



Submission to the Commerce Commission:

Telecommunications Dispute Resolution Scheme 2024 Review

29 November 2024

A. Introduction

1. Thank you for the opportunity to take part in the Commerce Commission's 2024 review of the Telecommunications Disputes Resolution (TDRS) service. The New Zealand Telecommunications Forum (TCF) is providing this submission on the Commerce Commission's draft Report to the Telecommunications Disputes Resolution Limited (TDRL) on recommendations for improvements on TDRS (the Report).
2. The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers. Our members include network operators, retail service providers and tower companies.

B. Changes implemented following the 2021 review

3. The TCF completed a significant project in 2022/2023 to implement the recommendations set out in the Commerce Commission 2021 review of the TDRS. This project delivered both operational changes and a significant revamp of the scheme's governance.
4. Operational efficiencies were implemented to the way the TDRS delivers its service and accessibility to consumers was improved.
5. Changes to the scheme's governance structure went beyond the Commission's recommendations, with a new independent entity, Telecommunications Disputes

Resolution Limited, established. New constitutional documents were developed and a new governing board set up with a new independent TDRL Board Chair, followed by the appointment of a Chief Executive Officer.

6. The TCF has observed that TDRL is working well and continues to deliver a high level of customer service to telecommunications consumers. TDRL has increased its membership and it continues to be the industry disputes resolution service supported and funded by the telecommunications sector. All TCF members are members of the TDRS.
7. The new governance arrangements have been in place for 17 months with the new CEO having been in the role since July 2024.

C. General comments on the 2024 Review

8. The TCF appreciates the Commission's commitment to reviewing and making recommendations for improving the TDRS. The points outlined in our submission are focused on regulatory balance, cost-effectiveness, inclusivity, and clarity.
9. This submission sets out comments on the Commission's specific draft recommendations.

Governance

10. The Commission has recommended that TDRL 'Conduct a review of the budget setting process to increase independence and ensure that TDR is fully funded to carry out all its duties including raising awareness and engagement.' The telecommunications industry recognises the importance of having a dispute resolution scheme that is independent and funded adequately. We believe it is too early to start implementing further governance changes at this stage, given that the new TDRL entity has only been operational for 17 months.

Monitoring and reporting

11. The Commission's draft recommendations include significant new reporting requirements for TDRL. Striking a balance in respect to reporting is vital to maintaining cost efficiency and avoiding an increase to fees that could deter membership. The Commission should ensure that introducing new regulatory obligations on the TDRS is justifiable and does not impact on the scheme remaining cost effective for its members.

Membership

12. We would support the Commission using its regulatory position to encourage those telecommunications providers who remain outliers to join the TDRS, ensuring equitable consumer access to the dispute resolution mechanism. In particular, focus on the small number of providers who have a consumer base over a particular threshold and who make up the bulk of the 11% of consumers unable to access the industry's dispute

resolution service¹. A key part of encouraging increased membership is ensuring that the scheme is effective and affordable, particularly for smaller operators.

Other schemes

13. The Commission could also consider reviewing the other telecommunications scheme advertised by Utilities Disputes Limited². Under the Telecommunications Act 2001, the Commission has a requirement to review each industry dispute scheme.³ Without equal regulatory oversight, there is a risk of creating a two-tier dispute resolution environment. This could undermine the TDRS' membership model by having a regulated dispute scheme and another with no regulatory oversight whatsoever. There is a risk that it may prove difficult to convince non-TDRS members to join a scheme if the alternative is less onerous.

D. Increasing Awareness

14. The changes implemented in 2022 / 2023 enabled improved consumer access to the TDRS. Recommendations made in the Report for specific consumer awareness actions—such as interactive voice recording messaging or bill notifications—should remain within the TDRS' operational discretion.
15. Specific activities that individual providers are required to do must be practical and addressed via collaborative discussions through TDRS' internal operational remit or under the TCF's code development processes.
16. The TCF will continue to support the TDRS' ongoing consumer awareness initiatives.

E. Governance and budget independence

17. The TCF acknowledges significant progress has been made toward independent governance of the TDRS following the 2021 Review. The current process for the approval of TDRL's operational budget must be first approved by the TDRL Board before it is submitted to the shareholders, essentially a rubber-stamping process. The TDRL governance structure allocated the TCF as a 25% shareholder to minimise fiscal risk to ensure the scheme would be adequately funded as it transitioned to the new TDRL. Historically, the TCF has approved every operations budget proposal submitted by TDRS.
18. The TCF supports the principle of independence and will continue to work with TDRL as its governance autonomy advances. That said, we believe it is premature to reassess governance structures at this stage, given the limited timeframe under the new framework and that changes to the governance structure made to date went beyond the Commission's recommendations. The TDRS should remain focused on delivering

¹ Review of the TDRS 2024 – Commerce Commission Draft Report

² <https://www.udl.co.nz/en/our-publications-and-schemes/providers/telecommunications-complaints-scheme/>

³ Telecommunications Act 2001, cl.246 (1)

improvements to the scheme in the short-term that will benefit consumers as the longer-term pathway to an independently governed scheme will evolve.

19. We recommend that the Commission's final recommendations recognise this and encourage the scheme to prioritise areas that require more urgent focus to improve outcomes for consumers, such as systemic issues. We recommend that the governance structure is revisited in the Commission's next review of the scheme. By then, the current structure will have been operational for a longer period of time to assess whether there is a genuine need for further changes. In the meantime, the Commission will continue to have the ability under the Telecommunications Act to carry out another review if it observes any specific issues with the current governance structure.

F. Addressing systemic issues

20. The TCF will support TDRS to establish a robust framework for identifying and addressing systemic issues.
21. Providing information on sector-wide systemic issues will be considered as important inputs into the TCF Code development, but it will require time to mature and demonstrate effectiveness.

G. Membership Growth

22. To enhance scheme inclusivity, the Commission could exercise its regulatory influence to ensure that those outlier providers with consumer connections over a particular percentage must join the scheme. We have put forward our views on mandatory membership to an industry dispute resolution scheme as part of MBIE's consultation on enhancing telecommunications regulatory and funding frameworks.
23. This approach is essential to bridging the gap for the 11% of consumers currently unable to access the TDR scheme because their provider is not a member of TDRS. There is a risk that alternative disputes services attract existing or potential TDRS members and this warrants careful consideration.

H. Reducing Exclusions

24. As a general principle, the TCF supports a disputes scheme that is accessible with limited exclusions. We will continue to engage with the TDRL on improving accessibility to the scheme. However, some exclusions are practical and have been included by the TDRS for a specific purpose.
25. The TCF makes comments on the following exclusions:
 - **Network Coverage:** Complaints about coverage inaccuracies or service degradation should be addressed by the TDRS through assessment against the requirements or parameters set out in TCF Codes and the Commission's guidelines. This will help ensure

that the approach to disputes relating to network coverage remains appropriate, and complaints cannot be brought (for example) on the basis of a provider's network investment or divestment decisions. In addition, the Commission's draft recommendations also suggest that complaints about 'a lack of coverage where a provider's coverage map indicates coverage exists' should not be excluded. Mobile Network Operators are working to make coverage maps more comparable, but they will remain indicative⁴. It's important that the reality of how mobile coverage maps work is aligned with how the TDRS complaints assessment process works. These issues are reflected in comparable overseas dispute resolution schemes. For example, the Australian Telecommunications Industry Ombudsman⁵ excludes complaints that relate to coverage where there is no provider infrastructure or when the consumer requests to fix mobile coverage in the customer's area or any specific area.

- **Broadband Performance:** As above, complaints about broadband performance or marketing of broadband services should be addressed by the TDRS through assessment against the requirements or parameters set out in the TCF Broadband Marketing Code and the Commerce Commission's Broadband Marketing Guidelines. The TCF Broadband Marketing Code provides detail and guidance to the TDRS on the matters of broadband performance.

26. The TCF will continue to work with TDRL on any practical solutions to improve consumer accessibility to the TDRS. However, it should be noted that the TDRS can make recommendations to the TCF if it believes a particular threshold of customer service is not being met in relation to requirements set out in TCF Codes. If these recommendations result in changes to TCF Codes, they subsequently flow through to TDRS operational documents, including the exclusions, in consultation with TDRS members.

I. Compliance Monitoring

27. The TCF has responsibility for monitoring compliance with TCF Codes. The TDRS has a role in monitoring compliance with TCF codes and the Customer Care Code specifically when dealing with customer complaints and to improve consumer awareness of the TDRS. The current mechanisms for reporting breaches are effective, and the ability for the TDRS to highlight systemic issues through consumer complaints data is a valuable tool for continuous improvement.
28. We disagree with the Report that there is a risk to consumers due to compliance being linked to voluntary codes. Whether a provider is a signatory or not to a TCF code, an industry code or the Commission's guidelines provide invaluable guidance to both the TDRS and consumers on best practice. TCF members are committed to a number of

⁴ The Coverage Challenge Report by Coleago Consulting

⁵ <https://www.tio.com.au/complaints/what-we-can-help-with>

industry codes and they represent a significant proportion of the market share and telecommunications consumers.

J. Conclusion

29. The TCF is committed to its relationship with TDRS and that it continues to operate effectively and equitably. Maintaining a collaborative approach between the Commission, the TDRS, and industry stakeholders is crucial to achieving these objectives.
30. The implementation of Commission recommendations takes time to implement and we encourage the Commission to work with TDRL, as it did with the TCF, on realistic implementation timeframes and monitoring of outcomes to determine success.
31. The TCF continues to support the principles of disputes resolution best practice and is committed to supporting TDRS' ongoing success and contributing further to its evolution.
32. The TCF is available to respond to any questions the Commerce Commission might have on the views set out in this submission. Any communications should be directed to Clare Dobson: clare.dobson@tcf.org.nz