

## Investigation Report

<b>File No</b>	ACMA2022/221
<b>Entity</b>	Protech Solutions WA Pty Ltd
<b>ACN</b>	607 163 575
<b>Scope of Investigation</b>	Compliance with subsection 128(1) of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	The carrier licence condition set out at clause 1 of Schedule 1 to the <i>Telecommunications Act 1997</i>

## Findings

The Australian Communications and Media Authority (the **ACMA**) finds that Protech Solutions WA Pty Ltd (ACN 607 163 575) (**Protech Solutions**) has contravened:

- (a) subsection 128(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**);
- (b) the carrier licence condition set out at clause 1 of Schedule 1 to the *Telecommunications Act 1997* (the **Act**); and
- (c) subsection 68(1) of the Act,

by failing to join the Telecommunications Industry Ombudsman (**TIO**) scheme.

## Background

1. On 11 April 2022, the ACMA received a referral from the TIO alleging that Protech Solutions had failed to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act.
2. On 15 April 2021, the TIO contacted Protech Solutions by phone and email to advise that as Protech Solutions holds a carrier licence it is required to become a member of the TIO scheme. The TIO subsequently advised Protech on 21 May 2021 that it could contact the ACMA to apply for an exemption from the requirement to join the TIO scheme.
3. On 24 July 2021, Protech Solutions submitted an application for exemption from the requirement to join the TIO scheme to the ACMA. On 13 October 2021, the ACMA advised Protech Solutions that it had decided not to exercise its power under section 129 of the TCPSS Act to declare Protech Solutions exempt from the requirement to enter into the TIO scheme. At the same time, the ACMA advised Protech Solutions that as Protech Solutions was not a currently a member of the TIO scheme, it was required to join the TIO scheme. The ACMA informed the TIO of its decision not to exempt Protech Solutions on 13 October 2021.
4. On 4 November 2021, the TIO sent a TIO membership application form to Protech Solutions to complete. The TIO subsequently sent follow-up emails to Protech Solutions on 5 November 2021, 25 November 2021 and 13 January 2022 as it had not received an application to join the TIO scheme from Protech Solutions.
5. The ACMA investigated the TIO referral and on 29 April 2022 sent its preliminary findings report to Protech Solutions inviting it to respond by 16 May 2022.
6. On 6 May 2022, Protech Solutions advised the ACMA that it submitted a membership application form to the TIO.
7. The TIO has confirmed that Protech Solutions joined the TIO scheme on 9 May 2022.

### **Legislative framework**

8. Under paragraph 510(1)(aa) of the Act, the ACMA may investigate a potential contravention of the TCPSS Act, where it has reason to suspect that a person may have contravened that Act.
9. Subsection 128(1) of the TCPSS Act requires each carrier and eligible carriage service provider to enter into a scheme known as the TIO scheme. A carrier means the holder of a carrier licence (see subsection 5(1) of the TCPSS Act and section 7 of the Act).
10. When a carrier contravenes subsection 128(1) of the TCPSS Act it also contravenes the carrier licence condition set out at clause 1 of Schedule 1 to the Act and subsection 68(1) of the Act.

### **Findings and reasons**

11. The ACMA carrier licence register indicates that Protech Solutions has held a carrier licence under the Act since 9 April 2021 (carrier 562 [Register of licensed carriers | ACMA](#)).
12. As Protech Solutions holds a carrier licence, it is required to join the TIO scheme in accordance with subsection 128(1) of the TCPSS Act.
13. Despite being a carrier from 9 April 2021, Protech Solutions did not join the TIO scheme until 9 May 2022. Consequently, the ACMA finds that Protech Solutions contravened subsection 128(1) of the TCPSS Act from 9 April 2021 to 8 May 2022. Accordingly, Protech Solutions contravened the carrier licence condition set out at clause 1 of Schedule 2 to the Act, in contravention of subsection 68(1) of the Act.