

Review of the Telecommunications Dispute Resolution Scheme

Under Part 7 of the Telecommunications Act 2001

Issues paper

Date: 23 April 2021



Associated documents

Publication date	Reference	Title
29 October 2020	n/a	Open letter – Improving retail service quality for consumers
29 March 2021	978-1-869458-80-5	Review of industry dispute resolution schemes – Framework document
29 March 2021	978-1-869458-81-2	Review of the Telecommunications Dispute Resolution Scheme – Process paper

Glossary, defined terms and abbreviations

2006 Amendment Act	Telecommunications Amendment Act 2006
2018 Amendment Act	Telecommunications (New Regulatory Framework) Amendment Act 2018
Act	Telecommunications Act 2001
Commission	Commerce Commission
Customer Complaints Code	Industry code developed by the TCF which sets out rights and obligations of Scheme Members and their customers with regard to the handling of complaints and resolution of disputes
CRK	cameron. ralph. khoury – Consultancy hired to conduct certain tasks for the Commission’s first review of the TDRS
Dispute resolution provider	Body providing the dispute resolution service for the TDRS. Also referred to as the “Scheme Agent” or “FairWay” for the purposes of this paper
FairWay	FairWay Resolution Limited, a company contracted by the TCF to provide the dispute resolution service for the TDRS
GCDR	Government Centre for Dispute Resolution
LFC	Local Fibre Company
MBIE	Ministry of Business, Innovation and Employment
Scheme	The term we use to refer to the documents that collectively comprise the TDRS (ie, the Customer Complaints Code, the Scheme ToR and the TCF Rules)
Scheme Agent	The independent body contracted by the TCF to provide the dispute resolution service for the TDRS
Scheme Member	Means a provider of telecommunications services to a Customer and who has the billing relationship with the Customer for that telecommunications service and who has signed the Scheme Deed. Scheme Members include TCF members and non-TCF members.
Scheme Provider	The industry body that established the TDRS in 2007 (see TCF)
Scheme ToR	Terms of Reference – document created by the TCF setting out the rules and governance for the TDRS
Service provider	A telecommunications service provider
RIS	Regulatory Impact Statement
RSMs	Retail Scheme Members
RSQ	Retail Service Quality
TCF	New Zealand Telecommunications Forum – an industry body made up of both wholesale and retail telecommunications service providers
TCF Rules	The rules or constitution of the TCF

TDRS	Telecommunications Dispute Resolution Scheme: the industry dispute resolution scheme which is the subject of this review. The TDRS is New Zealand's main dispute resolution service for consumers who have disputes with their service providers about mobile, internet and landline services
TIO	Telecommunications Industry Ombudsman
TUANZ	Technology Users Association New Zealand
UFB	Ultra-Fast Broadband – the Government's initiative to roll out a fibre-to-the-premises access network (defined in s 5 of the Act)
RSMs	Retail Scheme Members
WSMs	Wholesale Scheme Members

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Purpose

1. This document sets out the matters we intend to consider when conducting our first review of the Telecommunications Dispute Resolution Scheme (**TDRS**) under Part 7 of the Telecommunications Act 2001 (**Act**) (**our first review**).
2. The Act sets out a non-exhaustive list of matters we may choose to consider when we conduct a review of an industry dispute resolution scheme.¹ In order to inform the matters on which we will focus, we have sought feedback from interested parties on the TDRS. We have summarised the views received from consumer groups and industry, and grouped them according to key themes.² These key themes are the matters on which we will focus for the purposes of our first review.
3. The NZ Government Centre for Dispute Resolution (**GCDR**) has developed best practice principles which provide a framework for assessing whether a dispute resolution scheme is consistent with best practice.^{3,4} We discuss each key theme with reference to these best practice principles, to provide a guide as to how we intend to approach them during our review, including relevant questions we may consider.

Background

4. Part 7 – Consumer matters was introduced to the Act by the Telecommunications (New Regulatory Framework) Amendment Act 2018. The policy objectives for consumer service quality in the telecommunications sector underpinning these provisions were to ensure that consumers:⁵
 - 4.1 can make informed choices about retail telecommunications services;
 - 4.2 can expect service quality at competitive levels; and
 - 4.3 have access to efficient and responsive complaint and dispute resolution procedures if problems arise.
5. One of the new Part 7 provisions is s 246(1), which requires us to review each industry dispute resolution scheme at least once every three years.

¹ Telecommunications Act 2001, s 246.

² Refer to paragraph 38 onwards, and Attachment A.

³ <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/best-practice-guidance-on-dispute-resolution/assessing-a-dispute-resolution-scheme>.

⁴ These principles are similar to the *Benchmarks for Industry-based Customer Dispute Resolution Schemes* and *Key practices for Industry-based Customer Dispute Resolution* developed by the Australian Government. The Benchmarks and Key Practices can be found respectively at https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf and https://treasury.gov.au/sites/default/files/2019-03/key_pract_ind_cust_dispute_resol.pdf.

⁵ Ministry of Business, Innovation and Employment Regulatory Impact Statement: Telecommunications Act review - consumer matters (30 March 2017) accessible at <https://www.mbie.govt.nz/assets/512ad8c91a/telco-review-ris-consumer-matters.pdf>, para 51.

6. There is currently one industry dispute resolution scheme, as defined in s 232 of the Act: the TDRS.
2. In October 2020 we published an open letter in which we sought stakeholders' views on the TDRS.⁶
3. On 29 March 2021 we published a framework document in which we set out our approach to conducting reviews of industry dispute resolution schemes under Part 7.⁷ We also published a process paper outlining timeframes for our first review and the ways in which stakeholders can contribute.⁸
4. Stakeholders may find it useful to read this paper alongside our framework document and process paper.

What is the TDRS?

5. The TDRS is New Zealand's main dispute resolution service for consumers who have disputes with their telecommunications service providers (**service providers**) about mobile, internet and landline services.^{9,10}
6. It is also the dispute resolution service for disputes related to the Commission's 111 Contact Code and Copper Withdrawal Code.¹¹
7. The TDRS is a self-regulatory regime created by the New Zealand Telecommunications Forum (**TCF**) in 2007.
8. The TCF is an industry body whose membership is made up of both retail and wholesale telecommunications service providers. The TCF's stated purpose is to

⁶ Our open letter published on 29 October 2020 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0023/227354/Improving-retail-service-quality-for-consumers-Open-letter-29-October-2020.pdf

⁷ Our review of dispute resolution schemes framework document published on 29 March 2021 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0026/251387/Review-of-industry-dispute-resolution-schemes-Framework-paper-29-March-2021.pdf

⁸ Our TDRS review process paper published on 29 March 2021 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0027/251388/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Process-paper-29-March-2021.pdf

⁹ In specific circumstances, a telecommunications complaint may come under the jurisdiction of another dispute resolution scheme. For example; complaints about rights of access to install broadband on shared property are dealt with by Utilities Disputes. Refer to https://www.utilitiesdisputes.co.nz/UD/About_us/What_we_do/Broadband_Shared_Property/UD/About_Us/Broadband_Shared_Property_Access_Disputes_Scheme.aspx?hkey=b6899463-51be-407e-a3e6-7de68a69e94f.

¹⁰ Complaints from service providers' government or business/corporate clients are not within the jurisdiction of the TDRS: refer to the Customer Complaints Code (**Code**), clause 18.1.7.

¹¹ Our 111 Contact Code: decisions and reasons paper published on 17 November 2020 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0021/228315/Commission-111-Contact-Code-Decisions-and-Reasons-Paper-17-November-2020.pdf, para 190-200; Our Copper Withdrawal Code: final decisions and reasons paper published on 10 December 2020 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0031/229882/Copper-Withdrawal-Code-Decisions-and-reasons-paper-10-December-2020.pdf, para 313-320.

“actively foster co-operation among participants in the telecommunications industry to efficiently resolve regulatory, technical and policy issues”.¹²

Purpose of the TDRS

9. The purpose of the TDRS is to ensure that if a consumer has a dispute with a service provider in relation to a Commission code or an industry retail service quality (**RSQ**) code, the consumer has access to a dispute resolution scheme for resolving that dispute in accordance with the following principles:¹³
 - 9.1 accessibility;
 - 9.2 independence;
 - 9.3 fairness;
 - 9.4 accountability;
 - 9.5 efficiency; and
 - 9.6 effectiveness.

The Scheme: documents that form the basis of the TDRS

10. At the time it established the dispute resolution scheme which is the subject of this review under s 246 of the Act —the TDRS— the TCF created the following documents:
 - 10.1 the Customer Complaints Code (**the Code**);¹⁴ and
 - 10.2 the Terms of Reference (**Scheme ToR**); (which are incorporated into and form part of the TCF Rules).¹⁵
11. For the purposes of our review, we refer to the Code, the Scheme ToR and the TCF Rules (to the extent they relate to the TDRS) collectively as “**the Scheme**”.¹⁶

¹² New Zealand Telecommunications Forum Incorporated Rules of Association (2014) (**TCF Rules**), clause 4, accessible at https://app.businessregisters.govt.nz/sber-businesses/viewInstance/view.html?id=229a78e05307b6d8bf1b29667f00cb17278e781eda4647e5&_timestamp=645939221661029. See also “About us” accessed on 22 March 2021 - <https://www.tcf.org.nz/industry/about-us/>

¹³ Telecommunications Act 2001, Section 247. The principles are those set out in s 246(2)(f) of the Act.

¹⁴ The Code can be found at <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/customer-complaints-code.pdf>. The reference to the Code includes all of its annexures.

¹⁵ The Scheme ToR can be found at <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/terms-of-reference-telecommunications-dispute-resolution-scheme.pdf>. Refer to clause 4.1.

¹⁶ We note that the documents themselves adopt slightly different definitions for “Scheme”. For example, the Scheme TOR states that the Code and the Scheme TOR collectively constitute “the Scheme” (refer to clause 1.1); and the Explanatory Statement to the Code states that the Scheme is comprised of the Code

12. We set out below a brief overview of each of these documents and how they interact. The actual operation and interrelationship between these documents will form part of our review.

The Code

13. The Code sets out the rights and obligations of Scheme Members and their customers with regard to the handling of complaints. It both:
- 13.1 sets out the principles and commitments that Scheme Members agree to follow for the resolution of a complaint internally;¹⁷ and
 - 13.2 provides for a specialised dispute resolution mechanism and procedures to address issues where a Scheme Member's internal complaints handling or dispute resolution process fails to deliver a solution acceptable to the Customer.^{18,19}

The Scheme ToR

14. The Scheme ToR set out details regarding Scheme Membership and how the TDRS is governed, including the role of the TDRS Council and the TCF Board (governance is discussed in greater detail at paragraphs 34-36 below).
15. The Scheme ToR form part of, and are incorporated into, the TCF Rules.²⁰

The TCF Rules

16. The TCF Rules are the constitution of the TCF. They set out details regarding membership and governance of the TCF, its functions as an industry body, including in relation to the creation of industry codes and the TDRS.

Dispute resolution provider/Scheme Agent

17. Section 248 provides that the purpose of a dispute resolution provider in relation to a dispute resolution scheme for a Commission code or an industry RSQ code is:
- (a) to operate the scheme; and
 - (b) to administer the relevant code; and
 - (c) to manage consumer complaints relating to the code; and
 - (d) to investigate disputes relating to the code; and
 - (e) to promote awareness of the scheme and the code; and

and Annexure 1 of the Code (Annexure 1 sets out dispute resolution procedures the Scheme Agent must follow). For the purposes of our review, this is the definition we will be adopting.).

¹⁷ Code, clause 22.

¹⁸ Code, clause 17.3.

¹⁹ Code, Annexure 1.

²⁰ Scheme ToR, clause 4.1.

(f) to monitor compliance with the scheme and the code; and

(g) to enforce the provisions of the scheme and the code.

18. Under the Scheme ToR, the primary role of the dispute resolution provider —also referred to as the Scheme Agent— is to handle disputes, administer the Code, and develop position statements that provide guidance on how particular recurring types of complaint are commonly approached and resolved.²¹
19. The Scheme Agent reports to the TDRS Council, a governing body established under the Scheme ToR.²² (The TDRS Council is discussed further at paragraphs 29-30 below).
20. In 2007 the TCF appointed FairWay Resolution Limited (**FairWay**) as the Scheme Agent/dispute resolution provider for the TDRS.
21. FairWay is an independent employee-owned company providing conflict management and dispute resolution services.²³ It provides dispute resolution services for a number of schemes and handles over 16,000 cases a year across different schemes. FairWay has been the dispute resolution provider for the TDRS since it was established in 2007.

Membership of the TDRS

Scheme Members

22. There is no requirement under legislation that all telecommunications service providers must be members of the TDRS (**Scheme Members**).
23. The Code defines a Scheme Member as “a provider of Telecommunication Services to a Customer, and who has the Billing Relationship with the Customer for that Telecommunications Service and who has signed the Scheme Deed. Scheme Members include TCF members and non-TCF members”.²⁴
24. The Code provides for both Retail Scheme Members (**RSMs**) and Wholesale Scheme Members (**WSMs**). It defines RSMs as Scheme Members who hold the billing relationship with the customer, and WSMs are service providers who supply wholesale telecommunications services to:²⁵
 - 24.1 an RSM, so that the RSM may supply telecommunications services to the customer; or

²¹ Scheme ToR, clause 14. Please note, the Act uses the term “dispute resolution provider” whereas the Scheme ToR use the term “Scheme Agent” (they refer to the same body and we use the terms interchangeably throughout this document).

²² Code, clause 3.

²³ <https://www.fairwayresolution.com/about-fairway>

²⁴ Code, clause 3.

²⁵ Code, clause 28.1.

- 24.2 another WSM and all or part of the services are ultimately supplied to an RSM so that the RSM may supply telecommunications services to the customer (to recognise that there may be a number of WSMs in the chain of supply of telecommunications services to the customer).
25. Current Scheme Members include both TCF members and a number of service providers who are not TCF members.²⁶ This means that the TDRS is estimated to be available to over 99% of residential mobile market customers and at least 87% of residential fixed broadband customers.²⁷

Which consumers can lodge disputes with the TDRS?

26. Only customers of telecommunications service providers who are Scheme Members can lodge disputes with the TDRS. The exception to this is for disputes related to the Commission's 111 Contact Code and Copper Withdrawal Code. For these matters, any consumer, irrespective of whether their service provider is a Scheme Member, may lodge a dispute with the TDRS.
27. The TDRS can only deal with disputes up to a maximum of \$15,000 in value.²⁸
28. Customers must refer complaints to Scheme Members with whom they have a billing relationship (ie, the RSM). Where relevant, the RSM may then refer any aspects of the complaint to the WSM and request the WSM's assistance in investigating or resolving the complaint in accordance with the Code.²⁹

Structure and governance of the TDRS

The TDRS Council

29. The TDRS Council is a governing body established under the Scheme ToR. Its role is explained in the explanatory statement to the Code as "to provide independence and ensure industry and public confidence in the Scheme".³⁰ It is comprised of four consumer representatives and four industry representatives.³¹
30. The Scheme ToR set out the functions of the TDRS Council, which include:³²
- 30.1 overseeing the operation of the TDRS and ensuring it operates efficiently and within the approved budget;

²⁶ Refer to paragraphs 31-33 below regarding TCF membership. A list of Scheme Members can be found at <https://www.tdr.org.nz/about-tdr/tdr-scheme-members>

²⁷ See Figures 17 and 18 of the 2020 Annual Telecommunication Monitoring Report for market share estimates at https://comcom.govt.nz/_data/assets/pdf_file/0030/247377/2020-Annual-Telecommunications-Monitoring-Report-Revised-version-16-March-2021.pdf

²⁸ Code, clause 18.1.15.

²⁹ Code, clauses 29-30. The Scheme Agent may rule that a WSM is partially at fault or responsible for one or more matters raised in the complaint and may apportion liability between relevant WSM(s) and RSM: refer to Code, clause 34.7.

³⁰ Code, page 2.

³¹ Scheme ToR, clause 7.1. Industry representatives are determined by reference to the TCF membership category tiers.

³² Scheme ToR, clause 6.1.

- 30.2 providing guidance to the dispute resolution provider (the Scheme Agent) on policy and procedural questions; and
- 30.3 providing the TCF Board and Scheme Members with quarterly reports on the progress of the TDRS.

The TCF

- 31. As set out at paragraph 8 above, the TCF is an industry body whose membership is made up of both retail and wholesale telecommunications service providers.³³
- 32. TCF membership consists of full members (“eligible persons”, as defined in s 5 of the Act) who have joined the TCF; and associate members.³⁴
- 33. Full members are divided into membership tiers according to membership fees they pay, which are determined based on the telecommunications revenue the particular member earns.³⁵

The TCF Board

- 34. The functions of the TCF Board in relation to the TDRS are to maintain an oversight role, approve the overall budget for the TDRS, and execute the contract with the Scheme Agent (the dispute resolution provider).³⁶
- 35. The TCF is governed by a Board comprised of:³⁷
 - 35.1 the Chairperson;
 - 35.2 one representative from each Tier One Member;
 - 35.3 one representative for each Tier Two Tier Representative; and
 - 35.4 one representative for each Tier Three Tier Representative.
- 36. The current members of the Board are the chief executives of 2degrees, Chorus, Spark, Vodafone, Vocus and Trustpower.

³³ A list of TCF members can be found at <https://www.tcf.org.nz/industry/about-us/our-members/>

³⁴ Associate Members are made up of “Numbering Associates” and “General Associates”: see TCF Rules, accessible at <https://app.businessregisters.govt.nz/sber-businesses/viewInstance/view.html?id=229a78e05307b6d8bf1b29667f00cb1709b19e0dd9908792×tamp=569209778573581>, clause 6.1.

³⁵ TCF Rules, clause 9.1.

³⁶ Scheme ToR, clause 10.

³⁷ Scheme ToR, clause 9.2. Tier Four Members, Numbering Associates and General Associates have no Board representatives.

General information regarding the TDRS

37. In the six months to 30 June 2020, the TDRS received 1,231 complaints and enquiries.³⁸ During this period, around 90% of consumer complaints and enquiries referred by the TDRS back to the Scheme Member to resolve with the customer, were resolved directly with the Scheme Member. Of the remaining complaints and enquiries, 8% resulted in no intervention and 2% (a total of 23) resulted in formal intervention by the TDRS.³⁹

Matters we intend to consider in our first review

38. The Act sets out a non-exhaustive list of matters we may choose to consider when we conduct a review of an industry dispute resolution scheme.⁴⁰
39. We have identified certain matters —presented below as “key themes”— that we consider require particular attention for our first review. These key themes are:
- 39.1 awareness;
 - 39.2 position statements;
 - 39.3 systemic issues;
 - 39.4 complaints handling process;
 - 39.5 jurisdiction; and
 - 39.6 governance.
40. These key themes have been shaped by feedback from industry, consumers and community groups about aspects of the TDRS that work well, and those that could be improved.⁴¹ They do not limit the matters that can be raised with us throughout our first review. We will use our discretion to include any additional matter we consider necessary or desirable. If we decide to consider additional matters, we will inform stakeholders of this as soon as reasonably practicable.

³⁸ TDR Biannual Report January – June 2020 at https://www.tdr.org.nz/sites/default/files/field/file_attachment/TDR%20Bi-Annual%20Report%202020%20-PT%201-DEC%202020.pdf

³⁹ No intervention includes complaints that were withdrawn and complaints the TDRS does not have jurisdiction over.

⁴⁰ Telecommunications Act 2001, s 246.

⁴¹ Our open letter published on 29 October 2020 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0023/227354/Improving-retail-service-quality-for-consumers-Open-letter-29-October-2020.pdf.

41. A summary of stakeholders' submissions is set out in Attachment A of this document. Full copies of all public submissions have been published on the project page of our website.⁴²

Best practice guidance

42. In the section that follows, we expand on each key theme with reference to the relevant best practice principles and how we intend to approach each theme during our review (see section on *assessment guide* under each key theme). We set out a range of relevant questions we may consider during our review. This does not however limit the questions we may consider.

Awareness

43. The Code states that “good awareness of the TDRS is recognised as an important part of providing a commitment to the Scheme and its principles”.⁴³
44. The Scheme ToR state that FairWay (as the Scheme Agent) will undertake promotion of the TDRS in accordance with the TDRS business plan (as approved by the TCF Board).⁴⁴

Submissions

45. The TCF considers that ensuring consumers are aware of the existence of the TDRS is an aspect that is working well. The TCF highlighted that FairWay is taking steps to increase consumers' awareness by updating its branding and taking part in a joint Pasifika engagement campaign with other dispute resolution bodies.⁴⁵
46. There was however a general feeling among many other submitters that awareness of the TDRS needed to be improved. Spark —a Scheme Member— noted that general awareness for the TDRS could be better.⁴⁶ Citizens Advice Bureau and Age Concern New Zealand expressed a similar sentiment, noting that their clients were often unaware that the TDRS existed.⁴⁷
47. FinCap submitted that providers do not adequately inform their customers of the existence of the TDRS, nor is there enough targeted outreach work, which FinCap considered was the best way to reach the most vulnerable consumers.⁴⁸

⁴² The TDRS project page can be found at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/2021-review-of-the-telecommunications-dispute-resolution-scheme>.

⁴³ Code, clause 5.3.

⁴⁴ Scheme ToR, clause 14.3.

⁴⁵ TCF submission on industry dispute resolution scheme (18 December 2020), para 41.

⁴⁶ Spark submission on industry dispute resolution scheme (18 December 2020), para 21.

⁴⁷ Citizens Advice Bureau submission on industry dispute resolution scheme (17 December 2020), pg 1; Age Concern New Zealand submission on industry dispute resolution scheme (9 December 2020), pg 3.

⁴⁸ FinCap submission on industry dispute resolution scheme (17 December 2020), pg 2.

48. Consumer NZ and Citizens Advice Bureau were concerned there was a lack of engagement from the TDRS with them as consumer agencies.⁴⁹
49. In its submission, Spark encouraged further discussion of how the telecommunications industry can continue to raise awareness of the TDRS.⁵⁰

Assessment guide

50. Both MBIE's best practice guidance and the Australian guidance include raising awareness under the accessibility principle.⁵¹
51. There are a range of questions we may consider for the awareness theme, including:
- 51.1 How is the scheme promoted and awareness of it raised?
- 51.2 Does the Scheme Provider focus its promotion efforts on areas where customers are likely to seek information in the event of a dispute, eg, the websites of consumer agencies and advocacy services?
- 51.3 What forms of media are used to promote it (eg, online, posters, television)?
- 51.4 Is information about the scheme easy to find and understand?
- 51.5 Is the promotional material consistent across the different media and entry channels?

Position statements and case studies

52. The Code provides that position statements are designed to guide the Scheme Agent on how particular recurring types of complaint are commonly approached and resolved, to allow for more efficient resolution of common types of complaint. The Code states that the Scheme Agent must take position statements into account when evaluating any complaint.⁵²
53. Position statements are recommended by the Scheme Agent and approved by the TDRS Council before being published on the TDRS website.
54. The Scheme Agent currently publishes:
- 54.1 position statements, to show both consumers and Scheme Members how the TDRS approaches complaints with common themes; and
- 54.2 case studies that provide examples of the types of complaints the TDRS can help to resolve.

⁴⁹ Citizens Advice Bureau submission on industry dispute resolution scheme (17 December 2020), pg 1; Consumer NZ submission on industry dispute resolution scheme (18 December 2020), pg 2-3.

⁵⁰ Spark submission on industry dispute resolution scheme (18 December 2020), para 25.

⁵¹ Ibid, 3 and 4.

⁵² Code, Section I (Position Statements).

Submissions

55. FinCap noted the importance of clear position statements as a way to incentivise providers to comply with their obligations, and to increase consumers' confidence in the TDRS. FinCap submitted the view that existing position statements seem unlikely to help achieve a fair outcome for consumers, for example because they offer limited protection and do not name the providers involved in the complaints.
56. Consumer NZ also questioned the comprehensiveness and robustness of existing position statements and case studies. It suggested that position statements should provide more information and should inform consumers of their rights.

Assessment guide

57. The analysis of complaints data and the publication of written reports and case studies about complaints engage both the efficiency and accountability principles.⁵³
58. The questions we may ask when considering this key theme include:
 - 58.1 What information about complaints does the dispute resolution provider collect, analyse and publish?
 - 58.2 To what extent does the dispute resolution provider publish information that is educative and that assists consumers, providers and other organisations to achieve early resolution of disputes?
 - 58.3 Does the dispute resolution provider publish final determinations of the TDRS?

Systemic issues

59. One of the purposes of the TDRS set out in the Scheme ToR is to educate the industry about systemic issues arising from disputes and determinations.⁵⁴
60. Systemic issues may be issues that affect several customers of one service provider, or, in the case of industry-wide issues, customers of a number of different service providers. Systemic issues can affect a significant number of consumers or a particular category of consumers.⁵⁵ Addressing systemic issues is key to improving outcomes for consumers, as it allows service providers to address the root cause of the issue, rather than dealing with recurring complaints.

Submissions

61. Consumer NZ submitted that it does not consider the TDRS is able to consistently identify and work to resolve systemic issues.⁵⁶

⁵³ Ibid, 3 and 4.

⁵⁴ Scheme ToR, clause 1.2(c).

⁵⁵ <https://www.tio.com.au/about-us/policies-and-procedures/systemic-problem-investigation>

⁵⁶ Consumer NZ submission on industry dispute resolution scheme (18 December 2020), pg 3.

62. Consumer groups noted that while the TDRS publishes position statements (as is good practice), it needs to provide more detailed information to the public. For example, FinCap submitted that position statements needed to name the Scheme Member involved in order to increase the accountability of the scheme and its members.⁵⁷ Consumer NZ similarly submitted that Scheme Members should be named and that the statements should include information to inform consumers of their rights.⁵⁸

Assessment guide

63. Both MBIE's best practice guidance and the Australian guidance include addressing systemic issues under the efficiency principle.⁵⁹
64. The range of questions we may ask when considering this key theme include:
- 64.1 Does the dispute resolution provider routinely collect and record dispute data and other information?
 - 64.2 Does the dispute resolution provider regularly analyse scheme data and information to identify trends, underlying issues and systemic problems?
 - 64.3 How does the dispute resolution scheme respond to the trends, underlying issues and systemic problems that are identified?

Complaints handling process

65. The Code sets out the rules and processes that consumers and Scheme Members must follow for the resolution of a customer complaint, before a customer can take the complaint to the Scheme Agent. This includes, for example, rules relating to timeframes within which Scheme Members should resolve complaints directly with their customers.
66. Once the Scheme Agent has accepted a complaint, it will investigate the matter following the process outlined in the Code. This usually includes trying to get parties to the dispute to agree a resolution. If the parties do not agree, the Scheme Agent will consider and ultimately make a final decision on the dispute.⁶⁰

Submissions

67. Consumer NZ and FinCap considered that certain complaints should be prioritised over others. Examples include where a problem is causing significant consumer detriment, or where the consumer may suffer more in the long-term from delayed resolution.⁶¹ Criticisms were also made that powers of the TDRS were too limited, for

⁵⁷ FinCap submission on industry dispute resolution scheme (17 December 2020), pg 3.

⁵⁸ Consumer NZ submission on industry dispute resolution scheme (18 December 2020), pg 2.

⁵⁹ Ibid, 3 and 4.

⁶⁰ Code, Annexure 1 – Dispute Resolution Procedures.

⁶¹ Consumer NZ submission on industry dispute resolution scheme (18 December 2020), pg 3; FinCap submission on industry dispute resolution scheme (17 December 2020), pg 3.

example, the lack of a power to pause debt collection while the complaint was being handled.⁶²

68. Chorus and 2degrees considered that the TDRS' encouragement of efficient resolution of complaints outside of formal intervention was an area that was working well.⁶³
69. Some submitters considered that the six-week deadlock period before a complaint can be accepted by the TDRS was too long and that it could discourage consumers from following through with their complaints. In its submission, Utilities Disputes noted that the Telecommunications Industry Ombudsman (**TIO**) —the Australian equivalent of the TDRS— only has a 15-day deadlock period.⁶⁴
70. Utilities Disputes also criticised the TDRS' use of a variety of resolution practitioners to decide matters that were unable to be settled. In its submission, a centralised decision-making process would permit greater consistency of decisions.⁶⁵

Assessment guide

71. The complaints handling process engages the principles of accessibility, fairness and efficiency.⁶⁶
72. When considering this theme, the questions we may ask include:
 - 72.1 How easy is it for consumers to use the TDRS?
 - 72.2 Is the complaints handling process seen as fair by consumers, Scheme Members and other organisations?
 - 72.3 Is the complaints handling process appropriate when considering the number, size, and complexity of the issues for the disputes received?
 - 72.4 Is timeliness considered in the complaints handling process (eg timeliness of acknowledging and responding to an initial complaint, time taken to investigate a complaint, time taken to make a decision etc)?
 - 72.5 Is the existing six-week deadlock requirement before a dispute can be accepted by the TDRS reasonable?

Governance

73. The TCF appointed the Scheme Agent as an independent party to facilitate the efficient working of the TDRS.⁶⁷ The Scheme Agent reports to the TDRS Council,

⁶² FinCap submission on industry dispute resolution scheme (17 December 2020), pg 3.

⁶³ Chorus submission on open letter (18 December 2020) p 1; 2degrees submission on industry dispute resolution scheme (17 December 2020), pg 2.

⁶⁴ Utilities Disputes submission on industry dispute resolution scheme (17 December 2020), pg 2.

⁶⁵ Utilities Disputes submission on industry dispute resolution scheme (17 December 2020), pg 2. MBIE's guidance includes fairness and independence in the same principle, whereas they are separate principles in the Australian guidance.

⁶⁷ Scheme ToR, clause 14.1.

which in turn provides guidance to the Scheme Agent on policy and procedural questions, including the approval, suggested amendment and removal of position statements.

74. The TDRS Council instigated a self-review of the TDRS in 2009 with the purpose of testing the independence and the public perception of independence of the TDRS.⁶⁸ The TCF still has an active role in the governance of the TDRS (for example, the TCF Board approves the overall budget for the TDRS and can modify the Code and the Scheme ToR).⁶⁹

Submissions

75. In its submission, the TCF considered there is room for changes to the governance structure of the TDRS.⁷⁰
76. There were divergent views on the presence of industry representatives on the TDRS Council. Utilities Disputes submitted that it created a perceived lack of independence while 2degrees and Vodafone submitted in favour of industry presence on the TDRS Council.⁷¹
77. TUANZ submitted that the TDRS Council should be strengthened through the TCF delegating more of its governance powers and responsibilities to the TDRS Council.⁷²
78. Consumer NZ submitted that reliance by the TDRS on industry funding was problematic and created potential conflicts of interest.⁷³

Assessment guide

79. The relevant principle when considering the governance structure (including funding) is the principle of independence.⁷⁴
80. The questions we may ask when considering this key theme include:
- 80.1 Is there an appropriate balance of powers between the TCF, the TDRS Council and the Scheme Agent?
- 80.2 Is the funding model appropriate in terms of independence (eg, is there a relationship between the decision-maker for resolving disputes and any participating organisations that funds or administer the TDRS)?
- 80.3 Are the funding arrangements transparent?

⁶⁸ <https://www.tdr.org.nz/news/review-of-the-tdr-scheme>.

⁶⁹ Scheme ToR, clause 10.1.

⁷⁰ TCF submission on industry dispute resolution scheme (18 December 2020), para 45.

⁷¹ Utilities Disputes submission on industry dispute resolution scheme (17 December 2020), pg 2; 2degrees submission on industry dispute resolution scheme (17 December 2020), pg 2; Vodafone submission on industry dispute resolution scheme (18 December 2020), pg 3.

⁷² TUANZ "Submission on industry dispute resolution scheme" (18 December 2020), para 14(a).

⁷³ Consumer NZ "Submission on industry dispute resolution scheme" (18 December 2020), pg 2.

⁷⁴ Ibid, 3 and 4.

Jurisdiction

81. The jurisdiction of the TDRS is set out in the Code. The Code currently contains 18 specific exclusions, ie, types of disputes that the Scheme Agent cannot consider. For example, disputes relating to congestion and performance are currently not included within the jurisdiction of the TDRS, except under very specific and limited circumstances.⁷⁵
82. Also, WSMs have a limited liability under the Code, meaning that consumers can only bring complaints against a WSM if there is an existing billing relationship with a Scheme Member.⁷⁶ The current exceptions to this are for disputes related to the 111 Contact Code and the Copper Withdrawal Code.

Submissions

83. Consumer groups and industry both submitted that guidance on whether certain issues fall inside or outside the TDRS' jurisdiction needs updating. For example, Citizens Advice Bureau noted that there was confusion surrounding the role of the TDRS in relation to addressing mobile handset issues, and whether these fell within the jurisdiction of the TDRS.⁷⁷
84. There were also calls from Utilities Disputes and Consumer NZ for the TDRS claims cap of \$15,000 to be raised.⁷⁸
85. Many stakeholders submitted that there were issues with the TDRS being a voluntary scheme for telecommunications providers. For example, Vodafone submitted that it reduces the ability for the TDRS to market itself as a one-stop shop for telecommunications disputes. Citizens Advice Bureau considered that it created the wrong incentives for the TDRS, as it was reliant on keeping its members on side.⁷⁹
86. There were also issues raised in submissions with the limited membership status of wholesale fixed-line operators. For example, Spark submitted that having the concept of "wholesale" members who are only involved if the TDRS considers them a party to a particular issue creates unnecessary complexity.⁸⁰ Spark also considered that it unfairly penalises retailers and does not result in the same incentives for wholesalers to improve their performance.⁸¹

⁷⁵ Code, clause 18.

⁷⁶ Code, clause 34.7

⁷⁷ Citizens Advice Bureau "Submission on industry dispute resolution scheme" (17 December 2020), pg 2.

⁷⁸ Utilities Disputes submission on industry dispute resolution scheme (17 December 2020), pg 4; Consumer NZ submission on industry dispute resolution scheme (18 December 2020), pg 3.

⁷⁹ Vodafone "Submission on industry dispute resolution scheme" (18 December 2020), pg 2.

⁸⁰ Spark "Submission on industry dispute resolution scheme" (18 December 2020), para 12-14.

⁸¹ Spark "Submission on industry dispute resolution scheme" (18 December 2020), para 12.

Assessment guide

87. The most relevant best practice principles when considering the jurisdiction of a dispute resolution are the accessibility principle and the effectiveness principle (eg, appropriateness of the scope).⁸²
88. The questions we may consider for this key theme include:
- 88.1 Is the jurisdiction of the scheme (including membership) appropriate and sufficiently broad to allow it to deal with the majority of disputes?
 - 88.2 Is the jurisdiction of the scheme (including membership) clearly outlined and accessible to all relevant stakeholders?
 - 88.3 Is the process for becoming a Scheme Member clearly outlined and accessible?
 - 88.4 Is there a referral procedure for matters that are outside the scheme's jurisdiction?
 - 88.5 Is the financial jurisdiction of the scheme consistent with the nature, extent and value of customer transactions in the telecommunications industry?

Next steps

89. Following publication of this issues paper we will continue gathering information for the purpose of our review and meet with relevant stakeholders.
90. As noted in our process paper, we have hired an external independent expert, cameron. ralph. khoury (**CRK**) to assist with certain tasks of our review. This means some stakeholders may be contacted directly by CRK.
91. We expect the information gathering and analysis phase of our review to last until June 2021 and to publish our draft report and draft recommendations by the end of August 2021. Please see our process paper for more detailed information on timeframes.

⁸² Ibid, 3 and 4.

Attachment A – summary of views

Summary of views – what works well

Cost to consumers			
Row #	Submitter	Key submission point	Reference
1.	Consumer NZ	<i>TDRS is free, which is good for consumers</i>	<i>page 2</i>
2.	TCF	<i>The services of the Scheme are provided free to consumers and the fixed costs are fully funded by Retail Service Provider (RSP) members.</i>	<i>para 4</i>
3.	Chorus	<i>The Telecommunications Dispute Resolution Scheme (TDRS) is working well for industry participants and end-consumers and is a free service for end-consumers.</i>	<i>page 1</i>
Awareness			
Row #	Submitter	Key submission point	Reference
4.	TCF	<i>FairWay is doing targeted work to increase public awareness of the scheme. For example, FairWay is part of a joint Pasifika engagement campaign with other dispute resolution bodies and attends events such as the Hui with Te Kahui Mana Ririki. A slight increase in complaint and enquiry contacts to the scheme can be attributed to the increased awareness of the Scheme. In addition, Fairway has commenced a new marketing and awareness campaign, and this includes work to update the branding and logo of the scheme to make it more accessible to consumers.</i>	<i>para 41</i>
5.	2degrees	<i>The TDRS is promoted by Fairway and retailers – retailers must provide consumers with information about the TDRS on their websites and bills.</i>	<i>page 2</i>
Relationship with consumers and industry			
Row #	Submitter	Key submission point	Reference
6.	TCF	<i>The Scheme has a Net Promoter Score of +73.</i>	<i>para 7</i>
7.	Utilities Disputes	<i>[I]n its 2019/20 Annual Report, the TDRS shows an 89% satisfaction level from complainants. 93% of those surveyed agreed TDRS staff were friendly and courteous. 85% of respondents agreed that TDRS staff listened and understood their complaint.</i>	<i>page 1</i>

8.	Consumer NZ	<i>Consumer NZ has received some positive feedback from consumers who have dealt with the TDR.</i>	<i>page 2</i>
9.	2degrees	<i>Overall, 2degrees considers the TDRS works very well, with very positive feedback from consumers using the service, as well as from our team that works with the TDRS.</i>	<i>page 1</i>
10.	Age Concern New Zealand	<i>Feedback from local Age Concerns is that a good service is provided by the Telecommunications Dispute Resolution Scheme and that staff appear to have good relationships with telecommunication providers and can get them to fix problems that older people are experiencing.</i>	<i>page 3</i>
Complaints handling process			
Row #	Submitter	Key submission point	Reference
11.	Chorus	<i>[T]he TDRS is effective at resolving disputes outside of adjudication, which is good for consumers as its likely they would prefer proceedings to be resolved as quickly as possible and outside of formal adjudication proceedings.</i>	<i>page 1</i>
12.	TUANZ	<i>We agree with a general perception that the TDRS does indeed provide a relatively successful process within the scope and processes set up under the industry defined code.</i>	<i>para 12</i>
13.	TCF	<i>The [Retail Scheme Members] have a good record of resolving issues directly with consumers.</i>	<i>para 43</i>
14.	Spark	<i>We consider the TDR disputes scheme generally works well and disputes are resolved quickly and independently</i>	<i>para 1</i>
15.	Age Concern New Zealand	<i>Once referred to TDRS, complaints are typically followed up efficiently and effectively.</i>	<i>page 4</i>
16.	2degrees	<i>The TDRS encourages efficient resolution of complaints and enquiries with relevant service providers, resulting in satisfied telecommunications consumers and an efficient scheme that minimises unnecessary, more costly and resource-intensive formal interventions.</i>	<i>page 2</i>

Position statements			
Row #	Submitter	Key submission point	Reference
17.	FinCap	<i>FinCap noted that the TDR published position statements, which is good practice for a dispute resolution scheme.</i>	<i>page 2</i>
Reporting			
Row #	Submitter	Key submission point	Reference
18.	TCF	<i>There has been increased public reporting with the Biannual Report, which is a tool to inform consumer choice. The Biannual Report includes complaint and enquiry data per 10,000 connections by the largest five scheme members.</i>	<i>para 38</i>
19.	TCF	<i>There has been improved communication with the Commission with the introduction of quarterly catch-up meetings with TDR (in addition to providing quarterly complaints data to the Commission).</i>	<i>para 40</i>
Governance and independence			
Row #	Submitter	Key submission point	Reference
20.	2degrees	<i>The TDRS Council provides informed, expert practical advice to the dispute resolution provider, drawing from important knowledge of both consumer and industry representatives (chaired by a consumer representative).</i>	<i>page 2</i>
21.	Vodafone	<i>We consider it is essential that strong industry representation remains on the TDRS Council. Industry involvement ensures that decisions are practical and achievable. This requires a broad industry representation to ensure a wide range of market perspectives are taken into account.</i>	<i>page 3</i>
22.	TCF	<i>Fairway makes its decisions fully independently of the industry and scheme members</i>	<i>para 34</i>

Summary of views – what could be improved

Awareness			
Row #	Submitter	Key submission point	Reference
1.	Chorus	<i>We support improving awareness for consumers and consider there are low cost ways to increase awareness. For example, through more proactive engagement by RSPs with their customers. We would also support initiatives to promote awareness through relevant and appropriate channels, such as consumer advocacy groups, the Commerce Commission and / or Consumer NZ.</i>	<i>page 1</i>
2.	Jason Brown (consumer)	<i>Far greater prominence to complaints processes on retail sites required. Complaint links should not be buried in fine print or deep inside a site. Complaint options should also be added by law to automated phone systems.</i>	<i>page 1</i>
3.	Spark	<i>We recognise that general awareness for TDRS could be better and welcome the fact that the TDRS Board has approved work in this area. It is important consumers understand there is a disputes body they can use and that they feel empowered to use it.</i>	<i>para 21</i>
4.	Citizen Advice Bureau	<i>[O]ur experience with clients is that very few of them are aware of the TDRS when they approach us.</i>	<i>page 1</i>
5.	FinCap	<i>FinCap thinks there is a lack of awareness around the TDR, as the scheme has not been mentioned by any of the Financial Mentors that a FinCap staff member has had detailed discussions on telecommunication issues with. The lack of awareness seems to be partly because telecommunications providers do not mention or do not sufficiently mention the existence of the TDR to their customers (for example when consumers sign up to a telecommunications service).</i>	<i>page 2</i>
6.	Consumer NZ	<i>Consumer NZ's results from a prompted awareness survey showed a level of 21%.</i> <i>TDR is represented on consumers' bills in very small print. Recent changes in the electricity sector have made it mandatory for companies to have a reference to the dispute resolution scheme prominently displayed on consumer bills.</i> <i>Low level of complaints and enquiries to TDR show that there is low public awareness. The costs of this are being borne by other organisations, such as Consumer NZ, because consumers don't know where to go if they have a complaint.</i>	<i>page 2</i>

7.	TUANZ	<i>As a minimum, there should be a requirement on members of the TDRS to advertise the fact through their website and customer communications.</i>	<i>para 14(e)</i>
8.	Age Concern New Zealand	<i>Age Concern New Zealand is contacted by older people asking who they should contact to make a complaint or inquiry. The public are aware of the Consumer Guarantees Act and Fair Go but not the Telecommunications Disputes Resolution Service</i>	<i>page 3</i>

Outreach and engagement

Row #	Submitter	Key submission point	Reference
9.	Citizen Advice Bureau	<i>[T]he current TDRS is significantly underperforming in reaching the consumers who could benefit from their help.</i>	<i>page 1</i>
10.	FinCap	<i>There is not enough targeted community engagement by TDR, but noted that this applies across all disputes resolution providers, not just the TDR. Most communications seem to be directed towards members (ie providers), not the public. FinCap considers outreach is the way to get to the most vulnerable consumers.</i>	<i>page 2</i>
11.	Citizen Advice Bureau	<i>We also have concerns about the level of engagement with the TDRS and consumer stakeholders. As a national organisation which supports over 1500 clients a year with telecommunications issues we have had almost no interaction with the TDRS, either in terms of promoting awareness of the service or the TDRS seeking to understand the nature of the client enquiries that we are dealing with.</i>	<i>page 1</i>
12.	Consumer NZ	<i>Consumer NZ [is] not aware of proactive work being undertaken by the scheme to raise its public profile, and there is little direct contact with consumer groups.</i>	<i>page 2</i>

Complaints handling process

Row #	Submitter	Key submission point	Reference
13.	Utilities Disputes	<i>We believe a 6-week time frame for acceptance of a deadlocked complaint is too long. The Australian Telecommunications Industry Ombudsman (TIO) has a 15-day requirement. Lengthy delays can discourage consumers from following through with their complaints.</i>	<i>page 2</i>
14.	Citizen Advice Bureau	<i>It's simply unrealistic for consumers to have to wait for six weeks of inaction from a telecommunication provider before they can elevate their request. We would support this being much shorter, so that people can access the TDRS in a timelier manner.</i>	<i>page 1</i>

15.	Consumer NZ	<i>[T]he six-week deadlock period is too long for consumers to wait to access the TDR. As a comparison, there is no such deadlock period in the Consumer Guarantees Act or for a consumer to go to a disputes tribunal. Consumer NZ noted that telco bills must be paid promptly and that there isn't a 'grace period' for consumers when things go wrong. Telecommunications providers should be held to the same standard.</i>	<i>page 2-3</i>
16.	FinCap	<i>FinCap considers the following changes to the TDR would make the biggest impact for the benefit of consumers: o Prioritisation of complaints of consumers who are in hardship because these consumers may suffer more in the long-term (eg they might get cut off or get poor credit rating)</i>	<i>page 3</i>
17.	ConsumerNZ	<i>Complaints should be dealt with in a timely manner. Some complaints should be given more urgency than others, eg when the problem is causing significant consumer detriment.</i>	<i>page 3</i>
Position statements			
Row #	Submitter	Key submission point	Reference
18.	Consumer NZ	<i>Consumer NZ also questioned the comprehensiveness of the TDR's position statements. These statements don't name providers and don't necessarily discuss the application of relevant consumer law.</i>	<i>page 2</i>
19.	FinCap	<i>FinCap noted the importance of clear position statements, as position statements: - help consumers and their support workers to understand their rights and may incentivise them raising a complaint - incentivise providers to comply with their obligations and to 'do the right thing' - increase consumers' confidence in the dispute resolution system</i>	<i>page 2</i>
20.	FinCap	<i>FinCap considers the following changes to the TDR would make the biggest impact for the benefit of consumers: o Increased accountability of the scheme and its members - Name traders in position statements</i>	<i>page 3</i>
21.	Consumer NZ	<i>Consumer NZ doesn't think the TDR is able to consistently identify and work to resolve industry systemic issues; it addresses disputes but doesn't appear to have the ability to influence improvements in company behaviour.</i>	<i>page 3</i>
Reporting			
Row #	Submitter	Key submission point	Reference
22.	2degrees	<i>We consider the current TDRS reporting can be misleading for consumers and other industry stakeholders, including the Commerce Commission.</i>	<i>page 2</i>

23.	Vodafone	<i>Industry complaint statistics are reported incorrectly. Complaints raised to TDRS must be assigned to an RSP first, even if the complaint solely relates to a network issue from Chorus or one of the other LFCs. We believe that this has contributed to a worrying trend where Chorus and the LFCs are not willing to engage in resolving issues before they are deadlocked and sent for a TDRS decision.</i>	<i>page 2</i>
Jurisdiction			
Row #	Submitter	Key submission point	Reference
24.	TUANZ	<i>The scope of the TDRS should be extended to cover the aspects of service quality that are identified in the Commission's review as being those that are critical to users receiving a quality, made for purpose service.</i>	<i>para 14(c)</i>
25.	Citizens Advice Bureau	<i>Reviewing our enquiries about client interactions with the TDRS some of the issues that keep coming up include:</i> <ul style="list-style-type: none"> • <i>Confusion about the role of the TDRS in relation to hardware, especially problems with mobile phones, which aren't working correctly.</i> • <i>Confusion about the role of the TDRS in relation to dealing with complaints around pricing and what the TDRS can help with in relation to this.</i> 	<i>page 2</i>
26.	Vodafone	<i>We would like to see the code updated to provide more guidance to the TDRS on certain matters.</i>	<i>page 3</i>
27.	FinCap	<i>The TDR's website did not give enough information for consumers to know whether to raise a complaint or not. For example, it is not apparent from the TDR's website whether TDR deals with debt collection issues, or even before the debt is handed over to a debt collector (eg the consumer has been notified of the debt but cannot agree a payment plan with the provider).</i>	<i>page 2</i>
Governance and independence			
Row #	Submitter	Key submission point	Reference
28.	TUANZ	<i>The TDR Council should be strengthened with more governance powers and responsibilities delegated to it by the TCF to develop policy and be given the power to manage the contract with the service provider. This should include setting policy and budget. This move will increase the perceived independence of the scheme.</i>	<i>para 14(a)</i>
29.	TCF	<i>The TCF is aware that there is some room for changes to the scheme, particularly in relation to the governance structure of the Scheme.</i>	<i>para 45</i>
30.	Utilities Disputes	<i>We understand TDRS uses a variety of resolution practitioners, contracted by FairWay, who act independently when writing their decisions. This process could be improved with the introduction of a centralised decision-maker. A centralised decision-maker can be pivotal in a successful scheme, particularly where complaints are unable to be settled. It allows for greater consistency of decisions, without the cost of litigation to provide judicial precedent and provides certainty for both consumers and scheme members so long as decisions are readily accessible.</i>	<i>page 2</i>

31.	Consumer NZ	<i>Consumer NZ thinks the scheme's reliance on industry funding is problematic and creates potential conflicts of interest.</i>	<i>page 2</i>
32.	Utilities Disputes	<i>Our view is that for the TDRS to be independent it needs to operate as a not-for-profit, mandatory scheme with all telecommunications providers required to join. Membership of a scheme needs to be mandatory for a scheme to be independent. This reduces the influence, both real and perceived, of scheme members on the case management and decision-making process</i>	<i>page 1</i>
33.	Utilities Disputes	<i>We believe there can be a perceived lack of independence in having a governing council made up of industry representatives from organisations from which the scheme considers complaints about. It would be preferable if the governing Council were made up of independent directors.</i>	<i>page 2</i>
Membership			
Row #	Submitter	Key submission point	References
34.	TUANZ	<i>There should be a requirement for all providers of telecommunications services in New Zealand to end-users to be part of an approved disputes service such as the TDRS.</i>	<i>para 14(d)</i>
35.	FinCap	<i>The scheme should be mandatory for telecommunications providers</i>	<i>page 3</i>
36.	Vodafone	<i>Many RSPs are not a member of the TDRS. For example neither Voyager, nor Lightwire are members despite having almost \$20m of qualifying telco revenue between them. This reduces the ability for the TDRS to market itself as the one-stop shop for telecommunications disputes. The industry must be on a level playing field with simple messaging to customers. This requires membership of TDRS to be mandatory.</i>	<i>page 2</i>
37.	Citizens Advice Bureau	<i>Our view is that there are significant downsides to having a voluntary scheme. We would like to see active consideration of whether the TDRS operating as a voluntary scheme is fit for purpose. One of our main concerns is that operating a voluntary scheme creates the wrong incentives for the scheme to be as effective as it should be, because the scheme is reliant on keeping its members on side.</i>	<i>page 2</i>
38.	Spark	<i>We support mandatory, universal membership of the TDRS</i>	<i>page 2</i>
39.	2degrees	<i>The current focus of the TDRS is on Retail Service Providers (RSPs), however many of the consumer complaints relate to services provided to RSPs by wholesale-only suppliers, in particular Local Fibre Companies, who do not contribute to the scheme's fixed costs.</i>	<i>page 2</i>

40.	Vodafone	<i>There are a number of customers with in-tact connections but no RSP associated with that connection. In this case the TDRS has no jurisdiction if there are any issues.</i>	<i>page 2</i>
Other matters raised			
Row #	Submitter	Key submission point	References
41.	Consumer NZ	<i>[T]he TDR hasn't evolved appropriately to respond to the growth in mobile phone and fixed-line products, and the complaints the telco sector is generating.</i>	<i>page 3</i>
42.	Consumer NZ	<i>The TDR should impose penalties for non-compliance, as there is otherwise no incentive on the members to comply.</i>	<i>page 3</i>
43.	Spark	<i>All members of the TDRS should be required to proportionally contribute to the common running costs of the scheme as well as paying per incident costs.</i>	<i>para 11</i>
44.	TUANZ	<i>The Customer Complaints Code should be a required regulated code giving the Commerce Commission oversight of the process and that the scope of the service should be regularly reviewed.</i>	<i>para 14(b)</i>
45.	Citizens Advice Bureau	<i>Our most significant concern is that the TDR is simply not meeting the level of need that exists.</i>	<i>page 1</i>