with key external stakeholders from the Government, Regulatory bodies such as the ACCC and ACMA and the media. The group also develops Optus' position on competition and compliance policies.	Director with Industry Experience (from 26 February 2018)

Director	Experience	Responsibility
Julie Hamblin *BA, LLB (Hons) (Syd), LLM (McGill), FAICD*	Ms Hamblin has many years' experience as a non-executive director working across a range of sectors. She chairs the Boards of Autism Spectrum Australia and Maluk Timor Australia, is Deputy Chair of Plan International Australia and an independent Board member of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. She is also Deputy Chair of the Australian Research Integrity Committee. A former partner of HWL Ebsworth, she worked for more than 25 years as a lawyer and policy consultant in the health, disability and not-for-profit sectors, specialising in governance and risk. She has a particular interest in global health having worked with the United Nations Development Programme and other organisations on projects relating to public health and HIV/AIDS in more than 20 countries in Asia, the Pacific, Africa and Eastern Europe.	Independent Director with Not-for-Profit Governance Experience (from 12 November 2019)
Catherine Wolthuizen *BA (Hons), LLB*	Ms Wolthuizen brings her experience as a consumer advocate, consultant and ombudsman to the Board. She is an independent consumer representative to the Australian Financial Complaints Authority and is Chair of the Consumer Policy Research Centre, a specialist consumer policy think-tank with a particular focus on regulated markets and data ethics and regulation. Ms Wolthuizen is Chair of the Economic Abuse Reference Group, an Australia-wide network of community and consumer organisations dedicated to reducing family violence and economic abuse and also consults to NAB as its Customer Advocate, advising the bank on fair treatment of its customers. Ms Wolthuizen is a Consumer Director for the Victorian Legal Services Board, and is Chair of that organisation's Consumer Advisory Committee. Ms Wolthuizen was previously an Ombudsman and Head of Market Affairs at the UK's Financial Ombudsman Service, and is a former CEO of the Consumer Law Centre Victoria (which later became the Consumer Action Legal Centre). She was Senior Policy Officer at Choice, and is a former Chair of the Consumers Federation of Australia. Her overseas experience includes running an international human rights NGO, Fair Trials, and the UK's whistleblower NGO as well as helping establish the UK's consumer financial capability service.	Independent Director with Consumer Experience (from 18 February 2020)

DIRECTORS' REPORT

Directors who retired, resigned or otherwise ceased to hold office during the year (Information current as at date of departure)

Director	Experience	Responsibility
Patricia M Faulkner AO *BA, Dip Ed, MBA, FIPAA*	Ms Faulkner's career spanned the most senior levels of both the public and private sectors. She was a CEO of large and complex government departments and a Partner in a major advisory firm (KPMG). Ms Faulkner is Chair of Jesuit Social Services and Melbourne Racing Club Foundation. She is also Chair of the Commonwealth Bank of Australia CEO Advisory Panel. In addition, Ms Faulkner is a Director of the Committee for Economic Development Australia and Melbourne Theatre Company, VicSuper, Catholic Professional Standards Ltd, and is a member of the Melbourne Racing Club Committee. Ms Faulkner was awarded an Order of Australia in June 2008 for her services to the field of Health and Social Policy; and a Centenary Medal in 2002 for services to Public Administration. She was awarded the degree of Doctor of Laws honoris causa by Monash University in September 2013.	Independent Chair (from 26 February 2014 to 14 July 2019)
Catriona E Lowe *LLB*	Ms Lowe was a member of the boards of the Australian Financial Complaints Authority, the Financial Adviser Standards and Ethics Authority and Way Forward Debt Solutions. Catriona is also Co-Chair of the ACCC's Consumer Consultative Committee, as well as being a member of the Legal Practitioners Liability Committee. Catriona's former positions include Co-CEO of the Consumer Action Law Centre, Chair of the Consumers' Federation of Australia and member of the Board of the Australian Communications Consumer Action Network. Catriona became a member of the TIO Council in July 2012 and has been a member of the TIO Board since 2014, having been re-appointed in 2017.	Director with Consumer Experience (from 26 February 2014 to 31 January 2020)

Information on Company Secretary

Company Secretary	Experience	Responsibility
Gerard Dell'Oste *BBus, FCPA, FAICD*	Mr Dell'Oste has been a senior finance professional in the commercial and not-for-profit sectors for over 30 years. He has been a Chief Financial Officer for 18 years, a company secretary for over seven years and has served as a Director and Chair of a not-for-profit organisation.	Company Secretary (from 5 July 2019) (and 17 August 2017 to 31 October 2018)
Gayle Neville-Hill *BEc, LLB, LLM, FICSA, FGIA, MAICD*	Ms Neville-Hill was a chartered company secretary and/or in-house legal counsel for 30+ years. She has also worked as a senior legal practitioner in private practice and has served as a Director on the Australian Board of a global non-governmental organisation. Gayle also serves on the Council of the Victorian Society of Notaries.	Company Secretary (from 11 April 2013 to 5 July 2019)

Access to Independent Professional Advice and Company Information

In connection with their duties and responsibilities, all Directors and Officers of TIO have the right to seek independent professional advice at the Company's expense and have the right to access Company information.

Board Evaluation

The Board regularly evaluates its performance, including periodically engaging in an external evaluation exercise. The last external evaluation was undertaken in late 2018 by the Australian Institute of Company Directors.

Meetings of Directors

The Board meets as often as necessary to fulfil its role. Directors are required to allocate sufficient time to TIO to perform their responsibilities effectively, including adequate time to prepare for Board meetings. During the reporting year, the Board met six times.

The Chief Financial Officer, Executive Director Shared Services and Company Secretary and the Ombudsman attend all Board meetings while other members of the Senior Leadership Team attend meetings of the Board by invitation.

Attendance at Board and standing Board committee meetings during FY2020 is set out in the table on the following page.

Board and Standing Board Committee Attendance in FY2020

	Board		Audit, Finance, Risk & Compliance		Nominations		People	
	Eligible	Attended	Eligible	Attended	Eligible	Attended	Eligible	Attended
M Lavarch (Chair)	6	6	4	4	4	4	3	3
P J Harrison	6	5					3	3
J Lindsay	6	6	4	4	1	1		
C Lowe	3	3						
G J Nicholson	6	6	4	4			2	2
G P Renouf	6	6	4	4	4	4		
A Sheridan	6	5					3	2
J van Beelen	6	6	4	4	3	3		
J C Hamblin	3	3					1	1
C Wolthuizen	2	2						

Board Committees

The Board has three committees to assist it perform its duties and allow detailed consideration of complex issues. Each committee has a charter setting out its roles and responsibilities, composition, structure, membership requirements and the manner in which the committee operates. The charters of all committees are regularly reviewed, with any changes requiring Board approval.

All Board committees have authority, with the permission of the Board and within the scope of their responsibilities, to seek any information they require from any employee or external party. They may also undertake any other activities consistent with their charters.

The Board's committees at the date of this report are detailed below.

Audit, Finance, Risk and Compliance Committee

The role of the Audit, Finance, Risk and Compliance Committee is to assist and advise the Board on the Company's audit, finance, risk and compliance management frameworks.

The Audit, Finance, Risk and Compliance Committee:

(a) reviews and recommends to the Board the annual financial statements and Directors' report;

(b) reviews monthly management accounting reports;

(c) reviews the Company's annual budgets and makes recommendations to the Board;

(d) monitors and reviews the external audit process, including the effectiveness of the external auditors;

(e) reviews, recommends to the Board, and monitors progress against an internal audit plan;

(f) monitors management of risk, including through the regular review of the company risk register; and

(g) monitors management of compliance with relevant legislative and regulatory obligations, including breach reporting and compliance assurance.

The Audit, Finance, Risk and Compliance Committee, at its discretion, invites the auditors, Ombudsman, Chief Financial Officer, and other parties to attend its meetings. The Committee also meets annually with the auditors without management being present.

There were four meetings of the Committee held during the year ended 30 June 2020.

Audit, Finance, Risk and Compliance Committee Members

Name	Category	Status	Attendance
G J Nicholson (Chair)	Independent	Member for Whole Period	4/4
M Lavarch	Independent	Member for Whole Period	4/4
J Lindsay	Industry Experience	Member for Whole Period	4/4
G P Renouf	Consumer Experience	Member for Whole Period	4/4
J van Beelen	Industry Experience	Member for Whole Period	4/4

Nominations Committee

The Nominations Committee is established under clause 12.2 of TIO's Constitution. Its role is to identify and recommend to the Board persons to fill vacant Board positions.

The Nominations Committee is the only Board Committee to have external representation, with its composition set out in its Charter: the Independent Chair is the Chair of the Committee, and its members comprise the following Board appointees:

(a) one Director with Consumer Experience;

(b) one Director with Industry Experience;

(c) one person nominated by a peak group representing users of telecommunications services or public interest issues relevant to telecommunications services (the peak body being the Australian Communications Consumer Action Network (**ACCAN**)); and

(d) one person nominated by a peak group representing the telecommunications industry (the peak body being Communications Alliance).

Nominations Committee Members

Name	Category	Status	Attendance
M Lavarch	Independent	Member for Whole Period	4/4
G P Renouf	Consumer Experience	Member for Whole Period	4/4
J van Beelen	Industry Experience	Member for Whole Period	3/3
J Lindsay (Alternate for J van Beelen)	Industry Experience	Member for Part Period	1/1
U Lawrence (Alternate for T Corbin and Nominee of ACCAN)	External	Member for Whole Period	4/4
J Stanton (Nominee of Communications Alliance)	External	Member for Whole Period	4/4

The Nominations Committee:

(a) determines the process for recruiting Directors; and

(b) interviews and recommends to the Board suitable candidates for any vacant Board positions.

DIRECTORS' REPORT

The Nominations Committee undertook the recruitment process for Board vacancies in 2019 and 2020. The Committee convened in 2019 to consider applications for Board vacancies and recommend candidates for the positions of Independent Director with Not-for-Profit Governance Experience, Director with Consumer Experience and Director with Industry Experience. Ms Julie Hamblin and Ms Catherine Wolthuizen were appointed as Director with Not-for-Profit Governance Experience and Director with Consumer Experience respectively, and Mr John Lindsay was reappointed as the Director with Industry Experience.

People Committee

Name	Category	Status	Attendance
M Lavarch (Chair)	Independent	Member for Whole Period	3/3
GJ Nicholson	Independent	Member up to 24 March 2020	2/2
PJ Harrison	Consumer Experience	Member for Whole Period	3/3
A Sheridan	Industry Experience	Member for Whole Period	2/3
J Hamblin	Independent	Member from 24 March 2020	1/1

The People Committee was re-established in March 2019 as a result of recommendations from the independent Board Evaluation undertaken in late 2018. The Committee assists the Board in fulfilling its governance and oversight responsibilities relating to the people, remuneration and culture of the TIO.

The key responsibilities of the People Committee include:

(a) Reviewing and recommending remuneration of Directors.

(b) Monitoring the skills and capability of Board members and advising the Board on tenure and succession planning.

(c) Recommending to the Board a performance evaluation methodology or form of assessment of the Board including the involvement of external assistance if desired.

(d) Oversight of the Director induction program.

(e) Oversight of the overall People and Culture strategy.

(f) Oversight of remuneration and incentive policies.

(g) Recommending to the Board the terms and conditions of the Ombudsman's employment contract.

(h) Making recommendations to the Board on the Enterprise Agreement strategy.

(i) Oversight of workplace health and safety policies and programs.

DIRECTORS' REPORT

Key Management Personnel

The Directors and other key management personnel of TIO during or since the end of the financial year were:

Name	Position
M Lavarch	Independent Chair (from 15 July 2019)
P M Faulkner	Independent Chair (from 26 February to 14 July 2019)
P J Harrison	Director
J Lindsay	Director
C Lowe	Director (resigned effective 31 January 2020)
G J Nicholson	Director
G P Renouf	Director
A Sheridan*	Director
J van Beelen*	Director
J C Hamblin	Director
C Wolthuizen	Director
*Declined to receive Directors' fees	
J Jones	Ombudsman
G Dell'Oste	Executive Director Shared Services, Chief Financial Officer and Company Secretary Company Secretary (reappointed 5 July 2019) Company Secretary (appointed 17 August 2017 to 31 October 2018)
G Neville-Hill	Company Secretary (from 11 April 2013 to 5 July 2019)

ETHICAL AND RESPONSIBLE DECISION MAKING

TIO is committed to operating ethically and with integrity.

Conflicts of Interests and Disclosure of Personal Interests

The Board maintains a register of personal interests which is reviewed at every Board meeting. Any Director with a material personal interest in a matter being considered by the Board must declare their interest and may not vote on any matter in which they have declared a personal interest. Related party transactions are reported within the financial statements.

The Board requires Directors to declare the offer and acceptance of any gifts, benefits or hospitality where a potential conflict may arise. A register of gifts and hospitality offered or accepted is also maintained and presented to Directors at every Board meeting.

TIO has a Conflict of Interests Policy that sets out TIO's commitment to undertaking its functions according to the highest ethical, legal and professional standards and outlines processes for employees to deal with conflict of interest issues. Under the Policy, employees are expected to behave with honesty, transparency, integrity and fairness in dealing with TIO stakeholders, other TIO employees and the general community.

Confidentiality and Privacy

TIO maintains and respects the confidentiality and privacy of personal and financial information. Employees must not use or disclose confidential information, complaint information or personal Information of any person, for any unauthorised purpose.

TIO has a TIO Privacy Policy and privacy compliance program. TIO holds formal recognition under Commonwealth privacy laws as an external dispute resolution scheme for privacy complaints.

Feedback About the Delivery of TIO Scheme Services

As an external dispute resolution scheme, TIO recognises the right of stakeholders to complain about the services it provides under the TIO scheme and that there is a responsibility to address those complaints. Consumers and service providers may make formal compliments or complaints about the service they receive. There are mechanisms by which compliments and complaints are recorded and notes made, indicating any actions taken and outcomes achieved.

The Board receives regular reports about compliments and complaints about services provided by the TIO scheme. TIO's Compliments and Complaints Policy is available on the TIO website.

Whistleblower Protection

TIO does not tolerate employees at any level acting improperly and supports TIO employees reporting in good faith a matter they believe constitutes reportable conduct without fear of reprisal, dismissal or discriminatory treatment.

The TIO Board reviews the Whistleblowing Policy on a regular basis, which is regarded as an important element in combatting any corrupt, illegal and other reportable conduct that might arise within TIO, and as a necessary step to achieving good corporate governance.

The Board adopted a revised Whistleblowing Policy in September 2019 to comply with the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2019 (Cth) which came into effect on 1 January 2020. In February 2020, the Board ratified a further updated Whistleblowing Policy to comply with the ASIC Regulatory Guide 270 released in November 2019.

The Board and Senior Leadership Team undertook external training on the requirements of the Whistleblower legislation and their specific obligations as Eligible Recipients. All employees will undertake internal training.

INTEGRITY IN REPORTING

The Board is committed to ensuring that the external auditor is independent. TIO's external auditor is Deloitte Touche Tohmatsu, appointed by members at the November 2014 Annual General Meeting. The present Deloitte Touche Tohmatsu lead audit partner for TIO audit is Ms Isabelle Lefevre. The Auditor's Independence Declaration follows the Directors' report.

RISK MANAGEMENT FRAMEWORK

The Board is committed to managing risk to protect TIO's quality of service, to satisfy TIO's legislative requirements, and to safeguard TIO's image and reputation, employees, members, stakeholders and assets. The Audit, Finance, Risk and Compliance Committee monitors the risk management framework, receiving reports from the TIO Executive on the risk register as a standing agenda item at Committee meetings. The Board receives regular reports from management on the status of strategic risks identified.

INSURANCE OF OFFICERS

During the financial year, TIO insured officers of the company. The officers of the company covered by the insurance policy included all Directors as listed in this report, former Board and Council members and the TIO Senior Leadership Team.

ENVIRONMENTAL ISSUES

TIO Facilities and Administration team provides a conduit to TIO Senior Leadership Team on environmental matters. Apart from statutory provisions of general applicability, TIO is not subject to any specific environmental regulation.

EQUALITY, DIVERSITY & INCLUSION

The Board values and is committed to equality, diversity and inclusion (EDI) at the TIO. The TIO respects all kinds of diversities and is absolutely committed to being inclusive. The TIO recruits, develops, compensates, and promotes people regardless of ethnicity, religion, national origin, gender, sex, sexuality, intersex variation, disability, age, and life experience.

The TIO has in place strategies and policies to support EDI in relation to workplace conduct, flexible working hours, parental leave, recruitment practices and remuneration. Policies directed at preventing sexual harassment, discrimination, bullying and victimisation in the workplace are also embedded. Processes, set out in the policies, assist and proactively support the prevention of conscious and unconscious bias within the organisation.

The TIO reports annually to the Workplace Gender Equity Agency. The TIO's remuneration gap analysis has not identified any significant gender pay gaps.

OPERATING RESULTS

TIO recorded an operating surplus of $797,051 for the year ended 30 June 2020.

The results for the year are as follows:

Year	Total Income $	Total Expenditure $	Surplus $
FY2020	32,881,196	32,084,145	797,051
FY2019	31,881,676	29,914,009	1,967,667

REVIEW OF OPERATIONS

The surplus of $0.797M in FY2020 was a reduction from a large surplus of $1.968M in FY2019. Total revenue was $1.000M or 3.1% higher than FY2019, mainly due to increased member revenue from a significant reduction of a high volume of unresolved complex referrals. Total expenditure for the year was $32.084M reflecting a $2.170M or 7.3% increase on FY2019. The higher spend was directed towards improving IT infrastructure, introducing robotic process automation, implementing a new human resources system and increased resources for systemics, reporting and queue management. The organisation also commenced a project to assess the replacement of key technology infrastructure for complaints management, finance, and data warehousing.

DIRECTORS' REPORT

The 2020 global pandemic brought major challenges for members and for the Telecommunications Industry Ombudsman (TIO). In March 2020, the TIO temporarily closed its offices in Melbourne but continued to deliver its services, with all employees working from home. The priority was the wellbeing of our employees to ensure they were fully supported in the transition to remote working. This priority continues as we have continued to work from home. The organisation's business continuity plan was put into action with upgrades to our IT infrastructure to provide the infrastructure and tools to allow normal operations to continue in work from home environments. The transition and remote working impacted several activities planned in FY2020 which resulted in lower expenditure and contributed to the surplus for the year.

Other important events during the year included:

- the Australian Communications and Media Authority's (ACMA) publication of data collected under its Record Keeping Rules. These reports contain complaints data supplied by providers with more than 30,000 services in operation to the ACMA on a quarterly basis.
- the new Telecommunications Consumer Protections Code took effect from 1 August 2019. This Code provides increased consumer protections including selling practices, credit assessment, financial hardship, and assistance for vulnerable consumers.
- signing of revised Memoranda of Understanding with the regulators ACMA and Australian Competition and Consumer Commission (ACCC). These revised agreements enhance the sharing of information between TIO, ACMA and ACCC on compliance with consumer law, enforcement and systemic issues.

Total Complaint Handling Transactions

Complaint handling transactions for FY2020 are presented below.

Year	Enquiries	Referrals	Fast Track Resolution	Direct Resolution	Standard Resolution	Advanced Resolution	Complex Resolution	Land Access	Total Contacts
FY2020	38,419	128,169	1,680	6,948	5,560	2,125	387	19	183,307
FY2019	40,542	133,164	2,369	3,975	4,384	1,283	96	14	185,827
% Change	-6%	-4%	-41%	43%	21%	40%	75%	26%	-1%

Employees

The number of employees at year end was 246, compared to 223 at the end of FY2019.

To manage fluctuations in demand services, TIO maintained an agile workforce by adopting several strategies which included:

(a) using agency, casual and part time employees to increase resourcing in times of high demand;

(b) developing a team of officers within TIO who can be seconded from support to operational areas to deal with sudden demand increases; and

(c) the use of overtime for queue management.

Debt Recovery

Bad debts written-off during the financial year were $146,439 (FY2019 $nil). Provision for bad debts at the end of the year was $407,230 (FY2019 $446,552). Doubtful debt provisioning is based on Accounting Standard AASB 9 *Financial Instruments* – Simplified Approach that requires TIO to recognise the expected credit loss of the receivables based on TIO's historical experience in the past 36 months. Additional details of Receivables are reported in Notes to Financial Statement 3(h).

With the oversight of the Board, TIO takes a proactive approach to debt recovery, with a cross-functional group used to identify and work with members at risk.

Membership

The Telecommunications (Consumer Protection and Services Standard) Act 1999 requires all carriers and eligible carriage service providers to be members of TIO. Eligible carriage service providers are those which supply:

(a) a standard telephone service where some of the customers are residential or small business customers; or

(b) a public mobile telecommunications service; or

(c) a carriage service which enables end users to access the Internet.

A carriage service intermediary who arranges the supply of the services referred to above qualifies as an eligible carriage service provider.

At the end of year, TIO had 1,390 service providers as members and 50 service providers, within the cessation period, leaving the scheme. During the financial year, 224 entities were assessed for potential membership, 194 members joined TIO, 322 members departed, and 15 entities were referred to the Australian Communications and Media Authority (ACMA) for non-compliance with the legislation. Since referral to ACMA, 8 of these entities have since joined, 5 were deemed not required to join, and 2 are under investigation.

Communication with Members

During FY2020 TIO continued to work collaboratively with industry to help reduce complaints about customer service and complaint handling. TIO Member Services team provides members an access point to find out about our services and processes and to raise issues or concerns. The Policy and Systemics team works with providers to improve services and reduce complaints.

MNews publications continue to be issued on a monthly basis, highlighting changes to process and membership information.

The Member Portal (launched in February 2019) provides members with access to online training resources, complaint handling guides, reports and invoices. Other functions include an Event Calendar, Training and Webinars, TIO processes and FAQ's.

Webinars and Training

The "Let's Talk!" webinar series (which commenced in May 2019) continued for FY2020 with a further 6 webinars held. Each webinar session was attended by over 100 members and focused on the complaint handling procedures and soft skills for complaint handling. The webinar series will continue into FY2020/21.

A series of Induction and Training videos for new and existing members was released in November 2019. The series focused on the purpose and role of the TIO, our complaint handling procedures and the obligations of being a telecommunications service provider.

Member Forums

A National Member Forum was held by webinar in September 2019. The Ombudsman presented at the forum focusing on highlights from the Annual Report. The forum included other topics such as: our purpose, benchmarks for industry-based customer disputes, and our experience of the industry through complaint handling.

Member forums for Melbourne, Perth, Adelaide, Sydney and Brisbane were planned for April/May 2020. The forums were placed on-hold during the COVID-19 pandemic.

Member Liability

TIO is a company limited by guarantee. Every member undertakes that in the event that TIO is wound up during the currency of the member's membership or within one year of the member ceasing membership, it will contribute to the property of TIO for:

(a) payment of the debts and liabilities of TIO incurred before it ceased to be a member;

(b) the costs, charges and expenses of winding up; and

(c) an adjustment of the rights of the contributories among themselves,

such amount as may be required, provided such amount shall not exceed one hundred dollars ($100).

Dividends

Under the terms of its Constitution, TIO is not permitted to pay dividends to members.

Significant Changes in the State of Affairs

There have been no significant changes in the state of affairs of the Company.

Matters Subsequent to the end of the Financial Year

At the date of this report no other matter or circumstance has arisen since 30 June 2020 that has significantly affected or may significantly affect:

(a) the operations of TIO in future financial years; or

(b) the results of those operations in future financial years; or

(c) the state of affairs of TIO in future financial years.

Signed in accordance with a resolution of the Board of Directors

Director:________________________________

Director:________________________________

Dated this 15th day of September 2020

Deloitte.

Deloitte Touche Tohmatsu
ABN 74 490 121 060

477 Collins Street
Melbourne VIC 3000
GPO Box 78
Melbourne VIC 3001 Australia

Tel: +61 3 9671 7000
Fax: +61 3 9671 7001
www.deloitte.com.au

Board of Directors
Telecommunications Industry Ombudsman Limited
Level 14, 717 Bourke Street
Docklands VIC 3008

15 September 2020

Dear Members of the Board,

Auditor's Independence Declaration – Telecommunications Industry Ombudsman Limited

In accordance with section 307C of the Corporations Act 2001, I am pleased to provide the following declaration of independence to the directors of Telecommunications Industry Ombudsman Limited.

As lead audit partner for the audit of the financial statements of Telecommunications Industry Ombudsman Limited for the financial year ended 30 June 2020, I declare that to the best of my knowledge and belief, there have been no contraventions of:

(i) the auditor independence requirements of the Corporations Act 2001 in relation to the audit; and

(ii) any applicable code of professional conduct in relation to the audit.

Yours faithfully

Deloitte Touche Tohmatsu

DELOITTE TOUCHE TOHMATSU

Lefevre

Isabelle Lefevre
Partner
Chartered Accountants

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Asia Pacific Limited and the Deloitte Network.

STATEMENT OF COMPREHENSIVE INCOME
FOR THE YEAR ENDED 30 JUNE 2020

	Note	2020	2019
		$	$
Continuing operations			
Revenue from members	5	32,645,331	31,542,398
Other income	5	235,865	339,278
Total income		**32,881,196**	**31,881,676**
Less: expenses			
Depreciation expense	6	(1,362,785)	(290,113)
Employee benefits expense		(24,866,960)	(22,508,775)
Occupancy expense		(737,942)	(1,923,095)
Marketing expense		(192,359)	(365,105)
Finance costs	6	(285,298)	(4,277)
Bad & doubtful debts expense	10	(107,117)	(290,321)
Information technology expense		(1,850,175)	(1,807,102)
Consultancy expense		(1,296,223)	(1,033,429)
Legal expense		(215,204)	(357,304)
Travel expense		(81,435)	(114,721)
Telephone and faxes		(297,828)	(171,061)
Other expenses		(790,819)	(1,048,706)
Total expenses		**(32,084,145)**	**(29,914,009)**
Surplus for the year from continuing operations		**797,051**	**1,967,667**
Total comprehensive surplus for the year		**797,051**	**1,967,667**

The Statement of Comprehensive Income should be read in conjunction with the accompanying notes.

STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2020

	Note	2020	2019
		$	$
Current assets			
Cash and cash equivalents	17	7,974,896	7,594,155
Other short-term investments	18	14,000,000	14,000,000
Receivables	10	1,421,096	1,109,948
Other assets	9	439,355	228,119
Total current assets		**23,835,347**	**22,932,222**
Non-current assets			
Plant and equipment	7	1,205,696	1,340,328
Right-of-Use Assets	8	6,527,496	-
Total non-current assets		**7,733,192**	**1,340,328**
Total assets		**31,568,539**	**24,272,550**
Current liabilities			
Payables	13	1,010,825	1,287,615
Lease liabilities	8	1,315,164	-
Provisions	11	2,067,258	2,009,681
Other liabilities	12	-	213,133
Total current liabilities		**4,393,247**	**3,510,429**
Non-current liabilities			
Payables	13	-	714,075
Lease liabilities	8	8,360,658	-
Provisions	11	385,493	176,049
Other liabilities	12	-	2,239,907
Total non-current liabilities		**8,746,151**	**3,130,031**
Total liabilities		**13,139,398**	**6,640,460**
Net assets		**18,429,141**	**17,632,090**
Accumulated Surplus			
Accumulated surplus		18,429,141	17,632,090
Total accumulated surplus		**18,429,141**	**17,632,090**

STATEMENT OF CHANGES IN EQUITY
FOR THE YEAR ENDED 30 JUNE 2020

	2020	2019
	$	$
Accumulated Surplus		
At beginning of the year	17,632,090	15,664,423
Movements in equity - surplus for the year	797,051	1,967,667
Balance at the end of the year	**18,429,141**	**17,632,090**

The Statements above should be read in conjunction with the accompanying notes.

STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 2020

	Note	2020	2019
		$	$
Cash flow from operating activities			
Receipts from members		35,504,343	35,685,318
Cash Grant from Federal Government		50,000	-
Payments to suppliers and employees		(33,674,822)	(32,580,082)
Interest component of lease liabilities		(281,086)	-
Interest received		183,555	329,394
Bank charges paid		(4,212)	(4,277)
Net cash provided by operating activities		**1,777,778**	**3,430,353**
Cash flow from investing activities			
Payment for plant and equipment		(169,641)	(50,441)
Net cash used in investing activities		**(169,641)**	**(50,441)**
Cash flow from financing activities			
Payment of principal component of lease liabilities		(1,227,396)	-
Net cash provided by/(used in) financing activities		**(1,227,396)**	**-**
Reconciliation of cash			
Cash at beginning of the financial year		7,594,155	4,214,243
Net increase in cash held		380,741	3,379,912
Cash at end of financial year	17	**7,974,896**	**7,594,155**

FOR THE YEAR ENDED 30 JUNE 2020	2020	2019
	$	$
Cash flows from operating activities		
Profit from ordinary activities after income tax	797,051	1,967,667
Adjustments and non-cash items		
Depreciation expenses	1,362,785	290,113
Movements in provision for doubtful debts	107,117	290,321
Lease incentive through P&L	-	(363,228)
Changes in assets and liabilities		
(Increase) / decrease in receivables	(418,265)	988,679
(Increase) / decrease in other assets	(211,236)	155,752
Increase / (decrease) in payables	(126,695)	(72,460)
Increase / (decrease) in provisions	267,021	173,509
Cash flows from operating activities	**1,777,778**	**3,430,353**

The Statement of Cash Flows should be read in conjunction with the accompanying notes.

NOTE 1: GENERAL INFORMATION

The financial report is for the Telecommunications Industry Ombudsman Limited (TIO) as an individual entity. Telecommunications Industry Ombudsman Limited is a company limited by guarantee, incorporated and domiciled in Australia. Telecommunications Industry Ombudsman Limited is a not-for-profit entity for the purpose of preparing the financial statements.

The registered office of TIO is:

Telecommunications Industry Ombudsman
Level 14
717 Bourke Street
Docklands VIC 3008

Basis of Preparation

The financial report is a general purpose financial report that has been prepared in accordance with the *Corporations Act 2001*, Accounting Standards, and other authoritative pronouncements issued by the Australian Accounting Standards Board (AASB), and comply with other requirements of the law.

Accounting Standards include Australian equivalents to International Financial Reporting Standards (A-IFRS). Compliance with A-IFRS ensures that the financial statements and notes of TIO comply with International Financial Reporting Standards (IFRS), except for the requirements applicable to not-for-profit organisations.

Historical Cost Convention

The financial statements have been prepared under the historical cost convention, as modified by revaluations to fair value for certain classes of assets as described in the accounting policies in Note 3.

NOTE 2: APPLICATION OF NEW AND REVISED AUSTRALIAN ACCOUNTING STANDARDS (AASB)

AASB 16 *Leases*

TIO has adopted AASB 16 *Leases* ("AASB 16") from 1 July 2019 for the operating lease for Level 14, 717 Bourke Street, Docklands that expires on 31 August 2026.

The standard replaces AASB 117 *Leases* ("AASB 117") and for lessees, eliminates the classifications of operating lease and finance lease. TIO has applied the cumulative catch-up approach which:

- Requires TIO to recognise the cumulative effect of initially applying AASB 16 at 1 July 2019.
- Does not permit restatement of comparatives, which continue to be presented under AASB 117.

Impact of the new definition of a lease

TIO has made use of the practical expedient available on transition to AASB 16 not to reassess whether a contract is or contains a lease. Accordingly, the definition of a lease in accordance with AASB 117 will continue to be applied to those leases entered or changed before 1 July 2019.

TIO applies the definition of a lease and related guidance set out in AASB 16 to all lease contracts entered into or changed on or after 1 July 2019 (whether it is a lessor or lease in the lease contract). In preparation for the first-time application of AASB 16, TIO has carried out an implementation project. The project has shown that the new definition in AASB 16 will not significantly change the scope of contracts that meet the definition of a lease for TIO.

NOTE 2: APPLICATION OF NEW AND REVISED AUSTRALIAN ACCOUNTING STANDARDS (AASB) (continued)

AASB 16 *Leases* (continued)

Impact on lessee accounting

AASB 16 changes how TIO accounts for leases previously classified as operating leases under AASB 117, which were off balance sheet.

Right-of-use assets and corresponding lease liabilities are recognised in the statement of financial position, initially measured at the present value of the future lease payments, with the right-of-use asset adjusted by the amount of any prepaid or accrued lease payments. Lease incentives are recognised as part of the measurement of the right-of-use assets and lease liabilities. Depreciation charge for the right-of-use assets and interest expenses on the lease liabilities replace the straight-line operating lease expense.

Under AASB 16, right-of-use assets are tested for impairment in accordance with AASB 136.

The standard is not applicable to short-term leases (lease term of 12 months or less) and leases of low value assets. Lease expenses for these leases are recognised when due.

Financial impact of initial adoption of AASB 16

The impact of adoption on assets and liabilities as at 1 July 2019 were as follows:

	1 JULY 2019 **$**
Operating lease commitments as 1 July 2019 under AASB 117 (Note 19)	**15,616,123**
Short term lease for office equipment	(8,850)
Future payments for non-lease components, including outgoings and services	(3,501,510)
Adjustment for car parking lease component at 1 July 2019	(59,864)
Effect of discounting at weighted average incremental borrowing rate of 2.75%	(1,142,681)
Lease Liabilities at 1 July 2019	**10,903,218**
Unearned lease incentives (Note 12)	(2,453,040)
Other lease incentives (Note 13)	(150,095)
Straight line lease provision (Note 13)	(714,075)
Right-of-use Assets at 1 July 2019	**7,586,008**

The adoption will in effect increase expenses in earlier periods of the lease compared to lease expense under AASB 117. Operating lease expense is now replaced by depreciation and interest expense. Furthermore, the classification of cash flows will also be affected as operating lease payments under AASB 117 are presented as operating cash flows; whereas under the AASB 16 model, the lease payments will be split into a principal and an interest portion which will be presented as financing and operating cash flows respectively.

AASB 16 had an impact on the current year. As at 30 June 2020, total liabilities were increased by $9.676M (attributable to current lease liabilities of $1.315M and non-current lease liabilities of $8.361M) and net assets were reduced by $3.149M (attributable to right-of-use assets of $6.527M offset by lease liabilities), with no adjustment to opening retained earnings.

NOTE 3: SIGNIFICANT ACCOUNTING POLICIES

The following is a summary of the material accounting policies adopted by TIO in the preparation and presentation of the financial report. The accounting policies have been consistently applied, unless otherwise stated.

(a) Revenue

From 1 July 2018, membership fees are charged to members to fund 70 percent of the budget for the provision of TIO's independent dispute resolution services to residential consumers and small business who have unresolved complaints about their telecommunication services in Australia. The 70 percent funding requirement is allocated to members based the percentage of the number of complaints the member had in the previous calendar year compared to the total complaints received in that year. A minimum annual fee of $400 (before GST) is charged and pro-rata for new members.

Case fees for handling of customers' complaints are charged to members at varying prices relative to the complexity of the case at its conclusion when the performance obligation is satisfied.

Interest revenue is recognised when it becomes receivable on a proportional basis taking in to account the interest rates applicable to the financial assets.

TIO recognises income from legal proceedings when the outcome of the proceedings is virtually certain and can be measured with reliability.

(b) Employee benefits

Short-term and other long-term employee benefits

Liabilities recognised in respect of short-term employee benefits are measured at the undiscounted amount of the benefits expected to be paid in exchange for the related service.

Liabilities recognised in respect of other long-term employee benefits are measured at the present value of the estimated future cash outflows expected to be made by TIO in respect of services provided by employees up to the reporting date.

(c) Taxation

TIO is exempt from income tax under item 2.1 of section 50-10 of the *Income Tax Assessment Act 1997*.

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Tax Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense. Receivables and payables in the statement of financial position are shown inclusive of GST.

Cash flows are presented in the statement of cash flows on a gross basis, except for the GST component of investing and financing activities, which are disclosed as operating cash flows.

(d) Property, plant and equipment

Fixtures and equipment are stated at cost less accumulated depreciation and accumulated impairment losses.

Depreciation is recognised to write off the cost or valuation of assets less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and depreciation method are reviewed at the end of each reporting period, with the effect of any changes in estimate accounted for on a prospective basis.

NOTE 3: SIGNIFICANT ACCOUNTING POLICIES (continued)

(d) Property, plant and equipment (continued)

Class of fixed asset	Depreciation rates	Depreciation basis
Leasehold improvements at cost	14%	Straight line
Plant and equipment at cost	33%	Straight line
Furniture, fixtures and fittings at cost	14%	Straight line
Software	20%	Straight line

An item of property, plant and equipment is derecognised upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognised in profit or loss.

(e) Right-of-use assets

Right-of-use assets comprise the initial measurement of the corresponding lease liability, lease payments made at or before the commencement day, less any lease incentives received and any initial direct costs. They are subsequently measured at cost less accumulated depreciation and impairment losses.

Whenever TIO incurs an obligation for costs to dismantle and remove a leased asset, restore the site on which it is located or restore the underlying assets to the condition required by the terms and conditions of the lease, a provision is recognised and measured under AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*. To the extent that the costs relate to a right-of-use asset, the costs are included in the related right-of-use asset.

(f) Provisions

Provisions are recognised when TIO has a present obligation (legal or constructive) as a result of a past event, it is probable that TIO will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation.

The amount recognised as a provision is the best estimate of the consideration required to settle the present obligation at the end of the reporting period, taking into account the risks and uncertainties surrounding the obligation. When a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount is the present value of those cash flows (when the effect of the time value of money is material).

When some or all of the economic benefits required to settle a provision are expected to be recovered from a third party, a receivable is recognised as an asset if it is virtually certain that reimbursement will be received, and the amount of the receivable can be measured reliably.

NOTE 3: SIGNIFICANT ACCOUNTING POLICIES (continued)

(g) Financial instruments

Financial assets and financial liabilities are recognised when TIO becomes a party to the contractual provisions of the instruments.

Financial assets and financial liabilities are initially measured at fair value. Transaction costs that are directly attributable to the acquisition or issue of financial assets and financial liabilities (other than financial assets and financial liabilities at fair value through profit or loss) are added to or deducted from the fair value of the financial assets or financial liabilities, as appropriate, on initial recognition.

Subsequent to initial recognition, all financial assets are measured at amortised cost and all financial liabilities are measured at fair value through profit or loss.

(h) Financial assets

Financial assets are held till contractual maturity and not for sale before maturity and are measured at amortised cost.

Cash and cash equivalents

Cash and cash equivalents include cash on hand and at banks, short-term deposits with an original maturity of three months or less held at call with financial institutions.

For the purposes of the statement of cash flows, cash and cash equivalents include cash on hand and in banks, short-term and highly liquid investments with original maturities of three months or less that is readily convertible to known amounts of cash. Cash and cash equivalents at the end of the reporting period as shown in the statement of cash flows can be reconciled to the related items in the statement of financial position.

Trade receivables

Receivables are carried at nominal amounts due, less any provision for impairment.

Amounts due from all members are recognised as trade receivable.

Collectability is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for impairment is established using the impairment provisions of AASB 9 *Financial Instruments* – Simplified Approach that recognised lifetime expected credit losses for amounts due from members.

(i) Financial liabilities

Financial liabilities, measured at fair value, are classified as current liabilities unless TIO has an unconditional right to defer settlement of the liability for at least twelve months after the reporting period.

Trade and other payables

Liabilities are recognised for amounts to be paid in future for goods and services received. These amounts represent liabilities for goods and services provided to TIO prior to the end of the financial year and which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition.

Interest bearing loans and borrowings

Finance leases are accounted for at their principal amounts, with the lease payments discounted to present value using the interest rate implicit in the lease. Interest is accrued over the period it becomes due and recognised as part of payables.

NOTE 4: CRITICAL ACCOUNTING JUDGEMENTS AND KEY SOURCES OF ESTIMATION UNCERTAINTY

In the application of TIO's accounting policies, which are described in note 3, the Directors of TIO are required to make judgements, estimates and assumptions about the amortised cost of assets and fair value of liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and other factors that are considered to be relevant. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

Key sources of estimation uncertainty

Key estimates include:

- The assessment of the lease accounting for Level 14, 717 Bourke Street, Docklands, VIC 3008 lease.
- The timing of future cash flows within the provisions for Long Service Leave.
- The assessment for the provision for doubtful debts.
- The assessment of the useful life of fixed assets.

Note 5: REVENUE AND OTHER GAINS AND LOSSES

	2020 $	2019 $
Revenue from members	**32,645,331**	**31,542,398**
Other income		
Interest income	185,583	336,264
Government COVID-19 cash boost grant	50,000	-
Other	282	3,014
	235,865	**339,278**
Total Income	**32,881,196**	**31,881,676**

The federal government grant was given to small and medium businesses and not-for-profit organisations during the economic downturn associated with COVID-19. TIO has recognised the cash grant for the year ended 30 June 2020 as income.

Note 6: SURPLUS FOR THE YEAR FROM CONTINUING OPERATIONS

Surplus before income tax has been determined after:

	2020	2019
	$	$
Finance costs		
- Bank charges	4,212	4,277
- Interest on lease liabilities	281,086	-
	285,298	**4,277**
Depreciation expenses		
- Plant and equipment	129,066	119,487
- Furniture and fittings	25,113	20,532
- Leasehold	150,094	150,094
- Right-of-use Assets	1,058,512	-
	1,362,785	**290,113**

Note 7: PROPERTY, PLANT AND EQUIPMENT

	2020	2019
	$	$
Leasehold improvements		
Leasehold improvements at cost	1,475,932	1,475,932
Accumulated depreciation	(550,347)	(400,253)
	925,585	**1,075,679**
Plant and equipment		
Plant and equipment at cost	512,495	396,664
Accumulated depreciation	(368,568)	(239,502)
	143,927	**157,162**
Furniture, fixtures and fittings		
Furniture, fixtures and fittings at cost	198,202	144,392
Accumulated depreciation	(62,018)	(36,905)
	136,184	**107,487**
Total property, plant and equipment	**1,205,696**	**1,340,328**

(a) Reconciliations

Reconciliation of the carrying amounts of property, plant and equipment at the beginning and end of the current financial year.

	2020	2019
Leasehold improvements		
Opening carrying amount	1,075,679	1,225,773
Additions	-	-
Depreciation expense	(150,094)	(150,094)
Closing carrying amount	**925,585**	**1,075,679**
Plant and equipment		
Opening carrying amount	157,162	228,893
Additions	115,831	47,756
Retired Assets	-	(367,932)
Retired Assets Accumulated Depreciation	-	367,932
Depreciation expense	(129,066)	(119,487)
Closing carrying amount	**143,927**	**157,162**
Furniture, fixtures and fittings		
Opening carrying amount	107,487	125,334
Additions	53,810	2,685
Depreciation expense	(25,113)	(20,532)
Closing carrying amount	**136,184**	**107,487**

Note 8: RIGHT-OF-USE ASSETS AND LEASE LIABILITIES

(a) Right-of-use Assets

	2020 $	2019 $
Right-of-use Assets	7,586,008	-
Accumulated amortisation	(1,058,512)	-
Total Right-of-use Assets	**6,527,496**	**-**

Reconciliations

Reconciliation of the carrying amounts of Right-of-Use assets at the beginning and end of the current financial year.

	2020	2019
Right-of-use Assets	$	$
Opening balance	7,586,008	-
Additions	-	-
Amortisation expense	(1,058,512)	-
Closing balance	**6,527,496**	**-**

(b) Lease Liabilities

	2020 $	2019 $
Lease Liabilities		
Current	1,315,164	-
Non-current	8,360,658	-
	9,675,822	**-**

Lease Liabilities maturing :

	2020 $	2019 $
Year 1	1,561,279	-
Year 2	1,615,923	-
Year 3	1,672,481	-
Year 4	1,731,018	-
Year 5	1,791,603	-
Onwards	2,165,113	-
	10,537,417	**-**
Less: Unearned interest	(861,595)	-
	9,675,822	**-**

Note 9: OTHER ASSETS

	2020 $	2019 $
CURRENT		
Prepayments	370,357	221,249
Accrued Interest Revenue	8,898	6,870
Rental Bond	60,100	-
	439,355	**228,119**

Note 10: TRADE AND OTHER RECEIVABLES

	2020 $	2019 $
Trade debtors	848,926	769,066
Provision for doubtful debts	(407,230)	(446,552)
	441,696	**322,514**
Other receivables	979,400	787,434
Total Trade and Other Receivables	**1,421,096**	**1,109,948**

	2020 $	2019 $
Movement in the allowance for doubtful debts		
Balance at the beginning of the year	446,552	156,232
Impairment losses recognised on receivables	107,117	290,320
Amounts written off during the year as uncollectable	(146,439)	-
Balance at the end of the year	**407,230**	**446,552**
Age of receivables that are past due but not impaired		
60-90 days	10,651	7,730
91-120 days	5,100	3,382
121+ days	160,237	126,299
Total	**175,988**	**137,411**
Age of receivables that are past due and impaired		
60-90 days	8,440	5,376
91-120 days	2,038	1,452
121+ days	163,909	227,773
Total	**174,387**	**234,601**

Note 11: PROVISIONS

	2020	2019
	$	$
CURRENT		
Provision for Annual Leave	1,422,157	1,209,705
Provision for Long Service Leave	645,101	799,976
	2,067,258	2,009,681
NON CURRENT		
Provision for Long Service Leave	385,493	176,049
Total employee benefit liability	**2,452,751**	**2,185,730**
Number of employees at year end	246	223

Accounting policy for employee provisions are provided in Note 3 (b).

Note 12: OTHER LIABILITIES

	2020	2019
	$	$
CURRENT		
Unearned lease incentives	-	213,133
NON CURRENT		
Unearned lease incentives	-	2,239,907

Unearned lease incentives have been offset against the carrying value of the right-of-use asset under AASB 16 on adoption of the standard on 1 July 2019.

Note 13: TRADE AND OTHER PAYABLES

	2020	2019
	$	$
CURRENT		
Unsecured liabilities		
Trade creditors	181,894	281,941
Sundry creditors and accruals	828,931	855,579
Lease incentives - current	-	150,095
	1,010,825	1,287,615
NON CURRENT		
Straight line lease provision	-	714,075

Lease incentives and straight-line lease provision have been offset against the carrying value of the right-of-use asset under AASB 16 on adoption of the standard on 1 July 2019.

Note 14: FINANCIAL RISK MANAGEMENT

The company is exposed to a variety of financial risks comprising:

(a) Interest rate risk

(b) Credit risk

(c) Liquidity risk

(d) Fair values

The Board of Directors have overall responsibility for identifying and managing operational and financial risks.

The company holds the following financial instruments:

	2020	2019
	$	$
Financial assets		
Cash and cash equivalents	7,974,896	7,594,155
Term Deposit	14,000,000	14,000,000
Receivables	1,421,096	1,109,948
	23,395,992	**22,704,103**
Financial liabilities		
Creditors	181,894	281,941
Other payables	828,931	1,005,674
	1,010,825	**1,287,615**

NOTE 14: FINANCIAL RISK MANAGEMENT (continued)

	2020	2019
	$	$
Credit standby arrangements with banks		
Credit facility	300,000	300,000
Amount utilised	(32,000)	(3,725)
Unused credit facility	**268,000**	**296,275**

(a) Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate as a result of changes in market interest rates.

The company's exposure to interest rate risk in relation to future cash flows and the effective weighted average interest rates on classes of financial assets and financial liabilities is as follows:

Financial instruments	Interest bearing	Non interest bearing	Total carrying amount	Weighted average effective interest rate	Interest rate type
	$	$	$		
2020					
Financial assets					
Cash	7,580,031	500	7,580,531	0.01%	Floating
Cash on deposit	394,365	-	394,365	0.24%	Floating
Term deposit	14,000,000	-	14,000,000	1.23%	Floating
Trade and other receivables	-	1,421,096	1,421,096	0.00%	
	21,974,396	**1,421,596**	**23,395,992**		
Financial liabilities					
Trade creditors	-	181,894	181,894	0.00%	
Other payables	-	828,931	828,931	0.00%	
	-	**1,010,825**	**1,010,825**		

NOTE 14: FINANCIAL RISK MANAGEMENT (continued)

Financial instruments	Interest bearing	Non interest bearing	Total carrying amount	Weighted average effective interest rate	Interest rate type
	$	$	$		
2019					
Financial assets					
Cash	7,201,036	500	7,201,536	0.15%	Floating
Cash on deposit	14,392,619	-	14,392,619	2.17%	Floating
Trade and other receivables	-	1,109,948	1,109,948	0.00%	
	21,593,655	**1,110,448**	**22,704,103**		
Financial liabilities					
Trade creditors	-	281,941	281,941	0.00%	
Other payables	-	1,005,674	1,005,674	0.00%	
	-	**1,287,615**	**1,287,615**		

Sensitivity

The main risk arises from cash and cash equivalents, and the interest income they derive.

The aggregate net fair value and amortised cost of financial assets and financial liabilities are disclosed in the balance sheet and in the notes to the financial statements.

(b) Credit risk

Credit risk is the risk that a debtor will not repay all or a portion of an amount outstanding in a timely manner and therefore will cause a loss to TIO.

Debtors are actively monitored and follow up actions are taken as required.

The maximum exposure to credit risk, excluding the value of any collateral or other security, at balance date of recognised financial assets is the amortised cost of those assets, net of any provisions for impairment of those assets, as disclosed in statement of financial position and notes to financial statements.

The company does not have any material credit risk exposure to any single debtor or group of debtors under financial instruments entered into by the company.

The company's debtors are concentrated in one industry.

(i) Cash deposits

Credit risk for cash deposits is managed by holding all cash deposits with major Australian banks.

(ii) Trade receivables

The ageing analysis of trade and other receivables is provided in Note 10. As the company undertakes transactions with a large number of customers and regularly monitors payment in accordance with credit terms, the financial assets that are neither past due nor impaired, are expected to be received in accordance with the credit risk.

NOTE 14: FINANCIAL RISK MANAGEMENT (continued)

(c) Liquidity risk

Liquidity risk is the risk that the company may not have or may not be able to raise funds when needed and therefore encounter difficulty in meeting obligations associated with financial liabilities.

TIO maintains a cash reserve and actively monitors its cash flow position to ensure its ability to meet its debts as and when they fall due. In addition, TIO's Constitution provides that it can impose a special levy on TIO members or a particular class of member.

(d) Fair values

The fair value of financial assets and financial liabilities approximates their amortised cost as disclosed in statement of financial position and notes to financial statements.

NOTE 15: RELATED PARTY TRANSACTIONS

Compensation of key management personnel

Compensation received by key management personnel of the company

	2020 $	2019 $
Short-term employee benefits	1,139,331	1,268,440

The composition of key management personnel was reassessed to include only Executive level and the Company Secretary role.

The remuneration of the Directors was determined by the remuneration committee having regards to the performance of individuals and market trends.

Other related party transactions

Transactions with key management personnel of the entity or its parent and their personally related entities:

(i) One current Director, J van Beelen, is an employee of Telstra Corporation. TIO has recognised $16,468,087 (2019: $16,117,013) as revenue from Telstra Corporation Ltd and related entities for complaint handling fees and expensed $159,181 (2019: $9,049) for the use of telecommunication services during the year.

(ii) One current Director, A Sheridan, is an employee of SingTel Optus Pty Ltd. TIO has recognised $7,075,163 (2019: $6,622,088) as revenue from SingTel Optus Pty Ltd and related entities for complaint handling fees and expensed $85,972 (2019: $155,399) for the use of telecommunication services during the year.

All of the above transactions with Directors and Director related entities were based on normal commercial terms and conditions.

NOTE 16: REMUNERATION OF THE AUDITORS

	2020	2019
	$	$
Audit of the financial report	59,945	60,920

Deloitte Touche Tohmatsu is the auditor

During the year ended 30 June 2020, TIO only engaged with Deloitte Touche Tohmatsu to perform the statutory audit, no other assurance or non-assurance services were provided by Deloitte Touche Tohmatsu or other auditor professionals.

Note 17: CASH AND CASH EQUIVALENTS

	2020	2019
	$	$
CURRENT		
Cash on hand	500	500
Cash at bank	7,580,031	7,201,036
Cash on deposit	394,365	392,619
	7,974,896	**7,594,155**

Note 18: OTHER SHORT-TERM INVESTMENTS

	2020	2019
	$	$
Term Deposit	14,000,000	14,000,000

The term deposit has a maturity date of 20 November 2020.

NOTE 19: COMMITMENTS

Operating leases relate to floor space for Level 14 and car parks in 717 Bourke Street, Docklands are accounted under AASB 16 as lease liabilities and therefore not reported as commitments in 2020. Commitments for non-lease components including cleaning and outgoings, short-term leases and leases for low value assets for other office space, IT equipment and services are expensed when incurred and their future instalments are reported as commitments.

	2020 $	2019 $
Payments recognised as an expense		
Minimum lease payments	645,372	2,028,649
Non-cancellable operating lease commitments		
- not later than one year	611,617	1,962,985
- later than one year and not later than five years	1,981,295	8,524,849
- later than 5 years	631,516	5,128,289
	3,224,428	**15,616,123**

NOTE 20: CONTINGENT LIABILITIES

TIO has no contingent liabilities.

NOTE 21: EVENTS SUBSEQUENT TO REPORTING DATE

At the date of this report, there are no matter or circumstance that has arisen since 30 June 2020 that has significantly affected or may significantly affect:

(a) the operations of TIO in future financial years; or

(b) the results of those operations in future financial years; or

(c) the state of affairs of TIO in future financial years.

NOTE 22: COMPARATIVE FIGURES

Some comparatives have been restated for presentation purposes in order for the balances to remain comparable.

DIRECTORS' DECLARATION

The Directors declare that:

(a) In the Directors' opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable;

(b) In the Directors' opinion, the attached financial statements are in compliance with Australian Accounting Standards, as stated in Note 1 to the financial report;

(c) In the Directors' opinion, the attached financial statements and notes thereto are in accordance with the *Corporations Act 2001*, including compliance with accounting standards and giving a true and fair view of the financial position and performance of the company.

Signed in accordance with a resolution of the Directors made pursuant to s.295(5) of the *Corporations Act 2001*.

Director: ______________________________

Director: ______________________________

Dated this 15th day of September 2020

Deloitte Touche Tohmatsu
ABN 74 490 121 060

477 Collins Street
Melbourne VIC 3000
GPO Box 78
Melbourne VIC 3001 Australia

Tel: +61 3 9671 7000
Fax: +61 3 9671 7001
www.deloitte.com.au

Independent Auditor's Report to the Members of Telecommunication Industry Ombudsman Limited

Report on the Audit of the Financial Report

Opinion

We have audited the financial report of Telecommunication Industry Ombudsman Limited (the "Entity"), which comprises the statement of financial position as at 30 June 2020, the statement of comprehensive income, the statement of changes in equity and the statement of cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies, and the directors' declaration.

In our opinion the accompanying financial report of the Entity, is in accordance with the *Corporations Act 2001*, including:

(i) giving a true and fair view of the Entity's financial position as at 30 June 2020 and of its financial performance for the year then ended; and

(ii) complying with Australian Accounting Standards and the *Corporations Regulations 2001*.

Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of our report. We are independent of the Entity in accordance with the auditor independence requirements of the *Corporations Act 2001* and the ethical requirements of the Accounting Professional & Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

We confirm that the independence declaration required by the *Corporations Act 2001*, which has been given to the directors of the Entity, would be in the same terms if given to the directors as at the time of this auditor's report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Other Information

The directors are responsible for the other information. The other information comprises the information included in the Entity's annual report for the year ended 30 June 2020, but does not include the financial report and our auditor's report thereon.

Our opinion on the financial report does not cover the other information and we do not express any form of assurance conclusion thereon.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Asia Pacific Limited and the Deloitte Network.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work we have performed, we conclude that there is a material misstatement of this other information; we are required to report that fact. We have nothing to report in this regard.

Responsibilities of the Directors for the Financial Report

The directors of the Entity are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards and the *Corporations Act 2001* and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the ability of the Entity to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Entity or to cease operations, or have no realistic alternative but to do so.

Auditor's Responsibilities for the Audit of the Financial Report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

As part of an audit in accordance with the Australian Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial report, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control.

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the directors.

- Conclude on the appropriateness of the directors' use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial report or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern.

- Evaluate the overall presentation, structure and content of the financial report, including the disclosures, and whether the financial report represents the underlying transactions and events in a manner that achieves fair presentation.

We communicate with the directors regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

DELOITTE TOUCHE TOHMATSU

Isabelle Lefevre
Partner
Chartered Accountants
Melbourne, 15 September 2020

Telecommunications Industry Ombudsman

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.

Telecommunications Industry Ombudsman Ltd

Proposed amendments to TIO Constitution and Terms of Reference

Explanatory notes

The Board of TIO Ltd has proposed some amendments to the TIO Constitution, to be considered at TIO Ltd's Annual General Meeting on Tuesday 15 December 2020. These will also require some amendments to the TIO Terms of Reference, TIO Board of Directors Charter and the TIO Board Nominations Committee Charter.

The notes in the table below explain the reasons for the proposed amendments. The table is a summary and does not discuss some of the minor amendments that are proposed.

Constitution			
Clause	**Summary of amendment**	**Details of amendment**	**Reason for amendment**
2.1	New and amended definitions.	New definitions of Acting Deputy Ombudsman, Common Appointment Criteria, Legislation and Legislative Instrument added. Minor amendments to other definitions.	A new role of Acting Deputy Ombudsman is provided for (see discussion of clause 15.4 below), but nobody will be appointed to that role in the short term as there is no Deputy Ombudsman at present. The new definition of Common Appointment Criteria helps simplify the drafting in clause 12 (see discussion of clause 12.3 below) and in itself is not a material change. The amendment of the term "Community and Consumer Groups" to "Consumer Groups" relates to the changes in clause 12.4 discussed below. The new definitions of Legislation and Legislative Instrument relate to the new wording added to clause 15.2(c) (see discussion below). The definition of Legislative Instrument would include the Telecommunications Code of Practice. Minor amendments to some other definitions relate to the removal of the ability to appoint alternate directors (see discussion below).
8(d)	Clarification of obligations of former Members to make payments	Minor changes to wording.	This amendment clarifies that when a Member leaves TIO Ltd, they must abide by the Constitution regarding payment of charges to TIO Ltd whether or not the charges have already fallen due at the date the Member leaves. For example, a former Member may have to pay charges for a complaint that was ongoing when the Member left, even if the charges arise after the Member left.
11.5(g)	Clause deleted	This clause can be deleted as it is no longer relevant.	This was a transitional clause, inserted when a previous set of amendments to the Constitution was made. It is redundant now and can be deleted. It relates to the amount of Operational Costs that a Member would in certain circumstances be deemed to have contributed in a financial year, for the purpose of determining how many votes the Member would have on a poll in a General Meeting of Members.

Constitution			
Clause	**Summary of amendment**	**Details of amendment**	**Reason for amendment**
11.6	Amendments to requirements for appointment of a proxy by a Member	A Member can appoint a proxy to attend a General Meeting of TIO Ltd, or to vote at such a meeting, on the Member's behalf. The amendments allow a Member to give a proxy electronically. They also better align clause 11.6 with the legislative requirements for a valid proxy.	These amendments modernise the Constitution by allowing a Member to give a proxy electronically. The amended wording in clause 11.6 closely matches the wording in the relevant legislation. The amendments also provide more details of what information a proxy appointment must contain to be legally valid. Again, the wording closely matches the wording of the legislation. Stating these details in clause 11.6 should assist Members when they appoint proxies.
12.3	Introduction of concept of Common Appointment Criteria for directors	This new clause lists certain criteria that will be considered when appointing any director to the Board of TIO Ltd. Additional criteria are set out in clauses 12.4 to 12.7 inclusive, for different categories of director.	This is not a material change. It simplifies clause 12 by bringing together in one clause the criteria that are the same for appointing each category of director. These were previously spread over the subsequent provisions of clause 12. Minor changes have also been made in clause 12.3 to make the criteria consistent across the different categories of director.
12.4(a)	Removal of reference to community groups	This amendment means that a Director With Consumer Experience must have links to <u>consumer</u> groups – having links to <u>community</u> groups would not be sufficient.	Before this amendment, all Directors With Consumer Experience had to 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 is intended to help ensure that candidates for Director With Consumer Experience positions have links specifically to consumer bodies, rather than potentially only having links to a community group whose focus is not centrally on consumer interests.
12.4(b)	Simplification of drafting	This clause has been simplified by moving the Common Appointment Criteria for directors to clause 12.3 and moving the need for a Director With Consumer Experience to have links to relevant Consumer Groups into clause 12.4(a). Also, several sub-clauses have been moved into clause 12.8 and the Charter of the TIO Board Nominations Committee.	These changes simplify the drafting of the clause. The need for this category of director to have expertise in consumer affairs is retained in this clause. Several sub-clauses of clause 12.4(b) have been moved to: • clause 12.8, because they are common to the nomination and appointment processes for all categories of director; or • the Charter of the TIO Board Nominations Committee because they are procedural in nature.

Constitution			
Clause	**Summary of amendment**	**Details of amendment**	**Reason for amendment**
12.5(b)	Simplification of drafting	This clause has been simplified by moving the Common Appointment Criteria for directors to clause 12.3. Several sub-clauses have been moved into clause 12.8 and the Charter of the TIO Board Nominations Committee.	These changes simplify the drafting of the clause. The need for this category of director to have expertise in the telecommunications industry is retained in this clause. Several sub-clauses of clause 12.5(b) have been moved to: • clause 12.8, because they are common to the nomination and appointment processes for all categories of director; or • the Charter of the TIO Board Nominations Committee because they are procedural in nature.
12.6	Simplification of drafting	This clause has been simplified by moving the Common Appointment Criteria for directors to clause 12.3. Several sub-clauses have been moved into clause 12.8 and the Charter of the TIO Board Nominations Committee.	These changes simplify the drafting of the clause. Two sub-clauses of clause 12.6(b) have been moved to clause 12.8, because they are common to the nomination and appointment processes for all categories of director. Another sub-clause of clause 12.6(b) has been moved to the Charter of the TIO Board Nominations Committee because it is procedural in nature.
12.7	Simplification of drafting	This clause has been simplified by moving the Common Appointment Criteria for directors to clause 12.3. Two sub-clauses have been moved into clause 12.8.	These changes simplify the drafting of the clause. The need for the Independent Chair to have the ability to command the respect of stakeholders and the Board is retained in this clause. Two sub-clauses of clause 12.7 have been moved to clause 12.8, because they are common to the nomination and appointment processes for all categories of director.
12.8	Simplification of drafting	Wording about record keeping and transparency of process in the appointment of directors has been moved to this clause.	This new clause does not introduce any material change. It states requirements relating to record keeping, transparency and cost-effectiveness of process in the appointment of directors. These were previously stated in each of clauses 12.4 to 12.7.
12.11	Change in terminology and deletion of ability to pay special honorarium to directors	The word "honorarium" is replaced by the word "remuneration", for the payments made to directors for their role. The specific ability for TIO Ltd to pay a special honorarium to a director who performs duties outside the ordinary duties of a director is removed.	The change to terminology will not have any material effect on TIO Ltd's ability to pay directors for performing their role as directors, or on the amount they receive. It simply makes the wording more modern and uses plainer English. The amendments align the body of the clause with its heading ("Remuneration") and with the terminology used in the constitutions of certain other industry ombudsman schemes in Australia. Sub-clause 12.11(b), which will be deleted, states that if a director performs duties outside the ordinary duties of a director they may in some circumstances be paid a special honorarium. So far as the current Board is aware, this sub-clause has never been used. The Board does not expect that it is likely to be used in future and recommends its deletion.

Constitution			
Clause	**Summary of amendment**	**Details of amendment**	**Reason for amendment**
12.12	Change to term of appointment of directors	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.
14.7	Changes to provisions for circular resolutions of the Board	The amendments allow a circular resolution of the Board to be passed without the assent of directors who are unavailable to consider it. They also allow for a circular resolution to be passed by electronic means, for example by email.	The changes will allow the Board to pass a circular resolution of the Board with the assent of all directors entitled to vote on the resolution, except any director who has informed the Board of their unavailability to consider it or whom the Independent Chair reasonably deems unavailable to consider it (for example due to serious illness). They also allow the Board to pass a circular resolution by electronic means, for example by email, telephone or video-conference. In that case each relevant director must also affirm the resolution at the next Board meeting they attend, however the validity of the resolution would not be affected by any failure to do so.
14.10 (deleted clause)	Deletion of ability for a director to appoint an alternate director	A director will no longer be able to appoint an alternate or substitute director to act in their place.	While some directors of TIO Ltd 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. If a director is unable to do so they: • will still receive the Board papers for the meeting and have the opportunity to consider them; • may vote at the Board meeting by proxy given to another director, on any resolution the wording of which they have sighted; and • may communicate their views on key matters to the Independent Chair, who can ensure those views are considered at the meeting.
15.2(c)	Members must treat Acting Ombudsman as having the same powers as the Ombudsman	Members must treat any Acting Ombudsman as having the same functions and powers as the Ombudsman under all legislation, the Constitution and the Terms of Reference.	Under the Telecommunications Code of Practice the Telecommunications Industry Ombudsman can give a carrier a direction about the way the carrier should engage in certain activities related to entering land. Because of the way "Telecommunications Industry Ombudsman" is defined in the Code, arguably only the Ombudsman personally can give such a direction. This amendment aims to help address this issue. Under this amendment, each Member must treat an Acting Ombudsman as having the Ombudsman's powers under legislation (this would include the Code). Therefore if an Acting Ombudsman gave a Carrier Member a direction under the Code about the way the Carrier Member should engage in land entry activities, the Carrier Member would be obliged by the Constitution to comply.

Constitution			
Clause	**Summary of amendment**	**Details of amendment**	**Reason for amendment**
15.4	New role of Acting Deputy Ombudsman introduced	This new clause allows for the appointment of an Acting Deputy Ombudsman.	This clause will allow the Ombudsman, in consultation with the Board, to appoint an Acting Deputy Ombudsman if: • the appointment of the Deputy Ombudsman ends; • the Deputy Ombudsman becomes physically or mentally incapable of carrying out their duties; or • the Deputy Ombudsman is or is to be absent and unable to perform their duties for an extended period. There is no Deputy Ombudsman at present, and the Ombudsman has no current plan to appoint one, so this new clause will not have any practical impact in the short term. However as the potential exists to appoint a Deputy Ombudsman, it makes sense to allow for the appointment of an Acting Deputy Ombudsman.
21(b)(i)	Change of deemed time when a notice is received	A notice will be deemed to be received 5 days after posting, rather than 2 days as was the case before this amendment.	Before the COVID-19 pandemic, Australia Post was citing a target delivery time for regular letters of 2-6 business days after posting. Changing the deemed date for receipt of a notice to 5 days after posting better reflects this timeframe. COVID-19 has further impacted Australia Post's service levels. For example, until 30 June 2021, subject to review, in metropolitan areas Australia Post is permitted to make deliveries every second business day rather than every business day. This further supports extending the deemed delivery time to 5 days after posting.
25(b)	Amendment to transitional provision	The amendments update this transitional provision to ensure the other changes to the Constitution do not have unintended effects.	This clause makes it clear that changes to the requirements for appointing Directors With Industry Experience that were made in a previous update to the Constitution, do not affect the validity of appointment of the current directors holding those positions. The amendments to this clause are not intended to make any material change, but simply preserve the effect of this clause.

Terms of Reference			
Clause	**Summary of amendment**	**Details of amendment**	**Explanation**
7.3(c) and 7.5	Addition of references to Acting Deputy Ombudsman	The amendments provide for the role of Acting Deputy Ombudsman.	As clause 15.4 of the Constitution now provides for the role of Acting Deputy Ombudsman (see discussion above), minor amendments are needed in the Terms of Reference to reflect the responsibilities of this role. There is no Deputy Ombudsman at present, and the Ombudsman has no current plan to appoint one, so these amendments will not have any practical impact in the short term.
7.4	Acting Ombudsman has the same powers as the Ombudsman	Statement that an Acting Ombudsman has the same functions and powers as the Ombudsman.	While the Terms of Reference already referred to the possibility of an Acting Ombudsman being appointed, they did not state that the Acting Ombudsman has the same functions and powers as the Ombudsman. This was implied, but these amendments will make it clear.

Charter – TIO Board of Directors			
Clause	**Summary of amendment**	**Details of amendment**	**Explanation**
3(5)	Board to consider gaps in skill set of the Board when appointing directors	In considering candidates to be appointed to the Board, the Board will consider any gaps in the collective skill-set of the Board.	The Constitution states that Board appointments are to be based on merit and on criteria including the specific criteria stated in the Constitution. The Board also requires the skills to meet its responsibilities as outlined in the Terms of Reference. The amendment to clause 3(5) means that in considering candidates to be appointed to the Board, the Board will also 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.
3(6)	Capacity and willingness to consult with key stakeholders is a criterion for appointing a Director With Industry Experience	The amendment means that the criteria for appointing a Director With Industry Experience include the capacity and willingness to consult with key stakeholders of the TIO scheme (not just with Members as previously required).	The Common Appointment Criteria for directors (see the discussion of clause 12.3 of the Constitution, above) include capacity and willingness to consult with key stakeholders of the TIO scheme. Previously in the Constitution, this criterion (as it related to a Director With Industry Experience) was capacity and willingness to consult with Members. The amendment reflects the minor changes being made to harmonise the Common Appointment Criteria across all of the different categories of director. Since all directors have a legal duty to discharge their duties in the best interests of TIO Ltd as a whole, it is considered that Directors With Industry Experience should have the capacity and willingness to consult with all key stakeholders, not just Members. (Similarly, Directors With Consumer Experience should have the capacity and willingness to consult with all key stakeholders, not just Consumer Groups, and the proposed amendments to the Constitution reflect this.)

Charter – TIO Board Nominations Committee			
Clause	**Summary of amendment**	**Details of amendment**	**Explanation**
2(4)(b)	Board to consider gaps in skill set of the Board when appointing directors	In considering candidates to be appointed to the Board, the Board will consider any gaps in the collective skill-set of the Board.	This is the same as the amendment to clause 3(5) of the TIO Board of Directors Charter, discussed above.
2(4)(c)	Capacity and willingness to consult with key stakeholders is a criterion for appointing a Director With Industry Experience	The amendment means that the criteria for appointing a Director With Industry Experience include the capacity and willingness to consult with key stakeholders of the TIO scheme (not just with Members as previously required).	This is the same as the amendment to clause 3(6) of the TIO Board of Directors Charter, discussed above.
2(4)(d)-(f)	Procedural steps for appointing directors	For Board positions other than the Independent Chair, the Nominations Committee must consider a wide range of candidates and conduct a search process including through a medium or media likely to attract a substantial pool of suitably qualified candidates. For any vacant Director With Consumer Experience position the Committee will invite Consumer Groups (as defined in the TIO Constitution) to make nominations. For any vacant Director With Industry Experience position the Committee will invite Members to make nominations.	These provisions have been moved, with little amendment, from the Constitution. It is appropriate to state them in this Charter rather than the Constitution as they are procedural in nature. A sentence has been added to the end of clause 4(d) 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 as to whether to consider a wide range of candidates and conduct a search process as for the other Board positions.

[DRAFT 19 OCTOBER 2020]

Constitution of Telecommunications Industry Ombudsman Limited ACN 057 634 787

[Incorporating amendments adopted on ~~12 November 2019~~]

Contents

1 Name of Company

The name of the company is Telecommunications Industry Ombudsman Limited (**TIO Limited**).

2 Interpretation

2.1 Definitions

In this Constitution:

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997* (Cth).

Acting Deputy Ombudsman means any Acting Deputy Ombudsman appointed pursuant to **clause 15.4(a)**.

Acting Ombudsman means the Acting Telecommunications Industry Ombudsman appointed pursuant to **clause 15.2(a)**.

Budget means the budget for TIO Limited for each Year approved or amended by the Board in accordance with this Constitution.

Carriage Service has the same meaning as under the Act.

Carriage Service Intermediary has the same meaning as under the Act.

Carriage Service Provider has the same meaning as under the Act.

Carriage Service Provider Member has the meaning ascribed in **clause 6.2**.

Carrier means the holder of a Carrier Licence under the Act.

Carrier Licence has the same meaning as under the Act.

Carrier Member has the meaning ascribed in **clause 6.2**.

Common Appointment Criteria has the meaning ascribed in **clause 12.3**.

~~**Community and**~~ **Consumer Groups** ~~has the meaning ascribed~~means groups of the types mentioned in **clauses 12.4(a)(i)** and **12.4(a)(ii)**~~**12.3(a)**~~.

Corporate Representative means a person authorised to act as the representative of a corporation pursuant to section 250D of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Deputy Ombudsman means the Deputy Telecommunications Industry Ombudsman appointed pursuant to **clause 15.3**.

Director means any director of TIO Limited for the time being~~ and includes an alternate Director~~.

Director With Consumer Experience means a Director appointed in accordance with clause **12.4**~~**12.3**~~. For the avoidance of doubt, the plural for this term is **Directors With Consumer Experience**.

Director With Industry Experience means a Director appointed in accordance with clause **12.5**~~**12.4**~~. For the avoidance of doubt, the plural for this term is **Directors With Industry Experience**.

Directors or the **Board** means the whole or any number of Directors assembled at a meeting of Directors not being less than a quorum.

Eligible Carriage Service Provider has the same meaning as under the TCPSS Act.

Independent Chair means the person appointed to that role under ~~**clause**~~ **clause 12.7**~~**12.6**~~.

Independent Directors means directors appointed in accordance with ~~**clause**~~ **clause 12.6**~~**12.5**~~.

Legislation means all legislation and Legislative Instruments.

Legislative Instrument means:

(a) a legislative instrument within the meaning of the *Legislation Act 2003* (Cth); and

(b) any similar instrument under the legislation of a state or territory of Australia.

Member means any person for the time being admitted to membership of TIO Limited in accordance with this Constitution.

Month means calendar month.

Nominations Committee means the committee described in **clause 12.2**.

Ombudsman means the Telecommunications Industry Ombudsman appointed pursuant to **clause 15.1**.

Operational Costs means the operational costs of TIO Limited.

Other Member has the meaning ascribed in **clause 6.2**.

Related Company has the same meaning as “related body corporate” under the Corporations Act.

Scheme means the Telecommunications Industry Ombudsman scheme.

Seal means the common seal of TIO Limited.

Secretary means any person appointed to perform the duties of secretary of TIO Limited and includes any person appointed to perform the duties of a secretary of TIO Limited temporarily.

Special Resolution of the Board means a resolution of the Board with a majority of at least 75% of such Directors as, being entitled to do so, vote in person ~~(or by their alternate)~~ at the meeting that considers the resolution.

Terms of Reference means the document published by TIO Limited entitled “Telecommunications Industry Ombudsman Terms of Reference”, as modified or amended from time to time in accordance with its terms.

TCPSS Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Year means a period of 12 consecutive months.

2.2 Construction

Unless expressed to the contrary in this Constitution:

(a) Words importing:

(i) the singular include the plural and vice versa;

(ii) any gender include the other genders; and

(iii) persons include companies, corporations, public bodies and any other bodies corporate.

(b) References to “in writing” and “written” include typing, printing, lithography and any other mode of representing or reproducing words or figures in a visible form, including words or figures displayed on an electronic screen.

(c) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

(d) Terms defined in the Corporations Act have the same meaning when used in this Constitution.

(e) This Constitution displaces the replaceable rules set out in the Corporations Act and accordingly, none of the replaceable rules set out in the Corporations Act apply.

3 Objects

The objects of TIO Limited are to operate the Scheme and to appoint an Ombudsman with power on behalf of TIO Limited:

(a) to receive, investigate, make decisions relating to, give directions relating to and facilitate the resolution of:

(i) complaints as to the provision or supply of (or the failure to provide or supply) a Carriage Service by a Member, other than complaints in relation to the general telecommunications policy or commercial practices of such a Member;

(ii) complaints from owners or occupiers of land in respect of which a holder of a Carrier Licence under the Act has exercised its statutory powers as a Carrier, where the Carrier is a Member, other than complaints in relation to the policy or commercial decision of a Carrier to exercise its statutory rights as a Carrier in relation to that particular land; and

(iii) such other complaints as may by agreement with the complainant be referred to the Ombudsman by a Member; and

(b) to exercise such jurisdiction, powers and functions as may be conferred by or under any legislation or instrument.

4 Powers

TIO Limited has all of the powers of a natural person, as set out in section 124 of the Corporations Act.

5 Income and Property of TIO Limited

(a) The whole of the income and property of TIO Limited shall be applied solely towards the promotion of the objects of TIO Limited as set out in this Constitution and no part shall be paid or transferred directly or indirectly to Members by way of dividend, bonus or otherwise provided that nothing in this Constitution shall prevent the payment in good faith of remuneration to any officers or employees of TIO Limited or to any Member in return for any goods supplied or services actually rendered in the ordinary and usual course of business or prevent the payment of interest at prevailing market rates on money borrowed from any Member or reasonable and proper rent for premises let by any Member to TIO Limited.

(b) True accounts shall be kept of all moneys received and expended by TIO Limited, the matters in respect of which such moneys are received and expended, and of the property, credits and liabilities of TIO Limited. Subject to any reasonable restrictions as to the time and manner of inspecting the same imposed in accordance with this Constitution and the Corporations Act, the accounts shall be open for inspection by the Members. At least once in every year, the accounts of TIO Limited shall be examined by a properly qualified auditor or auditors who shall report to the Members in accordance with the provisions of the Corporations Act.

6 Membership

6.1 Eligibility for Membership

A person shall be eligible to be a Member only if the person:

(a) is:

(i) a Carrier;

(ii) a Carriage Service Provider or a Carriage Service Intermediary; or

(iii) otherwise considered by the Board to be appropriate for membership;

(b) completes an application for membership in the form prescribed by the Board at the time the application is made and submits the application to the Secretary; and

(c) if required by the Board, provides a guarantee by a related company or another person of the prospective Member's obligations as a Member, in a form specified by the Board.

6.2 Classes of Member

Members of TIO Limited shall be divided into classes designated as "Carrier Members", "Carriage Service Provider Members" and "Other Members". Membership of a particular class will be determined as follows:

(a) for each applicant who holds a Carrier Licence in force under the Act, membership shall be as a **Carrier Member**;

(b) for each applicant who is a Carriage Service Provider or Carriage Service Intermediary and does not hold a Carrier Licence in force under the Act, membership shall be as a **Carriage Service Provider Member**; and

(c) for each applicant who does not fall within **clause 6.2(a)** or **(b)**, membership shall be as an **Other Member**.

6.3 Acceptance of Applications

(a) Where an applicant for membership of TIO Limited is required by the TCPSS Act or another law to participate in a Telecommunications Industry Ombudsman scheme, the application for membership shall be accepted by TIO Limited if:

(i) the application is in the form the Board prescribes (if any); and

(ii) any fees determined by the Ombudsman under **clause 7(e)** are paid.

(b) In relation to any other application for membership, the Board shall consider whether to accept or reject the application. The Board may accept or reject any such application at its discretion.

(c) Any decision by the Board to accept an application under **clause 6.3(b)** must be passed by Special Resolution of the Board.

6.4 Transferability

The rights and privileges of a Member shall not be transferable.

6.5 Aggregation of Membership

If:

(a) a Member acquires 50% or more of another Member (or is otherwise in the Board's reasonable opinion deemed to control that other Member), the acquired Member and the acquiring Member shall for the purposes of quorum and voting requirements under this Constitution be deemed to be one Member only and the class of membership shall be the same as that of the acquiring Member; and

(b) a non-Member acquires 50% or more of two or more Members (or is otherwise in the Board's reasonable opinion deemed to control those Members), the acquired Members shall for the purposes of quorum and voting requirements under this Constitution be deemed to be one Member only, and the class of membership shall be the same as that of the acquired Member with the longest continuous membership of TIO Limited.

7 Operational Costs

(a) The Board will from time to time determine:

(i) the method for allocating a share of Operational Costs to each Member;

(ii) whether to allocate Operational Costs amongst Members through two or more different fee structures (for example, the Board may determine to allocate a portion of Operational Costs to Members through an annual membership fee, and another portion or other portions in a different manner);

(iii) whether each Member (or any class of Members) must pay its Operational Costs contributions (or any portion of its Operational Costs contributions) based on actual costs incurred by TIO Limited or an estimate of costs to be incurred by TIO Limited (or some combination of the two);

(iv) when each Member (or any class of Members) must pay its Operational Costs contributions and what payment terms will apply to each Member (or any class of Members); and

(v) whether each Member (or any class of Members) must pay in advance or in arrears (or some combination of the two).

(b) The Board may determine different requirements for different Members, or different classes of Member, under **clause 7(a)**.

(c) Any determination by the Board under **clause 7(a)** must be subject to consultation with Members.

(d) To avoid doubt, **clause 7(c**) is not limited to consultations occurring after **clause 7(c)** was included in this Constitution.

(e) Each Member agrees to pay such annual Operational Costs as are determined by the Ombudsman as being applicable to the Member in accordance with the Board's determination under **clause 7(a)**.

(f) The total annual Operational Costs shall be based on the amount required to fund the Budget for the relevant year.

8 Cessation of Membership

(a) Any Member may withdraw from TIO Limited by giving to the Secretary not less than three months' notice to that effect and its membership shall cease on expiry of such notice.

(b) If any Member (**Defaulting Member**) neglects or willfully refuses to comply with the provisions of this Constitution, the Terms of Reference or any rules of TIO Limited the Directors may recommend the expulsion of the Defaulting Member from TIO Limited. Any recommendation to expel a Defaulting Member must be passed by a Special Resolution of the Board. The Directors must, within 21 days of the Special Resolution of the Board being passed, convene a meeting of Members and the recommendation must be put before the Members to determine whether or not to adopt the Directors' recommendation and expel the Defaulting Member.

(c) Any person who ceases to be a Member of TIO Limited shall forfeit all and any rights and privileges of membership as at the date of cessation of membership and shall have no further rights against or claim upon TIO Limited or the property or funds of TIO Limited, except rights or claim as a creditor (if any), and any right or claim arising from actions or omissions during the period of membership.

(d) Any person who ceases to be a Member shall:

(i) continue to abide by the provisions of this Constitution and the Terms of Reference so far as they are applicable to the particular complaints which are being investigated by TIO Limited at the time the person ceases membership (including for example complying with any decision made by the Ombudsman or the Ombudsman's delegate in respect of such a complaint); and

(ii) without limiting **clause 8(d)(i)**, continue to abide by the provisions of this Constitution in relation to the payment of Operational Costs and any other such levies as are or ~~as may fall~~ become due.

9 Additional Funding

9.1 Special Levies

The Board may at any time and from time to time obtain money for the purposes of TIO Limited in addition to the annual Operational Costs by raising a special levy from the Members or a particular class of Member. Any decision by the Board to raise a special levy must be passed by a Special Resolution of the Board. Special levies shall be funded by the Members on the basis of each Member’s percentage share of Operational Costs billed in the relevant billing period specified by the Board.

9.2 Capital Expenditure

(a) The Board may at any time and from time to time obtain money for the purpose of on-going capital expenditure in addition to the annual Volume Related Costs and Operating Costs. Any decision by the Board to obtain money pursuant to this **clause 9.2(a)** must be passed by a Special Resolution of the Board. This expenditure shall be funded by the Members on the same basis as special levies.

(b) As and when further applicants become Members of TIO Limited they shall contribute towards capital expenditure as determined by the Board.

9.3 Loans

The Board may raise loan funds from Members or third parties for particular purposes. Any decision by the Board to raise loan funds must be passed by a Special Resolution of the Board.

9.4 Funding

(a) The Board shall set global funding limits for TIO Limited within which the budgets for TIO Limited shall be finalised.

(b) Before:

(i) the budgets of TIO Limited are implemented; or

(ii) any additional expenditure to that set out in a budget approved by the Board is incurred,

the prior approval of the Board must be obtained.

(c) In setting global funding limits and approving budgets or any additional expenditure to that set out in an approved budget the Board shall require the Ombudsman to:

(i) prepare the budget and business plans for TIO Limited in each successive Year; and

(ii) submit each such budget and business plan (and any proposal for additional expenditure beyond an approved budget) to the Board for its consideration.

(d) In setting global funding limits or approving budgets and additional expenditure as set out in **clauses 9.4(a)** and **(b)** the Board will use its best endeavours to ensure that the level of funding is such that the Ombudsman is able to carry out his or her functions under the Terms of Reference.

10 General Meetings

(a) TIO Limited will hold an annual general meeting (**AGM**) if required by, and in accordance with, the provisions of the Corporations Act. All meetings of Members (including the AGM) will be called General Meetings.

(b) General Meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Act.

(c) Except as otherwise required by law, the Board must not put to a General Meeting a proposal to amend this Constitution unless the Board resolves by Special Resolution of the Board to put that proposal to the General Meeting.

(d) Subject to the provisions of the Corporations Act relating to special resolutions and consent to short notice, at least 21 days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting and, in the case of special business, the general nature of that business, shall be given to persons entitled to receive such notices from TIO Limited.

(e) For the purposes of **clause 10(d)**, all business that is transacted at a General Meeting (with the exception of the consideration of the accounts, financial statements and the reports of the Board and auditors at an AGM) shall be special business.

(f) Omission to give notice of a General Meeting by TIO Limited to, or the non-receipt of notice of a meeting by, any Member shall not invalidate proceedings at a General Meeting.

(g) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a General Meeting unless the General Meeting has been convened pursuant to a request by Members in which case the Board must not postpone or cancel the general meeting without the consent of the requesting Members.

11 Proceedings at General Meetings

11.1 Quorum

(a) No business shall be transacted at a General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as otherwise provided in this Constitution, five Members shall constitute a quorum at any General Meeting. For the purpose of this **clause 11.1(a)**, persons attending as a proxy or Corporate Representative shall be counted as Members.

(b) If within 30 minutes of the time appointed for a General Meeting, a quorum is not present, the meeting shall, if convened upon the requisition of Members, be dissolved or, in any other case, stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Independent Chair may determine (being a day which is not more than 30 days after the originally scheduled date).

11.2 Adjourned Meetings

If a quorum of five Members is not present within 30 minutes after the time appointed for the commencement of the adjourned meeting (and notice of the meeting having been properly given in accordance with this Constitution) then the quorum shall be any Member.

11.3 Chair

(a) The Independent Chair shall preside as Chair at General Meetings of TIO Limited. If the Independent Chair is not present within 30 minutes of the time appointed for holding a General Meeting or if the Independent Chair is unable or unwilling to act, then the Members present shall elect an Independent Director who is present or one of the Members who is present to be Chair of the General Meeting.

(b) The Chair of any General Meeting may, with the consent of the majority of those Members present at the General Meeting (being a Meeting at which a quorum is present) adjourn the General Meeting. No business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place. Except as otherwise provided by this Constitution, it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned General Meeting.

11.4 Special Resolutions

(a) In addition to the requirements of the Corporations Act regarding the passing of special resolutions, a special resolution may only be passed if five Members, including at least one Carrier Member and at least one Carriage Service Provider Member, vote in favour of the special resolution.

(b) For the purposes of **clause 11.4(a)**, notwithstanding anything contained in this Constitution, any two or more Members who are Related Companies 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.

11.5 Voting

(a) For the avoidance of doubt, in this **clause 11.5** references to a Member or Members will be read subject to the “aggregation of membership” provisions set out in **clause 6.5**.

(b) At any General Meeting, a resolution put to the vote of the meeting shall be decided on a show of hands (each Member present in person or by Corporate Representative having one vote) unless a poll is demanded before or on the declaration of the result of the show of hands by any Member present in person, by proxy or by Corporate Representative and who is entitled to vote.

Unless a poll is so demanded, a declaration by the Chair of the General Meeting that a resolution has been carried, carried unanimously, carried by a particular majority or lost on a show of hands and an entry to that effect in the book containing the minutes of the proceedings of TIO Limited shall be conclusive evidence of the fact of the resolution having been so carried, carried unanimously, carried by a particular majority or lost. The demand for a poll may be withdrawn.

(c) If a poll is duly demanded, it shall be taken either at once or after an interval or adjournment and in such manner as the Chair of the General Meeting directs. On a poll each Member will have one vote per whole dollar of its annual Operational Costs contribution in the immediately preceding financial year of TIO Limited, except that:

(i) if the Member has made an annual Operational Costs contribution only in respect of part of the relevant financial year because it was only a Member during that part, the Member will have one vote per whole dollar of the pro-rata amount of Operational Costs the Member would have contributed for the whole financial year had it been a Member for the whole financial year, based on the contribution the Member actually paid;

(ii) if the Member did not make an annual Operational Costs contribution in the relevant financial year because it was not a Member during any part of that financial year, the Member will have one vote; and

(iii) every Member will in any case have a minimum of one vote.

(d) In the case of an equality of votes on a show of hands or on a poll, the Chair of the General Meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and the motion shall be lost.

(e) A Member may vote in person, by proxy, by attorney or by Corporate Representative. On a show of hands, every Member shall have one vote but in order to pass validly an ordinary resolution at least one Member who is a Carrier Member must vote in favour of that resolution.

(f) Subject to **clause 11.6(d)**, a Member whose estate is liable to be dealt with in any way under the law relating to mental health shall not be entitled to vote, either on a show of hands or on a poll.

~~(g) If a poll is taken in accordance with **clause 11.5(c)** at a time when no Member has made any Operational Costs contribution, as such, in the immediately preceding financial year of TIO Limited, then for the purposes of that poll references in that clause to Operational Costs will be taken to be references to Operating Costs as defined in the version of this Constitution that was in effect as at 1 February 2018.~~

11.6 Proxies and Other Authorities

(a) The instrument appointing a proxy shall be in writing and (subject to **clause 11.6(b)**) signed by the appointor or his or her duly authorised attorney or, if the appointor is a corporation, either under seal or under the hand of an officer or duly authorised attorney of the corporation. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct his or her proxy to vote in favour of or against any proposed resolution. Unless otherwise instructed, a proxy may vote as he or she thinks fit.

(b) An appointment of a proxy may be made electronically if it includes a method of identifying the relevant Member and an indication of the Member's approval of the information contained in the electronic communication. If a Member appoints a proxy by email or internet-based voting the Member's approval of the information communicated must be communicated by a form of security protection (for example, the entering of a confidential identification number issued by TIO Limited).

(c) The instrument appointing a proxy may be in any common or usual form acceptable to the Directors but must contain the following:

- (i) the Member's name and address;
- (ii) a statement that the proxy is in relation to TIO Limited;
- (iii) the proxy's name or the name of the office held by the proxy; and
- (iv) the meetings at which the appointment may be used.

~~(b)~~ For the purposes of **sub-clause (iv)** above, an appointment may be a standing one.~~.~~

(d) The instrument appointing a proxy for a Member and ~~a copy of~~ the original or a certified copy of the power of attorney or other authority under which it is signed ~~or notarially certified~~ (if any) shall be:

- (i) deposited at the registered office of TIO Limited (or at such other place ~~within the State~~ as is specified for that purpose in the notice convening the General Meeting); or
- (ii) provided electronically to the Secretary or such other person as is specified for that purpose in the notice convening the General Meeting,

~~(c)~~ not less than 48 hours before the General Meeting or adjourned General Meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default of the foregoing requirements, the instrument of proxy shall at the discretion of the Chair of the General Meeting be invalid.

~~(d)~~(e) A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding:

- (i) the previous death or unsoundness of mind of the principal;

(ii) revocation of the instrument; or

(iii) revocation of the authority under which the instrument was executed,

unless an indication in writing of such death, unsoundness of mind or revocation has been received at the registered office of TIO Limited before the commencement of the General Meeting at which the instrument is used.

~~(e)~~(f) Any corporation or other body corporate which is a Member may authorise such person as it thinks fit to act as its Corporate Representative at any General Meeting of TIO Limited. The person so authorised shall be entitled to exercise the same powers on behalf of the appointor as the appointor could exercise if it were a human Member in accordance with his or her authority until his or her authority is revoked by the corporation or other body corporate.

~~(f)~~(g) TIO Limited is not responsible for ensuring that:

(i) any directions provided in an instrument appointing a proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with; or

(ii) the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

12 Directors and Management of TIO Limited

12.1 The Board

Subject to the Corporations Act and to this Constitution, TIO Limited and the business, affairs and property of TIO Limited will be managed by a Board of Directors consisting of:

(a) three Directors With Consumer Experience;

(b) three Directors With Industry Experience;

(c) two Independent Directors; and

(d) the Independent Chair.

12.2 Nominations Committee and Appointment of Directors

(a) The Board may, in accordance with this **clause 12.2**, appoint a person to fill any vacant Board position.

(b) Any decision by the Board to appoint a person to act as a Director must be passed by a Special Resolution of the Board.

(c) The Board will establish a Nominations Committee with membership as determined by the Board from time to time. The Board may appoint or remove the members of the Nominations Committee as the Board considers appropriate from time to time, however the Independent Chair will always be a member of the Nominations Committee (except where the Independent Chair has or may be perceived to have a conflict of interest in relation to specific business of the Nominations Committee).

(d) The Nominations Committee will identify and recommend to the Board persons to act as Directors, as and when any vacancies on the Board arise or are anticipated.

(e) Except in the circumstances described in **clause 12.2(g)** or in the charter of the Nominations Committee, the Board must only appoint a person to act as a Director if that person has been recommended by the Nominations Committee.

(f) When the Board receives a recommendation from the Nominations Committee the Board may accept or reject that recommendation in its discretion. If the Board rejects the recommendation the Board will instruct the Nominations Committee to identify and recommend another person to be appointed to fill that Board position, in accordance with the charter of the Nominations Committee.

(g) Subject to **clause 12.2(b)** but notwithstanding anything else in this **clause 12.2**, the Board will in all cases determine the best way to appoint a person to the role of the Independent Chair (and a person may be appointed to the role of the Independent Chair in that way). Without limiting the Board's ability to determine the best way to make the appointment, the Board may decide (but is not required) to ask the Nominations Committee to identify and recommend to the Board a person to act as the Independent Chair. However, the Board does not require a recommendation from the Nominations Committee in order to appoint a person to act as the Independent Chair.

(h) The Board will provide the Nominations Committee with a charter and any other instructions the Board may wish to give, all of which must be consistent with the terms of this Constitution and must be complied with by the Nominations Committee. In circumstances where the charter of the Nominations Committee provides for the Board to take over the role of the Nominations Committee because the decision making process described in the charter does not result in the Nominations Committee making a recommendation, or because that process cannot be followed, the Charter may provide for the Independent Chair to have a casting vote.

12.3 Common Appointment Criteria for Directors

The appointment of each Director will be based on merit, based on criteria including the candidate's:

(a) expertise in corporate governance;

(b) ability to provide effective input on policy and jurisdiction issues for TIO Ltd;

(c) ability to uphold the independence of the Ombudsman;

(d) capacity and willingness to consult with key stakeholders of the Scheme;

(e) knowledge of, or ability to acquire knowledge of, telecommunications issues; and

(f) knowledge of, or ability to acquire knowledge of, dispute resolution issues.

(the **Common Appointment Criteria**), and any additional criteria set out in **clauses 12.4** to **12.7** inclusive.

~~12.3~~12.4 Directors With Consumer Experience

(a) Directors With Consumer Experience will be appointed from individuals with links to~~the following groups and agencies (**Community and Consumer Groups**)~~:

(i) ~~community or~~ consumer groups representing users of telecommunications services, including individual users and small business users; ~~and~~or

(ii) ~~community or~~ consumer groups or agencies representing public interest issues relevant to telecommunications services.

(b) In nominating Directors With Consumer Experience for appointment by the Board, the Nominations Committee and the Board will observe the following principles:

~~(i)~~ All appointments will be based on criteria including ~~merit, based on~~the Common Appointment C~~c~~riteria ~~including~~ and the candidates’. ~~:~~

~~(A) expertise in corporate governance;~~

~~(B) ability to provide effective input on policy and jurisdiction issues for TIO Ltd;~~

~~(C) ability to uphold the independence of the Ombudsman;~~

~~(D)~~ expertise in consumer affairs~~;~~

~~(E) links to relevant Community and Consumer Groups~~.~~;~~

~~(F) capacity and willingness to consult with relevant Community and Consumer Groups; and~~

~~(G) knowledge of, or ability to acquire knowledge of, telecommunications issues.~~

~~(iii)~~(ii) Directors With Consumer Experience must in the opinion of the Board be independent of the telecommunications industry and government.

~~(iv) The Nominations Committee will invite Community and Consumer Groups to make nominations for vacant Director With Consumer Experience positions (however successful candidates do not necessarily have to come from the Community and Consumer Groups invited by the Nominations Committee to make nominations).~~

~~(v) A wide range of candidates will be considered and a search process will be conducted including through a medium or media likely to attract a substantial pool of suitably qualified candidates.~~

~~(vi)~~(i) ~~The nomination and appointment process followed by the Nominations Committee and the Board must be transparent, accountable and cost effective.~~

~~(vii)~~(i) ~~The nomination and appointment process followed by the Nominations Committee and the Board must be documented and records kept of how decisions have been made.~~

~~12.4~~12.5 Directors With Industry Experience

(a) Directors With Industry Experience will (except in the circumstances described in the charter of the Nominations Committee) be appointed from persons with telecommunications industry experience, identified and recommended by the Nominations Committee.

(b) In nominating Directors With Industry Experience for appointment by the Board, the Nominations Committee and the Board will observe the ~~following~~ principle~~s:~~ that all appointments will be based on criteria including the Common Appointment Criteria and the candidates' expertise in the telecommunications industry.

~~(i) All appointments will be based on merit, based on criteria including the candidates':~~

~~(A) expertise in corporate governance;~~

~~(B) ability to provide effective input on policy and jurisdiction issues for TIO Ltd;~~

~~(C) ability to uphold the independence of the Ombudsman;~~

~~(D) expertise in the telecommunications industry; and~~

~~(E) capacity and willingness to consult with Members.~~

~~(ii) The Nominations Committee will invite Members to make nominations for the Director With Industry Experience positions (however a successful candidate does not necessarily have to come from the Members invited by the Nominations Committee to make nominations).~~

~~(iii) A wide range of candidates will be considered and a search process will be conducted including through a medium or media likely to attract a substantial pool of suitably qualified candidates.~~

(iv) ~~The nomination and appointment process followed by the Nominations Committee and the Board must be transparent, accountable and cost effective.~~

(v) ~~The nomination and appointment process followed by the Nominations Committee and the Board must be documented and records kept of how decisions have been made.~~

~~12.5~~12.6 Independent Directors

Two Independent Directors will be appointed in accordance with the following principles:

(a) All appointments will be based on criteria including ~~merit, based on~~the Common Appointment ~~c~~Criteria ~~including the candidates'~~.~~:~~

(i) ~~expertise in corporate governance;~~

(ii) ~~ability to provide effective input on policy and jurisdiction issues for TIO Ltd;~~

(iii) ~~ability to uphold the independence of the Ombudsman;~~

(iv) ~~knowledge of, or ability to acquire knowledge of, telecommunications issues; and~~

(v) ~~knowledge of, or ability to acquire knowledge of, dispute resolution issues.~~

(b) Independent Directors must be independent of ~~Community and~~ Consumer Groups, the telecommunications industry, government and other organisations and bodies such that they are not likely to have any substantive conflict of interest in fulfilling their roles as directors of TIO Limited.

~~(c) A wide range of candidates will be considered and a search process will be conducted including through a medium or media likely to attract a substantial pool of suitably qualified candidates.~~

~~(d) The nomination and appointment process must be transparent, accountable and cost effective.~~

~~(e) The nomination and appointment process must be documented and records kept of how decisions have been made.~~

~~(f)~~(c) One of the Independent Directors must have not for profit governance experience. The other Independent Director must have commercial governance experience.

~~12.6~~12.7 Independent Chair

An Independent Chair will be appointed in accordance with the following principles:

(a) Any appointment will be based on ~~merit, based on~~ criteria including the Common Appointment C~~c~~riteria ~~including~~ and the candidates' ability to command the respect of stakeholders and the Board.~~:~~

~~(i) expertise in corporate governance;~~

~~(ii)~~(i) ~~ability to provide effective input on policy and jurisdiction issues for TIO Ltd;~~

~~(iii) ability to uphold the independence of the Ombudsman;~~

~~(iv) knowledge of, or ability to acquire knowledge of, telecommunications issues; and~~

~~(v) ability to command the respect of stakeholders and the Board.~~

(b) The Independent Chair must be independent of ~~Community and~~ Consumer Groups, the telecommunications industry, government and other organisations and bodies such that he or she is not likely to have any substantive conflict of interest in fulfilling his or her role as a director of TIO Limited.

(c) Before appointing the Independent Chair, the Board must inform the Federal ministers responsible for consumer affairs policy and communications policy about the proposed appointment and consider any comments they make.

~~(d) The nomination and appointment process must be transparent, accountable and cost effective.~~

~~(e) The nomination and appointment process must be documented and records kept of how decisions have been made.~~

12.8 Record Keeping and Transparency of Process

In relation to the appointment of each Director the nomination and appointment process must be:

(a) documented and records kept of how decisions have been made; and

~~The nomination and appointment process followed by the Nominations Committee and the Board must be~~ transparent, accountable and cost effective~~.~~

~~(b) The nomination and appointment process followed by the Nominations Committee and the Board must be documented and records kept of how decisions have been made.~~

~~12.7~~12.9 Condition of Appointment of Directors

The appointment of each Director is subject to the appointee executing a deed poll in a form acceptable to the Board by the date required by the Board in which the appointee agrees to be bound by the Terms of Reference and any other document the Board specifies. If this condition is not met by that date, the position of the relevant Director will be vacated from that date.

~~12.8~~12.10 Vacation of Office

(a) The office of a Director shall become vacant:

(i) if the Director becomes bankrupt or makes any arrangement or composition with his or her creditors generally;

(ii) if the Director becomes prohibited from holding the office of a director of a company under the Corporations Act;

(iii) if the Director becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;

(iv) if the Director resigns his or her office by notice in writing to TIO Limited;

(v) unless otherwise determined by the Board – if the Director is absent from meetings of the Board for more than 6 months without permission of the Board;

(vi) unless otherwise determined by the Board – if the Director holds any office of profit under TIO Limited or receives any payment from TIO Limited other than remuneration properly payable in accordance with this Constitution;

(vii) unless otherwise determined by the Board – if the Director is a Director With Consumer Experience and has ceased:

(A) to have suitable links to relevant ~~Community and~~ Consumer Groups; or

(B) to be independent of the telecommunications industry and government; or

(viii) unless otherwise determined by the Board – if the Director is an Independent Director or the Independent Chair and has ceased to be independent within the requirements of **clause 12.6(b)~~12.5(b)~~** or **12.7(b)~~12.6(b)~~** (as applicable).

(b) Upon the office of a Director becoming vacant under **clause 12.10(a)(i)~~12.8(a)(i)~~-(a)(vi)~~(vi)~~** the person who vacated office is disqualified from acting as a Director for a period of two years from the vacation of office.

~~12.9~~12.11 Remuneration

(a) The Board may make provision for a Director to be ~~paid an honorarium~~remunerated from the funds of TIO Limited, on such terms as the Board considers reasonable, subject to the following:

(i) any decision to pay ~~an honorarium~~remuneration to a Director must be passed by a Special Resolution of the Board; and

(ii) any remuneration ~~honorarium~~ which is to be paid to an Independent Director or the Independent Chair must be commensurate with the fees usually paid to a non-executive director of a public company of comparable size; and

(iii) the remuneration ~~honorarium~~ may include additional amounts for participation in any committee established by the Board.

~~(b) If a Director performs duties which, in the opinion of the Board, are outside the scope of the ordinary duties of the Director, he or she may be paid a special honorarium. The payment of a special honorarium shall be on such terms as considered reasonable by the Board and must be passed by a Special Resolution of the Board.~~

~~(c)~~(b) Each Director will be reimbursed all reasonable travelling, accommodation and other expenses incurred by the Director in attending General Meetings, meetings of the Board and committees of the Board or while otherwise engaged in undertaking the activities of TIO Limited, promptly upon production of appropriate receipts or other records accurately recording those expenses.

~~(d)~~(c) The remuneration~~honorarium~~ of any Director may be varied or terminated by Special Resolution of the Board.

~~(e)~~(d) The vote of the Director to whom remuneration~~an honorarium~~ is to be paid is not to be counted in determining whether a Special Resolution of the Board in favour of that payment has been passed, and that Director will not be counted towards a quorum in relation to that part of a Board meeting during which such Special Resolution of the Board is considered.

~~12.10~~12.12 Term of Office

(a) Each Director will be appointed for a term specified by the Board of up to 3 years. For the avoidance of doubt, if a current Director is appointed to fill a different position on the Board, e.g. an Independent Director is appointed to be the Independent Chair, their appointment to that different position will be for a term specified by the Board of up to 3 years from the time of their appointment to that position.

(b) At the end of the term of office of a Director the procedures specified in this Constitution will be followed to fill that position except that the Board may in the case of a Director completing that Director's first term of office:

(i) subject to any express restriction in this Constitution or at law; and

(ii) subject to the willingness of the Director and the Director remaining eligible for appointment,

re-appoint the Director to that position by Special Resolution of the Board if the Board considers it appropriate:

(iii) subject to following those procedures in full; or

(iv) without any requirement for the nomination or consideration of other candidates.

~~12.11~~12.13 Removal of Directors

Subject to this Constitution and the provisions of the Corporations Act, a resolution, request or notice of any or all of the Directors is void to the extent that it purports to remove a Director from their office or requires a Director to vacate their office, unless it is determined at a General Meeting on due notice to remove that Director from office.

13 Powers and Duties of the Board

(a) The Board may exercise all the powers and do all the acts and things as may be exercised or done by TIO Limited that are not required to be exercised by TIO Limited in General Meeting, subject to this Constitution, the Terms of Reference, the provisions of the Corporations Act and to such regulations as are not inconsistent with this Constitution or provisions of the law as may be prescribed by the Board or TIO Limited in General Meeting.

(b) Any rule, regulation or by-law made by the Board must be circulated among Members within one month of its coming into being.

(c) The Board may exercise all of TIO Limited's borrowing powers.

(d) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments drawn on bank accounts maintained by TIO Limited and all receipts for money paid to TIO Limited shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in the manner determined by the Board from time to time.

(e) The Board shall cause minutes to be made of:

(i) all appointments of officers of TIO Limited;

(ii) the names of Directors present at all General Meetings and meetings of the Board; and

(iii) all resolutions and proceedings at General Meetings and meetings of the Board.

Upon confirmation of any minutes made, the Chair of the meeting at which the proceedings are held or the Chair of the next succeeding meeting must sign the minutes.

(f) The Board shall, at least once every 6 months, convene a discussion forum for the purposes of small Member engagement with TIO Limited. The Board will determine the scope, nature and agenda of such discussion forums as it considers appropriate.

14 Proceedings of the Directors

14.1 Convening of meetings

(a) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Secretary shall on the requisition of a Director summon a meeting of the Board.

(b) Reasonable notice of each Board or committee meeting (including the Nominations Committee) must be given to the Directors ~~and each alternate~~ entitled to receive notice (if any) or, in the case of each committee meeting, each member of the committee.

(c) Each notice must state:

(i) the date, time and place (or places) of the Board or committee meeting;

(ii) the general nature of the business to be conducted at the Board or committee meeting; and

(iii) any proposed resolutions.

(d) No resolution passed at or proceedings at any Board or committee meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

(i) that Board or committee meeting;

(ii) any change of place (or places) of that Board or committee meeting;

(iii) postponement of that Board or committee meeting; or

(iv) resumption of that adjourned Board or committee meeting.

14.2 Voting

Except as otherwise specified in this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Board shall be deemed a determination of the Board.

14.3 Quorum

(a) Subject to this Constitution, the number of Directors necessary to constitute a quorum for a Board meeting shall be equal to:

(i) if the number of Directors holding office at the time of the relevant Board meeting is an even number: half of the number of Directors holding office at the time of the relevant Board meeting plus one; or

(ii) if the number of Directors holding office at the time of the relevant Board meeting is an odd number: half of the number of Directors holding office at the time of the relevant Board meeting, rounded up to the nearest whole number.

(b) Notwithstanding **clause 14.3(a)** but subject to **clause 14.3(d)**:

(i) the quorum for a Board meeting shall in no event be fewer than five Directors; and

(ii) the quorum must include at least two Directors With Consumer Experience, two Directors With Industry Experience and either:

(A) one Independent Director; or

(B) the Independent Chair.

(c) If within 30 minutes of the time appointed for a Board meeting, a quorum is not present, then:

(i) the Directors present 30 minutes after the time appointed for the meeting may, by unanimous decision, elect to adjourn the meeting to a specific time and place later that day; or

(ii) if no unanimous decision is made under **clause 14.3(c)(i)**, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Independent Chair may determine (being a day which is not more than 30 days after the originally scheduled date).

(d) If a quorum is not present within 30 minutes after the time appointed for the commencement of the adjourned Board meeting (and notice of the meeting having been properly given) then the quorum shall be three, including:

(i) one Independent Director; or

(ii) the Independent Chair.

(e) The Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as a quorum of the Board, the Directors may only act for the purpose of calling a General Meeting and seeking such amendments to this Constitution as would be desirable in the circumstances to enable sufficient Directors to be appointed to constitute a quorum, or to amend **clause 14.3(a)**.

14.4 Chair

(a) The Independent Chair shall act as Chair of meetings of the Board.

(b) If the Independent Chair is not present within 10 minutes after the time appointed for holding a meeting of the Board, then the Directors present shall appoint an Independent Director (or in their absence, any other Director) who is in attendance to act as Chair by ordinary resolution.

(c) Except where expressly provided by or in accordance with this Constitution, the Chair of any meeting of the Board shall not have a casting vote at that meeting.

14.5 Committees

(a) The Board may delegate any of its powers and/or functions (except powers conferred and duties imposed on the Directors by law which are incapable of delegation and except any power to make a decision on behalf of the Board) to one or more committees consisting of such persons as the Board thinks fit. Any committee formed for this purpose:

(i) must conform to any regulation or charter that may be imposed by the Board; and

(ii) will have power to co-opt any person or persons provided that any person so co-opted shall not have a vote on such committee unless so authorised by the Board.

(b) A committee may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting will be determined by a majority of votes of the committee members present (except where the charter of a committee requires a special majority or unanimous decision in relation to a particular matter) and except where expressly provided by or in accordance with this Constitution, in the event of an equality of votes, the Chair of the committee will not have a second or casting vote, and the motion will be lost.

(c) Without limitation, the Board will establish a Nominations Committee in accordance with **clause 12.2(c)** and may establish the following committees at its discretion:

(i) a remuneration committee;

(ii) a finance or budget committee; and

(iii) an audit and risk committee.

14.6 Validity of acts

All acts done by the Board, by a committee, or by any person acting as a Director or committee member shall be valid, notwithstanding that it is subsequently discovered that:

(a) there was some defect in the appointment of any Board or committee member or person so acting; or

(b) a Board or committee member or any person so acting was disqualified, as if every such person had been duly appointed and was qualified to hold their purported office.

14.7 Circular Resolutions ~~in Writing~~

(a) The Board may pass a circular resolution ~~A resolution in writing signed by~~ with the assent of all the Directors ~~for the time being entitled to receive notice of meetings of the Board~~ entitled to vote on the resolution, excluding any Directors who have informed the Board of their unavailability to consider the circular resolution or whom the Independent Chair reasonably deems unavailable to consider the circular resolution (for example due to serious illness).

(b) For the purposes of **clause 14.7(a)**, a Director may assent to a circular resolution by:

(i) signing the resolution digitally or in writing (any such resolution may consist of several identical documents each signed by one or more Directors);

(ii) providing assent by email; or

(iii) providing assent by telephone or by the use of other audio or audio-visual technologies.

(c) If a Director assents to a circular resolution under **clause 14.7(b)(ii)** or **14.7(b)(iii)**, that Director must confirm his or her assent by affirming the resolution at the next Board meeting he or she attends. However the effectiveness and validity of the resolution will not be affected by the failure of a Director to comply with this **clause 14.7(c)**.

~~(a)~~(d) A circular resolution passed in accordance with this **clause 14.7** shall be valid and effectual as if it had been passed at a duly convened meeting of the Board. ~~Any such resolution may consist of several identical documents each signed by one or more Directors.~~

14.8 Meetings by Electronic Means

(a) If –

(i) the Directors confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications;

(ii) all the Directors who for the time being are entitled to receive notice of a meeting of the Directors receive notice of the conference and have access to the means by which the conference is to take place; and

(iii) each of the Directors taking part in the conference is able to hear each of the other Directors taking part in the conference;

then all the provisions of this Constitution relating to meetings of the Board shall apply to the conference as if such conference were a meeting of the Board and as if the Directors taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

(b) The fact that a Director is taking part in the conference must be made known to all the other Directors taking part, and no Director may disconnect or cease to have access to his or her means of communication or otherwise cease to take part in the conference unless he or she makes known to all other Directors taking part that he or she is ceasing to take part in the conference. Until a Director makes it known that he or she is ceasing to take part in the conference he or she shall be deemed to continue to be present and to continue to form part of the quorum.

14.9 Declarations of Interest

A Director must not be counted in any quorum considering any contract or proposed contract with TIO Limited in which he or she has an interest nor vote in respect of any such contract or proposed contract unless the Director discloses the existence and nature of that interest to the Board prior to voting and if he or she does so vote without making disclosure, his or her vote will not be counted. Such Director may attest the affixation of the seal to such a contract.

~~14.10 Alternate Directors~~

~~(a) With the approval of the Board (including approval of the person to be appointed), any Director may appoint:~~

~~(i) any person or another Director to be an alternate or substitute Director in his or her place during such period as he or she thinks fit; and~~

~~(ii) a second person or Director to be an alternate or substitute Director to replace the first appointed alternate or substitute Director if he or she is unable or unwilling to act.~~

~~Any alternate or substitute Director is entitled to notice of meetings of Directors, to attend and vote at such meetings and to exercise all the powers of the appointor in his or her place. An alternate or substitute Director will ipso facto vacate office if the appointor vacates or is removed from office. Any appointment or removal under this **clause 14.10(a)** will be effected by notice in writing signed by the appointor and delivered to the registered office of TIO Limited.~~

~~(b) An alternate Director who is also a Director in his or her own right shall be entitled to vote in his or her own capacity as Director and again for each alternate directorship held.~~

~~14.11~~14.10 Proxies

A Director may vote at a Board meeting in person or in the case of a particular resolution the wording of which has been sighted by that Director, by proxy given to another Director. If a Director votes by proxy, the Director must specify the way the proxy is to vote on that specific resolution. The proxy must vote accordingly. The proxy retains any vote of his or her own, to which he or she is entitled as a Director.

15 Ombudsman~~, Acting Ombudsman and Deputy Ombudsman~~ and Related Roles

15.1 Ombudsman

(a) The Board has the power to appoint a person as the Ombudsman and terminate any such appointment. Any decision by the Board to terminate the appointment of the Ombudsman must be passed by a Special Resolution of the Board.

(b) The Ombudsman has the powers conferred on the Ombudsman in this Constitution and the Terms of Reference.

(c) To the extent permitted by the Terms of Reference, the Ombudsman may delegate rights, powers and obligations to any staff member of TIO Limited.

15.2 Acting Ombudsman

(a) A person may be appointed as Acting Ombudsman, which appointment will last only until either a new Ombudsman is appointed or the existing Ombudsman is able to resume his or her duties (as the case may be), if:

(i) the appointment of the Ombudsman has terminated or expired;

(ii) the Ombudsman is rendered physically or mentally incapable of carrying out his or her duties; or

(iii) the Ombudsman is or is to be absent and unable to perform his or her duties for an extended period.

(b) The Acting Ombudsman will be appointed in the same manner as the Ombudsman, and the appointment of the Acting Ombudsman can only be terminated in the same manner as the appointment of the Ombudsman may be terminated, all as specified in **clause 15.1**.

(c) The Acting Ombudsman will during his or her appointment have all the rights, powers and obligations of the Ombudsman. All Members must treat any Acting Ombudsman as having the same functions, powers and responsibilities as the Ombudsman under all Legislation, this Constitution and the Terms of Reference, and must comply with all Legislation, this Constitution and the Terms of Reference accordingly.

15.3 Deputy Ombudsman

In consultation with the Board, the Ombudsman has the power to appoint a person as the Deputy Ombudsman and terminate any such appointment.

15.4 Acting Deputy Ombudsman

(a) A person may be appointed as Acting Deputy Ombudsman, which appointment will last only until either a new Deputy Ombudsman is appointed or the existing Deputy Ombudsman is able to resume his or her duties (as the case may be), if:

(i) the appointment of the Deputy Ombudsman has terminated or expired;

(ii) the Deputy Ombudsman is rendered physically or mentally incapable of carrying out his or her duties; or

(iii) the Deputy Ombudsman is or is to be absent and unable to perform his or her duties for an extended period.

(b) The Acting Deputy Ombudsman will be appointed, and the appointment of the Acting Deputy Ombudsman may be terminated, by the Ombudsman in consultation with the Board.

(c) The Acting Deputy Ombudsman will during his or her appointment have all the rights, powers and obligations of the Deputy Ombudsman. All Members must treat any Acting Deputy Ombudsman as having the same functions, powers and responsibilities as the Deputy Ombudsman under all Legislation, this Constitution and the Terms of Reference, and must comply with all Legislation, this Constitution and the Terms of Reference accordingly.

~~15.4~~15.5 Terms of Appointment

(a) The terms of appointment of the Ombudsman, the Acting Ombudsman, ~~and~~ the Deputy Ombudsman and any Acting Deputy Ombudsman shall include undertakings by those persons to:

(i) be bound by the provisions of the Terms of Reference; and

(ii) promptly make a written declaration to the Independent Chair (or if there is no Independent Chair, to the Board generally) of any actual or potential conflict of interest which may arise between their duties as officers of TIO Limited and their personal interests by reason of their having a direct financial interest in a Member or in a business operated by a complainant under the Scheme, after becoming aware of the conflict or potential conflict. Without limitation, the Ombudsman, Acting Ombudsman, ~~or~~ Deputy Ombudsman or any Acting Deputy Ombudsman is deemed to have a potential conflict of interest if he or she holds any share in any Member or complainant. The holding of a share or other financial interest in a Member by a family member of the Ombudsman, Acting Ombudsman, ~~or~~ Deputy Ombudsman or any Acting Deputy Ombudsman is deemed not to constitute an actual or potential conflict of interest.

(b) The Ombudsman, the Acting Ombudsman, ~~and~~ the Deputy Ombudsman and any Acting Deputy Ombudsman must not be associated with any Member of TIO Limited.

16 Secretary

(a) The Secretary shall be appointed by the Board for such term and upon such terms and conditions as the Board thinks fit. The Secretary may be removed by the Board.

(b) If the Secretary is also a Director of TIO Limited, he or she shall not be entitled to receive any remuneration except as provided by this Constitution.

17 Terms of Reference

(a) TIO Limited will operate in accordance with and observe the roles, functions, powers and obligations set out in the Terms of Reference.

(b) In becoming a Member each Member agrees to be bound by and observe the terms of the Terms of Reference.

18 Seal

The Board shall provide for the safe custody of the seal which shall only be used by the authority of the Board or a committee of Directors authorised by the Board in that behalf. Every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Secretary, a second Director or some other person appointed by the Board for that purpose.

19 Accounts

(a) The Board shall cause proper accounts and other records to be kept and shall distribute copies of financial statements and related documents as required by law.

(b) Subject to the Corporations Act, the Board shall determine the times and places at which, and the conditions and regulations upon which, the accounting and other records of TIO Limited shall be open for inspection by the Members in accordance with **clause 5(b)**.

(c) The financial years of TIO Limited are from 1 July in each year to the following 30 June.

20 Audit

A properly qualified auditor or auditors shall be appointed and its or their duties regulated in accordance with the Corporations Act. Each report of the auditor or auditors shall be submitted to the Members as required by law.

21 Notices

(a) Any notice required by law or by or under this Constitution to be duly given to any Member may be given by sending it by post to, or leaving it at, the Member's address in the register of Members or by emailing it to the Member's email address for notices listed in the register of Members (if any).

(b) For the purposes of determining the time at which a notice is received:

- (i) where a notice is sent by post from within Australia, it is taken to have been received ~~2~~ 5 days after the date of posting;
- (ii) where a notice is served on a Member personally or left at the Member's registered address, it is taken to have been received when delivered; and

(iii) where the notice is sent by email, it is taken to have been received when the email is sent (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee).

(c) Notice of every General Meeting shall be given in any manner authorised by this Constitution to:

(i) every Member except those Members who have not supplied an address to TIO Limited for the giving of notices; and

(ii) the auditor or auditors for the time being of TIO Limited, if required by law.

(d) No other person shall be entitled to receive notice of General Meetings.

22 Review of Scheme

22.1 Periodic review

The Board must commission reviews of the Scheme and develop proposals for the continued operation or termination of the Scheme as required by legislation or when the Board otherwise considers it necessary or desirable. Such reviews must allow sufficient time for consultation with Members and ~~Community and~~ Consumer Groups.

22.2 Recommendations by Ombudsman

The Board must consider any recommendation made at any time by the Ombudsman about amendments to the Scheme the Ombudsman considers necessary or desirable.

23 Winding Up

23.1 Agreement to wind up

If and only if the TCPSS Act no longer requires that Carriers and Eligible Carriage Service Providers enter into a Telecommunications Industry Ombudsman scheme the Members may, by agreement, wind up TIO Limited or transfer it to those Members which choose to continue the Scheme.

23.2 Liability of Members Limited

(a) The liability of the Members is limited.

(b) Every Member undertakes that in the event that TIO Limited is wound up during the currency of the Member's membership or within one year of the Member ceasing membership, it will contribute to the property of TIO Limited for:

(i) payment of the debts and liabilities of TIO Limited incurred before it ceased to be a Member;

(ii) the costs, charges and expenses of winding up; and

(iii) an adjustment of the rights of the contributories among themselves, such amount as may be required, provided such amount shall not exceed one hundred dollars ($100).

(c) If upon the winding-up or dissolution of TIO Limited in accordance with the Corporations Act and after satisfaction of all its debts and liabilities, there remains any property whatsoever, the same shall be paid to or distributed to a society, association or club which is not carried on for the purposes of profit or gain to individual members and is established for community services purposes.

24 Indemnity and Insurance

(a) To the extent permitted by the Corporations Act, TIO Limited will, in the case of an action, claim or proceeding brought against an officer and may, at its election, in the case of an action, claim or proceeding initiated by an officer, indemnify each officer and each person who has been an officer of TIO Limited out of the assets of TIO Limited against any liability, loss, damage, cost, charge or expense incurred or to be incurred by the officer in or arising out of the conduct of any activity of TIO Limited or the proper performance by the officer of his or her duties.

(b) TIO Limited may enter into an agreement containing an indemnity in favour of any officer on such terms as the Board may determine.

(c) To the extent permitted by the Corporations Act, TIO Limited may pay any premium in respect of a contract of insurance between an insurer and an officer or any person who has been an officer of TIO Limited in respect of any liability suffered or incurred by the officer in or arising out of the conduct of any activity of TIO Limited or the proper performance by the officer of his or her duties.

25 Transitional

(a) This **clause 25** has effect notwithstanding any other clause of this Constitution and prevails over the other clauses to the extent of any inconsistency.

(b) ~~At the time this version of the Constitution comes into effect, t~~The Directors With Industry Experience holding office on 11 November 2019 who were appointed from among candidates nominated by "the Largest Member" and "the Second Largest Member" are deemed as of 12 November 2019 to have been appointed as Directors With Industry Experience in accordance with **clause 12** and the term of office of each of them will be taken to have commenced when they were appointed (i.e. before ~~this~~ the version of ~~the~~ this Constitution that was adopted on 12 November 2019 came into effect).