

Investigation Report

File No	ACMA2023/230
Entity	Telnetworks Pty Ltd
ACN	129 551 453
Relevant Legislation	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> <i>Telecommunications Act 1997</i>

Findings

The Australian Communications and Media Authority (the **ACMA**) finds that Telnetworks Pty Ltd (ACN 129 551 453) (**Telnetworks**) has contravened:

- (a) section 132 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the **TCPSS Act**)
- (b) the service provider rule set out at clause 1 of Schedule 2 to the *Telecommunications Act 1997* (the **Act**)
- (c) subsection 101(1) of the Act,

by failing to pay operational costs totalling \$1,415.70 to the Telecommunications Industry Ombudsman (the **TIO**) by the due date, as a member of the TIO scheme.

Background

1. The ACMA may investigate a potential contravention of the Act and the TCPSS Act where it has reason to suspect that a contravention may have occurred (see section 510 of the Act). This report presents the findings of an investigation conducted by the ACMA under that section of the Act.
2. On 22 May 2023, the TIO referred Telnetworks to the ACMA for failure to comply with the TIO scheme in contravention of section 132 of the TCPSS Act.
3. Specifically, the TIO alleges that Telnetworks, a TIO member, failed to pay operational costs to the TIO when they fell due between 8 September 2018 and 12 August 2022 (the **relevant period**), contrary to the requirements of the TIO's Constitution. The TIO informed the ACMA that it had sought, without success, to engage with Telnetworks to recover outstanding operational fees, and that on 12 July 2022 the TIO had listed a credit default against Telnetworks with Equifax Pty Ltd, for the amount of \$1,442.00.
4. On 16 June 2023, the ACMA provided its preliminary breach findings report to Telnetworks and invited Telnetworks to respond. On 30 June 2023, Telnetworks made submissions in response to the ACMA's preliminary findings, disputing the TIO's allocation of fees and charges to Telnetworks since 2015. In its submission, Telnetworks:
 - (a) stated that 'nearly all' the TIO's invoices to Telnetworks over this period were 'riddled with erroneous charges and multiple mistakes'.
 - (b) provided 5 examples of complaints that it believes were incorrectly allocated to Telnetworks by the TIO on the basis that they relate to a different telecommunications provider with a similar name: one from 2015, 3 from 2017, and one from 2019.

- (c) stated that it has contacted the TIO regarding the erroneous charges and the TIO advises that it will investigate the issues, however Telnetworks receives no response other than invoice reminder emails for the amounts in question.
5. The ACMA notes that the documentation provided by Telnetworks relating to the 5 examples of disputed complaints does not include any evidence of Telnetworks contacting the TIO in relation to any of them, including, notably, the 2019 complaint (relevant to the **September 2019 case fees**) and the 3 2017 complaints (relevant to the **2019 annual membership fee**).
 6. In a meeting on 27 February 2023, the TIO advised the ACMA of its standard process for dealing with disputes from TIO members on the allocation of complaints. The TIO advised that members are required to lodge a 'reclassification request' via the TIO's member portal (online), which is formally assessed by a reclassification officer. If the officer determines that the relevant fees have been charged incorrectly, the officer applies a credit note to the member's next invoice. The TIO advised that members are informed of this formal reclassification process via information on the TIO's member portal. The TIO also advised that it does not reconsider the allocation of complaints and associated fees outside of this formal reclassification process.
 7. Information provided by the TIO to the ACMA on 12 December 2023 includes an internal email sent on 8 December 2023 stating that the TIO has no record of a formal reclassification request submitted by Telnetworks in relation to the complaint relevant to the September 2019 case fees, nor a record of any correspondence from Telnetworks disputing the allocation of the complaint. The TIO's 12 December 2023 submissions did not include records or information relevant to the 4 earlier complaints also disputed by Telnetworks.
 8. In reaching its view, the ACMA has considered Telnetworks' 30 June 2023 submissions, and further information provided by the TIO on 12 December 2023, 12 April 2024, and 26 April 2024.

The TIO scheme and TIO Constitution

9. Relevantly, subsections 128(1) and (2) of the TCPSS Act provide that each carrier and eligible carriage service provider (**CSP**) must enter into a scheme to be known as the TIO scheme. Subsection 128(3) of the TCPSS Act provides for only one TIO scheme, to be operated by the TIO Limited (ABN 46 057 634 787).
10. Section 132 of the TCPSS Act requires that a carrier or a CSP who is a member of the TIO scheme must comply with the scheme.
11. The TIO's Constitution¹ establishes the TIO as a public company overseen by a Board of Directors and funded by its members to operate the TIO scheme. Members are admitted to the TIO scheme in accordance with the TIO's Constitution.
12. Under clause 7(e) of the TIO's Constitution, each TIO member agrees to pay operational costs of the TIO, as determined by the TIO, as a condition of membership of the TIO scheme.
13. Accordingly, a failure of a TIO member to pay its contribution to the operational costs of the TIO constitutes a failure to comply with the TIO's Constitution, and consequently a failure to comply with the TIO scheme and section 132 of the TCPSS Act.
14. The Act states that service providers (including CSPs) must comply with the service provider rules contained in the Act (see subsection 101(1) of the Act). The relevant service provider rule

¹ <https://www.tio.com.au/sites/default/files/2022-11/CONSTITUTION%20as%20amended%2015%20November%202022.pdf>, accessed 22 April 2024.

in this case requires a service provider to comply with the TCPSS Act (see subsection 98(1) and subclause 1(1) of Schedule 2 to the Act).

15. Failure to comply with section 132 of the TCPSS Act is therefore a breach of the service provider rules, and a contravention of subsection 101(1) of the Act.

Findings and Reasons

16. Telnetworks is an eligible CSP in Australia, as it provides internet and phone services to small business consumers.
17. Telnetworks is a member of the TIO scheme as evident from the list of current members available on the TIO's website.²
18. As a TIO member, Telnetworks is required under section 132 of the TCPSS Act to comply with the TIO scheme. Accordingly, the TIO member must also comply with the TIO's Constitution, and Terms of Reference.
19. On 22 May 2023, the TIO provided the ACMA a copy of a letter emailed and sent by post to Telnetworks on 19 May 2023 regarding the overdue operational costs. The TIO's letter to Telnetworks included a statement of account listing Telnetworks' operational costs owing, comprising case fees and annual membership fees that were payable between 8 September 2018 and 12 August 2022, with a total outstanding balance of \$1,914 (the **May 2023 statement**) (**Attachment A**).
20. The May 2023 statement comprises:
 - (a) monthly case fees totalling \$127.60 for the period March 2019 to June 2022
 - (b) annual membership fees totalling \$1,786.40 for financial years 2019 to 2023.
21. On 19 April 2024, the TIO advised the ACMA that Telnetworks had not paid its total outstanding debt as per the May 2023 statement of \$1,914.00.
22. The ACMA understands from information provided by the TIO on 12 April 2024 that case fees are charged against referrals and complaints received by the TIO from consumers applicable to a particular member, and invoices for case fees are issued to members monthly for the preceding month's closed cases.
23. The ACMA further understands from the TIO's 12 April 2024 submissions that one factor in the calculation of a member's annual membership fees, which are settled on a financial year basis, is the number of referrals (that is, consumer complaints) applicable to the member received in the previous calendar year.³
24. Having considered all relevant information available to the ACMA, including that certain case and membership fees listed in the May 2023 statement relate to complaints that Telnetworks disputes, the ACMA is satisfied that Telnetworks is liable for payment of at least the following operational costs totalling \$1,415.70:
 - (a) monthly case fees totalling \$95.70 for the period March 2019 to June 2022
 - (b) annual membership fees totalling \$1,320 for financial years 2020, 2022, and 2023.

These are laid out at **Attachment B**.

² [Telnetworks Pty Ltd | The Telecommunications Industry Ombudsman](#), accessed 23 April 2024.

³ For example, complaints received between January and December (CY) 2017 impact the calculation of annual membership fees for financial year (FY) 2019; complaints received in CY 2018 impact FY 2020 membership fees; complaints received in CY 2019 impact FY 2021 membership fees; and so on.

25. The amount of \$1,415.70 is the minimum amount that Telenetworks must owe the TIO for the payment of its share of the TIO's operational costs. For the purposes of its investigation, the ACMA has decided to omit the amounts which are associated with complaints that Telenetworks has disputed relate to it; however, this does not amount to a finding that these disputed amounts are not owed. Rather, for the purposes of the current investigation, the ACMA has decided to focus on the amount owing under the TIO Constitution which is unaffected by Telenetworks' claims with regard to the alleged miscategorisation of complaints.
26. For the above reasons, the ACMA finds that Telenetworks has contravened section 132 of the TCPSS Act, and therefore has also contravened both the service provider rule set out at clause 1 of Schedule 2 to the Act and subsection 101(1) of the Act, by failing to pay operational costs as required by the TIO Constitution. The ACMA finds that the minimum amount that Telenetworks has failed to pay is \$1,415.70.

Attachments

Attachment A	Copy of letter dated 19 May 2023 from the TIO to Telenetworks regarding the overdue operational costs and attaching statement of account.
Attachment B	Table of operational costs payable by Telenetworks to the TIO.