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Constitution of Telecommunications Industry Ombudsman Limited ACN 057 634 787

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

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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 12.712.6.

Independent Directors means directors appointed in accordance with ~~clause~~ clause 12.612.5.

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.
- (e) -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.
- (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.

12.312.4 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 Criteria 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.~~

12.412.5 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 principles: 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.~~

12.512.6 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 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.

12.612.7 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 Criteria 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.~~

12.712.9 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.

12.812.10 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.

12.912.11 Remuneration

- (a) The Board may make provision for a Director to be ~~paid an~~ 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.~~
- ~~(e)~~(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.

15.415.5 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).