



## Subsection 102(2) of the *Telecommunications Act 1997*

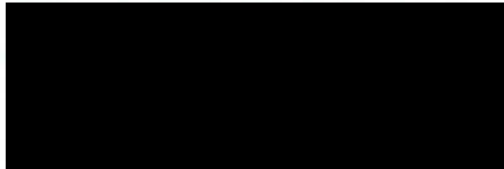
### Direction to comply with the Telecommunications Industry Ombudsman scheme as required by the *Telecommunications (Consumer Protections and Service Standards) Act 1999*

TO: Telnetworks Pty Ltd (ACN 129 551 453)  
AT: Unit 603, 370 St Kilda Road, Melbourne VIC 3004  
Attn: Rajith Suharsha Maligaspe

#### Direction

I, Craig Riviere, delegate of the Australian Communications and Media Authority (the **ACMA**), under subsection 102(2) of the *Telecommunications Act 1997* (the **Telecommunications Act**), hereby direct Telnetworks Pty Ltd (ACN 129 551 453) (**Telnetworks**) to take the following action directed towards ensuring it does not continue to contravene the service provider rule in clause 1 of Schedule 2 to the Telecommunications Act:

- (a) Pay the sum of \$1,415.70 to the Telecommunications Industry Ombudsman (**TIO**) as required under the TIO scheme, by no later than 16 August 2024, into the following account:



- (b) Provide the ACMA evidence of the completion of the transaction mentioned in paragraph (a) by email to [consumer.interests@acma.gov.au](mailto:consumer.interests@acma.gov.au) no later than 16 August 2024.

#### Background

1. Subsection 128(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) provides that each carrier and eligible carriage service provider must enter into the Telecommunications Industry Ombudsman scheme (**TIO scheme**).
2. Section 132 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TPCSS Act) provides that a carrier or a carriage service provider which is a member of the TIO scheme must comply with the TIO scheme.
3. The TIO's Constitution<sup>1</sup> 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.

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

4. 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.
5. 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.
6. Subsection 101(1) of the Telecommunications Act provides that a service provider must comply with the service provider rules that apply to the provider. Subsection 101(1) of the Telecommunications Act is a civil penalty provision. Subsection 98(1) of the Telecommunications Act provides that the service provider rules are the rules set out in Schedule 2 of that Act. Clause 1 of Schedule 2 provides that a service provider must comply with the Act, which is defined to include the TCPSS Act.
7. Under subsection 102(2) of the Telecommunications Act, the ACMA can direct a service provider to take specified action directed towards ensuring that the provider does not contravene a service provider rule, or is unlikely to contravene a service provider rule, in the future.
8. The TIO has provided evidence of the operational costs which have been billed to Telenetworks for the period 8 September 2018 to 12 August 2022. The total is \$1914. Following an investigation under Part 26 of the Telecommunications Act, the ACMA has ascertained that Telenetworks disputes certain components of the billed operational costs. Omitting the disputed components, total of the unpaid and undisputed operational costs is \$1415.70.

**TAKE NOTE:**

9. Subsection 102(4) of the Telecommunications Act provides that a service provider must not contravene a direction given under subsection 102(2). Such a contravention is a contravention of the Telecommunications Act, and therefore a breach of the service provider rules. As mentioned in paragraph 3, failure to comply with a service provider rule may result in civil penalties. A corporation that has contravened the civil penalty provision at subsection 101(1) of the Telecommunications Act may be ordered by the Federal Court to pay the Commonwealth such pecuniary penalty as the Court determines to be appropriate, up to a maximum of \$10 million (section 570 of the Telecommunications Act).

**Review Rights**

10. If Telenetworks is dissatisfied with the decision to give this direction, it may seek reconsideration of the decision by the ACMA under subsection 558(1) of the Telecommunications Act by making an application in writing to the ACMA, which sets out the reasons for the application. Any such application must be made within 28 days after Telenetworks is informed of the decision, unless the ACMA extends the period for making the application (subsection 558(3) of the Act).
11. If, upon reconsideration, the decision is affirmed or varied and Telenetworks is dissatisfied with that decision, it may:
  - (a) subject to the Administrative Appeals Tribunal Act 1975 (**the AAT Act**), apply to the Administrative Appeals Tribunal for review of the reconsideration decision; and
  - (b) request a statement under section 28 of the AAT Act in relation to that decision (section 562 of the Telecommunications Act).



## Contacting the ACMA

12. Should you require further information, please contact:

**Peter Sutton**

Manager

Telecommunications Compliance and Enforcement Section

Australian Communications and Media Authority

PO Box 13112 Law Courts

Melbourne VIC 8010

Ph: (03) 9963 6950

Email: [peter.sutton@acma.gov.au](mailto:peter.sutton@acma.gov.au)

This 19th day of July 2024



Craig Riviere

Executive Manager

Telecommunications Safeguards and Numbers Branch

**Delegate of the Australian Communications and Media Authority**