

Investigation Report

File No	ACMA2019/803
Entity	CCS Comms Pty Ltd
ACN	615 762 564
Scope of Investigation	Compliance with section 132 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
	The service provider rule at clause 1 of Schedule 2 to the <i>Telecommunications Act 1997</i>

Findings

The Australian Communications and Media Authority (**ACMA**) finds that CCS Comms Pty Ltd (ACN 615 762 564) (**CCS Comms**) contravened:

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

by failing to comply with a decision made by the Telecommunications Industry Ombudsman (**TIO**) on 11 June 2019 (the **TIO Decision**), identified as 2018/07/01708 (a copy of the TIO Decision is at **Attachment A**).

Background

1. This report presents the findings of an investigation conducted by the ACMA under paragraph 510(1)(aa) of the Act into a matter referred to it by the TIO.
2. On 15 July 2019, the TIO referred CCS Comms to the ACMA for its failure to comply with the TIO Scheme as required by section 132 of the TCPSS Act (**Attachment B**).
3. Specifically, the TIO alleges that CCS Comms failed to pay \$1,102.30 to Wickham Terrace Dental Pty Ltd (**Wickham Terrace Dental**) within 10 working days of 11 June 2019, as required by the TIO decision. The TIO was satisfied that CCS Comms is liable to pay \$993.30 in compensation to Wickham Terrace Dental (an amount equivalent to the damages required under the *Telecommunications (Customer Service Guarantee) Standard 2011*); and that CCS Comms should refund Wickham Terrace Dental \$109.00 in late fees it was not entitled to charge, as the invoices it sent to Wickham Terrace Dental were not sent to the correct email address.
4. On 11 June 2019, the TIO sent CCS Comms a copy of the TIO decision (**Attachment A**).
5. On 12 June 2019, the TIO sent CCS Comms a copy of Wickham Terrace Dental's acceptance of the TIO decision (**Attachment C**).

6. Following the TIO referral to the ACMA, on 18 July 2019, the ACMA invited CCS Comms to provide any relevant submissions or information that it would like the ACMA to consider prior to making any preliminary findings about this matter (**Attachment D**).
7. On 18 July 2019, CCS Comms provided the ACMA with a written response stating that Wickham Terrace Dental purchased equipment from another supplier, which caused the service it was providing to Wickham Terrace Dental not to function. CCS Comms advised that it did not agree with the TIO decision and that it would not pay Wickham Terrace Dental the \$1,102.30 required by the TIO decision (**Attachment E**).
8. On 9 October 2019, the ACMA advised CCS Comms that it holds the preliminary view that, by not complying with the TIO decision, CCS Comms had failed to comply with:
 - section 132 of the TCPSS Act;
 - the service provider rule set out in clause 1 of Schedule 2 to the Act; and
 - subsection 101(1) of the Act (**Attachment F**).
9. On 11 October 2019, CCS Comms advised (via a teleconference with the ACMA) that it did not intend to comply with the TIO decision on the basis that it did not agree with the TIO decision. During this teleconference, CCS Comms indicated that it did not intend to provide further written submissions in response to the ACMA's preliminary view (see file note **Attachment G**).

The TIO scheme, TIO Constitution and Terms of Reference

10. CCS Comms is a current member of the TIO scheme.
11. Relevantly, subsections 128(1) and (2) of the TCPSS Act provide that each carrier and eligible carriage service provider (**eligible CSP**) must enter into a scheme to be known as the TIO scheme. An 'eligible CSP' includes a CSP which supplies standard telephone services for residential or small business customers and/or carriage services that enable end-users to access the internet (subparagraphs 127(a)(i) and (iii) of the TCPSS Act).
12. Section 132 of the TCPSS Act provides that a carrier or a CSP which is a member of the TIO scheme must comply with the TIO scheme.
13. Paragraph 17(b) of the TIO's Constitution states that, in becoming a member of the TIO scheme, each TIO member agrees to be bound by and observe the TIO's Terms of Reference (which set out how the TIO scheme operates).
14. Relevantly, clause 3.14 of the TIO's Terms of Reference provides that if a consumer, such as Wickham Terrace Dental, accepts a TIO decision the provider must comply with that decision.
15. Accordingly, failure of a TIO member to comply with a TIO decision that has been accepted by the relevant consumer constitutes a failure to comply with the TIO scheme and thereby section 132 of the TCPSS Act.
16. The Act states that service providers (defined in section 86 of the Act to include CSPs) must comply with the service provider rules contained in the Act (see subsection 101(1)). The relevant service provider rule 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).
17. 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

18. CCS Comms is an eligible CSP, supplying telephone and internet services to small business customers. It became a member of the TIO scheme on 2 July 2018.
19. As a TIO member, CCS Comms is required under section 132 of the TCPSS Act to comply with the TIO scheme. CCS Comms must also comply with the TIO's Constitution and Terms of Reference.
20. The TIO decision required CCS Comms to pay Wickham Terrace Dental \$1,102.30 within 10 working days of Wickham Terrace Dental's acceptance of the TIO decision.
21. As Wickham Terrace Dental accepted the TIO decision on 12 June 2019 (see **Attachment C**), CCS Comms was required, under clause 3.14 of the TIO's Terms of Reference, to comply with the TIO decision by 26 June 2019.
22. Wickham Terrace Dental advised the ACMA on 30 August 2019 and confirmed on 16 January 2020 that it had not received the payment of \$1,102.30 from CCS Comms, as required by the TIO decision.
23. On 11 October 2019, CCS Comms advised the ACMA that it did not intend to comply with the TIO's decision by making the payment of \$1,102.30 to Wickham Terrace Dental in accordance with the TIO decision.
24. The ACMA considers that none of the matters raised in CCS Comms' submission constitute evidence that CCS Comms has paid the amounts due to Wickham Terrace Dental in accordance with the TIO decision, or that CCS Comms was not required to make those payments in accordance with the TIO decision.
25. For the above reasons, the ACMA is of the view that CCS Comms failed to comply with the TIO decision. Consequently, the ACMA has formed the view that CCS Comms contravened section 132 of the TCPSS Act and, in doing so, did not comply with the service provider rule set out at clause 1 of Schedule 2 to the Act, and contravened subsection 101(1) of the Act.

Attachments

Attachment A	TIO Decision
Attachment B	Referral from the TIO to the ACMA
Attachment C	Wickham Terrace Dental acceptance of the TIO decision
Attachment D	Preliminary Findings Report
Attachment E	CCS Comms submission to Preliminary Findings
Attachment F	Subsection 101(1) of the Act
Attachment G	File note of teleconference with CCS Comms on 11 October 2019